

REPRESENTATIVES FOR PETITIONER: Jay Lynn, Taxpayer

RESPRENTATIVES FOR RESPONDENT: None appeared

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

JAY & SANDRA LYNN,)	
)	Petition No.: 49-401-00-1-5-00087
Petitioner)	County: Marion
)	Township: Lawrence
v.)	Parcel No.: 4022091
)	Assessment Year: 2000
MARION COUNTY PROPERTY TAX)	
ASSESSMENT BOARD OF APPEALS)	
and LAWRENCE TOWNSHIP)	
ASSESSOR,)	
)	
Respondents.)	
)	

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

[September 19, 2002]

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:

Issues

1. The issues presented for consideration by the Board were:

ISSUE 1 – *Whether the Indiana Board of Tax Review has jurisdiction over this matter.*

ISSUE 2 – *Whether the land value was assessed correctly.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3 Jay Lynn, taxpayer, filed a Form 131 petitioning the Board to conduct an administrative review of the above petition. The Form 131 petition was filed on February 11, 2002.
3. On May 30, 2002, an Order of Dismissal was sent to the Petitioner dismissing the present case for lack of jurisdiction. The Order of Dismissal is labeled Board Exhibit C. As the result of a phone conversation between the Petitioner and Annette Biesecker, Chairman, of the Indiana Board of Tax Review and a letter sent by the Petitioner (Petitioner's Exhibit G), a hearing was scheduled in this matter.

Hearing Facts and Other Matters of Record

4. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on August 14, 2002 at the office of the Indiana Board of Tax Review before Brian McKinney, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-5-2.
5. The following persons were present at the hearing:

For the Petitioner: Jay Lynn, taxpayer

For the Respondent: No one appeared
6. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner: Jay Lynn

For the Respondent: No one appeared

7. At the hearing, the subject Form 131 petition was made a part of the record and labeled as Board Exhibit A. The Notice of Hearing on Petition was labeled Board Exhibit B.

8. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit A – Explanation of issues, and Notice of Assessment

Petitioner's Exhibit B – Declaration and Percent Interest Correction to the 43rd

Supplemental Declaration of Horizontal Property Ownership – Windridge
Horizontal Property Regime

Petitioner's Exhibit C – Memorandum from Jay Lynn to Marion County Property
Tax Assessment Board of Appeals (PTABOA) dated September 25, 2000

Petitioner's Exhibit D – Letter to Mr. John Spahr, President, Windridge Co-
Owners Association from Jay Lynn, dated May 3, 1995

Petitioner's Exhibit E – Letter from Mr. John Spahr to Jay Lynn dated December
8, 1995

Petitioner's Exhibit F – 43rd Supplemental Declaration of Horizontal Property
Ownership – Windridge Horizontal Property Regime

Petitioner's Exhibit G – Letter from Jay Lynn to Annette Biesecker dated June 5,
2002

For the Respondent: No exhibits were submitted

9. At the hearing, the ALJ gave Mr. Lynn two (2) weeks to present proposed findings of fact, and conclusions of law. On August 16, 2002, Mr. Lynn faxed to the ALJ his proposed findings and conclusions. Mr. Lynn's proposed findings and conclusions are entered into the record and labeled as Petitioner's Exhibit H.

10. The subject property is a residence. At the hearing, it was determined the assessed values under appeal were those set by the PTABOA: \$5,770, for the land and \$26,000, for the improvements.

11. The Administrative Law Judge assigned to this case did not inspect the subject property.

Jurisdictional Framework

12. 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.

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

Indiana's Property Tax System

14. The Indiana Constitution requires the Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.

15. 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.

16. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).

17. 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 Comm'rs v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).

18. 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.

19. 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 those existing rules until a new regulations are in effect.
20. 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

21. 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).
22. 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.]
23. 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.]
24. 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.]

25. 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. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).
26. 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 Indiana Board of Tax Review has jurisdiction over this matter.*

27. The Petitioner contends that the Board has jurisdiction over this matter pursuant to Ind. Code § 6-1.5-4-1 (a) which empowers the Board to review appeals concerning the assessed valuation of tangible property.
28. The applicable rule governing this issue is **Ind. Code § 6-1.5-4-1:**

Ind. Code § 6-1.5-4-1 states;

Sec. 1. (a) The Indiana Board shall conduct an impartial review of all appeals concerning:

- (1) the assessed valuation of tangible property;
- (2) property tax deductions
- (3) property tax exemptions
- (4) property tax credits;

that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law.

