STATE OF INDIANA
Board of Tax Review

In the matter of the Petition for Review)
of Assessment, Form 131) Petition No. : 49-101-96 –1-4-00117

Parcel No. : 1100422

Assessment Year: 1996

Petitioner: Consortium Foundation Inc.
3625 E. Raymond Street
Indianapolis, Indiana 46203

Petitioner Representative: Thomas J. Kern
Key, Kern & Wright
755 E. Main Street
Greenwood, Indiana 46143

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:

Issues

1. Whether the land is valued correctly.
2. Whether the grade factor is correct.
3. Whether the square footage of the paving is correct.
4. Whether the condition rating of the paving is correct.

5. Whether additional obsolescence 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, Thomas J. Kern of Key, Kern, and Wright, on behalf of Consortium Foundation, Inc. (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 petition was filed on May 23, 2001. The Marion County Board of Review's (County Board) Notification of Final Assessment Determination on the underlying Form 130 is dated April 27, 2001.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on August 8, 2001 before Hearing Officer Paul Stultz. Testimony and exhibits were received into evidence. Mr. Kern represented the Petitioner. Mr. Frank Corsaro represented Center Township. No one appeared to represent Marion County.

4. At the hearing, the Form 131 petition was made a part of the record and labeled as Board's Exhibit A. Notice of Hearing on Petition is labeled as Board's Exhibit B. In addition, the following exhibits were submitted:
Board's Exhibit C – Stipulation Agreement
Board's Exhibit D – Withdrawal Agreement

Petitioner's Exhibit 1 – Package of documents containing the following:
   a. Copy of State Board Final Assessment Determination for subject parcel for March 1, 1992
   b. Copy of Form 131 petition for Petition # 49-101-92-OCI-00176
   c. Copies of eight (8) comparable property record cards (PRC)

Petitioner's Exhibit 2 – Copy of letter from KB Parrish & Co. along with balance sheets as of December 31, 1990 and 1991 and a copy of

transactions for a checking account for 1993

Petitioner's Exhibit 3 – Copy of subject's PRC for 1992, and copies of two (2) maps of subject's property

Petitioner's Exhibit 4 – Copy of Form 103 petition to the County Board for the 1992 assessment with attachments

Petitioner's Exhibit 5 – Five (5) page statement asserting Petitioner's position on all five (5) issues as they relate to Petition # 49-101-92-OCI-00176

Respondent's Exhibit 1 – Copy of disclosure of sale information for sale of land to Auto Zone

Respondent's Exhibit 2 – Copy of PRC for Auto Zone

Respondent's Exhibit 3 – Copy of subject's PRC

5. The subject property is a neighborhood shopping center located at 3651 E. Raymond Street, Indianapolis, Center Township, Marion County.

6. The Hearing Officer did not view the subject property.

7. At the hearing, all parties were in agreement the year under appeal was 1996 and the Assessed Values of record were as follows:
Land - $137,270
Improvements - $308,770

8. At the hearing, the Hearing Officer requested Mr. Corsaro provide a copy of the Marion County Land Valuation Order (Land Order) along with the detail and summary sheets for the subject property. Mr. Corsaro's deadline to respond to this request was August 20, 2001. Mr. Corsaro responded in a timely manner. The Hearing Officer's request for additional evidence and Mr. Corsaro's response is entered into the record and labeled as Board's Exhibit E and Respondent's Exhibit 4, respectively.

9. In addition to the evidence requested by the Hearing Officer, Mr. Corsaro submitted a copy of a sheet from his property information system that showed the subject property is approximately 80% tax exempt. This sheet was made part of the record and labeled as Respondent's Exhibit 5.

10. The subject's PRC submitted by Mr. Corsaro at the hearing, shows a True Tax Value of $926,300 for the improvements on the front of the PRC (Respondent's Exhibit 3). The True Tax Value on the backside (second page) of the PRC is $1,199,700. The Hearing Officer called Mr. Corsaro on August 13, 2001 to inquire about these discrepancies. Mr. Corsaro stated that the County Board in their findings made two changes: 1) changed the grade from a "C+1" to "C-1"; and 2) changed the obsolescence depreciation percentage from 15% to 30%. Based on this information, the Hearing Officer created a PRC reflecting these changes. The PRC is entered into the record and labeled as Board's Exhibit F.

