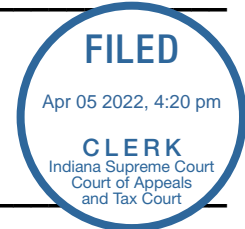


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**IN THE
INDIANA TAX COURT**



MARION COUNTY ASSESSOR,)
)
Petitioner,)
)
v.)
)
COLLEGE PARK CLUB, INC.,)
)
Respondent.)

Cause No. 21T-TA-00001

ON APPEAL FROM A FINAL DETERMINATION
OF THE INDIANA BOARD OF TAX REVIEW

**FOR PUBLICATION
April 5, 2022**

WENTWORTH, J.

The Marion County Assessor appeals from the Indiana Board of Tax Review’s final determination granting College Park Club, Inc.’s real property a common area property tax exemption under Indiana Code § 6-1.1-10-37.5 for tax years 2016 and 2017. Upon review, the Court affirms the Indiana Board’s final determination.

FACTS AND PROCEDURAL HISTORY

College Park is the not-for-profit homeowners’ association for the residential subdivision of College Park Estates, located in Indianapolis, Indiana. (See, e.g., Cert.

Admin. R. at 3-4, 27-28, 37-38, 155.) College Park owns the approximately six acre vacant lot within the community known as the “Colby Green Area,” which is used as green space. (See Cert. Admin. R. at 3-4, 27-28, 37-38, 155, 162). College Park purchased the land that comprises the Colby Green Area from the Jewish Federation of Greater Indianapolis, Inc. in July of 2014. (See Cert. Admin. R. at 27-28.) While under the Jewish Federation’s ownership, that land was exempt from property taxation. (See, e.g., Cert. Admin. R. at 4, 36.)

On September 23, 2016, the Assessor sent a letter to College Park stating that he had become aware of the change in ownership of the land in the Colby Green Area. (See Cert. Admin. R. at 36.) The letter explained that the previously granted property tax exemption would be suspended until College Park provided

an affidavit as required under [Indiana Code §] 6-1.1-11-4, signed under the penalties of perjury, which:

- Identifies the new owners of the property[; and]
- Indicates that the property continues to meet the requirements for an exemption under [Indiana Code §§] 6-1.1-10-21, [] 6-1.1-10-16, [] 6-1.1-10-24 or other.

If you have not provided the Marion County Assessor’s office with the affidavit by October 23, 2016, you are hereby notified that your exemption is suspended, and will continue to be suspended until such time as the requirements of IC 6-1.1-11-4 are satisfied.

Please note, for the exemption to continue the year following the change[,] a completed form 136 must be timely filed by April 1, 2017.

(Cert. Admin. R. at 36.)

On October 14, 2016, College Park responded by email to the Assessor’s letter. (See Cert. Admin. R. at 39.) Through various documents attached to that email, College

Park provided the Assessor with: (1) notice that the Colby Green Area qualified for an exemption under Indiana Code § 6-1.1-10-37.5 as common area property, (2) College Park's governing documents, and (3) the various versions of the covenants and restrictions for the residential community. (See Cert. Admin. R. at 39-97.) The Assessor did not respond to College Park's email. (See Cert. Admin. R. at 169-70, 182.)

Sometime in 2017, however, the Assessor instructed College Park that for the land in the Colby Green Area to qualify for the exemption under Indiana Code § 6-1.1-10-37.5, it needed to be re-platted with the words "Common Area" appearing on the recorded document. (See, e.g., Cert. Admin. R. at 171, 177-78.) College Park had the Colby Green Area re-platted and recorded that document on December 15, 2017. (See Cert. Admin. R. at 35, 171, 177-78.)

In 2018, College Park learned that the Colby Green Area received the common area property tax exemption for 2018 going forward, but not for the 2016 and 2017 tax years. Accordingly, College Park filed two Forms 130 ("Notice[s] to Initiate An Appeal") contending that the exemption had been improperly denied for both the 2016 and 2017 tax years. (See Cert. Admin. R. at 3-4, 7-8.) When the Marion County Property Tax Assessment Board of Appeals failed to act on the appeals in a timely manner, College Park transitioned them to the Indiana Board. (See Cert. Admin. R. at 1-2, 5-6.) See also IND. CODE § 6-1.1-15-1.2(k) (2018) (indicating that when a property tax assessment board of appeals failed to conduct a hearing on an appeal within 180 days of its filing, an appeal could be initiated directly with the Indiana Board).

The Indiana Board held a telephonic hearing on June 23, 2020, and issued a final determination in the matter on November 18, 2020. (See Cert. Admin. R. at 143, 151.)

