

REPRESENTATIVE FOR PETITIONER: James O'Donnell, Tax Representative

REPRESENTATIVE FOR RESPONDENT: Frank Agostino, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

SBCC PARTNERS, LLC,	)	Petition Nos.: 71-029-17-1-4-00439-21
	)	71-029-17-1-4-00440-21
Petitioner,	)	71-029-17-1-4-00441-21
	)	71-029-17-1-4-00442-21
v.	)	71-029-18-1-4-00443-21
	)	71-029-18-1-4-00444-21
ST. JOSEPH COUNTY ASSESSOR,	)	71-029-18-1-4-00445-21
	)	71-029-18-1-4-00446-21
Respondent.)	
	)	Parcel Nos.: 71-07-01-376-001.000-029
	)	71-07-01-176-001.000-029
	)	71-07-01-327-007.000-029
	)	71-07-01-151-001.000-029
)	
	)	County: St. Joseph
)	
	)	Assessment Years: 2017 and 2018

January 19, 2023

FINAL DETERMINATION

The Indiana Board of Tax Review ("Board"), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

INTRODUCTION

1. SBCC Partners, LLC contested its 2017 and 2018 assessments claiming that the St. Joseph County Assessor failed to properly assess its golf course.¹ We conclude,

¹ Although SBCC also contested its 2019 assessments, the parties reached a settlement during the hearing and subsequently filed a joint stipulation resolving SBCC's 2019 appeal.

however, that SBCC and the Assessor entered into binding settlement agreements with respect to both years. We therefore dismiss SBCC’s appeals.

PROCEDURAL HISTORY

2. SBCC filed Form 130 notices of appeal contesting the 2017 and 2018 assessments of its four parcels located in St. Joseph County, Indiana.² The Assessor valued the properties as follows:

Parcel No. 71-07-01-376-001.000-029 – (“376-001”)			
Year	Land	Improvements	Total
2017	\$13,500	\$0	\$13,500
2018	\$13,500	\$0	\$13,500

Parcel No. 71-07-01-176-001.000-029 – (“176-001”)			
Year	Land	Improvements	Total
2017	\$421,300	\$514,300	\$935,600
2018	\$421,300	\$498,600	\$919,900

Parcel No. 71-07-01-327-007.000-029 – (“327-007”)			
Year	Land	Improvements	Total
2017	\$23,300	\$0	\$23,300
2018	\$23,300	\$0	\$23,300

Parcel No. 71-07-01-151-001.000-029 – (“151-001”)			
Year	Land	Improvements	Total
2017	\$33,900	\$0	\$33,900
2018	\$32,900	\$0	\$32,900

²Because the procedural history of these appeals plays such a substantial role in our determination, we start with a condensed history and reserve a more detailed discussion for our Findings of Fact.

3. SBCC subsequently filed Form 131 petitions with the Board contesting the 2017 and 2018 assessments for all four of its parcels. On July 27, 2022, our designated administrative law judge, David Smith (“ALJ”), held a telephonic hearing on the petitions. Neither he nor the Board inspected the subject property.

4. The following people testified under oath:

For SBCC:	Gary “Duke” Downey, Owner/Chairman James O’Donnell, Tax Representative
For the Assessor:	Rosemary Mandrici, Assessor Patricia St. Clair, Chief Deputy Assessor Jason Kane, Reassessment Deputy

5. The parties submitted the following exhibits: See attached.

6. The record also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

FINDINGS OF FACT

7. SBCC owns four parcels located at 25800 Country Club Drive in South Bend. It uses its four parcels, including both the land and associated yard improvements, as a golf course. *O’Donnell testimony; Resp’t Exs. 6 (2017).*

8. On July 21, 2017, the Assessor issued Form 11 notices of assessment for SBCC’s four parcels valuing them collectively at \$1,006,300 as of the January 1, 2017 assessment date. The Assessor used the cost approach to determine the original 2017 assessments. *O’Donnell testimony; St. Clair testimony; Pet’r Exs. AC3, FC1-FC4.*

9. On September 7, 2017, SBCC filed a single Form 130 notice with the Assessor initiating 2017 assessment appeals for its four parcels. On October 30, 2017, the Assessor issued SBCC a Form 138 notice of defect because SBCC’s Form 130 included multiple parcels

on the same form. On November 3, 2017, SBCC cured the defect by filing separate Form 130 notices for each of its four individual parcels. *Pet'r Exs. FDA, FDD1-FDD4; Resp't Exs. 5 (2017)*.

