

STATE OF INDIANA) IN THE MARION COUNTY _____ COURT
) SS:
COUNTY OF MARION) CAUSE NO.: _____

ROBERT AND JEANNE CHANDLER,)
KATHERINE MCKINNEY,)
JOHN K. SNYDER)
MEL GOLDSTEIN,)
JOHN SOLHAN,)
VINCENT BROOKS,)
TODD FOUSHEE,)
JUSTIN GAYLIARD,)
DICK PROFFITT, and)
CHRISTIAN NIESHALLA,)
taxpayers and residents of)
Marion County, on behalf of themselves)
and all others similarly situated, and)
STOP TAXING OUR PROPERTY, INC.,)
(an Indiana Not for Profit Corporation))

Plaintiffs,)

vs.)

GREG BOWES,)
Marion County Assessor,)
BILLIE J. BREAU,)
Marion County Auditor,)
MARION COUNTY, INDIANA, and)
THE CONSOLIDATED CITY OF)
INDIANAPOLIS, MARION COUNTY,)
INDIANA (an Indiana Municipal)
Corporation))

Defendants.)

VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT
AND EMERGENCY INJUNCTIVE RELIEF

Come now the Plaintiffs herein, ROBERT AND JEANNE CHANDLER, upon their oath, and KATHERINE MCKINNEY, JOHN K. SNYDER, MEL GOLDSTEIN, JOHN SOLHAN, VINCENT BROOKS, TODD FOUSHEE, JUSTIN GAYLIARD, DICK PROFFITT

and CHRISTIAN NIESHALLA, as taxpayers and residents of Marion County, on behalf of themselves and all others similarly situated, STOP TAXING OUR PROPERTY, INC., (an Indiana Not for Profit Corporation), by Counsel, pursuant to I.C. 34-14-1, *et seq* (Uniform Declaratory Judgment Act), and I.C. 34-26-1 *et seq.* (Injunctions) and for their First Amended Complaint herein against the Defendants, GREG BOWES, Marion County Assessor, BILLIE J. BREAUX, Marion County Auditor, MARION COUNTY, INDIANA and the CONSOLIDATED CITY OF INDIANAPOLIS, MARION COUNTY, INDIANA, allege and say as follows:

I. Parties

1. Robert and Jeanne Chandler, Katherine McKinney, John K. Snyder, Mel Goldstein, John Solhan, Vincent Brooks, Todd Foushee, Justin Gayliard, Dick Proffitt and Christian Nieshalla are owners of Marion County, Indiana residences upon which they pay real estate taxes.

2. The Plaintiff STOP TAXING OUR PROPERTY, INC., an Indiana Not for Profit Corporation, whose members are taxpayers and residents of the State of Indiana, including the County of Marion, Indiana.

3. The Defendant Greg Bowes is the elected Assessor of the County of Marion, State of Indiana. The Defendant Billie J. Breaux is the Auditor of Marion County, Indiana and, virtue of law, certifies final assessed values for real estate in the County.

4. The Defendant Marion County, Indiana, is a County established under the Constitution and laws of the State of Indiana.

5. The Defendant the Consolidated City of Indianapolis-Marion County, Indiana is a municipal corporation in the State of Indiana.

II. Request for Certification as Class Action

6. Plaintiffs bring this action as a Class Action pursuant to Trial Rule 23 on behalf of the persons who own residential real estate in the County of Marion, State of Indiana.

7. The class has several hundred thousand members, though the exact number in the class will be determined in the discovery process. The members of the class are so numerous that joinder of said members is impracticable.

8. Plaintiffs will fairly and adequately protect the interests of the members of the class and have retained counsel competent and experienced in class actions and administrative law litigation. Plaintiffs have no interests that are adverse or antagonistic to those of the class.

9. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damages suffered by many individual class members may be relatively modest, as compared to the costs of litigating such claims, the expense and burden of individual litigation make it virtually impossible for such class members to individually seek redress for the wrongful conduct alleged herein.

10. The prosecution of separate actions by the members of the class would create a risk of inconsistent adjudications establishing incompatible standards of conduct for the defendants.

11. The defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and corresponding declaratory relief with respect to the class as a whole.

