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**IN THE  
INDIANA TAX COURT**

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SCHERWOOD GOLF CONCESSIONS, INC., )	)	
Petitioner, )	)	
v. )	)	Cause No. 49T10-0602-TA-18
DEPARTMENT OF LOCAL GOVERNMENT )	)	
FINANCE, )	)	
Respondent. )	)	

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ON APPEAL FROM THE FINAL DETERMINATIONS OF  
THE INDIANA BOARD OF TAX REVIEW

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**NOT FOR PUBLICATION**  
**January 30, 2007**

FISHER, J.

Scherwood Golf Concessions, Inc. (Scherwood) appeals the final determinations of the Indiana Board of Tax Review (Indiana Board) valuing its real property for the 2002 assessment year. Scherwood maintains that the Indiana Board's determination, refusing to lower Scherwood's assessment, was erroneous because Scherwood established that golf courses in St. John Township are inconsistently assessed.

## **FACTS AND PROCEDURAL HISTORY**

Scherwood owns six parcels of land in St. John Township, Lake County, Indiana. At issue in this appeal are two of those parcels: 1) a 40 acre tract of land containing an eighteen hole golf course (parcel #1); and 2) 5.85 acres of commercial land with a clubhouse and parking lot thereon (parcel #2).

For the 2002 assessment, the Department of Local Government Finance (DLGF) assessed parcel #1 with a value of \$860,500 (\$42,000 for the land and \$818,500 for the improvements) and parcel #2 with a value of \$574,100 (\$197,400 for the land and \$376,700 for the improvements). Believing those assessments to be too high, Scherwood filed Petitions for Review of Department of Local Government Finance Action for Lake County Residents (Forms 139L) on April 23, 2004.<sup>1</sup>

The Indiana Board held a joint hearing on Scherwood's Forms 139L on July 5, 2005. On January 3, 2006, the Indiana Board issued final determinations in which it denied Scherwood's request for relief for the parcels at issue.

Scherwood initiated an original tax appeal on February 21, 2006. The Court heard the parties' oral arguments on December 1, 2006. Additional facts will be supplied as necessary.

## **STANDARD OF REVIEW**

This Court gives great deference to final determinations of the Indiana Board when it acts within the scope of its authority. *Wittenberg Lutheran Vill. Endowment Corp. v. Lake County Prop. Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 486 (Ind.

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<sup>1</sup> Scherwood also challenged the assessment of another one of its parcels at the administrative level; the results of that challenge, however, have not been appealed to this Court.

Tax Ct. 2003), *review denied*. Consequently, the Court will reverse a final determination of the Indiana Board only if it is:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial or reliable evidence.

IND. CODE ANN. § 33-26-6-6(e)(1)-(5) (West 2007).

### **DISCUSSION AND ANALYSIS**

Scherwood claims that its assessment is erroneous because golf courses in St. John Township are not assessed in a uniform, equal or consistent manner. More specifically, Scherwood argues that a much nicer and newer golf course in the area, Briar Ridge, is assessed at a value less than Scherwood's property; therefore, golf courses in that township are inconsistently assessed and its own assessment is erroneous. (See Pet'r Br. at 2-11.)

To support its argument, Scherwood submitted property record cards for its property and Briar Ridge, as well as the testimony of its attorney representative, Mr. David Ranich, explaining the characteristics of both golf courses. (See Cert. Admin. R. at 92-123, 164-179.) Although Scherwood did not offer any evidence indicating the market value-in-use of either golf course, it contends that its property should be given

the same assessment as Briar Ridge.<sup>2</sup> (See Oral Argument Tr. at 21-23; Cert. Admin. R. at 172-73 (footnote added).) Scherwood’s argument, however, confuses what it means to be “uniform and equal” under Indiana’s current assessment system.

Article X, Section 1 of the Indiana Constitution requires “[t]he General Assembly [to] provide, by law, for a uniform and equal rate of property assessment and taxation and [to] prescribe regulations to secure a just valuation for taxation of all property, both real and personal.” IND. CONST. ART. 10, § 1(a). This provision has long been held to require: (1) uniformity and equality in assessment, (2) uniformity and equality as to the rate of taxation, and (3) a just valuation for taxation of all property. See *Indianapolis Historic Partners v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1224, 1228 (Ind. Tax Ct. 1998) (citation omitted).

