

REPRESENTATIVE FOR PETITIONER: John Johantges, Property Tax Group 1, Inc.

REPRESENTATIVES FOR RESPONDENT: Jerolyn Ogle, Washington Township Assessor;
Debbie Folkerts, Hamilton County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

CEDAR ENTERPRISES, INC.,)	Petition Nos.: 29-015-99-3-4-00008
)	29-015-00-3-4-00007
Petitioner)	29-015-01-3-4-00009
)	
v.)	County: Hamilton
)	
WASHINGTON TOWNSHIP)	Township: Washington
ASSESSOR,)	
)	Parcel No.: 0909130000011.001
Respondent)	
)	Assessment Years: 1999, 2000, and 2001

Appeal from the Final Determination of
Hamilton County Property Tax Assessment Board of Appeals

May 5, 2004

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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issues

1. The issues presented for consideration by the Board were:

ISSUE 1 – *Whether a Petition for Correction of an Error, Form 133, is a correct form to address the underlying issue of whether the land was valued from the correct section of the Hamilton County Land Order.*

ISSUE 2 - *Whether the subject property is priced from the correct section of the Hamilton County Land Order.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-12 John Johantges, Property Tax Group 1, Inc., filed Petitions for Correction of an Error, Forms 133, on behalf of Cedar Enterprises, Inc. (Petitioner) petitioning the Board to conduct an administrative review of the above petitions. The determination of the Hamilton County Property Tax Assessment Board of Appeals was issued on August 8, 2003. The Form 133 petitions were filed on September 5, 2003.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on February 5, 2004, at the Hamilton County Judicial Center before Brian McKinney, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
4. The following persons were present at the hearing:
 - For the Petitioner: John Johantges, Property Tax Group 1, Inc.
Thomas L. McDonald
 - For the Respondent: Jerolyn Ogle, Washington Township Assessor
Debbie Folkerts, Hamilton County Assessor
5. All persons present at the hearing were sworn in.
6. The following exhibits were presented:
 - For the Petitioner:
Exhibit 1 - Plat map of The Village Office Park, containing the subject property;

- Exhibit 2 - Overhead map of the subject site; and
- Exhibit 3 - Copies of two pages from the Hamilton County Land Order pertaining to the subject property.

For the Respondent:

- Exhibit 1 - Overhead map of the subject site, with the Petitioner's property and Park Steckley property highlighted.
- Exhibit 2 - Group of six property record cards from the area.

- 7. The following additional items are officially recognized as part of the record of proceedings:
 - A. Form 133 Petitions
 - B. Notice of Hearing

Jurisdictional Framework

- 8. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
- 9. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-12.

Indiana's Property Tax System

- 10. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
- 11. Indiana has established a mass assessment system through statutes and regulations designed to assess property according to what is termed "True Tax Value." See Ind. Code § 6-1.1-31, and 50 Ind. Admin. Code 2.2.

12. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
13. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property's market value. See *State Board of Tax Commissioners v. Town of St. John*, 702 N.E.2d 1034, 1038 (Ind. 1998) (*Town of St. John V*).
14. The Indiana Supreme Court has said that the Indiana Constitution “does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each individual assessment”, nor does it “mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant”, but that the proper inquiry in tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” See *Town of St. John V*, 702 N.E.2d at 1039 – 40.
15. Although the Supreme Court in the *St. John* case did declare the cost tables and certain subjective elements of the State's regulations constitutionally infirm, it went on to make clear that assessment and appeals must continue to be determined under the existing rules until new regulations are in effect.
16. New assessment regulations have been promulgated, but are not effective for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

State Review and Petitioner's Burden

17. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998).
18. The petitioner must submit ‘probative evidence’ that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be

considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890 (Ind. Tax 1995). ['Probative evidence' is evidence that serves to prove or disprove a fact.]

19. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
20. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
21. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind. 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax 2002).
22. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case' and, by a 'preponderance of the evidence' proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E.2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is

sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of Issues

ISSUE 1: *Whether the Petition for Correction of an Error.*

Form 133, is a correct form to address the underlying issue of whether the land was valued from the correct section of the Hamilton County Land Order.