(b) Appeals described in this section shall be conducted under IC 6-1.1-15.

29. The relevant facts are:

- a. The subject property is part of Windridge Horizontal Property Regime (Windridge).
- b. The subject property is a condominium owned by Jay and Sandy Lynn.
- c. Ind. Code § 32-1-6 is the Horizontal Property Law.
- d. The assessed value on the land increased from \$4,130 in 1999 to \$5,770 in 2000.
- e. Each owner of property in Windridge has a percent interest in the common land in the community. The percent of common land owned is determined by a formula set out in the Declarations of the Windridge Co-Owners Association.
- f. In 1995, by the 42nd Supplemental Declaration, the Petitioner had a 0.43% ownership in the common land.
- g. In mid 1999, that was recalculated to be 0.60% in the 43rd Supplemental Declaration.

Analysis of ISSUE 1

30. The Petitioner's main argument is that the 43rd Supplemental Declaration (Petitioner's Exhibit F) is invalid due to the expiration of the Power of Attorney of Windridge Co-Owners Association (Association). The Petitioner further contends that because this Power of Attorney expired, the Association had no authority to increase the Petitioner's interest in common land in 1999.

31. The Petitioner further contends that because his interest in common land is incorrect, his assessment is then also incorrect and therefore the Board has the authority to order his assessment returned to the level that it was in 1999.
32. While the Petitioner is correct that the Board has jurisdiction to review appeals of assessed values of all tangible property, the Petitioner's argument is not about the assessed value of his property. The Petitioner's argument is how the amount of common land was determined in 1999 and whether the Association had authority to re-distribute the interest in common land.
33. The Petitioner claims that the Lawrence Township Assessor's office stated that the interest in common land is obtained from the recorded documents of the Association and the validity of those documents is not within the purview of the local assessing officials. Should there be an error or disagreement in the recorded documents, that action must be carried out in courts of local jurisdiction. Neither the local assessing officials nor this Board has the jurisdiction to declare a recorded document null and void.
34. The Petitioner did have a document recorded declaring the 43rd Supplemental Declaration (Petitioner's Exhibit F) not valid for his property. The Petitioner had recorded a Correction to the 43rd Supplemental Declaration (Petitioner's Exhibit B). The Petitioner, Jay Lynn, signed this correction before a notary public. No member of the Windridge Co-Owners Association's Board signed this correction.
35. In this Correction, the Petitioner declares that the 43rd Supplemental Declaration is not applicable to his property. The Correction also states that the 42nd Supplemental Declaration is the proper document to be used to determine the interest in common land for the subject property.
36. The Board does not have the jurisdiction to validate the Correction or invalidate the 43rd Supplemental Declaration. However, that is exactly the action the Petitioner is seeking in the case at bar. The Petitioner's main argument is with the amount of common land he is being assessed for. The Association determines the amount of common land. Neither the local

assessing officials nor this Board have any jurisdiction to determine the amount of common land the Petitioner has interest in.

37. The real issue before the Board in this appeal is a dispute between the Petitioner and the Association. In fact, the Petitioner and the Association have been involved in other disputes, one of which resulted in a decision of the Indiana Appellate Court. *See Lynn v. Windridge Co-Owners Association, Inc.*, 743 N.E. 2d 305 (Ind. App. 2001).¹

38. For all the reasons set forth above, the Board does not have jurisdiction in the determination of the Petitioner's interest in the common land. Accordingly, this case is dismissed.

ISSUE 2: *Whether the assessed value of the land is correct.*

39. The Board, having determined that it does not have jurisdiction to ascertain the amount of common land attributable to the Petitioner, makes no decision as to whether the land has been correctly value.

Summary of Final Determination

Determination of ISSUE 1: *Whether the Indiana Board of Tax Review has jurisdiction over this matter.*

40. The Board does not have jurisdiction in determining the amount of common land attributable to the owners of property in the community (Windridge) therefore this case is dismissed.

¹ This case held that the Association was entitled to assess unit owners for additional square footage that resulted from expansion of owners' unit. (Assess here refers to maintenance costs, etc.). This case explains that the Lynn's had added on to their condo in 1995. Whether this was the reason for the increase in the Petitioner's interest in common land cannot be determined from the evidence provided.

Determination of ISSUE 2: Whether the assessed value of the land is correct.

41. Since the Board has no jurisdiction in determining the amount of common land attributable to the owners of property in the community, the Board cannot determine whether the assessment for the land is incorrect. No change in the assessment as a result of this issue.

This Final Determination of the above captioned matter is issued this 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.