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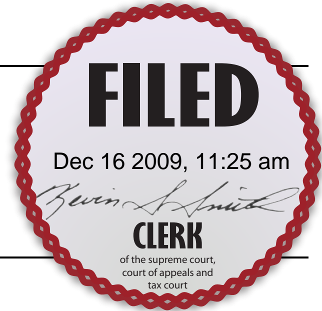

IN THE
INDIANA TAX COURT

GEORGE M. MOFFETT,

Petitioner,

v.

INDIANA DEPARTMENT OF LOCAL GOVERNMENT FINANCE,

Respondent.

Cause No. 49T10-0810-TA-58

ON APPEAL FROM A FINAL DETERMINATION OF
THE INDIANA DEPARTMENT OF LOCAL GOVERNMENT FINANCE

NOT FOR PUBLICATION
December 16, 2009

FISHER, J.

On September 11, 2009, the Indiana Department of Local Government Finance (DLGF) issued a final determination granting modified approval of the proposed lease rental agreement between the Union-North United School Corporation (the School Corporation) and the Union-North United School Building Corporation (the Building Corporation) which provided for the construction of a new intermediate school and

renovations to the existing elementary school and high school. George M. Moffett (Moffett) challenges that final determination.

FACTS AND PROCEDURAL HISTORY

The School Corporation is located in north central Indiana; it serves taxpayers residing in Union Township, St. Joseph County and North Township, Marshall County. The School Corporation operates one elementary school (kindergarten through grade 5) and one junior/senior high school (grades 7 through 12). The entire 6th grade has been taught in several modular (portable) classrooms located adjacent to the elementary school since 1999.[1]

In 2007, the School Corporation formed a committee, comprised of both members of its staff and the community at large, to assist it in developing a construction plan that would best accommodate its current student body as well as anticipated enrollment growth. After reviewing numerous options, the School Corporation decided to pursue a plan whereby it would make certain renovations to the elementary school in order to house kindergarten through 4th grade, construct a new intermediate school to house grades 5 through 8, and make renovations to the existing high school which would then be used solely for grades 9 through 12 (the proposed project). The total cost for the proposed project was estimated at approximately $20,000,000.

On November 19, 2007, the School Corporation conducted a public hearing on the proposed project. At the conclusion of the hearing, the School Corporation voted

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[1] The junior/senior high school also employs two modular units for additional classroom space.

unanimously to proceed with the proposal.

In December of 2007, opponents of the proposed project initiated a remonstrance process as provided by statute. The remonstrance process ultimately failed, however, as only 1,313 signatures against the project were filed, opposed to the 1,781 signatures favoring the project.[2]

The School Corporation subsequently moved forward with its plans and approved a proposed lease rental agreement. In July of 2008, the School Corporation petitioned the DLGF to approve the execution of the lease, which provided that the School Corporation would make annual rental payments of $1,478,000 to the Building Corporation over 26 years for the proposed project. The DLGF referred the petition to the School Property Tax Control Board (Control Board) for its recommendation.

On July 17, 2008, the Control Board conducted a public hearing on the matter. After a vote, the Control Board recommended unanimously that the DLGF approve the lease rental agreement.[3] On September 10, 2008, the DLGF issued a final determination

[2] On July 2, 2008, Moffett and several other taxpayers filed a Verified Complaint with the Marshall Circuit Court alleging that the remonstrance process had been flawed and the School Corporation should therefore be enjoined from proceeding with the proposed project. (*See* Cert. Admin. R. at 596-97.) The Marshall Circuit Court dismissed the action on August 14, 2008, when, after declaring it a public lawsuit pursuant to Indiana Code § 34-13-5, Moffett and the other taxpayers failed to post a surety bond. (*See* Cert. Admin. R. at 594.)

[3] The Control Board noted it had some concerns that with the proposed project there would be excess capacity in the renovated high school, but deferred the issue to the DLGF for resolution. (*See* Cert. Admin. R. at 38-39.)

in which it approved a modified lease rental agreement.[4]

On October 7, 2008, Moffett filed an original tax appeal challenging the DLGF's final determination. The Court conducted a hearing on the matter on July 9, 2009. On August 19, 2009, the Court remanded the matter to the DLGF with instructions to enter specific findings of fact upon which its final determination was based. On September 11, 2009, the DLGF issued an amended final determination. Additional facts will be supplied when necessary.

