

REPRESENTATIVE FOR PETITIONER: Milo Smith, Tax Consultants, Inc.

REPRESENTATIVE FOR RESPONDENT: Gail Sims, Jefferson County Assessor.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

| | | |
|-------------------------|---|-----------------------------------|
| JOHNSON OIL COMPANY, |) | Petition No.: 39-011-95-1-4-00006 |
| |) | |
| Petitioner |) | County: Jefferson |
| |) | |
| v. |) | Township: Madison |
| |) | |
| |) | Parcel No.: 0110039500 |
| JEFFERSON COUNTY |) | |
| PROPERTY TAX ASSESSMENT |) | Assessment Year: 1995 |
| BOARD OF APPEALS and |) | |
| MADISON TOWNSHIP |) | |
| ASSESSOR, |) | |
| |) | |
| Respondents |) | |

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

September 16, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

The 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 the land is priced correctly.*
ISSUE 2 – *Whether a portion of the subject parcel is a legal right-of-way.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3 Milo Smith filed a Form 131 on behalf of Johnson Oil Company petitioning the Board to conduct an administrative review of the above petition. The determination of the County Board of Review was issued on May 24, 1996. The Form 131 petition was filed on June 19, 1996.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on August 5, 1998, at Madison, Indiana, before Hearing Officer Paul Stultz.
4. The following persons were present at the hearing:
For the Petitioner:
Milo Smith, Tax Consultants, Inc.

For the Respondents:
Gail Sims, Jefferson County Assessor

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Milo Smith

For the Respondents:

Gail Sims

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 – A copy of *RHC Associates, et al v. State Board of Tax Commissioners* (Ind. Tax Ct. July 13, 1993).¹

Petitioner's Exhibit 2 – A copy of page 7 of 13 of the Madison Township, Jefferson County Land Order.

Petitioner's Exhibit 3 – Property record card, legal description, and plat map of the parcel under appeal.

For the Respondent:

Respondent's Exhibit 1 – Copies of pages 31 and 32 of the Summary Report of Land Order.

Respondent's Exhibit 2 – A copy of a letter dated June 8, 1994, from Gail Sims to All Assessors.

Respondent's Exhibit 3 – A copy of a letter dated June 17, 1994, from James F. Cornwell, Field Representative of the State Board of Tax Commissioners, to Gail Sims.

Respondent's Exhibit 4 – A copy of a document entitled "Questions Asked from the 1989 Reassessment concerning County Land Valuation Committees."

¹ The Board notes that this decision is designated as unpublished case law. Ind. Tax Ct. Rule 17 (formerly Rule 16(E)) specifically states that "Unless specifically designated 'For Publication', such written memorandum decisions shall not be published and shall not be regarded as precedent *nor cited* before any court except for the purpose of establishing the defense of res judicata, collateral estoppel or the law of the case." (emphasis added).

7. The following additional items are officially recognized as part of the record of proceedings:
 - Board's Exhibit A – Form 131 petition.
 - Board's Exhibit B – Notice of Hearing on Petition.
8. The property is located at 1927 Lanier Drive, Madison, Madison Township, Jefferson County.
9. The Hearing Officer viewed the property on September 10, 1998.

Jurisdictional Framework

10. 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.
11. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

Indiana's Property Tax System

12. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
13. 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.
14. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).

15. 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*).
16. 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.
17. 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.
18. 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

19. 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).
20. 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 1230 (Ind. Tax 1998). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]

21. 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.]
22. 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.]
23. 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. Department of Local Government Finance*, 765 N.E.2d 711 (Ind. Tax 2002).
24. 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 land is priced correctly.*

25. The Petitioner contends that the land should be valued at \$24,750 per acre of primary land.
26. The Respondents contend that the land should be valued at \$432 per front foot.
27. The property record card describes the parcel under appeal as 1.68 acres. (Petitioner's Exhibit 3).
28. Mr. Smith testified that the relevant portion of the Jefferson County Land Order (Petitioner's Exhibit 2) indicates that commercial/industrial acreage must be priced within a range of \$10,950 - \$24,750 per acre of primary land.
29. Ms. Sims testified that the local officials applied a blanket negative influence factor to all acreage properties in the area that were assessed on the front foot basis. A negative 25% influence factor was applied to the parcel under appeal to reduce the true tax value to an amount that is comparable with neighboring parcels.
30. The applicable rules governing this issue are:

50 IAC 2.2-4-1(8)

"Front foot" means a strip of land one (1) foot wide that fronts on a desirable feature such as a road or lake...

50 IAC 2.2-4-2

Each county shall establish a county land valuation commission to determine the value of all classes of residential, commercial, industrial, and agricultural homesites...(b)...Before January 1, 1993, the commission shall submit the values it finally determines to the state board of tax commissioners.

50 IAC 2.2-4-3(d)

In making land assessments, the township assessors shall use the values as finally determined by the state board.