23. The Petitioner contended that the Form 133 is the appropriate form to address this issue.
24. The Respondent contended the determination of land value requires subjectivity because it is based on an interpretation of the description in the Hamilton County Land Order (Land Order).
25. The applicable rule/cases governing Issue 1 are:

IC 6-1.1-15-12

Subject to the limitations contained in subsections (c) and (d), a county auditor shall correct errors which are discovered in the tax duplicate for any one (1) or more of the following reasons:

- (1) The description of the real property was in error.
- (2) The assessment was against the wrong person.
- (3) Taxes on the same property were charged more than one (1) time in the same year.
- (4) There was a mathematical error in computing the taxes or penalties on the taxes.
- (5) There was an error in carrying delinquent taxes forward from one (1) tax duplicate to another.
- (6) The taxes, as a matter of law, were illegal.
- (7) There was a mathematical error in computing an assessment.
- (8) Through an error of omission by a state or county employee the taxpayer was not given credit for an exemption or deduction permitted by law.

Hatcher v. State Bd. of Tax Comm'rs, 561 N.E.2d 852 (Ind. Tax 1990)

A taxpayer may file a Form 133 petition to correct only objective errors in an assessment.

Park Steckley I v. Dep't of Local Gov't Finance, 779 N.E.2d 1270 (Ind. Tax 2002)

The Tax Court defined the US 31 Corridor as "a geographic area that includes only those properties fronting a highway that runs down the center of the area."

Analysis of Issue 1

26. The property was assessed from a portion of the Land Order defined as the “US 31 Corr. From 146th St. to St. Rt 32”. The Petitioner contended the subject property would be more appropriately priced from the section of the Land Order identified as “W. of US 31 Corr to RR tracks from 146th St to St. Rt 32”.
27. The Respondent contended that the selection of the appropriate portion of the Land Order requires subjectivity and therefore may not be addressed on Form 133.
28. Errors correctable by a Form 133 petition are those that can be corrected “without resort to subjective judgment.” *Hatcher v. State Board of Tax Commissioners*, 561 N.E.2d 852, 857 (Ind. Tax 1990).
29. The Tax Court has defined the US 31 corridor as “a geographic area that includes only those properties fronting a highway that runs down the center of the area.” *Park Steckley I v. Dep’t of Local Gov’t Finance*, 779 N.E.2d 1270, 1274 (Ind. Tax 2002).
30. The US 31 corridor described in the Land Order has therefore been judicially defined. Accordingly, no subjective judgment is required to determine whether a property is located within this corridor.
31. Instead, the assessor was required merely to determine whether the Petitioner’s property was physically located within the geographic boundaries established by the Land Order. This determination does not involve any subjective judgment.
32. Because no subjective determination is required to determine whether the parcel is physically located within the geographic boundaries described in the Land Order, the Board concludes that the Petitioner’s selection of a Form 133 petition to initiate its appeal was appropriate.

ISSUE 2: Whether the subject property is
priced from the correct section of the Hamilton County Land Order.

33. The Petitioner contended the subject property should be priced from the section of the Land Order described as “W. of US 31 Corr to RR tracks from 146th St to St. Rt 32”. The Petitioner asserted the parcel should be valued at \$152,500 per acre of primary land, the maximum permitted by this section of the Land Order.

34. The Respondent contended the subject property is located within the section of the Land Order described as “US 31 Corr. From 146th St. to St. Rt 32” and was correctly valued at \$225,000 per acre of primary land. The Land Order established a range of \$30,500 to \$350,000 per acre for primary land located in this section.

35. The applicable rule/case governing Issue 2 are:

50 IAC 2.2-4-4

The commission shall use plat maps or recorded plats to establish land value maps for the county.

The commission shall collect sales data and land value estimates from licensed real estate brokers and record this information on the maps.

From the information, the commission shall delineate general geographic areas, subdivisions, or neighborhoods based on characteristics that distinguish a particular area from the surrounding areas. The bases for delineation are such things as the following:

- (1) Range of improvement values
- (2) Zoning
- (3) Restrictions on and use
- (4) Natural geographic features, such as waterways, lakes, major roads, or streets.

