STATE OF INDIANA
Board of Tax Review

ELKHART MAPLE LANE ASSOCIATION	)	On Appeal from the Elkhart County Property Tax Assessment Board of Appeals
Petitioner,	)	
	)	Petition for Review of Assessment, Form 131
v.	)	Petition No. 20-027-01-1-4-00011
	)	Parcel No. 27-02-27-351-004
ELKHART COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS And OSOLO TOWNSHIP ASSESSOR	)	
Respondents.	)	

Findings of Fact and Conclusions of Law

The Indiana Board of Tax Review has assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners (State Board) and the Appeals Division (Appeals Division) of the State Board of Tax Commissioners (for convenience of reference, each hereafter referred to as "State"). The State having reviewed the facts and evidence, and having considered the issues, now makes the following findings of fact and conclusions of law.

Issue

Whether the land is valued correctly.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. The property that is the subject of this appeal is located at 2001 Sugar Maple Lane, Elkhart, Indiana (Osolo Township, Elkhart County). The tax year under appeal is 2001.

3. Pursuant to Ind. Code § 6-1.1-15-3, Integrity Tax Consulting, Inc., on behalf of Elkhart Maple Lane Association, filed a petition requesting a review by the State. The Form 131 was filed on September 10, 2001. The Property Tax Assessment Board of Appeals' (PTABOA) Final Determination was mailed on August 17, 2001. *Board Ex. A*

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on December 18, 2001 before Hearing Officer Joseph Stanford. Testimony and exhibits were received into evidence. Gregg DuCharme of Integrity Tax Consulting, Inc. represented the Petitioner. Cathy Searcy and Eugene Inbody represented the PTABOA. Marshall Phillips represented Osolo Township.

5. At the hearing, the subject Form 131 petition was made part of the record and labeled Board Ex. A. The Notice of Hearing on Petition was labeled Board Ex. B. In addition, the following items were received into evidence:

Petitioner's Ex. 1 – Sketch of subject parcel.
Petitioner's Ex. 2 – Tax Representative Disclosure Statement.

Respondent's Ex. 1 – Copies of all exhibits submitted by the Petitioner and Township at PTABOA hearing.
Respondent's Ex. 2 – Copy of Form 130, Form 115, and PTABOA Findings.
Respondent's Ex. 3 – Copy of 50 IAC 2.2-4-17.
Respondent's Ex. 4 – Aerial map of subject parcel.
Respondent's Ex. 5 – Calculation of current land value for subject parcel.
Respondent's Ex. 6 – Osolo Township, Elkhart County Land Valuation Order.

6. The assessed value under appeal is $483,300 (land) and $5,322,000 (improvements). The Hearing Officer did not view the property.

7. The subject parcel is one of three main parcels utilized by Elkhart Maple Lane Association, doing business as Maple Lane Apartments. There are 77 apartments, and lots for parking. Between the buildings and parking lots are large wooded areas. *Resp. Ex. 1, Phillips Testimony.*

8. The subject parcel consists of 25.438 acres assessed as primary land, and 0.570 acres of public road, which is not assessed. Portions of the parcel are improved, but much of the parcel consists of a wooded walking park with trails. Prior to the PTABOA hearing, the parcel was assessed partly as woodland and tillable land. *Resp. Ex. 1, 2.*

9. Mr. DuCharme contends that the current assessment of primary for the entire parcel is incorrect. He argues that only land under the footprint of a building, or paving, should be assessed as primary. For the subject parcel, this consists of 7.3328 acres. The remainder of the parcel, 18.1052 acres, he contends, should be assessed as either unusable undeveloped, because it cannot be developed without clearing trees, or usable undeveloped. *Resp. Ex. 1.*

10. Mr. Phillips argues that the landscaping present on this parcel is an amenity that should be considered as part of the footprint of the buildings, or necessary support land. He contends that the buildings would not have the same appeal if the trees and landscaping were not present. Since residents have access to the wooded walking park, Mr. Phillips contends that this area should be assessed as primary land.

Conclusions of Law

1. The Petitioner is statutorily limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues

that are raised as a result of the PTABOA's action on the Form 130 petition. Ind. Code §§ 6-1.1-15-1, -2.1, and –4. See also the Forms 130 and 131 petitions. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles,* 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and –2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners,* 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.

