STATE OF INDIANA
Board of Tax Review

NORTHEAST COMMERCE PARK	)	On Appeal from the Hamilton County
	)	Property Tax Assessment Board of Appeals
	)	
Petitioner,	)	
	)	Petition for Review of Assessment, Form 131
v.	)	Petition No. 29-006-98-1-4-00026
	)	Parcel No. 1511310000035011
HAMILTON COUNTY PROPERTY TAX	)	
ASSESSMENT BOARD OF APPEALS	)	
And DELEWARE 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 subject land qualifies for the developer's discount pursuant to Ind. Code § 6-1.1-4-12.

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, Stephen P. Zinkan, General Partner, Northeast Commerce Park (Petitioner) filed a Form 131 petition requesting a review by the State Board. The Form 131 petition was filed on August 13, 1999. The Hamilton County Property Tax Assessment Board of Appeals (PTABOA) Assessment Determination on the underlying Form 130 is dated July 16, 1999.

3. Pursuant to IC 6-1.1-15-4, a hearing was held on October 18, 2000 before Hearing Officer Debra Eads. Exhibits and testimony were received into evidence. Stephen P. Zinkan, General Partner of Northeast Commerce Park, represented the Petitioner. Lori Harmon represented Hamilton County and Terry McAbee represented Delaware Township.

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

   The Petitioner's exhibits were attached to the subject Form 131 petition:
   Petitioner's Exhibit A – Northeast Commerce Park Plat
   Petitioner's Exhibit B – Northeast Commerce Park Plat (updated)
   Petitioner's Exhibit C – Annexation Ordinance

   Respondent's Exhibit 1 (submitted by Hamilton County representative) – Memo detailing Respondent's position; plat map with aerial photo of subject parcel; parcel inquiry information from computer system

Respondent's Exhibit 2 (submitted by Delaware Township representative) – Parcel inquiry information from computer system, Warranty Deed for subject parcel; parcel inquiry information from computer system; and plat map with aerial photo of subject parcel

5. The subject property is vacant land located in the Northeast Commerce Park, Fishers, Delaware Township, Hamilton County.

6. The Hearing Officer did not conduct an on-site inspection of the subject property.

Issue – Developer's Discount for Land

7. At the hearing, all parties agreed to several basic facts with regard to the subject parcel:
   (a) The land is a portion of a larger tract purchased over a period of years and developed over a period of years;
   (b) The land was not being used as farmland on the assessment date;
   (c) The land was zoned for commercial use since 1986; and
   (d) Since the original land purchase for development purposes, there has been no change in legal title (original purchase was by a land contract).

8. As of the assessment date the subject land was platted with metes and bounds descriptions and was approved by the Town of Fishers as part of the master plan for a planned development. The subject development plan had been through the "normal" approval process but had simply not been recorded with the County Recorder. Indiana Code does not require that a plat be recorded with the County Recorder in order to be considered a viable plat and that a metes and bounds description of a tract of land is equally acceptable as a "lot". The subject land had not changed legal title since the development was begun. *Zinkan testimony.*

9. The subject land was transferred to Northeast Commerce Park in 1994. The land should not receive the developer discount because the land has a metes and bounds description; the land was not considered a "sub-divided lot" as referenced in IC 6-1.1-4-12 because the development plan was not a recorded plat with the County Recorder. The County couldn't reasonably be aware of any information concerning a plat if that plat is not recorded with the County. As of the assessment date the land should be considered usable undeveloped commercial land and therefore not eligible for the developer discount. *Harmon and McAbee testimony.*

Conclusions of Law

1. The Petitioner is 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. 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.

Issue – Developer's Discount for Land

17. Ind. Code § 6-1.1-4-12 reads in pertinent part as follows:

> If land assessed on an acreage basis is subdivided into lots, the land shall be reassessed on the basis of lots. If land is rezoned for, or put to, a different use, the land shall be reassessed on the basis of its new classification. If improvements are added to real property, the improvements shall be assessed. An assessment or reassessment made under this section is effective on the next assessment date. However, if land assessed on an acreage basis is subdivided into lots, the lots may not be reassessed until the next assessment date following a transaction which results in a change in legal or equitable title to that lot.

18. Valuing land on an acreage basis under Ind. Code § 6-1.1-4-12 is commonly referred to as the "developer's discount."

19. There was no disputed testimony in regard to: (1) how the parcels were previously assessed, (2) improvements, (3) whether the title has changed, (4) whether the subject property has been rezoned or (5) whether the subject property has been put to a different use since being subdivided.

20. The developer's discount is not available to a taxpayer once two transactions occur, namely: (1) the subdivision of land into lots, and (2) transfer of legal or equitable title to the lots. Ind. Code § 6-1.1-4-12 clearly states that land valued on an acreage basis is subject to reassessment when the land is subdivided into lots. That reassessment does not necessarily occur immediately upon the subdivision of land into lots. Instead, the penultimate sentence of the statute provides the date upon which reassessment can occur—the next assessment date following a transaction which results in a change in legal or equitable title.

21. The focus of this appeal is with regard to whether an unrecorded "plat" serves a similar function as a recorded plat when determining whether to reassess land that is in the development process.

22. The Petitioner indicated that approval of a "master plan" by the town with jurisdiction using metes and bounds descriptions qualifies as a plat. The Respondents indicated that if a plat is not recorded and the legal description does not include a plat and/or a lot number, the land should be assessed as usable undeveloped commercial land.

23. Aerial photos submitted by the Respondent clearly shows the subject parcel is bounded by improved developed land on three (3) sides with a railroad track on the east side.

24. The zoning of the subject parcel had not changed since 1986 and the developer owned the parcel on the assessment date.

25. The Petitioner's claim that Indiana Code includes no requirement for a plat to be recorded is correct. However, this fact makes it difficult for the Respondent to determine the development status of the land.

26. The reason for the reassessment of the subject land by the Respondent was due to its proximity and/or inclusion in the development commonly known as Northeast Commerce Park. This same proximity should have raised the question as to whether the developer discount rate would be applicable to the subject property.

27. The submission of the plat (even though unrecorded) for the subject area is sufficient to indicate that the land is indeed part of the Northeast Commerce Park and should receive the developer land rate. A change in the assessment is made as a result of this issue.

Summary of State Determination

Developer's Discount – It is determined the parcels within the subject property should receive what is commonly termed as a "developer's discount" to the land pursuant to Ind. Code § 6-1.1-4-12 until they are either put to a different use or title is transferred.

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.