11. The above changes resulted in a True Tax Value of $926,300 for the improvements. The parties agreement (Findings of Fact ¶7) to the Assessed Value of $308,770 for the improvements, would equate to a True Tax Value of $926,300.

12. Meisberger Limited Partnership owned the parcel under review in this appeal on the assessment date of March 1, 1992. Consortium Foundation (Petitioner) was the owner of record on the assessment date of March 1, 1996, the date of this appeal.

13. The Petitioner's position on all the issues under review in this appeal, are based on a previous State Board Final Determination issued August 30, 1996 for the same parcel for the assessment date of March 1, 1992. The Petitioner contends that the conditions that existed on the subject property in the 1992 appeal are the same conditions that exist in this appeal under review (1996).

Issue No. 1 - Whether the land is valued correctly.

14. The Petitioner contended that the assessed value is too high when compared with the average assessed value per acre for comparable properties within the same area. The subject parcel has very little frontage on either Raymond or Sherman Streets. *Kern testimony*.

15. The Petitioner testified that 12.8 acres of the 21.91 acres classified by the assessor as "undeveloped" land, is adjacent to Bean Creek and in a flood plain thus should be classified as "unusable" since it has no potential commercial use. The remaining 9.1 acres are assessed as 3.3 acres primary and 5.8 acres secondary, which might have been appropriate in 1970. *Kern testimony.*

16. The Petitioner argued that the land should be classified in the following manner:
6 acres as "unusable" at $250 per acre
6.8 acres as "undeveloped" at $500 per acre
9.1 acres at $1,358 per acre (the average rate of comparable properties)
Kern testimony.

16. Mr. Kern presented into evidence eight (8) PRCs purported to be comparable properties. *Petitioner's Exhibit 1.*

17. The Respondent testified that the land was valued within the range determined by the Land Order. *Corsaro testimony*.

Issue No. 2 - Whether the grade factor is correct.
Issue No. 4 - Whether the condition rating of the paving is correct.

18. At the hearing, Mr. Kern and Mr. Corsaro stipulated to Issues No. 2 and 4. The parties agreed to change the grade factor of the neighborhood shopping center to "C-1" and the condition rating of the paving to "poor". Mr. Kern and Mr.

Corsaro signed a Stipulation Agreement affirming these changes (Board's Exhibit C).

Issue No. 3 - Whether the square footage of the paving is correct

19. At the hearing, the Petitioner withdrew this issue from review by the State Board. Mr. Kern signed a Withdrawal Agreement (Board's Exhibit D) to this fact.

Issue No. 5 - Whether additional obsolescence is warranted.

20. The Petitioner argued that the subject structure suffers from both functional and economic obsolescence. Due to substantial transition of use in the neighborhood there is no longer any "retail sale" appeal, no market acceptability. Past tenants have left irregular floor plans, the ceilings are too low for warehousing use, and there are limited dock facilities. Changes would also have to be made to the heating, air conditioning systems, lighting as well as other wiring. *Kern testimony*.

21. The Petitioner argued a fair true tax value for both land and improvements would be $615,82 with an assessed value of $205,273. *Kern testimony*.

22. Mr. Kern presented a balance sheet and income statement for 1990 and 1991. Mr. Kern presented a handwritten bank account, showing deposits and withdrawals for part of 1993. *Petitioner's Exhibit 2*.

23. The Respondent testified that the County Board determined the obsolescence depreciation on the subject structure should be 30%, but 25% obsolescence would be more appropriate. *Corsaro testimony* & *Board's Exhibit A, Form 115.*

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). 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. 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.

Issue No. 1 - Whether the land valued correctly.

18. It is Mr. Kern's position that the land is incorrectly classified and valued higher than comparable property within the area.

19. In support of his position Mr. Kern presented a State Final Determination on the same property but for the assessment date of March 1, 1992 along with eight (8) PRCs of purported comparable properties to the subject. Mr. Kern then determined how the land should be classified and valued.

20. Before applying the evidence to reduce the contested assessment, the State must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.

Conclusions regarding Land Value

21. For the reasons set forth below, the State determined the Petitioner cannot challenge the Land Order values by way of the Form 130/131 appeal process. Alternatively, the State determined the Petitioner's evidence failed to demonstrate that the value assigned to the property by way of the Land Order is incorrect.