12. Common questions of law and fact exist as to all members of the class and predominate over any questions solely affecting individual members of the class. Among the questions of law and fact common to the class are:

(a) Whether the Defendants' acts and omissions, as alleged herein are and have been in violation of the Constitution and laws of the State of Indiana;

(b) Whether Defendants breached their legal, fiduciary and administrative duties owed to Plaintiffs and members of the class by failing to properly and equitably assess for tax purposes the real estate located in the County of Marion, the State of Indiana pursuant to the Constitution and laws of said State;

(c) Whether Defendants breached their legal, fiduciary and administrative duties owed to Plaintiffs and members of the class by failing to uniformly and equally assess for tax purposes the real estate located in the County of Marion, the State of Indiana pursuant to the holdings of the Supreme Court of the State of Indiana, based on "property wealth";

(d) Whether Plaintiffs and the members of the class have sustained injury by reason of Defendants' actions and omissions.

13. Plaintiffs envision no difficulty in the management of this litigation as a class action.

III. Legal Background

14. Article 10, Section 1 of the Constitution of the State of Indiana states that the Indiana General Assembly shall provide by law for a uniform and equal rate of property assessment and taxation and that said General Assembly shall prescribe regulations to secure a just valuation for taxation of all property, both real and personal located within the State of Indiana.

15. For many decades the real estate located within the State of Indiana was assessed by local taxing authorities on a “true tax value” methodology, which included costs of reproduction, cost schedules and other methods of assessing property for tax purposes.

16. In July, 1995 the Indiana Tax Court found that Indiana’s then current statutory system of property taxation was unconstitutional.

17. In 1996 and 1998 the Supreme Court of Indiana essentially affirmed the holding of the Indiana Tax Court, with certain minor modifications. The Supreme Court held that the Indiana General Assembly must provide for a “uniform and equal rate of property assessment and taxation based on property wealth”.

IV. Factual Background

18. In response to the holdings of the State’s highest Court the Indiana General Assembly adopted legislation requiring general reassessment of all real property in the State of Indiana as of March 1, 2002 and March 1, 2006. The Indiana Department of Local Government Finance adopted and distributed its *2002 Real Property Assessment Manual* (“*Manual*”) for use by the State’s County and Township Assessors. The Manual states that assessment of real property in the State of Indiana is to be based on “fair market value data of property wealth”. Indiana’s taxing authorities have attempted to implement a “property wealth” (market based) system of assessing and taxing real estate in the State of Indiana.

19. In the County of Marion, State of Indiana the Assessor responsible for the current reassessment is Defendant Greg Bowes. Pursuant to the Manual real estate values in Marion County (as in all other Indiana Counties) was to be determined based on property wealth as of March 1, 2006, based on a valuation date of January 1, 2005, and twelve months before and after January 1, 2005. In that tax bills are in arrears, the reassessment for real estate appeared in

Residential Real Estate Spring Bills recently provided to the Plaintiffs and members of the Class, showing the new assessment of their real estate owned in Marion County, Indiana.

20. The Plaintiffs, and it is believed, most of the members of the Class, have recently learned from their Residential Real Estate Spring Bills that their real estate has been reassessed at significantly higher assessments than had previously been the case. The Plaintiffs' real estate has been reassessed as set forth below:

a.) the real estate owned by Robert and Jeanne Chandler in Center Township, Marion County, has been reassessed 53% higher than the previous assessment, with taxes in two years increasing from \$6,669.92 to \$13,475.08;

b.) the real estate owned by Katherine McKinney in Washington Township, Marion County, has been reassessed 100% higher than the previous assessment, resulting in a residential property tax bill of \$26,000 annually;

c.) the real estate owned by John K. Snyder in Lawrence Township, Marion County, has been reassessed 40% higher than the previous assessment;

d.) the real estate owned by Mel Goldstein in Center Township, Marion County, has been reassessed at over 100% higher than the previous assessment;

e.) the real estate owned by John Solhan in Washington Township, Marion County, has been reassessed 80% higher than the previous assessment;

f.) the real estate owned by Vincent Brooks in Warren Township, Marion County, has been reassessed 123% higher than the previous assessment; rental property owned by Vincent Brooks in Center Township was assessed at 70% more than its actual cost in 2006, and almost 300% higher than nineteen homes sold in the same area in recent sales;