2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

A. Indiana's Property Tax System

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.

4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John,* 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V)*.

5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause 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. *Town of St. John V,* 702 N.E. 2d at 1039 – 40.

6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Id* at 1040. Only evidence relevant to this inquiry is pertinent to the State's decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners,* 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners,* 689 N.E. 2d 765, 769 (Ind. Tax 1997)).

8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. "Indeed, if administrative agencies were not entitled to

presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies." *Bell v. State Board of Tax Commissioners,* 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.

9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice,* § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. *See also* Ind. Code § 4-21.5-2-4(a)(10) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).

10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." *Id* (citing *Herb v. State Board of Tax Commissioners,* 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley,* 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners,* 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).

11. The taxpayer's burden in the State's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V,* 702 N.E. 2d at 1040.

12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.

13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark,* 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners,* 634 N.E. 2d 882, 887 (Ind. Tax 1994).

14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. *See Whitley,* 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not "triggered" if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State's final determination even though the taxpayer demonstrates flaws in it).

C. Review of Assessments After *Town of St. John V*

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property's market value will fail.

16. Although the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax

system is operative. *Town of St. John V,* 702 N.E. 2d at 1043; *Whitley,* 704 N.E. 2d at 1121.

17. Town of St. John V does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

D. Whether the land is valued correctly

18. "'Primary industrial or commercial land' refers to the primary building or plant site. The following are examples of primary land:
    (A) Land located under buildings.
    (B) Regularly used parking areas.
    (C) Roadways.
    (D) Regularly used yard storage.
    (E) Necessary support land."
    50 IAC 2.2-4-1(18).

19. "'Usable undeveloped commercial and industrial land' means vacant land that is held for future commercial or industrial development." 50 IAC 2.2-4-1(24).

20. The parties agreed that the contested land is not located under buildings, a regularly used parking area, a roadway, or regularly used yard storage. The parties further agreed that the contested portion is a wooded area. The parties disagree as to whether this wooded area is best described as necessary support land.

21. Because the parties have agreed that the land is a wooded area, the record is sufficient to sustain the Petitioner's burden of proof to support its contention that the land is not included in the acreage necessary to support the existing facility.

22. As discussed, in the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify their decision with substantial evidence.

23. Mr. Phillips contends that, because the wooded areas contribute to the appeal of the buildings, the wooded areas should be considered necessary support land, and, as a result, be valued as primary land.

24. The determination of necessary support land should include consideration of, but not be limited to, the local building requirements, restrictions, and covenants. Examples of items which may be taken into consideration as necessary support land include the following: zoning requirements, building set back lines, buffer zones, landscaped areas, sidewalks, etc.

25. The local taxing officials presented no such evidence of any local requirements for the wooded area. Even though the wooded areas clearly contribute to the appeal of the buildings, this fact alone does not render the land necessary support land. The wooded areas are present because of the taxpayer's choice, not due to any local requirements.

26. The Elkhart County officials have failed to present substantial evidence to rebut the Petitioner's contention that the contested portion of the parcel is best described as usable undeveloped.

27. The landscaping and wooded areas do not meet the definition of necessary support land, and thus do not meet the definition of primary land. The proper classification is usable undeveloped.

28. The wooded walking area is clearly usable and being used, but also does not meet the definition of primary land. The existence of trees does not render the land unusable. Therefore, the proper classification of this area is also usable undeveloped.

29. For the reasons set forth, it is determined that 7.3328 acres of land shall be considered primary. All land located under buildings, as well as all paving, shall remain primary. The remaining 18.1052 acres shall be classified as usable undeveloped. The County Land Order establishes values for primary, secondary, usable undeveloped, and unusable undeveloped. The secondary land is valued at 70% of primary. The usable undeveloped is valued at 30% of primary. Unusable undeveloped is valued at $1,500. *Resp. Ex. 6.* In this case, the 7.3328 acres of primary land will be valued at $19,000 per acre and the 18.1052 of usable undeveloped will be priced at $5,700 per acre ($19,000 x .30).

30. There is a change in the assessment as a result of this issue.

Issued this ____ day of _____, 2002
by the Indiana Board of Tax Review