STATE OF INDIANA
Board of Tax Review

INDIANAPOLIS RACQUET CLUB, INC.	)	On Appeal from the Marion County Property Tax Assessment Board of Appeals
Petitioner,	)	
	)	Petition for Review of Assessment, Form 131
v.	)	Petition No. 49-800-89-1-4-00046R
	)	Parcel No. 8051129
MARION COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS And WASHINGTON TOWNSHIP ASSESSOR	)	
Respondents.	)	

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

1. Whether the land value is correct.

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. Pursuant to Ind. Code § 6-1.1-15-3, Indianapolis Racquet Club, Inc. (IRC) filed a petition requesting a review by the State. IRC received the County Board of Review's (BOR) Final Determination on November 30, 1990. The Form 131 petition was filed on December 28, 1990. The State issued its final assessment determination on June 14, 1996.

3. IRC then sued the State in the Indiana Tax Court. *Indianapolis Racquet Club, Inc. v. State Board of Tax Commissioners*, 722 N.E. 2d 926 (Ind. Tax 2000). On January 31, 2000, the Indiana Tax Court remanded the matter back to the State, which appealed the Tax Court decision to the Indiana Supreme Court. The Supreme Court concluded that IRC had "demonstrated that the county commission and the State Board failed to follow the State Board's rules in valuing IRC's land by including it among noncomparable properties in its land order." *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.*, 743 N.E. 2d 247, 248 (Ind. 2001). The Supreme Court remanded the matter back to the State on March 6, 2001.

4. Pursuant to Ind. Code § 6-1.1-15-4, a remand hearing was held on August 16, 2001, before Hearing Officer Ronald Gudgel. Testimony and exhibits were received into evidence. Stephen E. DeVoe and Eliza Houston, both with the law firm of Henderson, Dailey, Withrow & DeVoe, represented IRC.[1] A. Peter Amundson represented both the Washington Township and the Marion County Assessor's Offices.

[1] Mr. DeVoe testified that he is also the President of IRC.

5. At the hearing, the Indiana Supreme Court Remand Order was made part of the record as Board's Exhibit A. The Form 131 petition was made part of the record as Board's Exhibit B. The relevant page of the 1989 Marion County Land Order was made part of the record and labeled as Board's Exhibit C. The transcript of the trial testimony before the Indiana Tax Court on May 2, 1997, was labeled Board's Exhibit D. In addition, the following exhibits were submitted:

   Petitioner's Exhibit 1 – A copy of the Form 115, Notification of Final Assessment Determination, for the parcel under appeal for the year 1995.

   Petitioner's Exhibit 2 – A written summary of Mr. DeVoe's argument.

   Respondent's Exhibit 1 – A copy of the 1989 property record card.

6. The tennis facility is located at 4115 E. 82nd Street, Indianapolis, Washington Township, Marion County.

7. The hearing officer did not inspect the property.

<u>Issue No. 1 - Whether the land value is correct.</u>

8. The BOR determined that the land base rate for the parcel under appeal should be $3.00 per square foot of primary land. IRC contended that the land base rate should be $1.50 per square foot of primary land.

9. In support of IRC's position, Mr. DeVoe contended that the parcel was incorrectly included in a portion of the 1989 Marion County Land Order (Land Order) that the parties referred to as the 82nd Street Corridor.[2] Mr. DeVoe asserted that IRC's parcel was not comparable to other parcels included in this section of the Land Order.

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[2] The 1989 Land Order described this area as "Allisonville Rd W. to Keystone on 86th St. fr Dean Rd. Keystone No. to I-465 Interchng fr 86th St".

10. Mr. DeVoe contended that the parcel should be included in a portion of the Land Order identified as "Township – other."

11. Mr. Amundson contended that the parcel was priced from the correct section of the Land Order.

12. Additional facts will be presented as necessary.

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 remand situations, however, the decision of the Tax Court controls.

2. The State is the proper body to hear a remand from the Indiana Tax Court pursuant to Ind. Code § 6-1.1-15-8.

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 V*, 702 N.E. 2d at 1040.

A. Issue No. 1 - Whether the land value is correct.

18. The Marion County Land Valuation Commission was required to collect sales data and land value estimates to create a Land Order. This Land Order identified a range of land values that the assessor used as a base rate for determining the True Tax Value of property.

19. For the tax year 1989, the relevant portion of the Land Order contained a chart that identified certain areas of concentrated commercial activity in Washington Township and prescribed a range of values within which land in those areas must be assessed. All but one of the areas identified by the Land Order were identified by location, e.g., "Graham Rd. & 71st (Rt. 37) & So. on 37 to 61st." The remaining area was simply identified as "Township - other."

