REPRESENTATIVES FOR PETITIONER:

William Price, Taxpayer Representative
Joseph D. Geeslin, Jr., Attorney

REPRESENTATIVES FOR RESPONDENT:

Delaware Township:
Marilyn Schenkel, Township Assessor
Terry McAbee, Deputy Assessor

BEFORE THE
INDIANA BOARD OF TAX REVIEW

In the matter of:

SUNBEAM DEVELOPMENT CORP.,	)	
	)	Petition for Review of Assessment,
Petitioner	)	Form 131
	)	
	)	Petition No: 29-006-99-1-4-00062
v.	)	
	)	
	)	County: Hamilton
HAMILTON COUNTY PROPERTY TAX	)	Township: Delaware
ASSESSMENT BOARD OF APPEALS	)	Parcel No: 15156060000002000
And DELAWARE TOWNSHIP	)	
ASSESSOR	)	
Respondents	)	Assessment Year: 1999

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

July 21, 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

Issue

1. The issue presented for consideration by the Board was:

   Issue 1 – *Whether the subject land qualifies for an agricultural rate of $495 per acre.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3 Joseph D. Geeslin, Jr., Geeslin & Associates, on behalf of Sunbeam Development Corporation (Sunbeam), filed a Form 131 petition requesting a review by the Board. The Hamilton County Property Tax Assessment Board of Appeals' (PTABOA) Notification of Final Assessment Determination was issued on July 24, 2000. The Form 131 petition was filed on July 28, 2000.

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on March 12, 2003 in Noblesville, Indiana before Dalene McMillen, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

4. The following persons were present at the hearing:

For the Petitioner:
Ken Kern, Director of Properties for Sunbeam
William Price, Taxpayer Representative
Joseph Geeslin, Attorney

For the Respondent:
Marilyn Schenkel, Delaware Township Assessor
Terry McAbee, Delaware Township Deputy Assessor

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

For the Petitioner:
Ken Kern, Director of Properties for Sunbeam
William Price, Taxpayer Representative

For the Respondent:
Marilyn Schenkel, Delaware Township Assessor
Terry McAbee, Delaware Township Deputy Assessor

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 – A list identifying the issue and exhibits 1 through 10, including a copy of Ind. Code § 6-1.1-4-12.

Petitioner's Exhibit 2 – A copy of a State Board of Tax Commissioners Final Determination (Form 118) of an appeal from PKT Development Company (Petition #29-006-95-1-4-00060).

Petitioner's Exhibit 3 – A copy of the lease agreements between Sunbeam and Stan Clark for 1998 and 1999. A copy of the lease agreement between Sunbeam and Art Johnson for 2000.

Petitioner's Exhibit 4 – A copy of an ordinance amending the zoning ordinances of Fishers, Indiana – 1980 (Ordinance No. 08-17-88), dated August 17, 1988.

Petitioner's Exhibit 5 – A copy of an ordinance amending the zoning ordinances of Fishers, Indiana – 1980 (Ordinance No. 090788B), dated September 7, 1988.

Petitioner's Exhibit 6 – A copy of the approved preliminary development plan between Sunbeam and the Town Board of Fishers, Indiana, dated September 7, 1988.

Petitioner's Exhibit 7 – Aerial map 15-06-00 in Delaware Township.

Petitioner's Exhibit 8 – Aerial map 11-31-00 in Fall Creek and Delaware Townships.

Petitioner's Exhibit 9 – A copy of a proposed property record card prepared by Geeslin & Associates.

Petitioner's Exhibit 10 – Two photographs of the subject area, dated June 1999.

For the Respondent:

Respondent's Exhibit 1 – A copy of an aerial map of the subject property, dated March 1, 1999.

Respondent's Exhibit 2 – The Township's response to the issue, a copy of Ind. Code § 6-1.1-4-13, a copy of Ind. Code § 6-1.1-4-12, a copy of 50 IAC 2.2-4-17 "Commercial and industrial acreage", and Sunbeam's 1999 property record card.

For the Board:

Board's Exhibit A – Form 131 petition, dated July 28, 2000.
Board's Exhibit B – Notice of Hearing on Petition (Form 117), dated January 15, 2003.

7. At the hearing, the parties agreed that the assessment date under appeal is March 1, 1999 and the assessed value under appeal is as follows:

Land: $1,038,770 Improvements: -0- Total: $1,038,770

8. The subject property is located at USA Parkway, Fishers, Delaware Township, Hamilton County, Indiana.

9. The Administrative Law Judge did not conduct an on-site inspection of the subject property.

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 assessments 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 affect.

18. New assessment regulations have been promulgated, but are not in affect for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

State Review and Petitioner's Burden

19. The Board does not undertake to reassess property, or to make the case for the petitioner. The Board's decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Board of Tax Commissioners,* 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 Board of Tax Commissioners,* 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Board of Tax Commissioners,* 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 Board of Tax Commissioners,* 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 Board in its evaluation of the evidence. See *Heart City Chrysler v. State Board of Tax Commissioners,* 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 Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.,* 743 N.E. 2d 247, 253

(Ind. Tax 2001) and *Blackbird Farms Apartments, LP v. Department Local Government Finance,* 765 N.E. 2d 711 (Ind. Tax 2002).