In its final determination, the Indiana Board explained that under Indiana Code § 6-1.1-10-37.5(f), after a taxpayer notifies an assessor of the recorded common area property, the assessor is required to respond within thirty days. (See Cert. Admin. R. at 147-48 ¶¶ 17-18.) The Indiana Board concluded that because College Park provided proper notice, but the Assessor had failed to respond in a timely manner, the Colby Green Area land was deemed to be an exempt common area by default in both 2016 and 2017 under Indiana Code § 6-1.1-10-37.5(g). (See Cert. Admin. R. at 143 ¶ 2, 148-49 ¶¶ 19, 21.)

The Assessor initiated an original tax appeal on January 4, 2021. The Court heard the parties' oral argument on July 27, 2021. Additional facts will be supplied as necessary.

STANDARD OF REVIEW

The party seeking to overturn an Indiana Board final determination bears the burden of demonstrating its invalidity. CVS Corp. v. Searcy, 137 N.E.3d 1053, 1055 (Ind. Tax Ct. 2019). Accordingly, the Assessor must demonstrate to the Court that the Indiana Board's final determination in this matter is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; contrary to constitutional right, power, privilege, or immunity; in excess of or short of statutory jurisdiction, authority, or limitations; without observance of the procedure required by law; or unsupported by substantial or reliable evidence. See IND. CODE § 33-26-6-6(e)(1)-(5) (2022).

LAW

The common area property tax exemption, which is at the heart of this litigation, is codified at Indiana Code § 6-1.1-10-37.5 and provides, in relevant part, as follows:

- (a) As used in this section, "common area" means a parcel of land, including improvements, in a residential development that:

(1) is legally reserved for the exclusive use and enjoyment of all lot owners, occupants, and their guests, regardless of whether a lot owner makes actual use of the land;

(2) is owned by:

(A) the developer, or the developer's assignee, provided such ownership is in a fiduciary capacity for the exclusive benefit of all lot owners in the residential development, and the developer has relinquished all rights to transfer the property other than to a person or entity that will hold title to the property in a fiduciary capacity for the exclusive benefit of all lot owners;

(B) each lot owner within the residential development, equally or pro rata; or

(C) a person, trust, or entity that holds title to the land for the benefit of all lot owners within the residential development;

(3) cannot be transferred for value to another party without the affirmative approval of:

(A) all lot owners within the residential development; or

(B) not less than a majority of all lot owners within the residential development, if majority approval is permitted under the bylaws or other governing documents of a homeowners association, or similar entity;

(4) does not include a Class 2 structure (as defined in IC 22-12-1-5); and

(5) is not designed or approved for the construction of a Class 2 structure.

The term includes, but is not limited to, a lake, pond, street, sidewalk, park, green area, trail, wetlands, signage, swimming pool, clubhouse, or other features or amenities that benefit all lot owners within the residential development.

(d) Notwithstanding any other provision of this article, a common area is exempt from property taxation, provided that the common area easements and covenants restricting the use and conveyance of

common areas to lot owners are recorded, and notice is provided, to the appropriate county or township assessor.

(e) A county or township assessor shall designate an area as a common area after:

- (1) receiving notice as provided in subsection (d); and
- (2) determining that the area is a common area.

(f) If a county or township assessor determines that the area is not a common area, or determines that the area fails to meet the requirements of subsection (d), then the county or township assessor shall send a written statement to the owner of the common area not later than thirty (30) days after receiving the notice under subsection (d). The written statement shall contain:

- (1) the specific provisions on which the county or township assessor based the determination; and
- (2) a statement that the owner of the common area shall have thirty (30) days to address the specific provisions provided in subdivision (1), and to establish the area as a common area that meets the requirements of subsection (d).

(g) If a county or township assessor fails to send a written statement to the owner of a common area as required by this section, then the area for which notice was provided in subsection (d) shall be considered a common area for purposes of this section.

(h) Once an area has been designated a common area, no subsequent refileing of a common area property tax exemption is required unless an area designated as a common area subsequently fails to meet the definition of a common area as provided in this section.

IND. CODE § 6-1.1-10-37.5(a), (d)-(h) (2016).

ANALYSIS

On appeal, the Assessor contends that the Indiana Board abused its discretion in determining that the Colby Green Area was entitled to the common area property tax exemption under Indiana Code § 6-1.1-10-37.5(g) because he did not provide a written

statement to College Park as required by Indiana Code § 6-1.1-10-37.5(f). (See, e.g., [Assessor’s] Br. (“Pet’r Br.”) at 1.)¹ In support, the Assessor first maintains that he was not required to send a written statement because College Park’s email on October 14, 2016, did not constitute the notice required by Indiana Code § 6-1.1-10-37.5(a) and (d). (See Pet’r Br. at 5-9; Oral Arg. Tr. at 3, 7, 18-23.) Alternatively, the Assessor argues that his letter dated September 23, 2016, was a sufficient written statement for purposes of Indiana Code § 6-1.1-10-37.5(f). (See Pet’r Br. at 9; Oral Arg. Tr. at 3.)