g.) the real estate owned by Todd Foushee in Washington Township, Marion County, has been reassessed 110% higher than the previous assessment;

h.) the real estate owned by Justin Gayliard on Talbot Street in Center Township has been assessed by the Defendants on an incomprehensible basis when one reviews the other residences located in same neighborhood which are assessed at widely variant figures not in any manner tied to market value, property wealth, recent sales, current listings or any other discernable method, and certainly neither uniform nor fair;

i.) the real estate owned by Dick Proffitt in Center Township was assessed 78% higher than the last assessment in 2002, which itself was 130% higher than the prior assessment; and

j.) the real estate owned by Christian Nieshalla in Washington Township has all been reassessed at significantly higher sums than the 2002 reassessment, in one instance at a 141% increase.

21. Various persons, taxing authorities, and others have opined as to why real estate assessments in Marion County would increase so precipitously between the 2002 and 2006 reassessments. This Complaint, however, is based upon an admitted failure by the Defendants to reassess real estate in Indiana according to the Constitution and the laws of the State of Indiana.

22. Defendant Greg Bowes has publicly stated that “We’re just a little slower on commercial and industrial. We didn’t do the adjustment as carefully and aggressively as we could have. It looks like they are undervalued to some extent.” (*Indianapolis Star*, June 27, 2007). The Plaintiffs have reason to believe that the Township Assessors in Marion County were misinformed by the Defendants as to the assessment of commercial and industrial real estate

located within the County, and as a consequence, seriously undervalued the market value/property wealth assessment of said commercial and industrial real estate.

23. In fact, the Indiana Department of Local Government Finance has recently notified Assessor Bowes of the Department's concern "about the uniformity of the assessments in...commercial and industrial property classes countywide", urging Marion County to "complete a countywide reassessment". Defendant has rejected the request for this year, thus insuring that the failure to adequately and properly assess the County's commercial and industrial real estate will go unchanged.

24. Because the Defendants did not legally assess the County's commercial and industrial real estate the result has been that the homeowners of Marion County will be forced, if the current assessment were to be allowed to stand, to assume the onerous, and inequitable, burden of paying most of the additional costs created by increased local government and school spending, the repeal of inventory taxes, and other factors that have led to increased taxes in Marion County.

25. The commercial and industrial real estate located in Marion County, Indiana constitutes a major portion of the real estate located in the County, and as a percentage of all real estate located within a county is the highest percentage of real estate of any county in the State of Indiana. The failure of the Defendant, therefore, to properly and legally assess the commercial and industrial real estate in the County has led directly to the inordinate, historically high increases in assessed values of residences located within Marion County.

26. Examples of the inequities created by the Defendants' failure to properly and legally assess all of the real estate located in the County abound:

a.) Plaintiffs Robert and Jeanne Chandler live on a single lot, but a nearby Kroger's grocery store on multiple lots, is assessed by the County at a lower market value than the Chandler's residence;

b.) Bud Wolf Chevrolet will pay real estate taxes in the amount of \$29,633, while Katherine McKinney will pay \$26,000 on her home, which is relatively near the dealership;

c.) Rolls Royce Corporation's Marion County facilities were assessed at an increase of only 18%, while Vincent Brooks' home assessed at an increase of 123%;

d.) many commercial and industrial properties had no increase in assessed value for 2006;

e.) most commercial and industrial real estate that did see increases were in the "12 to 25 percent" range (*Indianapolis Star*, July 5, 2007), which is clearly significantly less than increases in assessment of residential real estate, some of which increased by as much as 300%.

27. Thus, based on the assessed figures alone for the class of commercial and industrial versus the class of residential real estate a great inequity has occurred, arising directly from the failure of the Defendants to comply with the Constitution and laws of the State of Indiana. The failure of the Defendants is in violation of Article I, Section 23 of the Constitution of the State of Indiana which requires that the laws of Indiana "shall be general and of uniform operation throughout the State".

V.