24. The Board 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 Board of Tax Commissioners,* 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Board of Tax Commissioners,* 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 to the Board (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 Board that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of the Issue

Issue 1: *Whether the subject land qualifies for a agricultural rate of $495 per acre.*

25. The Petitioner contended that the subject property should be valued at an agricultural rate of $495 per acre because the land qualifies for the developer's discount pursuant to Ind. Code § 6-1.1-4-12.

26. The Respondent contends the subject property is 154.42 acres that has not been subdivided into lots; therefore it does not qualify for developer's discount under Ind. Code § 6-1.1-4-12. The 129.58 acres of the subject property have been priced in accordance with 50 IAC 2.2-4-17 from the "commercial and industrial acreage" as usable undeveloped and the remaining 24.84 acres were priced in accordance with Ind. Code § 6-1.1-4-13 at an agricultural rate of $495 per acre.

27. At the hearing, the following undisputed facts were presented by the parties with regard to the subject parcel:

    a. Sunbeam purchased the property in 1986 and has retained ownership of it since that time.
    b. The Town Board of Fishers approved Sunbeam's preliminary development plan of the subject on September 7, 1988; this changed the zoning from agricultural to preliminary development.
    c. There were 24.84 acres being farmed on the assessment date.
    d. Since the original land purchase for development purposes, there has been no change in legal title.

28. The 1999 property record card shows the land assessed as follows: .247 acres road right of way; 129.333 acres commercial/industrial usable undeveloped; and 24.84 acres tillable cropland.

29. The applicable statute governing this issue is:

    Ind. Code § 6-1.1-4-12 "Subdivided land; rezoned land; improvements; reassessment"

    In pertinent part: "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."

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

a. Sunbeam purchased the subject property in 1986 and there has been not change in legal or equitable title to date. *Kern, Price, and McAbee testimony.*

b. Sunbeam was required to file a preliminary development plan with the Town of Fishers. As a result of this development plan, the parcel was rezoned from agricultural to preliminary development. The property, however, is not permanently reclassified and/or rezoned until it is sold or a structure is constructed upon the property. *Petitioner's Ex. 4, 5, & 6 and Kern testimony*.

c. The contested 129.33 acres was not being used for agricultural purposes on the assessment date. *Kern & Price Testimony.*

d. The subject property has not been subdivided into lots, therefore I.C. §6-1.1-4-12 has no relevance and the developer's discount would not apply. *Respondent's Ex. 2 and Schenkel & McAbee testimony.*

Analysis of the Issue

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

32. The plain language of I.C. § 6-1.1-4-12 is unambiguous. The statute requires that two events must occur before land can be reassessed. First, the land must be subdivided into lots. Second, the statute clearly states that the land that has been subdivided into lots may be reassessed on the "next assessment date following a transaction which results in a change in legal or equitable title." *North Group, Inc. v. State Board of Tax Commissioners,* 745 N.E. 2d 938 (Ind. Tax 2001).

33. However, I.C. § 6-1.1-4-12 further states in plain language that if land is rezoned or put to a different use, the land shall be reassessed on the basis of its new classification.

34. The Tax Court has previously identified the circumstances under which the application of the developer's discount is appropriate. In *Aboite Corp. v. State Board of Tax Commissioners*, 762 N.E.2d 254, 257-58 (Ind. Tax 2001), the Tax Court recognized that the use of the platted (or in this case rezoned) property is of significance in considering the application of I.C. § 6-1.1-4-12; change of ownership is not the sole determinant, and use is relevant. Here the Petitioner has not established an agricultural use (except for the 24.84 acres). In the most simple terms the subject property is commercial zoned and unused.

35. Assuming arguendo that the developer's discount did apply would not assist the Petitioner. The application of the developer's discount does not guarantee that the parcel will be assessed as agricultural rather than usable undeveloped.

36. Agricultural property is defined as "land and improvements devoted to or best adaptable for the production of crops, fruits, timber, and the raising of livestock." 50 IAC 2.2-1-4.

37. "In assessing or reassessing land, the land shall be assessed as agricultural land only when it is devoted to agricultural use." Ind. Code § 6-1.1-4-13(a). Land that is not being used for agricultural purposes may not be assessed as agricultural land.

38. Significantly, the Petitioner's own witness, Mr. Kern, testified that no farming occurred on the parcel in either 1998 or 1999.

39. The simple reality, therefore, is that this parcel was not being used for agricultural purposes on the assessment dates.

40. Finally, the Petitioner introduced photographs purportedly showing crops being grown. (Petitioner's Exhibit 10). However, the Petitioner failed to identify which portion of the parcel the photographs represent. As discussed, the local officials assessed a portion of the acreage as agricultural. Further, the photographs contain no indication of the amount

of acreage of this purported farmland. Photographs, without explanation, do not constitute probative evidence. *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E.2d 329, 333 (Ind. Tax 1999). As discussed, this contention that the land was being used for agricultural purposes was rebutted by the Petitioner's testimony.

41. For all the reasons above, the Petitioner failed to meet its burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

Summary of Final Determination

Whether the subject land qualifies for an agricultural rate of $495 per acre.

42. The Petitioner did not meet its burden in this appeal. Accordingly, there is no change in the assessment.

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.