1. General principles of land valuation in Indiana.

22. Indiana's approximately 3 million land properties are valued on a mass appraisal basis.

23. The General Assembly has recognized that assessing officials cannot provide a commercial-grade/fee appraisal for every parcel in the State, but must instead rely on mass appraisal techniques commonly used by tax assessors throughout the United States. Ind. Code § 6-1.1-31-3(4) permits the use of "generally accepted practices of appraisers, including generally accepted property assessment valuation and mass appraisal principles and practices."

24. The Tax Court has similarly recognized the necessity of mass appraisal practices (while noting, as well, that the practices are imperfect). *See King Industrial Corp. v. State Board of Tax Commissioners*, 699 N.E. 2d 338, 343, n. 4 (Ind. Tax 1998)(The use of land classifications are commonly used to save time and money when assessing property).

25. Land valuation – through land order – is the one part of Indiana's assessment system that actually approximates fair market valuation through the use of sales data.

26. 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 determines by rule is just and proper.

27. For the 1995 reassessment, the county land valuation commission determined the value of non-agricultural land (i.e. commercial, industrial, and residential land) by using the rules, appraisal manuals and the like adopted by the State. 50 IAC 2.2-2-1. *See also* Ind. Code §§ 6-1.1-4-13.6 (West 1989) and –31-5 (West 1989). By rule, the State decided the principal that sales data could serve as a

proxy for the statutory factors in Ind. Code § 6-1.1-31-6. Accordingly, each county land valuation commission collected sales data and land value estimates and, on the basis of that information, determined the value of land within the County. 50 IAC 2.2-4-4 and –5. The county land valuation committee then held a public hearing on the land order values. 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).

28. The State reviewed the land orders established by the county land valuation committee, and could make any modifications deemed necessary for uniformity and equality purposes. Ind. Code § 6-1.1-4-13.6(f)(West 1989); *Mahan*, 622 N.E. 2d at 1061. After the State Board completed its review of the county land order, the State Board was required to give notice to the affected assessors. In turn, only county and township assessors could appeal the State Board's determination of values. *Id* at 4-13.6(g); *Poracky v. State Board of Tax Commissioners*, 635 N.E. 2d 235, 239 (Ind. Tax 1994)("An appeal of a land order, just as an appeal of a judgment or order, must follow the prescribed procedural mandates."). The final stage in the process provided for dissemination of the State's final decision on the land order: "[t]he county assessor shall notify all township assessors in the county of the values as determined by the commission and as modified by the [State] on review or appeal. Township assessors shall use the values as determined by the commission and modified by the State in making assessments." Ind. Code § 6-1.1-4-13.6(h).

29. Agricultural land was valued at $495 per acre with adjustments permitted for such things as soil productivity and influence factors 50 IAC 2.2-5-6 and –7.

2. Taxpayers must challenge Land Order values in a timely and appropriate manner

30. The Tax Court has consistently held that taxpayers must follow the required

appeals procedures when challenging property tax assessments. *The Kent Company v. State Board of Tax Commissioners*, 685 N.E. 2d 1156, 1158 (Ind. Tax 1997)("The law is well-settled that a taxpayer challenging a property tax assessment must use the appropriate means of doing so."); *Williams Industries v. State Board of Tax Commissioners*, 648 N.E. 2d 713, 718 (Ind. Tax 1995)(The legislature has created specific appeal procedures by which to challenge assessments, and taxpayers must comply with the statutory requirements by filing the proper petitions in a timely manner).

31. As previously stated, Ind. Code § 6-1.1-4-13.6(e)(West 1989) provided for a public hearing held by the local officials regarding values contained within the county land order. Once the public hearing was held, the only statutory means for requesting a change or challenging a land order was an administrative appeal to the State *by the county and township assessors*. Ind. Code § 6-1.1-4-13.6(g)(West 1989); *Poracky*, 635 N.E. 2d at 238 & 39.

32. Taxpayers did not have the right to challenge the values established by the county land orders after the county land commission made a determination on them.

33. The State is aware of Tax Court decisions that go against limiting taxpayers' rights to challenge land order values at the State administrative level. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365 (Ind. Tax 1998).

34. Moreover, the Tax Court implicitly found that Ind. Code § 6-1.1-4-13.6 (West 1989) violated the requirements of due course of law (due process) because the statute did not provide for taxpayer hearings prior to the State Board's "final say" on land values. *Town of St. John III*, 690 N.E. 2d at 373, n. 2, & 384, n. 31. (It is believed that the Tax Court also found that the amended version of Ind. Code § 6-1.1-4-13.6, effective 1998, remedied the Court's due process concerns. *Town of St. John III,* 690 N.E. 2d at 384, n. 31).