10. On July 17, 2018, the Assessor issued Form 11 notices of assessment for SBCC's four parcels valuing them collectively at \$989,600 as of the January 1, 2018 assessment date. The Assessor used the cost approach to determine the original 2018 assessments. *O'Donnell testimony; St. Clair testimony; Pet'r Exs. GCI-GC4*.
11. On August 29, 2018, SBCC filed Form 130 notices initiating 2018 assessment appeals for all four of its parcels. On December 10, 2018, the Assessor issued SBCC Form 138 notices of defect due to SBCC's failure to attach copies of a Power of Attorney to its Form 130 notices. SBCC subsequently cured the defects by resubmitting its Form 130 notices and attaching a preexisting Power of Attorney dated September 15, 2017 authorizing O'Donnell to represent it. *O'Donnell testimony; Pet'r Exs. AB1, GD1-GD5; Resp't Exs. 5 (2018 exhibits for Parcels 376-001, 176-001, and 327-007 only)*.
12. Downey is "Chairman" of SBCC and its largest shareholder. On June 10, 2020, Downey sent O'Donnell a letter indicating that SBCC would represent itself in interactions with the Assessor going forward. O'Donnell took no further actions on behalf of SBCC until SBCC signed a new Power of Attorney reauthorizing O'Donnell to represent it on January 4, 2021. And on February 7, 2021, Downey emailed the Assessor to clarify that SBCC had reauthorized O'Donnell to represent SBCC in its pending assessment appeals. *Downey testimony; O'Donnell testimony; Pet'r Exs. AB2-AB4, FC*.
13. On or about February 2, 2021, the Assessor sent Form 134 reports to SBCC for each of its four parcels that proposed reducing their 2017 and 2018 assessments to combined values of \$349,300 and \$433,600, respectively. The Assessor used SBCC's 2016 income statement to calculate the proposed assessment for 2017, and she used SBCC's 2017 income statement to calculate the proposed assessment for 2018. On February 9, 2021,

Downey, acting on behalf of SBCC, rejected the Assessor's proposed assessments for both 2017 and 2018. *O'Donnell testimony; Downey testimony; St. Clair testimony; Mandrici testimony; Pet'r Exs. FF1-FF4, GF1-GF4.*

14. On May 5, 2021, SBCC filed Form 131 petitions with the Board contesting the 2017 and 2018 assessments for all four of its parcels.³ *O'Donnell testimony; Resp't Exs. 2 (2017 and 2018).*
15. On September 22, 2021, Downey emailed O'Donnell and revoked O'Donnell's authorization to represent SBCC in its pending assessment appeals due to his desire to resolve SBCC's appeals expeditiously and his suspicion that O'Donnell's "toxic relationship" with the Assessor was interfering with the process.⁴ *Downey testimony; Pet'r Ex. AB7.*
16. On September 23, 2021, Downey emailed the Assessor to confirm SBCC's acceptance of the Assessor's "real-estate computations and corresponding tax settlements," and expressed his desire to get "all of these appeals behind us." Downey also informed the Assessor that SBCC had withdrawn O'Donnell's authorization to represent it. *Downey testimony; Mandrici testimony; Resp't Exs. 1 (2017 and 2018).*
17. On or about October 7, 2021, the Assessor issued Form 134 reports to SBCC for each of its four parcels that once again proposed reducing their 2017 and 2018 assessments to combined values of \$349,300 and \$433,600, respectively. On October 20, 2021, Downey, acting on behalf of SBCC, accepted the Assessor's proposed assessments for both 2017 and 2018 by signing individual Form 134 reports for each parcel. *Downey*

³SBCC elected to appeal its 2017 and 2018 assessments directly to us after the St. Joseph County Property Tax Assessment Board of Appeals ("PTABOA") failed to issue a determination within 180 days of when SBCC filed its Form 130 notices of appeal. *See* Ind. Code § 6-1.1-15-1.2(k) (allowing taxpayers to appeal to the Board if the county board has not issued a determination within 180 days of the date the notice of appeal was filed).

