

**STATE OF INDIANA
Board of Tax Review**

THE MARINA LIMITED PARTNERSHIP)	On Appeal from the Hamilton County
)	Property Tax Assessment Board of Appeals
)	
Petitioner,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition No. 29-007-96-1-4-00016
)	Parcel No. 1315100000026115
HAMILTON COUNTY PROPERTY TAX)	
ASSESSMENT BOARD OF APPEALS)	
And FALL CREEK 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

Whether the land base rate applied to the subject property is excessive

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 IC 6-1.1-15-3, Gordon D. Byers, on behalf of The Marina Limited Partnership (Petitioner) filed a Form 131 petition requesting a review by the State. The Form 131 petition was filed on November 24, 1999. The Hamilton County Property Tax Assessment Board of Appeals (PTABOA) Assessment Determination on the underlying Form 130 petition is dated November 10, 1999.

3. Pursuant to IC 6-1.1-15-4, a hearing was held on October 18, 2000 before Hearing Officer Debra Eads. Testimony and exhibits were submitted into evidence. Mr. Byers represented the Petitioner. Lori Harmon represented Hamilton County. No one appeared at the hearing to represent Fall Creek Township.

4. At the hearing, the subject Form 131 petition was made a part of the record and labeled State Exhibit A. The Form 117 Notice of Hearing on Petition was labeled State Exhibit B. In addition the following exhibits were submitted to the State:

Petitioner's Exhibit 1 – Copy of purchase agreement of subject property,
allocation of purchase price among multiple properties including the
subject, map for the subject property

Petitioner's Exhibit 2 – Affidavit of Phillip Klinger regarding sale of subject

Respondent's Exhibit 1 – Written response to the Petitioner's contentions, copy
of plat filed for the subject property, and copy of Warranty Deed for subject
property

Respondent's Exhibit 2 – Copy of property record cards (PRC) for parcels 19-15-05-00-16-001.000 and 19-15-08-00-00-030.113

Respondent's Exhibit 3 – Three (3) different copies of plat map and aerial photo of subject property

Respondent's Exhibit 4 – Plat map for subject area with various sale dates and amounts indicated

5. The subject property has no street address assigned and is located in Section 10, Township 17, Range 05 in Fall Creek Township, Hamilton County.
6. At the hearing, the parties agreed that the year under appeal is 1996.
7. The Hearing Officer did not conduct an on-site inspection of the subject property.

Whether the land base rate applied to the subject property is excessive.

8. The Fall Creek Township Assessor applied the developer's discount to the subject property for the March 1, 1998 assessment date. The developer's land rate was equally applicable for the 1996 assessment year. In 1995 the subject land was a recreational area for a sub-division known as Masthead. The subject property was purchased on February 28, 1995 for \$ 10,000 per acre as part of a larger tract of land. On the assessment date the land was zoned as a planned unit development; it was undeveloped with no utilities available on the assessment date. Since the appealed assessment date, the subject property has been incorporated into a residential plat and the improvements that were present on the subject land were removed before the March 1, 1997 assessment date. The appropriate land rate should be the value reflected in the purchase transaction for the subject land. *Byer's testimony.*

9. The land under appeal had been valued as both secondary and undeveloped lands, consistent with other sub-division recreational areas. Two (2) PRCs submitted into evidence, support this position that the classification of the subject land was consistent with other recreational areas. Three (3) different plat maps (aerial photographs) of the subject property confirm the removal of the improvements. *Harmon testimony and Respondent Exhibits 2 – 3.*

10. The PTABOA was not convinced that the subject sale could be considered an arms-length transaction since it did not have traditional market exposure and therefore would not be indicative of a true market value for the subject property. A map indicates the sale prices of four (4) separate tracts of land in the vicinity of the subject property. One (1) single sales transaction does not sufficiently represent the “market” and is therefore not indicative of the appropriate value for the subject property. *Harmon testimony and Respondent’s Exhibits 4.*

Conclusions of Law

1. The Petitioner is limited to the issues raised on the Form 130 petition filed with the PTABOA or issues that are raised as a result of the PTABOA’s action on the Form 130 petition. 50 IAC 17-5-3. See also the Forms 130 and 131 petitions authorized under Ind. Code §§ 6-1.1-15-1, -2.1, and –4. 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 Form130/131 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.

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.

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.

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. One manner for the taxpayer to meet its burden in the State's administrative proceedings is to: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). 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 merely because the taxpayer demonstrates flaws in it).

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.

Land Base Rate

18. In support of its position, the Petitioner submitted a purchase agreement for the subject property (Petitioner's Exhibit 1). Even with the presumption that the

submitted sale qualifies as an arms-length transaction (the lack of market exposure renders that presumption highly questionable), the submission of one (1) single land sale is insufficient to establish a “market” with regard to base land rate.

19. In addition, the Petitioner’s contention that the subject property is an unimproved site is clearly disputed by the presence of a pool house and in-ground pool (Respondent Exhibit 3). These improvements could not be present without water and electricity being on-site. Even though these improvements were subsequently demolished, the site cannot reasonably be classified as an undeveloped site.
20. Mr. Byers was unable to testify as to whether the Petitioner owned adjoining tracts at the time of the appeal assessment date. When the Petitioner acquired additional property and the plat for the area became known to the Township, testimony indicated that the appropriate developer’s rate was applied to the parcels as of the March 1, 1998 assessment date. Prior to this combination of tracts and the subsequent platting of the subject area, the Township was correct in their valuation of the subject property as secondary and usable undeveloped lands.
21. The Respondent submitted into evidence two (2) PRCs (Respondent’s Exhibit 2) as comparable properties to the subject. A review of these cards shows that the lands are classified and valued as primary and secondary. The Respondent explained that even though the subject property lands are classified and valued differently than the comparables (secondary and usable undeveloped), the purpose of these exhibits was to show that the same procedure/methodology was consistently used for homeowners association swimming and tennis facilities like that of the subject.

22. The Petitioner's contention that a State Tax Court decision determined it to be improper to put high values on recreational amenity blocks, like the subject, was not supported with any specifics regarding the alleged ruling or the case itself. When asked for the name of the case the Petitioner responded that he did not have the name.
23. Though the Petitioner contends that the subject land was incorrectly valued, the allegation was unsupported by evidence that such an error exists. "Allegations, unsupported by factual evidence, remain mere allegations." In addition, the State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges.
24. For all the reasons set forth above, the Petitioner failed to meet its burden by presenting probative evidence in order to make a prima facie case. Accordingly, there is no change in the assessment as a result of this issue.

SUMMARY OF STATE DETERMINATION

Land Value – No change

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.

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.