20. The BOR determined that the parcel is located in an area of the Land Order that

both parties referred to as the 82nd Street Corridor, a category that has base rates ranging from $3.00 to $4.00 per square foot of primary land. The BOR further determined that the land base rate for the parcel under appeal should be $3.00 per square foot of primary land.

21. IRC contended that the parcel should be classified in the Land Order category of "Township – other." IRC further contended that the land base rate should be $1.50 per square foot of primary land.

22. The Indiana Supreme Court found that factors such as zoning and accessibility to 82nd Street were not considered by the BOR at the time the parcel under appeal was included in the 82nd Street Corridor category of the Land Order. The Supreme Court further determined that the failure to consider these factors was sufficient to establish that the classification of IRC's parcel within the Land Order was not determined in accordance with the State's rules. *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.*, 743 N.E. 2d 247 (Ind. 2001). The Supreme Court concluded that, upon remand, IRC "'bears the burden of going forward with probative evidence concerning the proper classification of [its property] within the Order and the appropriate base rate to be assigned the [parcel].'" *Id* at 253.

23. IRC contended that its parcel is not comparable to the other properties included in the 82nd Street Corridor. In support of this position, Mr. DeVoe referred to testimony presented at proceedings before the Tax Court concerning zoning differences and a lack of direct accessibility to 82nd Street. Mr. DeVoe further testified that IRC's parcel has a low intensity, special commercial usage in contrast to the usages of other parcels located in the 82nd Street Corridor.

24. The testimony of Mr. DeVoe and the findings of the Indiana Supreme Court are sufficient to sustain IRC's burden of proof regarding the alleged error in assessment.

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

26. No evidence was presented on behalf of the local taxing officials to rebut Mr. DeVoe's contention that the parcel should be included in the "Township – other" category. Township officials presented no evidence that, after consideration of the zoning and lack of access to 82nd Street, the parcel is best described as part of the 82nd Street Corridor. Further, the Respondent presented no evidence of any comparable properties located in some other category of the Land Order to indicate that the category of "Township – other" does not best describe the parcel under appeal.

27. IRC has therefore established that the parcel was incorrectly included in the 82nd Street Corridor portion of the Land Order. IRC has further established that parcels not included elsewhere in the Land Order must be included in the "Township – other" category.

28. Having determined that the parcel is best included in the "Township – other" category, an appropriate value must be applied to the parcel. As discussed, the "Township – other" category includes values ranging from $1.50 to $3.00 per square foot for primary land.

29. Mr. DeVoe testified that he had been unable to locate any property in the "Township – other" category that had been assessed at the $3.00 level. Mr. DeVoe therefore contended that the correct value of the parcel should be $1.50 per square foot of primary land.

30. The Respondent did not produce any records of land sales or other evidence to establish that the value of IRC's parcel should be greater than $1.50 per square foot of primary land. Further, the Respondent presented no evidence of any property in the "Township – other" category that has been valued at more than

$1.50 per square foot of primary land.

31. The local taxing officials have failed to present substantial evidence to rebut IRC's contention that the land should be valued at $1.50 per square foot of primary land.

32. In view of the above, the State determines that IRC's parcel should be included in the "Township – other" category of the 1989 Land Order. The State further determines that the parcel should be valued at $1.50 per square foot of primary land.[3]

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

Other Findings

34. During the Tax Court proceedings, IRC identified a mathematical error on the property record card. The Summary of Improvements section of the property record card indicates that the parcel had eight tennis courts valued at $8,300 each. The property record card further indicates that the total reproduction cost of these eight tennis courts was incorrectly computed to be $88,300, rather than $66,400. The State has corrected this mathematical error pursuant to the instructions contained in the Tax Court's decision. *Indianapolis Racquet Club, Inc.*, 722 N.E. 2d at 941, n. 20 (Ind. Tax 2000).

35. During the remand hearing, both parties agreed that the parcel should receive a 70% negative influence factor.

[3] At the original administrative hearing, the State determined that the correct land classification consists of 57,600 square feet of primary land and 62,626 square feet of usable undeveloped land. Neither party contested this portion of the original State Final Determination. This determination of the land classification therefore remains unchanged.

36. The State accepts the parties' stipulation and agreement identified immediately above. In doing so, the State does not decide the propriety of this agreement, either explicitly or implicitly.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of________________, 2002.

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Chairman, Indiana Board of Tax Review