35. The State Board respectfully concludes that *Town of St. John V* changed the landscape regarding the issue of taxpayers' entitlement to challenge land order values.

36. Article X, § 1, of the Indiana Constitution was the basis of the Tax Court's ruling that a taxpayer may challenge his land order valuation in an individual appeal. *Zakutansky*, 691 N.E. 2d at 1368.

37. The Tax Court's basis for its finding was reversed by the Supreme Court in *Town of St. John V.* The Property Taxation Clause (Article X, § 1, of the Indiana Constitution) "[R]equires . . . a system of assessment and taxation characterized by uniformity, equality, and just valuation, but the Clause does not require absolute and precise exactitude as to the uniformity and equality of each individual assessment. *The tax system must also assure that individual taxpayers have a reasonable opportunity to challenge whether the system prescribed by the statute and regulations was properly applied to individual assessments, but the Clause does not create a personal, substantive right of uniformity and equality.*" *Town of St. John V*, 702 N.E. 2d at 1040. (Emphasis added).

38. Further, the Tax Court's finding that the assessment system violated the Due Course of Law Clause in *Town of St. John III* was expressly nullified by the Supreme Court in *Town of St. John V,* 702 N.E. 2d at 1040, n. 8.

39. Accordingly, a taxpayer is not constitutionally entitled to file an appeal to the State challenging the values established by a promulgated land order on an individual appeal basis. Taxpayers may, however, administratively appeal the application of the land order to his assessment to argue that the taxpayer's property should have been valued from one section of the land order rather than another. See *Indianapolis Racquet Club v. State Board of Tax Commissioners,* 743 N.E. 2d 247 (Ind. Tax 2001).

40. Furthermore, the statutes do not give taxpayers the right to challenge land order valuation.

41. Indiana courts have consistently held that a statute does not require interpretation unless a statute is unclear and ambiguous. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189 (Ind. Tax 1997). Unambiguous language within a statute cannot be construed in a manner that expands or limits its function. *Cooper Industries, Inc. v. Indiana Department of State Revenue*, 673 N.E. 2d 1209 (Ind. Tax 1996). Words, unless statutorily defined, are to be given their plain, ordinary, and usual meaning given in the dictionary. *Knauf Fiber Glass, GmbH v. State Board of Tax Commissioners*, 629 N.E. 2d 959 (Ind. Tax 1994).

42. It is just as important to recognize what a statute does not say as it is to recognize what a statute does say. *Peele v. Gillespie*, 658 N.E. 2d 954 (Ind. App. 1995); *Million v. State*, 646 N.E. 2d 998 (Ind. App. 1995). Concerning land orders, the statute clearly said that county and township assessors could appeal to the State. The statute does not give taxpayers the right to challenge land order values after the public hearing at the county level.

43. Although statutory construction is a judicial task, it is also the task of the administrative agency charged with administering the statute. *Riley at Jackson Remonstrance Group v. State Board of Tax Commissioners*, 663 N.E. 2d 802 (Ind. Tax 1996); *Auburn Foundry, Inc. v. State Board of Tax Commissioners*, 628 N.E. 2d 1260 (Ind. Tax 1994).

44. Time after time, the General Assembly has shown that it knows how to enact legislation that gives taxpayers the right to review by the State. For example: (1) the State reviews applications for Enterprise Zone Inventory Credits and issues a determination regarding eligibility under Ind. Code § 6-1.1-20.8-3, (2) the State reviews the denial of property tax exemptions under Ind. Code § 6-1.1-11-8, (3)

the State reviews the denial of a deduction for rehabilitated residential property under Ind. Code § 6-1.1-12-25.5, (4) the State reviews the denial of a deduction for resource recovery systems under Ind. Code § 6-1.1-12-28.5, and the State reviews the denial of a deduction for coal conversion systems, hydroelectric power devices, and geothermal energy heating/cooling devices under Ind. Code § 6-1.1-12-35.

45. For matters concerning Enterprise Zone Inventory Credits, rehabilitated residential property, coal conversion systems, and the like, the General Assembly quite explicitly provided for an administrative review by the State. The General Assembly did not, however, provide for State review by taxpayers challenging land order valuations. Such silence is meaningful. To repeat, in construing a statute, it is just as important to recognize what the statute does not say as it is to recognize what the statute does say. The statutes regarding land orders do not provide for a taxpayer appeal to the State regarding land order values. If the General Assembly meant for such an appeal to be available to taxpayers, it could ease have said so in clear terms.