(1)

The Assessor first claims that the Colby Green Area was not entitled to an exemption by operation of law under Indiana Code § 6-1.1-10-37.5(g) because College Park’s October 14, 2016, email did not state that the Colby Green Area was “legally reserved for the exclusive use and enjoyment of all lot owners, occupants, and their guests” as required by Indiana Code § 6-1.1-10-37.5(a)(1) or that the property restrictions had been recorded as required by Indiana Code § 6-1.1-10-37.5(d). (See, e.g., Pet’r Br. at 5-8 (asserting that College Park’s email “provided only a conclusory assertion that ‘it me[t] all of the requirements of Indiana Code 6-1-1-10-37.5’” and “did not clearly inform the [A]ssessor that [the] easements and covenants ha[d] been recorded”).) Therefore, the Assessor concludes that College Park’s email was not proper notice and failed to trigger his requirement to send a written statement under Indiana Code § 6-1.1-10-37.5(f). (See, e.g., Pet’r Br. at 8 (stating that “[n]otice alone is insufficient without [first] meeting the requirement of . . . record[ing] the easements and covenants”); Oral Arg. Tr. at 14, 19, 24 (implying that because the Colby Green Area was not a “common area,” College Park

¹ The Assessor is the Petitioner in this case, yet he titled both his initial brief and his reply brief as that of the “Respondent.” (See [Assessor’s] Br.; [Assessor’s] Reply.)

could not provide “notice” that it was).)

A property owner who seeks the benefit of a common area property tax exemption must provide notice to the appropriate assessing official.² See I.C. § 6-1.1-10-37.5(d). The plain language of Indiana Code § 6-1.1-10-37.5(d) indicates that the notice to be provided to an assessor, notwithstanding any other provision of the statute, is simply that the easements and covenants restricting a common area’s use “are recorded.” See I.C. § 6-1.1-10-37.5(d). See also e.g., Chambliss v. State, 746 N.E.2d 73, 77 (Ind. 2001); Nash v. State, 881 N.E.2d 1060, 1063 (Ind. Ct. App. 2008), trans. denied (explaining that when statutory language is clear and unambiguous, it is not subject to judicial interpretation and the Court will apply the statutory language as written, giving its words their plain and ordinary meaning).

Here, College Park explicitly stated in its email of October 14, 2016, that it was seeking the common area property exemption for the Colby Green Area under Indiana Code § 6-1.1-10-37.5, that it had complied with all of the requirements of that statute, which expressly included the requirement that the area’s property restrictions were recorded, and that its email “shall serve as such notice concerning the [] parcel.” (Cert. Admin. R. at 39, 96.) Thus, the Indiana Board did not err when it determined that College Park’s email was sufficient notice under Indiana Code § 6-1.1-10-37.5(d).

If, upon receiving notice from a property owner under Indiana Code § 6-1.1-10-37.5(d), an assessor “determines that the area is not a common area, or determines that

² The fact that the process for claiming a common area property tax exemption is initiated by “notice” indicates that it is more informal than the process for claiming most other exemptions. See, e.g., IND. CODE § 6-1.1-11-3 (2016) (amended 2017); IND. CODE § 6-1.1-11-3.5 (2016) (providing that for most exemptions, certified applications must be filed within certain time parameters).

the area fails to meet the requirements of subsection (d), then the . . . assessor shall send a written statement to the owner of the common area not later than thirty (30) days after receiving the notice under subsection (d).” I.C. § 6-1.1-10-37.5(f) (emphases added). See also Huntington Cnty. Cmty. Sch. Corp. v. Indiana State Bd. of Tax Comm’rs, 757 N.E.2d 235, 240 (Ind. Tax Ct. 2001) (explaining that the statutory word “shall” has a mandatory, rather than discretionary, meaning). The statute further requires that the assessor’s written statement contain “(1) the specific provisions on which the . . . assessor based the determination; and (2) a statement that the owner of the common area shall have thirty (30) days to address the specific provisions provided in subdivision (1), and to establish the area as a common area that meets the requirements of subsection (d).” I.C. § 6-1.1-10-37.5(f)(1)-(2). Accordingly, the statute is straightforward: it provides a property owner an opportunity to respond to an assessor’s adverse determination and to demonstrate that its property is exempt. See Chambliss, 746 N.E.2d at 77; Nash, 881 N.E.2d at 1063 (explaining that the Court will apply clear and unambiguous statutory language as written, giving the words their plain and ordinary meaning).

