

**STATE OF INDIANA
Board of Tax Review**

In the matter of the Petition for Review)
of Assessment, Form 131) Petition No. : 82-029-95-1-4-00113

Parcel No. : 1132024092018

Assessment Year: 1995

Petitioner: Charles E Taylor Jr.
P O Box 757
Washington, IN 47501

Petitioner Representative: Harding, Shymanski and Company P.C.
Attn: Steve Folz
21 S.E. Third Street, Suite 500
Evansville, IN 47708

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

1. Whether the property should receive economic obsolescence.
2. Whether the land should receive a negative influence factor.

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, the Petitioner filed a petition requesting a review by the State Board. The form 131, petition to the State for Review of Assessment, was filed on May 23, 1996. The Vanderburgh County Board of Review's (County Board) Final Determination was issued May 6, 1996.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on July 27, 1999 before Hearing Officer Betsy Brand. Steve Folz of Harding, Shymanski and Co., represented the petitioner. Khris Seger represented the County Assessor and the Board of Review (BOR). Pigeon Township was represented by Dorothy Joest.

4. At the hearing the Form 131 was labeled as Board's Exhibit A and entered as evidence. The Notice of Hearing was labeled as Board's Exhibit B and entered as evidence. In addition the following exhibits were submitted to the State Board of Tax Commissioners:
Petitioner's Exhibit 1 – Copies of invoices.
2 – Copy of Reclamation Summary.

Respondent's Exhibit 1 – Summary including the following:

- a. Copy of the BOR minutes.
 - b. Copy of the BOR final determination.
 - c. Plat map for the subject property.
 - d. Photograph of the subject property.
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5. The hearing officer did not view the property, which is located at 1202 E Virginia Street, Evansville, Pigeon Township, Vanderburgh County, Indiana.

Issue No. 1 - Economic Obsolescence

6. The petitioner requests economic obsolescence due to contamination of the site by petroleum products that was caused by previously leaking underground storage tanks. Mr. Folz presented a report by Hinderliter Environmental Services identifying the contamination and outlining a plan for neutralization. (Petitioner's Exhibit 1).

7. Mr. Folz testified to the following: (a) the building has been razed; (b) in order to build a new structure it was necessary to stabilize the ground contamination; (c) the owner estimates that it will cost \$210,000 to equalize the contamination of the ground; (d) invoices show the cost expended to date is \$88,114.75; (e) no appraisal done on the property, but the bank did make a loan to construct the new structure in 1998; (f) the Petitioner requests economic obsolescence due to the contamination; (g) in an effort to quantify the request a comparison of the estimated cost of cleanup to the assessed value of the property was done; (h) there is no economic obsolescence attributable to the building; (i) because one third of the property is contaminated, the economic obsolescence should be applied to the land in the form of a negative 30% influence factor, however, Mr. Folz knows of no scientific way to quantify the request.

8. Ms. Joest testified that the township assessor agrees with the request for a 30% influence factor on the land to be reviewed annually until the completion of the neutralization. She testified there is other contaminated land in Pigeon Township that has been treated in this manner.

9. Mr. Seger submitted evidence (Respondent's Ex. 1) in reference to the obsolescence issue but made no comment in regard to the request for the 30% influence factor on the land.

Conclusions of Law

1. The Petitioner is 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. 50 IAC 17-5-3. See also the Forms 130 and 131 petitions authorized under Ind. Code §§ 6-1.1-15-1, -2.1, and -4. 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). Because the township agrees with the Petitioner's position and the County raised no objection, such discretion will be exercised in this appeal and the Petitioner may raise the issue of the application of a negative influence factor on the land.

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. See 50 IAC 17-6-3. "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.
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. One manner for the taxpayer to meet its burden in the State's administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). 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 merely because 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. Issue No. 1 - Economic Obsolescence

18. Depreciation is a concept in which an estimate must be predicated upon a comprehensive understanding of the nature, components, and theory of depreciation, as well as practical concepts for estimating the extent of it in improvements being valued. 50 IAC 2.2-10-7(a).
19. The elements of functional and economic obsolescence can be documented using recognized appraisal techniques. These standardized techniques enable a knowledgeable person to associate cause and effect to value pertaining to a specific property.
20. Obsolescence is a concept that applies to improvements, not to land. Both parties agreed, at the hearing, that obsolescence is not applicable to the land. Accordingly, there is no change as a result of this issue.

E. Issue No. 2 – Influence Factor

21. The Petitioner requested a 30% negative influence factor be applied to the land due to contamination. At the hearing, the Township's representative agreed with the Petitioner that the property should receive a 30% negative influence factor, to be reviewed annually until the contamination is cleaned up. The Township

further testified that other property in Pigeon Township has been treated in such a similar way.

22. The County's representative made no comment or objection to the request for 30% negative influence factor.
23. The Petitioner requested a 30% negative influence factor, and the Respondent agreed at the hearing. It is determined that the Petitioner has met their burden of proof. Accordingly, there is a change in the assessment as a result of this issue.

Summary of Final Determination

Issue No. 1: Obsolescence – No change.

Issue No. 2: Influence Factor – There is a change, a 30% negative influence factor should be applied to the property.

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