46. Should it be concluded that the General Assembly somehow forgot to provide for a taxpayer's right to appeal land order values when it explicitly provided for such an appeal to the State by county and township assessors; or that the General Assembly chose to implicitly and obliquely provide for a taxpayer's appeal to the State regarding land order valuation, when the General Assembly explicitly and clearly provided for such an appeal by the local assessors? Statutes are not construed in a manner that requires absurd results. *Matonovich v. State Board of Tax Commissioners*, 705 N.E. 2d 1093 (Ind. Tax 1999). Again, if the General Assembly meant for such an appeal to be available to taxpayers, it could have easily said so in clear terms. It did not.

47. The absence of explicit or plausible implicit appeal rights is easily explained. Once a land order is promulgated, every parcel of property in the county is assessed according to it. Such "across the board" application results in uniform

land value. If individual taxpayers are able to question valuation on an individual appeal basis, uniformity ceases to exist. The State Board has an obligation to ensure uniform assessments on a *mass appraisal* basis.

48. The State Board recognizes the Form 130/131 petition process provided for by Ind. Code §§ 6-1.1-15-1 through –4, which is "triggered" by a local assessment. Though the General Assembly has provided for individual assessment appeals, neither the Constitution nor the statutes creates entitlement to make every challenge desired.

49. Prohibiting taxpayers from challenging certain aspects of the assessment system is not peculiar, and the Tax Court recognizes that taxpayers can not challenge every aspect of the assessment system in individual appeals, i.e., taxpayers can not challenge base rates provided by the cost schedules in the Regulation. *Town of St. John III,* 690 N. E. 2d at 374; *Dawkins v. State Board of Tax Commissioners,* 659 N.E. 2d 706, 709 (Ind. Tax 1995).

50. Instead, the challenges that can be made by way of the statutory Form 130/131 administrative appeal process are limited or qualified by Ind. Code § 6-1.1-4-13.6(g)(West 1989). Only by reading the statutes in such a way – taxpayers can challenge the application of the land order to individual assessments, but cannot challenge the underlying values of the same – is a harmonious statutory scheme preserved.

3. Properties with peculiar attributes may receive land value adjustments by way of influence factors.

51. Taxpayers are entitled to receive adjustments to land values if their properties posses peculiar attributes that require them to be distinguished from surrounding properties for land value purposes. Such adjustments, either upward or downward adjustments, can be made by way of influence factors applied to the

property. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099, 1105 (Ind. Tax 1999).

4. The Petitioner failed to demonstrate that the value assigned to the property by way of the Land Order is incorrect.

52. The Petitioner submitted a State Final Determination for the assessment date as of March 1, 1992 in support of this issue. However, the appeal under review is for the March 1, 1996 assessment date.

53. It is the Petitioner's contention the conditions that existed in 1992 are the same conditions that exist for this appeal. It should be noted the State, for the 1992 appeal, made no changes to the land value.

54. The values used in the 1992 appeal were for the statewide general reassessment for 1989. The land values found in the Land Order were based upon base rates that reflected the January 1, 1985 value of residential, agricultural homesite, commercial and industrial land. The land value for the 1996 appeal under review, were based upon a statewide general reassessment for 1995. The land values found in that Land Order reflected the January 1, 1991 value of residential, agricultural homesite, commercial and industrial land.

55. Mr. Kern determined what the different land classifications should be for the subject property and then determined their values. For the most part Mr. Kern calculated an "average" per acre value based on the purported comparables.

56. The presentation, by Mr. Kern, of eight (8) PRCs he contended were "comparable" but offered no analysis of the characteristics of the "comparables" (for example, age, size, amenities, functional utility, physical condition) as they relate to the subject property.