⁴ Between September 22, 2021 and April 3, 2022, O'Donnell was not authorized to act as SBCC's tax representative. Beginning on April 3, 2022, however, SBCC reinstated O'Donnell as its tax representative. *O'Donnell testimony; Downey testimony; Pet'r Ex. FJ3.*

testimony; Mandrici testimony; Resp't Exs. 4 (2017 and 2018).

18. Following SBCC's acceptance of the Form 134 reports, the Assessor forwarded them to the Auditor's Office so the Auditor could recalculate SBCC's tax bills and process any resulting refunds. The Assessor also forwarded them to the PTABOA, which reviewed the Form 134 reports during two separate meetings in November 2021. On December 10, 2021⁵, the PTABOA issued Form 115 notices adopting the parties' agreed assessments for all four of SBCC's parcels for both 2017 and 2018. *St. Clair testimony; Mandrici testimony; Resp't Exs. 3 (2017 and 2018).*

19. During the Board's hearing on July 27, 2022, SBCC presented two income capitalization approaches in support of its proposed assessments for 2017 and 2018. For 2017, SBCC calculated an average net operating income ("NOI") for the three-year period from 2013 to 2015 (excluding income derived from pro shop sales and golf cart rental) of \$7,088 and divided it by the 11.63% capitalization rate set by the Department of Local Government Finance ("DLGF"), producing a combined value indication of \$60,946 for SBCC's four parcels. SBCC followed the same process for 2018, dividing its average NOI from 2014 to 2016 of \$6,750 by an 11.89% capitalization rate, resulting in a value indication of \$56,770. *O'Donnell testimony; Pet'r Exs. FE, FHI-FH3, FI, GHI-GH3, GI.*

20. SBCC offered no evidence establishing who prepared the 2013-2016 income statements it submitted. Nor did it offer any testimony or documentary evidence (such as its federal tax returns from 2013-2016) verifying that the income statements accurately reflect its revenue and expenses for each of those years. Additionally, the capitalization rate set by the DLGF for 2018 was 11.69%. *Pet'r Ex. GE.*

⁵ The Form 115 notice addressing the 2018 assessment for Parcel 151-001 bears a signature date for the Assessor of October 21, 2021 and an issuance date of November 16, 2021.

ANALYSIS

21. In this case, the parties entered into settlement agreements in October 2021 that fully resolved their dispute over the 2017 and 2018 assessments of SBCC's golf course. Nevertheless, SBCC now argues that the settlement agreements are invalid because the Assessor did not calculate the agreed valuations in accordance with the requirements of Ind. Code §6-1.1-4-42 and 50 IAC 29-3-3. While the Assessor did not use the mandated three-year average to calculate the proposed assessments for 2017 and 2018, it is of no moment. Settlement agreements are governed by the general principles of contract law. *Ind. State Highway Comm'n. v. Curtis*, 704 N.E.2d 1015, 1018 (Ind. 1998). If the terms are clear and unambiguous, courts must give those terms their clear and ordinary meaning. *Id.* And in the absence of fraud or mistake, a settlement is as binding and conclusive of the parties' rights and obligations as a judgment on the merits. *Klebes v. Forest Lake Corp.*, 607 N.E.2d 978, 982 (Ind. Ct. App. 1993).
22. Here, we conclude that the terms of the settlement agreements are clear and unambiguous. The Form 134 reports from October 2021 each contain information identifying the assessment date, the parcel number, the property owner, the current assessment, and the proposed assessment the Assessor was offering to settle each appeal. And on each form, SBCC accepted the Assessor's proposed assessment by signing the signature block labeled "AGREE." Accordingly, we must give the terms their clear and ordinary meaning, which leads us to but one conclusion—the parties intended to settle SBCC's 2017 and 2018 appeals for the assessed values listed on the Form 134 reports.
23. The fact that the parties ultimately entered into settlement agreements with the same terms that SBCC had previously rejected does not change our conclusion that SBCC intended to settle these appeals. Indeed, eight months after rejecting the Assessor's initial settlement offers, Downey revoked O'Donnell's authorization to represent SBCC because Downey wanted to resolve SBCC's appeals more quickly. And the day after revoking O'Donnell's authorization, Downey emailed the Assessor to confirm SBCC's acceptance of the Assessor's settlement offers and expressed his desire to get "all of these appeals

