

STATE OF INDIANA
Board of Tax Review

In the matter of the Petition for Review)
of Assessment, Form 131) Petition No.: 45-004-95-1-4-00234

Parcel No.: 254503930006

Assessment Year: 1995

Petitioner: B.J.B. Properties
 6600 Dunes Hwy
 Gary, IN 46403

Petitioner Representative: Bob Conces, Jr.
 B.J.B. Properties
 6799 E Dunes Hwy
 Gary, IN 46403

Findings of Fact and Conclusions of Law

The Indiana Board of Tax Review (State Board), having reviewed the facts and evidence, and having considered the issues, now makes the following findings of fact and conclusions of law.

Issues

1. Whether the base rate of the land is correct.
2. Whether obsolescence depreciation is warranted.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-3, Mr. Bob Conces, Jr., on behalf of B.J.B. Properties (Petitioner) filed a Form 131 petition requesting a review by the State Board. The Form 131 was filed on January 22, 1999. The Lake County Board of Review's (County Board) Assessment Determination on the underlying form 130 is dated December 23, 1998.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on July 20, 1999 before Hearing Officer Kurt Ott. Testimony and exhibits were received into evidence. Mr. Conces, Jr. represented the Petitioner. Mr. Donald Griffin represented the Calumet Township Assessor. No one appeared to represent Lake County.
4. At the hearing, the subject Form 131 petition was made a part of the record and labeled Board Exhibit A. Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following exhibits were submitted to the State Board:
Petitioner Exhibit 1 – Plat maps showing location of subject, values of subject and surrounding properties and two (2) property record cards (PRC)
5. The subject property is located at 6640 Dunes Hwy, Gary, Calumet Township, Lake County.
6. The Hearing Officer did not inspect the subject property.
7. On June 13, 2000 the, State Board sent letters to Mr. Conces, Jr. and Mr. Blumenberg, Calumet Township Assessor requesting the two (2) parties meet in order to resolve the issues under review. A Stipulation Agreement was also enclosed for the parties' use. In the event that the parties could not reach an agreement on the issues the Township was requested to submit evidence relating to the land value issue. The deadline for the response to these requests was July 13, 2000. The letters sent to the parties by the State Board, dated June 13, 2000, are entered into the record and labeled Board Exhibit C.

8. It should be noted that neither party presented any additional information requested by the State Board in Board Exhibit C.
9. On February 8, 2001, the State Board again sent a letter to Mr. Blumenberg, Calumet Township Assessor, and a copy to Mr. Conces, Jr., requesting the Township supply copies of the PRCs for the parcels under review as well as those properties in the immediate area owned by the Petitioner. In addition, the Township was requested to furnish a copy of the Land Order and Summary Sheets for those properties. The letters sent to the parties by the State Board, dated February 8, 2001, are entered into the record and labeled Board Exhibit D.
10. It should again be noted the Township did not respond to this request for this information.

Issue 1 – Whether the land base rate is correct.

11. B.J.B. Properties owns Lots 1 through 14 (making up 7 parcels), which are located on the same street (Petitioner Exhibit 1). The lots are all basically the same width and depth (size) however, they are not valued the same. The subject parcels are valued using \$300 per front foot while other properties in the same area are valued at \$80 per front foot. *Conces testimony & Petitione'sr Exhibit 1.*
12. A calculation of the taxes paid on each of these properties divided by the width of those lots determined an amount per running foot (front foot). Based on this calculation, the average cost per front foot for the lots was as follows:
 - a. Lot 1 cost \$91.12 per effective front foot. (Parcel 1)
 - b. Lot 2 cost \$24.60 per front foot. (Parcel 2)
 - c. Lots 3 – 5 cost 24.50 per front foot. (Parcel 3)
 - d. Lots 6 – 7 cost \$91.00 per front foot. (Parcel 4)
 - e. Lots 8 – 9 cost \$24.30 per front foot. (Parcel 5)
 - f. Lot 10 cost \$91.40 per front foot. (Parcel 6)
 - g. Lots 11 – 14 cost 24.30 per front foot. (Parcel 7)

Conces testimony & Petitioner's Exhibit 1.