57. The subject property is a commercial parcel occupied by a neighborhood shopping center. The subject land consists of 16.618 acres valued on both a square foot ($1.10 and .80) and acreage basis (undeveloped land at $5,400 per acre). A review of the "comparables" properties presented by the Petitioner revealed the following:

a. "Comparable No.1" – 4.57 acres of usable/undeveloped vacant land valued at $5,400 per acre, with an influence factor applied for "restrictions"
b. "Comparable No. 2" – 15.01 acres of usable/undeveloped vacant land valued at $5,400 per acre
c. "Comparable No. 3" – 3.06 acres with a 3-story apartment building. Land is valued on the square foot basis of $1.10 for primary land and $.35 for usable undeveloped
d. "Comparable No. 4" – single-family residential structure. Land is valued as "homesite" for the first acre and 1.48 acres at $3,000 per acre
e. "Comparable No. 5" – 1.175 acres of secondary vacant land valued at $3,000 per acre
f. "Comparable No. 6" – 2.388 acres of secondary vacant land valued at $14,000 per acre
g. "Comparable No. 7" – single-family residential structure. Land is valued as "homesite" for the first acre and 3.42 acres at $3,000 per acre
h. "Comparable No. 8" – single-family residential structure. Land is valued as "homesite" for the first acre and 1.36 acres at $3,000 per acre

59. In summary, the "comparables" breakdown into the following categories:

a. Seven (7) of the eight (8) properties valued land on a per acre basis;
b. Three (3) of the properties are residential in nature;
c. Two (2) of the properties are valued as undeveloped land;
d. Two (2) of the properties are valued as secondary land;
e. One (1) of the properties valued the land on a square foot basis like the subject;
f. Four (4) of the properties are vacant land; and
g. One (1) of the properties is an apartment building.

60. The Petitioner did not attempt to explain any differences between the subject property and the "comparables" (see ¶ 58 & 59). It is not enough to select properties in an area and state that they are comparable without any explanation or analysis.

61. Mr. Kern's contention that an "average" value of the "comparable" properties serves as proof of inequities in the land value is of little probative value unless the properties are shown to be substantially similar. The parcel under review is a commercial property with a neighborhood shopping center. None of Mr. Kern's "comparables" are of a neighborhood shopping center.

62. 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.

63. As far as the Petitioner's land classification, the Petitioner determined the land should be classified as:

a. 6 acres "unusable" land
b. 6.8 acres "undeveloped" land
c. 9.1 acres at an "average" acre rate determined by the Petitioner

64. Mr. Kern does not present any documentation explaining how the requested land classifications were determined. Mr. Kern determined that "approximately one-half" of 12.8 acres valued by the local officials as "undeveloped" should be "unusable" due to being adjacent to Bean Creek and in a flood plain. The remainder 6.8 acres would remain as "undeveloped" land "but at a lesser rate".

Mr. Kern does not present any flood maps, aerial maps of the subject parcel, flood insurance binders, or sketches showing how the land classifications were calculated to support any of these allegations.

65. Likewise, Mr. Kern determines the remaining 9.1 acres should be valued using an "average" rate. Mr. Kern ignores any definitions of what is defined as primary land, secondary land, usable/undeveloped and unusable/undeveloped. Both the 1989 Real Property Assessment Manual (50 IAC 2.1) and the 1995 Real Property Assessment Manual (50 IAC 2.2) define these classifications in the same manner:

Primary land – refers to the primary building or plant site. The following are examples of primary land: land located under buildings, regularly used parking areas, roadways, regularly used yard storage and necessary support land (added to the 1995 Manual).

Secondary land – refers to land utilized for purposes that are secondary to the primary use of the land. The following are examples of secondary land: parking areas that are not used on a regular basis and yard storage that is not used on a regular basis.

Unusable/undeveloped – means vacant land that is unusable for commercial purposes.

Usable/undeveloped – means vacant land that is held for future commercial development.

66. A review of the subject's PRC shows the parcel occupied by a 70,230 square foot building, a canopy of 2,892 square feet, a masonry stoop of 360 square feet, a loading dock of 1,496 square feet and 310,650 square feet of asphalt paving.

67. The County classified the subject land as 12.8 acres undeveloped, 9.1 acres as primary, and 5.8 acres as secondary. In both the land value issue and the land classification issue in order for the taxpayer to meet his burden, the taxpayer must present probative evidence in order to make prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to

establish a given fact and which is 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).

68. For all the reasons set forth above, the Petitioner failed to meet his burden to show the local assessing officials incorrectly valued the land and to show the land classifications were incorrect. No change in the assessment is made as a result of these issues.

Issue No. 2 - Whether the grade factor is correct.
Issue No. 4 - Whether the condition rating of paving is correct.