In Indiana, property is assessed on the basis of its “true tax value.” IND. CODE ANN. § 6-1.1-31-6(c) (West 2007). Prior to 2002, true tax value was determined under Indiana’s own assessment regulations and bore no relation to any external, objectively verifiable standard of measure. See IND. CODE ANN. § 6-1.1-31-6(c) (West 2000) (amended 2002). See also *Town of St. John v. State Bd. of Tax Comm’rs*, 665 N.E.2d 965, 967 (Ind. Tax Ct. 1996) (“*St. John I*”), *rev’d in part on other grounds by Boehm v. Town of St. John*, 675 N.E.2d 318 (Ind. 1996). Consequently, because the

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<sup>2</sup> Indeed, Mr. Ranich testified at the administrative hearing:

Briar Ridge . . . has a \$21,000 per acre land charge and ours is \$33,000. And that to us didn’t seem appropriate. I’m not asking[,] I mean I’d be willing to have the same assessment on land as Briar Ridge has. I’m not asking for anything more than that. But in a very competitive business, [golf courses] ought to be on the same field.

(Cert. Admin. R. at 172-173.)

determination of a property's assessed value was inextricably linked to how the regulations were applied, the only way to determine the uniformity and equality of assessments was to determine whether the regulations were applied similarly to comparable properties. See *Town of St. John v. State Bd. of Tax Comm'rs*, 690 N.E.2d 370, 377-78 (Ind. Tax Ct. 1997) ("*St. John III*"), *rev'd in part on other grounds by* 702 N.E.2d 1034 (Ind. 1998).

In 2002, however, Indiana overhauled its property tax assessment system to incorporate an external, objectively verifiable benchmark by which to determine true tax value – market value-in-use.<sup>3</sup> As a result, the new system shifts the focus from examining how the regulations were applied (i.e., mere methodology) to examining whether a property's assessed value actually reflects the external benchmark of market value-in-use. See 50 IND. ADMIN. CODE 2.3-1-1(d) (2002 Supp.). Thus, Indiana's current assessment guidelines explain that while the value derived from the assessment process is presumed to be an accurate measure of a property's market value-in-use, a taxpayer may rebut that presumption by offering evidence relevant to the market value-in-use of its property. See 2002 REAL PROPERTY ASSESSMENT MANUAL (2004 Reprint) (hereinafter, Manual) (incorporated by reference at 50 IND. ADMIN. CODE 2.3-1-2 (2002 Supp.)) at 6.

In other words, the overarching goal of Indiana's new assessment scheme is to

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<sup>3</sup> “[Market value-in-use] may be thought of as the ask price of property by its owner[.] . . . In markets in which sales are not representative of utilities . . . true tax value will not equal value in exchange. In markets where there are regular exchanges, so that ask and offer prices converge, true tax value will equal value in exchange[.]” 2002 REAL PROPERTY ASSESSMENT MANUAL (2004 Reprint) (hereinafter, Manual) (incorporated by reference at 50 IND. ADMIN. CODE 2.3-1-2 (2002 Supp.)) at 2. See also IND. CODE ANN. § 6-1.1-31-6(c) (West 2002).

measure a property's value using objectively verifiable data. See *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006). As such, "[t]he end result – a 'uniform and equal *rate*' of assessment - is required, but there is no requirement of uniform procedures to arrive at that rate." See *State ex. rel. Att'y Gen. v. Lake Superior Court*, 820 N.E.2d 1240, 1250 (Ind. 2005) (*cert. denied*) (emphasis added). Here, Scherwood has neither shown what its property's market value-in-use is nor has it shown what the market value-in-use is of the alleged comparable property, Briar Ridge.<sup>4</sup> Accordingly, Scherwood has not established that its assessment was erroneous or that its property was assessed in a non-uniform manner with other golf courses in St. John Township.

### **CONCLUSION**

For the above stated reasons, the Indiana Board's final determinations are AFFIRMED.

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<sup>4</sup> Under Indiana's new assessment system, when a taxpayer challenges the uniformity and equality of its assessment, *one* approach that it may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals. See Manual at 6, 24-26.