13. All lots, including those under review in this appeal, lie between Dunes Highway (Highway 12) and Atcheson Road. Long Street runs between Lots 7 and 8 and separates Lots 1 through 7 from Lots 8 through 14. *Conces testimony & Petitioner's Exhibit 1.*

14. The base rate depended on which street address was used for the parcels. For example:

- a. Parcel 6 was assessed from Dunes Highway.
- b. Parcel 5 was assessed from Atcheson Road.
- c. Parcel 7 was assessed from La Porte Road.

Griffin testimony.

15. The land issue was not on the Form 130 petition and it was not known that it was an issue until the start of the State Board administrative hearing. If this issue had been known a correction could have been made in the Petitioner's favor. The Petitioner did not approach the Township to discuss this problem. The County Board made its decision and the Township was not included in the decision making process. *Griffin testimony.*

Issue 2 - Whether obsolescence depreciation is warranted

16. The County Board had granted the subject's structure an obsolescence depreciation factor in 1994. The subject property remains in approximately the same condition today as it did in 1994. There was no explanation why the obsolescence factor was removed. *Conces testimony.*

17. The subject property is in dire need of repair. \$9,879 had been spent for a new roof to stop the deterioration. B.J.B. Properties is a relatively new business that is struggling to keep in operation. It is important that the taxes are reduced in order

to have capital to make improvements to the subject building. The County Board overlooked the issue of obsolescence for this property. *Conces testimony*.

18. The reasons why the County Board granted the obsolescence factor in 1994, or reasons for its removal in 1995 could not be determined. *Griffin testimony*.

Conclusions of Law

1. The Petitioner is limited to the issues raised in the Form 131 petition filed with the State Board. Ind. Code § 6-1.1-15-12. The State Board has the discretion to address any issue once an appeal has been filed by the taxpayer. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised in the Form 131 petition filed with the State Board.
2. The State Board is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

A. Indiana's Property Tax System

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.
4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause 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. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.

6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State Board’s decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State Board to review the actions of the County Board, but does not require the State Board to review the initial assessment or undertake reassessment of the property. The State Board has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
8. In reviewing the actions of the County Board, the State Board is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.

9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State Board is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).
10. Taxpayers are expected to make factual presentations to the State Board regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State Board is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
11. The taxpayer's burden in the State Board's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V*, 702 N.E. 2d at 1040.
12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State Board is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State Board in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.

13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence.² *Charles H. Koch, Jr.* at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not “triggered” if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State Board’s final determination even though the taxpayer demonstrates flaws in it).

C. Review of Assessments After Town of St. John V

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property’s market value will fail.
16. Although the Courts have declared the cost tables and certain subjective elements of the State Board’s regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.
17. Town of St. John V does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

Conclusions Regarding the Validity of the Appeal

18. Before the State Board addresses the issues raised in the appeal, the State Board will determine the validity of the appeal.

19. While the testimony presented did not address this subject, upon review of the documentation included with the Form 131 petition, it was noted that B.J. B. Properties was not the owner of record on the March 1, 1995 assessment date, the year of appeal. The Real Estate Assessment Transfer Record from the Lake County Auditor's office shows that the property was not transferred to B.J. B. Properties until December 1996.

20. The Form 130 petition was filed by Leonard Pryweller, apparently a representative for Transfer Enterprises, Inc., the owner of record on March 1, 1995. The Lake County Board of Review's determination was sent to Mr. Pryweller. No documentation was submitted to show that B.J. B. Properties has the authority to act for the previous owner.

20. Furthermore, it would be reasonable to assume that the previous owner would have paid the 1995 taxes on the installment dates of May 1996 and November 1996, since B. J. B. Properties did not assume ownership until December 1996.

21. Summarizing, B. J. B. Properties was not the taxpayer of record on the 1995 assessment date and was not authorized to pursue any appeals on behalf of the previous owner. Accordingly, the State Board will not address the merits of the issues raised in the appeal.

Issued this ____ day of _____, 2002
by the Indiana Board of Tax Review.