69. At the hearing, Mr. Kern and Mr. Corsaro stipulated Issues No. 2 and 4. The parties agreed to change the grade factor of the neighborhood shopping center to "C-1" and the condition rating of the asphalt paving to "poor". Mr. Kern and Mr. Corsaro signed a Stipulation Agreement affirming these changes (Board's Exhibit C).

70. The agreement between the Township and the Petitioner is a decision among these parties and the State Board will accept the agreement. The Board's acceptance of the agreement should not be construed as a determination regarding propriety of the grade and condition ratings agreed to by the parties.

71. A change in the assessment is made as a result of this agreement.

72. It should be noted, the County Board in their determination on the underlying Form 130, had changed the grade of the neighborhood shopping center to "C-1".

Issue No. 3 - Whether the square footage of the paving is correct

73. At the hearing, Mr. Kern withdrew this issue from review by the State Board. Mr. Kern signed a Withdrawal Agreement to this fact (Board's Exhibit D). No change

in the assessment is made as a result of this issue.

Issue No. 5 - Whether additional obsolescence is warranted.

a. The concept of depreciation and obsolescence

74. Depreciation is an essential element in the cost approach to valuing property. Depreciation is the loss in value from any cause except depletion, and includes physical depreciation and functional and external (economic) obsolescence. IAAO Property Assessment Valuation, 153 & 154 (Second Edition, 1996); *Canal Square Limited Partnership v. State Board of Tax Commissioners,* 694 N.E. 2d 801, 806 (Ind. Tax 1998)(citing Am. Inst. of Real Estate Appraisers, The Appraisal of Real Estate, 321 (Tenth Edition, 1992)).

75. 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.

76. Depreciation is a market value concept and the true measure of depreciation is the effect on marketability and sales price. IAAO Property Assessment Valuation at 153. The definition of obsolescence in the Regulation, 50 IAC 2.2-10-7, is tied directly to that applied by professional appraisers under the cost approach. *Canal Square,* 694 N.E. 2d at 806. Accordingly, depreciation can be documented by using recognized appraisal techniques. *Id*.

77. Under the cost approach, “the appraiser estimates the cost to construct a reproduction of or replacement for, the existing structure then deducts all accured depreciation in the property being appraised from the cost new of the reproduction or replacement structure.” *Canal Square*, 694 N.E. 2d at 805 (quoting Am. Inst. of Real Estate Appraisers, The Appraisal of Real Estate, at 321); IAAO Property Assessment Valuation at 153.

78. The Petitioner seeks both functional and economic obsolescence to be applied to the subject structure.

79. Functional obsolescence is the loss in value resulting from changes in demand, design, and technology, and can take the form of deficiency (for example, only one bedroom), the need for modernization (for example, an outdated kitchen), or superadequacy (for example, overly high ceilings). IAAO Property Assessment Valuation, at 154 & 155.

80. External or economic obsolescence is the loss in value resulting from factors external to the property (for example, national economic conditions). IAAO Property Assessment Valuation, at 155.

81. The elements of functional and economic obsolescence can be documented using recognized appraisal techniques. *Canal Square,* 694 N.E. 2d at 801. These standardized techniques enable a knowledgeable person to associate cause and effect to value pertaining to a specific property. *Id.*

82. Under the cost approach, there are five recognized methods used to measure depreciation, including obsolescence; namely: (1) the sales comparison method, (2) the capitalization of income method, (3) the economic age-life method, (4) the modified economic age-life method, and (5) the observed condition (breakdown) method. IAAO Property Assessment Valuation at 156; IAAO Property Appraisal and Assessment Administration at 223.

b. Burden regarding the obsolescence claim

83. It is incumbent on the taxpayer to establish a link between the evidence and the loss of value due to obsolescence. After all, the taxpayer is the one who best knows his business and it is the taxpayer who seeks to have the assessed value

of his property reduced. *Rotation Products Corp. v. Department of State Revenue,* 690 N.E. 2d 795, 798 (Ind. Tax 1998).

84. Regarding obsolescence, the taxpayer has a two-prong burden of proof: (1) the taxpayer has to prove that obsolescence exists, and (2) the taxpayer must quantify it. *Clark v. State Board of Tax Commissioners,* 694 N.E. 2d at 1233 (Ind. Tax 1998).

c. The evidence submitted

85. Mr. Kern supported the obsolescence request by submitting the following:
    a. A State Final Assessment Determination on the subject property for the assessment date as of March 1, 1992 (Petitioner's Exhibit 1). The appeal under review is for the assessment as of March 1, 1996; and
    b. Financial records from KB Parrish Co. These records include an Accountant's Compilation Report, Balance Sheets as of December 31, 1990 and 1991, and a handwritten ledger for a checking account for part of 1993.