behind us.” Furthermore, SBCC has not alleged that the settlement agreements were the result of fraud. And although Downey testified that SBCC’s acceptance of the settlement agreements may have been a mistake, we view his comment as a general expression of regret as opposed to a mistake that could render the agreements unenforceable. We therefore conclude that SBCC and the Assessor entered into binding settlement agreements with respect to the 2017 and 2018 assessments of SBCC’s golf course.

24. Even if we reached the merits, we would not grant SBCC the relief it requested because it failed to offer any probative valuation evidence supporting its proposed assessments for 2017 and 2018.⁶ Although SBCC’s income capitalization analyses generally comply with the requirements of Ind. Code §6-1.1-4-42 and 50 IAC 29-3-3, SBCC did not establish who prepared the 2013-2016 income statements it used to develop them. Nor did SBCC introduce any testimony or documentary evidence verifying that the income statements accurately reflect its revenue and expenses for each of those years. Because SBCC has failed to persuade us that the financial data it used to develop its income capitalization analyses is correct, we conclude that its proposed assessments for 2017 and 2018 are unreliable. We also note that SBCC used the wrong capitalization rate in its analysis for 2018, further undermining the reliability of its proposed assessment for that particular year.

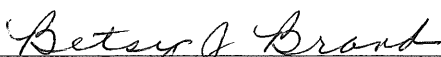
CONCLUSION

25. Because SBCC and the Assessor entered into binding settlement agreements that fully resolved the dispute over the 2017 and 2018 assessments of SBCC’s golf course, we find for the Assessor and dismiss SBCC’s appeals.

⁶ Although SBCC argued that the Assessor should bear the burden of proof, the Legislature repealed the burden-shifting statute, I.C. § 6-1.1-15-17.2, on March 21, 2022. P.L. 174-2022 § 32 (repeal effective on passage). In the same bill, a new statute created a substitute burden-shifting statute, I.C. 6-1.1-15-20, for new appeals filed after the effective date of March 21, 2022. P.L. 174-2022 § 34 (effective on passage). Because SBCC filed its appeals before March 21, 2022, and our hearing on this appeal occurred after the Legislature repealed I.C. § 6-1.1-15-17.2, neither the new nor the repealed statute apply to this case.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.


Chairman, Indiana Board of Tax Review


Commissioner, Indiana Board of Tax Review


Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.

EXHIBITS

PETITIONER'S EXHIBIT LIST⁷

AA1:	2016 Stipulation and Settlement Agreement
AA2-5:	2016 IBTR Final Determinations (4)
AA6:	True Tax Value calculation for 1/1/2016
AB1:	9/15/2017 O'Donnell Power of Attorney ("POA")
AB2:	6/10/2020 Downey letter to O'Donnell
AB3:	1/4/2021 O'Donnell POA
AB4:	3/5/2021 Downey email to Mandrici
AB5:	Hughes email to Downey
AB6:	Form 131 petitions
AB7:	9/22/2021 Downey discharge email to O'Donnell
AB8:	4/3/2022 Downey letter to IBTR
AC1:	2016 Stipulation and Settlement Agreement
AC2:	2016 Form 11 notices (4) dated 8/15/2016
AC3:	2017 Form 11 notices (4) dated 7/21/2017
BA:	10/15/2018 letter, descriptions, and sketch requesting parcel combination
CA1-4:	50 IAC 29-1-1 through 50 IAC 29-3-8
CB1-3:	IC 6-1.1-15-1.1; IC 6-1.1-15-1.2
DA:	9/1/2017 DLGF memorandum
DB:	6/10/2016 DLGF memorandum
EA:	3/15/2012 DLGF Golf Course Guidance memorandum
EB:	1/4/2016 DLGF Golf Course Guidance memorandum
FA:	2016 IBTR Stipulation and Settlement Agreement
FA2-5:	2016 IBTR Final Determinations (4)
FAA:	SBCC 3-Year average NOI (2012-2014)
FC:	2/17/2021 Downey email to Mandrici
FC1-4:	2017 Form 11 notices (4)
FDA:	2017 Form 130 notice filed 9/7/2017
FDB & FDB15-17:	2017 PRC for subject (4 pages)
FDC:	2017 Form 138 notice of defect
FDD1-4:	2017 Form 130 petitions filed 11/3/2017
FDE, FF1, & FJ3:	12/31/2016 Financials for 1/1/2017 pay 2018