Count One - Request for Declaratory Judgment

For their first claim for relief the Plaintiffs, on behalf of themselves and the members of the Class respectfully request the following:

28. Plaintiffs re-allege the preceding paragraphs numbered 1-27 and incorporate said allegations by this reference.

29. The Plaintiffs request the Court to review the underlying facts and law in this cause and, pursuant to I.C. 34-14-1, *et seq.* (Uniform Declaratory Judgment Act) to enter a declaratory judgment that:

a.) the Defendants, by their failure to properly, timely and legally assess the commercial and industrial real estate in Marion County did violate the Constitution and laws of the State of Indiana, to wit, and specifically that they did violate Article 10, Section 1 of the Constitution of the State of Indiana which requires a uniform and equal rate of property assessment and taxation and have failed to implement State regulations enacted to secure a just valuation for taxation of all property located within the State of Indiana, as well as violated Article I, Section 23 as aforesaid; and

b.) the only just and equitable solution for the said failures by the Defendant is an immediate and proper reassessment in which all of the real estate in Marion County, commercial/industrial and residential, is assessed on an equal and uniform basis as required by the Constitution and laws of the State of Indiana.

VI.

Count Two - Request for Emergency Injunctive Relief

For their second claim for relief the Plaintiffs, on behalf of themselves and the members of the Class respectfully request the following:

30. The Plaintiffs re-allege the preceding paragraphs 1-29 and incorporate said allegations by this reference.

31. The reported statement by Defendant that the failure of the Defendants to properly and legally assess the commercial and industrial real estate in Marion County is a matter that will have to dealt with at some future date is sufficient basis for this Court to use its equitable powers to avoid the great injustice of imposing this year almost all of the increased costs of government as set forth above on the homeowners of Marion County.

32. Recent reports of “blown up” residential real estate sales which have fallen through due to the increased assessments and increased foreclosures (*Indianapolis Star*, July 7, 2007) provide a basis for emergency injunctive relief in order to avoid even more serious and widespread financial losses due to the failure of the Defendants to comply with the Constitution and laws of the State of Indiana

33. The Plaintiffs request the Court, pursuant to I.C. 34-26-1, *et seq.*, to enter an Emergency Injunctive Order requiring the Defendants to:

a.) reassess all of the real estate in Marion County, Indiana, including a proper and legal assessment of the commercial and industrial real estate,

b.) to withdraw all tax assessment notifications that have been provided to Marion County property taxpayers pending the said reassessment; and

c.) to report to the Court their progress on said reassessment on a timely and regular basis until the ordered reassessment is concluded.

VI.

Prayer for Relief

WHEREFORE, the Plaintiffs, on behalf of themselves and on behalf of the members of the Class, petition the Court to:

a.) Enter a Declaratory Judgment finding that the Defendants, by their failure to properly, timely and legally assess the commercial and industrial real estate in Marion County did violate the Constitution and laws of the State of Indiana, which require a uniform and equal rate of property assessment and taxation and have failed to implement State regulations enacted to secure a just valuation for taxation of all property located within the State of Indiana; and finding that the only just and equitable solution for the said failures by the Defendant is an immediate and proper reassessment in which all of the real estate in Marion County, commercial/industrial and residential, is assessed on an equal and uniform basis as required by the Constitution and laws of the State of Indiana;

b.) to enter an Emergency Injunctive Order requiring the Defendants to:

1.) to immediately reassess all of the real estate in Marion County, Indiana, including a proper and legal assessment of the commercial and industrial real estate and a reassessment of residential real estate not properly assessed;

2.) to withdraw all tax assessment notifications that have been provided to Marion County property taxpayers pending the said reassessment and to send revised tax assessment notifications reflecting the adjustments arising from the reassessment; and

3.) to report to the Court the Defendants' progress on said reassessment on a timely and regular basis until the ordered reassessment is concluded.

Dated this 10th day of July, 2007 at Indianapolis, Indiana.

WE SWEAR AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF.

Robert Chandler, Individually
And on Behalf of the Plaintiffs

Jeanne Chandler, Individually
And on Behalf of the Plaintiffs

Respectfully submitted,

John R. Price, Counsel for Plaintiffs

John R. Price, Attorney
PRICE-OWEN LAW
9000 Keystone Crossing #150
Indianapolis, IN 46240
317-844-8822
Fax 317-844-7766
john@johnpricelaw.com
jprice1301@earthlink.net

STOP/Complaint