86. Before applying the evidence to reduce the contested assessment, the State Board must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.

87. At the hearing Mr. Corsaro (who was not in agreement with the County Board's findings on obsolescence) was willing to apply an obsolescence factor of 25% to the subject structure. The County Board chose to apply 30%. In essence the Petitioner, the Township and the County Board were in agreement that obsolescence did exist in some form. Since the parties agreed to the existence of obsolescence, the first prong of the two-prong burden of the Petitioner had been met. The parties however, are not in agreement as to the amount of obsolescence to apply. The only issue now open for review, is the amount of obsolescence.

88. The State will not apply obsolescence depreciation on the basis of its Final Assessment Determination for the tax year 1992. That Final Determination did not specifically state the basis for the application of obsolescence and it did not reflect or meaningfully deal with the evidence considered in making that determination. Instead, the Final Determination only said, "Upon inspection and review of the evidence, it is determined 30% obsolescence depreciation is applied to the building, stoop and the paving. The improvements suffer from problems beyond the control of the owners." Petitioner's Exhibit 1.

89. The State's Final Assessment Determination presented by the Petitioner is for the 1989 reassessment. At that time, the subject property was assessed based on rules and regulations (50 IAC 2.1) promulgated by the State for the statewide general reassessment for 1989. For the year under review in this appeal, the State promulgated rules and regulations (50 IAC 2.2) for the statewide general reassessment for 1995.

90. Since the appeal under review is for 1996, none of the financial information submitted for 1990, 1991 or 1993 has any bearing to the 1996 appeal. The submission of this evidence may have been an attempt to quantify obsolescence by the income approach. However, Mr. Kern does not make any analysis of the subject's rental income with any comparable property. Mr. Kern does not present any financial data for 1995 or 1996, as it would relate to this appeal.

91. In Indiana, each tax year is separate and distinct. *Williams Industries v. State Board of Tax Commissioners*, 648 N.E. 2d 713 (Ind. Tax 1995). What may be influences to or characteristics of a property one year may not be the same influences or characteristics the following year or years.

92. Obsolescence depreciation is a consideration that may change if additional problems are experienced of if current problems are cured. The assessment

should be reviewed annually to determine if the amount of obsolescence has changed.

93. Finally, in support of the obsolescence issue, Mr. Kern makes the following statements:

a. The subject property has been in a state of decline;
b. No significant maintenance has been done for ten (10) years;
c. Mechanical equipment is non-functional, in need of repair or replacement;
d. $3.00 per square foot is the maximum rent attainable due to the necessary repairs or remodeling tenants must do;
e. Building was only 65% occupied at the time the brief was written;
f. Neighborhood is in a transition of use;
g. No real "retail sale" appeal;
h. There are irregular floors plans due to tenants;
i. Ceiling too low for warehousing;
j. There is limited dock facilities;
k. 75% obsolescence should be applied to the building and 90% to the paving; and
l. A "fair" true tax value for both land and improvements would be $615,821, and that the assessed value would be $205,273.

94. Many of Mr. Kern's statements are conclusory in nature. Mr. Kern does not support any of his statements with any documentation. Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.

95. In the second prong of the burden of proof, the Petitioner is required to quantify the amount obsolescence he sort. The Petitioner requested the application of 75% obsolescence depreciation but failed to present any evidence that supported such a request or to show how that amount was determined.

96. As stated in Conclusions of Law ¶10, "Taxpayers are expected to make factual presentations to the State Board regarding alleged errors in assessment. These

presentations should both outline the alleged errors and support the allegations with evidence." Allegations, unsupported by factual evidence, remain mere allegations." The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges.

97. For all the reasons set forth above, it is determined the Petitioner failed to quantify the amount of obsolescence they sought. No change in the assessment is made as a result of this issue.

Summary of Final Determination

Issue No. 1 – Land Value – No Change.

Issue No. 2 – Grade – The parties agreed to change the grade of the neighborhood shopping center to "C-1."

Issue No. 3 – Square Footage of Paving – Withdrawn by Petitioner at the hearing.

Issue No. 4 – Condition of Paving – The parties agreed to change the condition of the paving to "poor."

Issue No. 5 – Obsolescence – No Change.

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