ANALYSIS AND OPINION

When the DLGF reviews school construction projects, it does so as a tax specialist. *See, e.g., Graber v. State Bd. of Tax Comm'rs*, 727 N.E.2d 802, 806 (Ind. Tax Ct. 2000), *review denied*; *Boaz v. Bartholomew Consol. Sch. Corp.*, 654 N.E.2d 320, 325-26 (Ind. Tax Ct. 1995); *Bell v. State Bd. of Tax Comm'rs*, 651 N.E.2d 816, 819-20 (Ind. Tax Ct. 1995). Thus, the DLGF's function is not to pass judgment on how a school corporation chooses to educate its students; rather, its function is to analyze, *from a tax standpoint*, the school corporation's need for capital construction in light of its chosen educational programs and policies. *See Graber*, 727 N.E.2d at 808-09; *Boaz*, 654 N.E.2d at 325-26; *Bell*, 651 N.E.2d at 819-20.

To that end, Indiana Code § 20-46-7-11 requires the DLGF to consider the following factors when determining whether or not to approve a school building construction project:

(1) The current and proposed square footage of school building

[4] The DLGF approved the lease rental agreement for a term of 22 years at an annual lease rental of $1,478,000. (*See* Cert. Admin. R. at 46-47.)

space per student.
(2) Enrollment patterns within the school corporation.
(3) The age and condition of the current school facilities.
(4) The cost per square foot of the school building construction project.
(5) The effect that completion of the school building construction project would have on the school corporation's tax rate.
(6) Any other pertinent matter.

IND. CODE ANN. § 20-46-7-11 (West 2008). In doing so, however, the DLGF is not required to assign greater weight to any one of the statutorily listed factors, nor is it required to consider any single factor dispositive. *See Graber*, 727 N.E.2d at 806-07.[5] Rather, the DLGF is simply required to consider each of the listed factors; in fact, it need not even base its ultimate decision on them.[6] *See id.* (footnote added).

In approving the proposed project, the DLGF specifically considered each of these factors. First, in examining both the current and proposed square footage of building space per student, the DLGF found that the per square foot costs of the proposed project were either at, or under, state threshold limitations. (*See* Am. Order at 2-4.) Second, the DLGF found that while enrollment had been static since 2003 (and was projected to remain static), the evidence indicated that proportionally, the number of students in kindergarten through 6th grade would outnumber the students enrolled in 7th through 12th grade. (Am. Order at 4 ¶ 2.) Thus, explained the DLGF, despite "[t]he Control Board['s]

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[5] *Graber* analyzes a different, but identical, statute. *See Graber v. State Bd. of Tax Comm'rs*, 727 N.E.2d 802, 806-07 (Ind. Tax Ct. 2000), *review denied.* It is therefore reasonable to apply that statute's construction to Indiana Code § 20-46-7-11.

[6] In turn, this Court will give deference to whatever factor or reason the DLGF bases its final determination on as long as the DLGF's reasoning is supported by substantial evidence. *See, e.g., Huffman v. Office of Envtl. Adjudication*, 811 N.E.2d 806, 809 (Ind. 2004) (citations omitted).

concern that the [renovated high] school[] would have empty space and would not be filled to capacity[, t]he D[LGF] considers the growth bubble in the younger grade levels [as] necessitat[ing] larger facilities as this growth advances in grade levels." (Am. Order at 4 ¶ 2 (citation omitted).) Third, the DLGF found that the School Corporation's use of modular units to be "a factor that weighs very heavily in favor of approving the proposed project." (Am. Order at 4 ¶ 3.) Indeed, while the units "are handicap accessible, [they] are not connected to other school facilities and do not have restrooms. Therefore, students must go outside to enter the main school facilities to go to lunch or use the restroom. . . . not only [is this] an inconvenience, but [it is] also a safety concern." (Am. Order at 4 ¶ 3.) Next, the DLGF found that given the proposed project's scope, the forecasted maximum tax rate impact of $0.3911 was appropriate. (Am. Order at 5 ¶ 6.) Finally, the DLGF found persuasive the fact that not only did more taxpayers support the project than opposed it, but also that the Control Board voted unanimously to approve the project. (Am. Order at 4-5 ¶¶ 4-5.)