Here, however, after receiving College Park’s notice, the Assessor determined that the Colby Green Area was not eligible for the common area property tax exemption without timely informing College Park of the basis for his determination or giving it an

opportunity to establish that the area met the statutory requirements as a common area.³ The Indiana Board's finding that the Assessor's failure to comply with the requirements of subsection (f) resulted in the Colby Green Area being deemed an exempt common area by operation of Indiana Code § 6-1.1-10-37.5(g) was therefore proper. Accordingly, the Court will not reverse the Indiana Board's final determination on this basis.

(2)

Alternatively, the Assessor argues that the Indiana Board abused its discretion when it failed to consider his September 23, 2016, letter to College Park a sufficient written statement for purposes of Indiana Code § 6-1.1-10-37.5(f). (Pet'r Br. at 9 (claiming that because his letter was sufficient, "there can be no default").) Specifically, the Assessor explains that his September 26, 2016, letter met the terms of Indiana Code § 6-1.1-10-37.5(f) because: (1) it was a written statement sent to College Park as the owner of the common area, (2) that "contain[ed] specific provisions on which [he] based [his] determination[,]" and (3) it provided College Park with 30 days to address those provisions. (See Pet'r Br. at 9; [Assessor's] Reply at 3.)

Yet again, however, the Assessor's argument ignores a significant portion of Indiana Code § 6-1.1-10-37.5. As stated previously, the plain language of Indiana Code § 6-1.1-10-37.5(f) unambiguously states that if, "after" receiving a property owner's notice

³ The Court notes that College Park attached to its October 14, 2016, email copies of its bylaws, covenants and restrictions, and Articles of Incorporation. (See Cert. Admin. R. at 39-95.) Those recorded documents indicate that as early as 1968, College Park designated its "common areas" – both present and future – for the exclusive use of its community's residents and prohibited the construction of any improvements thereon. (See, e.g., Cert. Admin. R. at 39-95, 101-18, 157-62, 176.) It was the Assessor's responsibility to determine whether the recordation of College Park's governing documents – and thus the restrictions contained therein – was sufficient for purposes of Indiana Code § 6-1.1-10-37.5(d). Because the Assessor neglected his responsibility, the Court will not now stand in his shoes and make that determination.

under subsection (d), an assessor determines that the area does not qualify as a common area, the assessor “shall” send a written statement to the property owner that (1) explains why the property is ineligible for the exemption and (2) provides the property owner with a thirty-day window to demonstrate that the area does indeed qualify. I.C. § 6-1.1-10-37.5(f) (emphases added). See also Huntington Cnty. Cmty. Sch. Corp., 757 N.E.2d at 240 (explaining that because a statute may be construed and interpreted only if it is ambiguous, an unambiguous statute must be read to mean what it plainly expresses and its words and phrases shall be taken in their plain, ordinary, and usual sense).

It is difficult to comprehend how the Assessor could believe his September 23, 2016, letter constitutes the written statement required by subsection (f) because it was issued before College Park issued its October 14, 2016, notice. See, e.g., WEBSTER’S THIRD NEW INT’L DICTIONARY 38 (2002 ed.) (defining “after” as “following in time or place” (emphasis added)). Moreover, the Assessor’s September 23, 2016, letter appears to be a form letter that was not intended to be used with respect to the common area property tax exemption process set forth in Indiana Code § 6-1.1-10-37.5 because (1) it does not reference Indiana Code § 6-1.1-10-37.5 at all, but rather references the exemptions contained in Indiana Code § 6-1.1-10-21 (exemptions for churches or religious societies), Indiana Code § 6-1.1-10-16 (exemptions for real property used for educational, literary, scientific, religious, or charitable purposes), and Indiana Code § 6-1.1-10-24 (exemptions for college fraternities or sororities); (2) it gives the new owner of formerly exempt property 30 days to present an affidavit under Indiana Code § 6-1.1-11-4, which in turn applies to the previously-mentioned statutory exemptions but not to the common area property tax exemption set forth in Indiana Code § 6-1.1-10-37.5; and (3) it references the need for a

completed exemption application which is also not required under Indiana Code Indiana Code § 6-1.1-10-37.5. (See Cert. Admin. R. at 36.) See also IND. CODE § 6-1.1-10-16 (2016) (amended 2019); IND. CODE § 6-1.1-10-21 (2016) (amended 2021); IND. CODE § 6-1.1-10-24 (2016); IND. CODE § 6-1.1-11-4 (2016) (amended 2018).

The Assessor has not demonstrated that his letter dated September 23, 2016, was a sufficient written statement for purposes of Indiana Code § 6-1.1-10-37.5(f). Accordingly, the Indiana Board's final determination will not be reversed on this basis either.

CONCLUSION

The Assessor has not demonstrated to the Court that the Indiana Board's final determination granting a common area property exemption to the Colby Green Area under Indiana Code § 6-1.1-10-37.5(g) for the 2016 and 2017 tax years constituted an abuse of discretion. The Indiana Board's final determination is therefore AFFIRMED in its entirety.