50 IAC 2.2-4-6(1)

Front foot value is a whole dollar amount applied to the most desirable frontage of a parcel...

50 IAC 2.2-4-6(3)

The acreage method of valuing land is appropriate where a particular use requires a large amount of land...

31. Evidence and testimony considered particularly relevant to this determination include the following:
- A. The property record card indicates the parcel under appeal is not platted. (Petitioner's Exhibit 3).
 - B. The copy of page 7 of 13 of the Jefferson County Land Valuation Order (Land Order). This exhibit indicates that commercial/industrial acreage plots are valued at a maximum of \$24,750 per acre of primary land. (Petitioner's Exhibit 2).
 - C. Petitioner's testimony asserting that the land order must be followed. (Smith testimony).

Analysis of ISSUE 1

32. In clear terms, the Land Order states commercial/industrial non-platted lots are valued from \$10,950 - \$24,750 per acre of primary land (Petitioner's Exhibit 2).
33. The parcel under appeal is a non-platted lot described as 1.68 acres (Petitioner's Exhibit 3). The parcel under appeal was assessed as a platted lot, contrary to the Land Order.
34. The Petitioner has therefore demonstrated that the local officials erred by assessing the parcel from the portion of the Land Order describing platted lots, contrary to instructions contained in the Land Order. Such evidence is sufficient to establish a prima facie case in support of the Petitioner's argument.

35. 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.
36. The Respondents contended that a blanket negative influence factor was applied to reduce any excessive values created by the use of the front foot method of assessment.
37. However, the plain language of the Land Order is clear: non-platted land must be assessed at a base rate of no more than \$24,750 per acre of primary land.
38. For all the reasons above, the Petitioner met its burden in this appeal. The Board finds the land shall be valued at a base rate of \$24,750 per acre of primary land (with no influence factor). Accordingly, there is a change in the assessment as a result of this issue.

ISSUE 2: *Whether a portion of the subject parcel is a legal right-of-way.*

39. The Petitioner contends that its property is subject to two rights-of-way that were incorrectly included in the assessment.
40. In support of its position, the Petitioner submitted a copy of the legal description of the parcel. In relevant part, the legal description states the parcel "contain[s] 1.68 acres and [is] subject to the legal right of way of State Road No. 7 and Pinehurst Street." The legal description further identifies the boundaries of the parcel under appeal as "the center of State Highway 7" and "the center line of Pinehurst Street." (Petitioner's Exhibit 3).
41. The Petitioner introduced a plat map indicating a 40-foot right of way on Pinehurst Street. Although the plat map does not indicate a right-of-way on State Road No. 7, the Petitioner testified the right-of-way is approximately 60 feet, similar in size to the right-of-way on the intersecting Cross Avenue. (Petitioner's Exhibit 3; Smith testimony).

42. The applicable rules governing this issue are:

50 IAC 2.2-4-1(16)

“Legal description” refers to a description of real property by government survey, metes and bounds, or lot numbers of a recorded plat.

50 IAC 2.2-4-17(c)(2)

“Acreage” refers to the amount of acreage designated for each specific land type.

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

- A. The legal description indicates the property contains 1.68 acres subject to two rights-of-way.
- B. The plat map confirms the existence of a right-of-way on Pinehurst Street and indicates that State Road No. 7 is similar in size to Cross Avenue.

Analysis of ISSUE 2

44. The plain language of the legal description indicates the parcel under appeal contains 1.68 acres “subject to the legal right of way of State Road No. 7 and Pinehurst Street.”

45. The Board determines that the combined amount of the two rights-of-way is .468 acres.² Accordingly, the assessment of the 1.68 acres of the parcel must be reduced to reflect

² For Pinehurst Street:

The legal description indicates the right-of-way for the Petitioner’s parcel extends to the center line of Pinehurst, or twenty feet. The plat map indicates the parcel extends 415 feet along Pinehurst. Twenty feet multiplied by 415 feet equals 8,300 square feet.

For State Road No. 7:

The legal description indicates the right-of-way for the Petitioner’s parcel extends to the center of the highway, or thirty feet. The plat map indicates the parcel extends 403.1 feet along the highway. Thirty feet multiplied by 403.1 feet equals 12,093 square feet.

The total of these amounts (8,300 square feet and 12,093 square feet) equals 20,393 square feet. Dividing this total by 43,560 square feet/acre results in .468 acre of right-of-way.

these rights-of-way, which are assessed as “no value”. There is a change in the assessment as a result of this issue.

Summary of Final Determination

Determination of ISSUE 1: *Whether the land is priced correctly.*

46. The Board finds the land shall be valued at a base rate of \$24,750 per acre of primary land (with no influence factor). Accordingly, there is a change in the assessment as a result of this issue.

Determination of ISSUE 2: *Whether a portion of the subject parcel is a legal right-of-way.*

47. The Board determines that the combined amount of the two rights-of-way is .468 acres that shall be assessed as “no value.” There is a 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.

Chairman, 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.