

**STATE OF INDIANA
Board of Tax Review**

CASSELWOOD DEVELOPMENT CORP. c/o HENRY J. HOEVEL) On Appeal from the Allen County Property) Tax Assessment Board of Appeals)
Petitioner,) Petition for Review of Assessment, Form 131) Petition Nos. 02-070-00-1-1-00011) 02-070-00-1-1-00012)
v.)
ALLEN COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS And ADAMS TOWNSHIP ASSESSOR) Parcel Nos. 65-0029-0009) 65-0029-0005)
Respondents.)

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

Whether the base rate of the land should be reduced.

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 IC 6-1.1-15-3, Casselwood Development Corp. c/o Henry J. Hoevel (Casselwood) filed Form 131 petitions requesting a review by the State. The Form 131 petitions were filed on June 2, 2000. The Property Tax Assessment Board of Appeals' (PTABOA) Final Determinations on the underlying Form 130 petitions were mailed on May 3, 2000.

3. A hearing on the petitions was originally scheduled for December 7, 2000. The Petitioner requested a continuance, and the hearing was continued to June 26, 2001. In requesting the continuance, the Petitioner signed a Continuance/Waiver (State Exhibit C), waiving the six-month deadline date within which the State must conduct an administrative hearing, and the forty-five (45) day deadline date within which the State must issue a determination. Pursuant to IC 6-1.1-15-4, a hearing was held on both petitions on June 26, 2001 before Hearing Officer Joseph Stanford. Testimony and exhibits were received into evidence. Henry J. Hoevel was self-represented himself. Mike Ternet and Kimberly Klerner represented PTABOA. Carolyn B. Werling and Teresa A. West represented Adams Township.

4. At the hearing, the subject Form 131 petitions were made part of the record and labeled State Exhibits A. The Notices of Hearing on Petition are labeled State Exhibits B. The signed Continuance/Waiver is labeled State Exhibit C. In addition, the following item was submitted into evidence:
Petitioner's Exhibit 1 – Sketches of subject area.

5. The subject properties are located at the 3400 and 3500 blocks of Paulding Road, Fort Wayne, Adams Township, Allen County. The hearing officer did not

view the properties. The parties agreed that the land assessments under appeal are \$50,730 for Parcel No. 65-0029-0009 (20.05 acres), and \$7,430 for Parcel No. 65-0029-0005 (2.94 acres). There are no improvements on either parcel.

Whether the base rate of the land should be reduced

6. The subject area has experienced a downturn in the past 20 years, from the closing of International Harvester to the deterioration of Southtown Mall. In addition, there have been several shootings in the immediate area. This has caused property values in the area to drop. An attempt to sell the parcels for \$10,000 per acre has proven futile. There is currently an offer for \$5,000 per acre, which is unacceptable. He is unable to farm the land. He is not sure what the base rate should be, but is asking for any type of relief possible. *Hoevel Testimony.*
7. The base rate of the subject parcels is \$25,300 per acre, which is in accordance with the Allen County Land Valuation Order for undeveloped commercial land in the area. The Land Order values were set in 1989, and remained the same in 1995. In addition, a negative 70% influence factor has been applied to both parcels. This effectively lowers the value of both parcels to approximately \$8,000 per acre, which is appropriate. *West Testimony.*

Conclusions of Law

1. The Petitioner is statutorily limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 130 petition. Ind. Code §§ 6-1.1-15-1, -2.1, and -4. See also the Forms 130 and 131 petitions. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz*

(1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 131 petition. *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 on the Form 131 petition filed with the State.

2. The State 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’s decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State 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 PTABOA, the State 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 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 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 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'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 is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State 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’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’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.

D. Whether the base rate of the land should be reduced

18. Land valuation – through land order – is one part of Indiana’s assessment system that actually approximates fair market value through the use of sales data.
19. Ind. Code 6-1.1-31-6(a)(1) states that land values shall be classified for assessment purposes based on acreage, lots size, location, use, productivity or earning capacity, applicable zoning provisions, accessibility, and any other factor that the State Board determines by rule is just and proper.
20. The county land valuation commission collects sales data and land value estimates and, on the basis of that information, determines the value of land within the county. 50 IAC 2.2-4-4 and –5. The commission then holds a public hearing on the land order values. The State reviews land orders established by the county land valuation commission, and may make any modifications deemed necessary for uniformity and equality purposes. Ind. Code 6-1.1-4-13.6(e)(West 1989); See *Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d 1058, 1061 (Ind. Tax 1993). Once the land order values are established and approved, township assessors must use these values in making assessments. Ind. Code 6-1.1-4-13.6(h).
21. As stated previously, the burden is on the petitioner to submit probative evidence of error in the assessment. If a petitioner does not meet this burden, the State will not disturb the local officials’ assessment.
22. The Petitioner has failed to show error in the assessment. While the Petitioner contends that the base rate is too high, the local officials have made an assessment in accordance with the land order. Again, the township assessor must use values in the land order in making assessments.

23. Even if the township assessor were permitted to go outside the land order in making assessments, the Petitioner submitted no probative evidence of the actual market value of the subject parcels.
24. Furthermore, the State notes the negative 70% influence factor on both parcels. This factor effectively lowers the base rate from \$25,300 per acre to \$7,590 per acre, which is the approximate price that the Petitioner is asking for the parcels.
25. In the final analysis, the Petitioner has made a request for tax relief, but has not submitted evidence of error in the assessment. Therefore, there is no change in the assessment as a result of this issue.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review