Park Steckley I v. Dep’t of Local Gov’t Finance, 779 N.E.2d 1270 (Ind. Tax 2002)

The Tax Court defined the US 31 Corridor as “a geographic area that includes only those properties fronting a highway that runs down the center of the area.” In its decision, the Tax Court concluded that Park Steckley’s property was located in the portion of the Land Order identified as “W. of US 31 Corr to RR tracks from 146th St to St. Rt 32”. The Petitioner in this appeal is contending that its land should also be valued from this portion of the Land Order.

36. Evidence and testimony considered particularly relevant to this determination include the following:

- A. The subject property is adjacent to US Highway 31.

- B. The Petitioner testified that the property does not “front” US Highway 31 because there is no direct access to the property from US Highway 31.
- C. The Respondent testified that all property adjacent to US Highway 31 in the same area was priced from the section of the Land Order titled “US 31 Corr from 146th St. to St. Rt 32.”

Analysis of ISSUE 2

- 37. The Petitioner opined that, because the subject property does not have direct access to US Highway 31, the property does not front US Highway 31.
- 38. Land orders, as administrative rules, are subject to the same rules of construction as statutes. See *Poracky v State Bd. of Tax Comm'rs*, 635 N.E.2d 235 (Ind. Tax 1994). “The first and foremost rule of construction is to ascertain and give effect to the land commission’s intent, and the most reliable guide to that intent is the language of the land order itself.” *The Precedent v. State Bd. of Tax Comm'rs*, 659 N.E.2d 701, 704 (Ind. Tax 1995).
- 39. However, the plain language of the description of the US 31 corridor in the Land Order does not include any requirement that the property have direct access to US Highway 31. Additionally, the Tax Court imposed no requirement of direct access to US Highway 31 when it defined the US 31 corridor in *Park Steckley*. The Petitioner provided no legal authority to support its argument that its property must have direct access to US Highway 31 to be a part of the US 31 corridor.
- 40. In further support of their respective positions, each party introduced into evidence a copy of a map of the area. These maps identify both the Petitioner’s parcel and the property that was the subject of the *Park Steckley* decision. (Petitioner’s Exhibit 3 and Respondent’s Exhibit 1). These maps further illustrate a clear distinction between the location of the Petitioner’s property and that of the Park Steckley property.

41. Specifically, the plat map (Petitioner's Exhibit 1) illustrates the following features (going east to west) for the Park Steckley property:
 - a. US Highway 31
 - b. A row of parcels (including the property of the Petitioner in this appeal)
 - c. Greyhound Court (the frontage road)
 - d. The Park Steckley property

42. In contrast, the Petitioner's property abuts US Highway 31 and is located east of both Greyhound Court (the frontage road) and the Park Steckley property.

43. Summarizing, the parties each submitted evidence demonstrating that the Petitioner's property is directly adjacent to US Highway 31. The Petitioner provided no legal authority to support its theory that the property must have direct access to US Highway 31 to be part of the US 31 corridor. In contrast to the Petitioner's assertion, the plain language of the description of the US 31 corridor in both the Land Order and the *Park Steckley* decision does not include any requirement that the property have direct access to US Highway 31. Additionally, there are significant differences between the physical location of the Petitioner's property and that of Park Steckley's property.

44. The Board finds that the subject property is located within the US 31 corridor and, accordingly, the subject property was correctly priced from the section of the Land Order described as "US 31 Corr. From 146th St. to St. Rt 32." There is no change in the assessment as a result of this issue.

Summary of Final Determination

Determination of ISSUE 1: *Whether the Petition for Correction of an Error,*

Form 133, is a correct form to address the underlying issue of whether the land was valued from the correct section of the Hamilton County Land Order.

45. The Form 133 petition is an appropriate method for addressing the underlying issue of whether the land was valued from the correct section of the Hamilton County Land Order.

Determination of ISSUE 2: *Whether the subject*

property is priced from the correct section of the Hamilton County Land Order.

46. The Petitioner's property was correctly priced from the section of the Land Order titled "US 31 Corr. From 146th St. to St. Rt 32." There is no change in the assessment as a result of this issue.

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

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.