On appeal, Moffett challenges the DLGF's final determination because it "will result in financial difficulty and eccessive [sic] taxation." (Cert. Admin. R. at 44 ¶ 5(A).) To that end, he makes numerous claims which the Court consolidates and restates as:

> Given the current state of the economy, it is not wise to move forward with the proposed project;
>
> The tax burden resulting from the proposed project is not (or will not be) fairly or equitably distributed between the taxpayers of St. Joseph County and the taxpayers of Marshall County;
>
> The School Corporation misled the DLGF into approving the project by giving it false and inaccurate information.

(*See* Pet'r Notice of Summ. Br. (hereinafter, "Pet'r Br."); Pet'r Resp. (hereinafter, "Pet'r Reply Br.").) (*See also* Oral Argument Tr. at 9-15, 24-27.)

With respect to the first claim, Moffett asserts that the community cannot support the project financially. Indeed, he maintains that given the community's small, aging, primarily agricultural and residential tax base, as well as its current rate of unemployment, "this project places a burden on the taxpayers they are unable to afford." (Pet'r Br. at 1-2.)

Admittedly, the current economy is in poor shape. Nevertheless, the administrative record in this case reveals that, despite economic conditions, more taxpayers decided that they were willing to finance the project than not. Indeed, while Moffett had an opportunity to stop the project through the remonstrance process, he failed to convince a sufficient number of his neighbors as to the wisdom of his position. At that point, the School Corporation's choice to construct a new intermediate school and make certain renovations to the existing elementary and high schools as its preferred means to meet its enrollment needs was no longer subject to debate by taxpayers. *See*, *e.g.*, *Boshart v. State Bd. of Tax Comm'rs*, 672 N.E.2d 499, 501 (Ind. Tax Ct. 1996) (stating that a school corporation need not entertain further legal protests or objections from taxpayers beyond the remonstrance).

With respect to his second claim, Moffett states that "Marshall [County] was

capped by [the] legislature at 1%. Saint Joseph County was capped at 1.2% residential."[7] (Pet'r Br. at 2 (footnote added).) Thus, contends Moffett, taxpayers in Marshall County are paying "[0].2% less tax than those who own real property [in St. Joseph County]." (*See* Pet'r Reply Br. at 1.) To the extent "[i]t costs you less to send a child to school in Marshall County than it does in St. Joseph County . . . [t]hat is not right." (Oral Argument Tr. at 13.) Moffett's argument, however, misses the mark.

Article 10, § 1 of the Indiana Constitution – the Property Taxation Clause – provides that "[t]he General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property, both real and personal." IND. CONST. art. 10, § 1(a). *See also* IND. CODE ANN. § 6-1.1-2-2 (West 2008) ("All tangible property which is subject to assessment shall be assessed on a just valuation basis and in a uniform and equal manner"). This provision "'deals with the uniformity and equal rate of assessment and taxation of property *within the taxing district or locality in which the particular tax is levied.*'" *Dep't of Local Gov't Fin. v. Griffin*, 784 N.E.2d 448, 453 (Ind. 2003) (citation omitted) (emphasis added).

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[7] In 2008, the state legislature implemented state-wide property tax "caps." More specifically, Indiana taxpayers would receive credits against their property tax liabilities; the amount of the credit was dependent upon the type of property owned and the overall gross assessed value of the property. *See* IND. CODE ANN. § 6-1.1-20.6-7(c) (West 2008). *See also* IND. CODE ANN. § 6-1.1-20.6-7.5 (West 2008) (eff. 1-1-2009) (adjusting the credit amounts for taxes due and payable after 2009). Due to higher debt loads and a greater reliance on property taxes for everyday operations, however, special accommodations had to be made in Lake County and St. Joseph County. Thus, the "caps" in those two counties are slightly higher (meaning that the credit amounts are slightly lower) than through the rest of Indiana (the result of exempting existing debt from counting against their caps).