⁷SBCC submitted two documents labelled as Exhibit GF2. For ease of reference, we have renumbered the second document (a Form 134 addressing the 2018 assessment for Parcel No. 71-07-01-176-001.000-029) as GF5. SBCC's exhibit binder also had the following empty tabs: FB, FG, FJ, FJ4, GB, and GG. Finally, we note that both parties withdrew their exhibit submissions for the 2019 assessment year after agreeing to settle SBCC's 2019 appeal.

FDF: 2017 Form 131 petition
 FE: 12/29/2016 DLGF Golf Course Guidance memorandum
 FF & FJ: O'Donnell and St. Clair emails and assessment information
 FDE, FF, & FH: SBCC 2016 Income Statement
 FF1-4: 2017 Form 134 reports (4) filed 2/23/2021
 FH1: SBCC 2013 Income Statement
 FH2: SBCC 2014 Income Statement
 FH3: SBCC 2015 Income Statement
 FI: True Tax Value calculation for 1/1/2017
 FJ1: Various emails between Parties and ALJ
 FJ3: 2/7/2021 Downey email to Mandrici
 FJ4-1: 2017 Form 134 report filed 2/23/2021
 FJ2: Various emails between Parties and ALJ
 FJ3: 4/3/2022 Downey letter to ALJ
 FK: *Grant County Assessor v. Randy & Sara Ballinger* (Ind. Tax Ct. 2020)

GA1: 2016 Stipulation and Settlement Agreement and IBTR Final Determinations (4)
 GA2: True Tax Value calculation for 1/1/2016
 GC1-4: 2018 Form 11 notices (4)
 GD1-4: 2018 Form 130 notices (4) filed 8/29/2018
 GD5: 2018 Form 138 notices of defect (4)
 GD6: Various emails, assessment information, and 2017 Income Statement/True Tax Value calculation for 1/1/2018
 GD7: 2018 Form 131 petition (page 1)
 GE: 12/27/2017 DLGF Golf Course Guidance memorandum
 GF1-4: 2018 Form 134 reports filed 2/23/2021 (4)
 GF5: 2018 Form 134 report signed 10/20/2021
 GH1: 2014 SBCC Income Statement
 GH2: 2015 SBCC Income Statement
 GH3: 2016 SBCC Income Statement
 GI: True Tax Value calculation for 1/1/2018
 GJ1: Various emails between Parties and ALJ
 GJ2: Various emails between Parties and ALJ
 GJ3: 4/3/2022 Downey letter to ALJ

I (CC2): *Marlin Hukill v. Monroe County Assessor* (IBTR 8/15/2012)
 I (CC2a): *Stewart D. and Megan Summers v. Porter County Assessor* (IBTR 3/11/2011)
 I (FF R): *BAKU JPS LLC (John P. Scott) v. Jefferson County Assessor* (IBTR 12/14/2020)
 I (F G H): *Grant County Assessor v. Randy & Sara Ballinger* (Ind. Tax Ct. 2020)
 I (multiple labels) Email from Barry Wood to James O'Donnell dated 7/10/2018

ASSESSOR'S EXHIBIT LIST

2017

Parcel No.: 71-07-01-376-001.000-029

Respondent's Ex. 1:	Downey e-mail to Mandrici
Respondent's Ex. 2:	Form 131 petition
Respondent's Ex. 3:	Form 115 notice
Respondent's Ex. 4:	Form 134 report
Respondent's Ex. 5:	Form 130 notice
Respondent's Ex. 6:	PRC
Respondent's Ex. 7:	Valuation History and Memo List

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2018

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Respondent's Ex. 2:	Form 131 petition
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