The taxing district at issue in this case is the School Corporation. To the extent that district is comprised of taxpayers in Union Township, St. Joseph County and North Township, Marshall County, Moffett must demonstrate one of two things in order to succeed on an Article 10, § 1 claim. First, he needs to show that property in Union Township, St. Joseph County has been assessed at a different rate than property in North Township, Marshall County. *See id.* In the alternative, Moffett needs to show that with respect to generating money for the School Corporation, the property of the taxpayers in Union Township was subject to a different tax rate than the property of the taxpayers in North Township. *See id.* at 452-53. Moffett has done neither.[8]

Finally, Moffett claims that the "figures, demographics, student enrollment rates and a host of other published, public facts were not presented accurately [by the School Corporation] to the Tax Board to allow [it] to make a just and fair decision." (Pet'r Br. at 2.) In advancing this claim, Moffett makes numerous allegations. For instance, he maintains that the School Corporation "low-balled" the cost and scope of the project "by at least $1.7 million to [] camouflage the true tax impact and gain support for the project." (Pet'r Br. at 3.) Moffett also contends that the School Corporation's demographic study

[8] It is important to note that, at first blush, the overall tax rate of St. Joseph County will probably be different than the overall tax rate of Marshall County: the overall tax rates are essentially a function of each county's total net assessed valuation and budgetary needs. Thus, Moffett needs to ask (and answer) the following more specific questions: what was the total net assessed valuation in both Union Township and North Township, what was the gross property tax to be generated by those two townships for purposes of the School Corporation, and was the resulting rate (i.e., the amount to be distributed to the School Corporation divided by the total net assessed valuation in both townships) the same in both townships? Therefore, any focus by Moffett on the disparity between property tax caps or overall tax rates of each county misses the more fundamental analysis.

was inaccurate. (*Cf.* Cert. Admin. R. at 512-24 (where School Corporation's demographic study predicted slight growth through the 2016/2017 school year) *with* Oral Argument Tr. at 9-10 (where Moffett asserts that certain "other" demographic studies indicated no growth).) Moffett also argues that neither the School Corporation nor the DLGF considered what impact, if any, the Kernan-Shepard Report and HEA-1001 would have on the proposed project. (*See* Pet'r Br. at 3.) Finally, Moffett asserts that the School Corporation lied to the DLGF, telling it that the School Corporation had no debt when it in fact had debt of at least $3.5 million.[9] (Oral Argument Tr. at 12 (footnote added).) (*But see* Am. Order at 5 ¶ 8 (where DLGF not only states that School Corporation did in fact disclose the debt, but cites to the places in the administrative record where that disclosure is contained).)

As the party challenging the propriety of the DLGF's final determination, Moffett bears the burden of demonstrating its invalidity. *See, e.g., Osolo Twp. Assessor v. Elkhart Maple Lane Assocs.*, 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003). To meet this burden, however, requires more than making mere allegations; rather, Moffett was required to show this Court that there was probative evidence in the administrative record that demonstrated that the DLGF's reasoning was not supported by substantial evidence.

[9] As evidence of this "lie," Moffett submitted, *inter alia*, photocopies of tax anticipation warrants that were issued to the School Corporation in 2008 in order to meet cash flow needs and a partial photocopy of the School Corporation's resolution to issue and sell "General Obligation Bonds of 2007." (*See* Supp. Cert. Admin. R. at 44-101.) As indicated *supra,* however, the School Corporation disclosed the bond issue to the DLGF. Furthermore, the DLGF explained in its final determination that not only was it aware that the tax anticipation warrants had been issued, but that they neither impacted the School Corporation's debt limit nor were they material to the consideration the DLGF gave to the proposed project. (*See* Am. Order at 5-6 ¶ 9.)

See id. (citation omitted); *supra* note 6. This he failed to do. *See Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999) (stating that conclusory statements do not constitute probative evidence); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995) (stating that "[a]llegations, unsupported by factual evidence, remain mere allegations").

CONCLUSION

Moffett has demonstrated that he does not think the proposed project is a good idea. He has not demonstrated, however, that the DLGF's final determination was not supported by substantial evidence or not in accordance with the law. Accordingly, the DLGF's final determination is AFFIRMED.