

STATE OF INDIANA
Indiana Board of Tax Review

In the Matter of:

Petition for Review of Assessment,)
Form 131)

Petition No: 29-018-97-1-4-00046

Parcel No: 1609260000017003

Assessment Year: 1997

Petitioner: Duke Realty Ltd.
600 East 96th Street, Suite 100
Indianapolis, Indiana 46240

Petitioner Representative: Ms. Vickie L. Norman
Baker & Daniels
300 North Meridian, Suite #2700
Indianapolis, Indiana 46204

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 base rate is excessive.
2. Whether 13,550 square feet of the building should be assessed as General Commercial Mercantile (GCM) utility storage instead of GCM office.
3. Whether five percent (5%) obsolescence should be applied due to excessive “unfinished” wall height.
4. The assessment is not in accordance with the Indiana Constitution, the Indiana Property Tax Assessment Statutes, and the State Board of Tax Commissioners’ Regulations.

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 be considered a finding of fact.
2. Duke Realty Ltd. (Duke) received the County Board’s determination on the underlying Form 130 petition on January 22, 1999. Pursuant to Ind. Code § 6-1.1-15-3, Baker & Daniels (B & D), filed a Form 131 petition on behalf of the Petitioner. The Form 131 was filed on February 11, 1999.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on July 10, 2001, before Hearing Officer Dalene McMillen. Testimony and exhibits were received into evidence. Ms. Vickie Norman, Messrs. Kevin Reiter and Brent Aubery, B & D, represented the Petitioner. Ms. Lori Harmon and Ms. Kim Powell represented Hamilton County. Mr. Kevin Poore represented Clay Township

4. At the hearing, the following documents were made part of the record and labeled as Board's Exhibits:
 - a. Board's Ex. A – A copy of the 131 petition filed by B & D.
 - b. Board's Ex. B – Form 117, Notice of Hearing on Petition.
 - c. Board's Ex. C – Request for additional evidence from Hamilton County, dated July 10, 2001.
 - d. Board's Ex. D – Stipulation agreement, dated July 10, 2001.

5. At the hearing, the following documents were submitted by the Petitioner to the State :
 - Petitioner's Ex. 1 – A "brief" containing the following: a six page summary of the issues; (1) Duke's property record cards for parcels #1609260000017003 and #1609260000017000; (2) zoning ordinance for Clay Township; (3) Land Valuation Order for Clay Township, page 11 of 30; (4) land pricing and property record cards for various properties located between 96th Street and 136th Street; (5) State Board Final Determination for Bankers National Life Insurance Company, dated January 17, 2001; (6) copy of a commercial land sale from Estridge Development Co. to Bethlehem Lutheran Church of Carmel, dated December 22, 1994; (7) a copy of the real estate purchase agreement between Duke and Hills Communities, Inc., dated May 8, 1997; and (8) a copy of an analysis of typical on-site development costs, conducted by Michael C. Lady Appraisal Company, Inc., dated July 23, 1996.
 - Petitioner's Ex. 2 – A map showing the City of Carmel zoning.
 - Petitioner's Ex. 3 – Four maps showing land prices on and off the U.S. 31 corridor from 96th to 136th Streets.
 - Petitioner's Ex. 4 – A photograph of the entrance of the subject property.
 - Petitioner's Ex. 5 – A photograph of a residential property (comparable).

Petitioner's Ex. 6 – A photograph of a land sale located north of the subject property.

Petitioner's Ex. 7 – Six photographs, one page information sheet, and the property record card of Meijer Inc.

Petitioner's Ex. 8 – A letter designating Vickie Norman, B & D, to represent Duke Realty, signed by Stephen H. Paul, B & D, dated July 10, 2001.

6. At the hearing, the following documents were entered into the record and labeled as Respondent's Exhibit 1: (a) Hamilton County Board of Review's response to the 131 petition; (b) Duke Realty's property record card; (c) an aerial photograph of the subject property; (d) a map of the City of Carmel zoning; (e) two pages from the County Land Order Summary Report (pages 246 & 242 of 725); and (f) a copy of the land sale of Meijer, Inc.

7. The assessed value of the property as determined by the County Board of Review for March 1, 1998 is:
Land: \$171,930 Improvements: \$653,370 Total: \$825,300

8. The Petitioner's property is located at 12722 – 12870 Hamilton Creek Blvd., Carmel, Indiana 46032, in Clay Township, Hamilton County.

9. The Hearing Officer did not conduct an on-site inspection of the subject property.

10. At the hearing, Mr. Kevin Reiter, Ms. Lori Harmon, and Mr. Kevin Poore testified that they are certified Level II Indiana Assessor/Appraisers.

11. At the hearing, Ms. Harmon requested the opportunity to submit to the State Board comparable properties dealing with the issue of land base rates. July 15, 2001 was established as the deadline for the submission of this information.

12. By letter dated July 13, 2001, Ms. Harmon provided an aerial photograph and twenty-two (22) property record cards indicating the primary land base rates. Ms. Harmon's letter, the aerial photograph and twenty-two (22) property record cards have been entered into the record and labeled Respondent's Exhibit 2.
13. The Petitioner's representative did not respond to Ms. Harmon's additional evidence.
14. On September 6, 2001, the State issued an Order to the parties stating "the parties agree that land values decrease as you travel north on U.S. 31 corridor and that land values are less if they are not directly fronting the corridor. Given these points of agreement, the Appeals Division finds it appropriate for the parties to meet...and attempt to resolve their differences of opinion regarding land value." The Order has been entered into the record and labeled as Board's Ex. E.
15. On September 11, 2001, Duke Realty stated in a letter to the Hamilton County Assessor that in accordance with the State Board's Order, Duke Realty was willing to meet and discuss the issues of the appeal. The letter has been entered into the record and labeled as Petitioner's Ex. 9.
16. On October 1, 2001, the Appeals Division received Duke Realty's response to the Order, advising that no agreement was reached at that time. Duke Realty's response to the Order has been entered into the record and labeled as Petitioner's Ex. 10.

Issue No. 1 – Land Base Rate

17. Subsequent to the hearing, on January 11, 2002, the parties submitted a stipulation agreement. This agreement indicated that the base rate for primary land should be \$100,000 per acre. The parties further agreed that this amount would be reduced by the application of a ten percent negative influence factor.

**Issue No. 2 & 3 – Building Use-type
And Obsolescence**

18. After discussion, the Petitioner's representatives and the County representatives agreed to the following: 45,269 square feet of the building is best described as GCM general office; 7,343 square feet of the building is best described as GCM utility storage; and the building should receive a 5% reduction because the structure was incomplete on March 1, 1997. (Note: the parties stipulated to the 1999 reproduction cost new, less 10% normal physical depreciation, and less a 5% incompleteness adjustment).

Issue No. 4 – Constitutionality of the Assessment

19. Duke did not address this issue at the hearing or include it in its "brief", Petitioner's Ex. 1.
20. At the hearing, Ms. Harmon testified that the County would agree with the Petitioner's issue #4, that the assessment is not in accordance with the State Board of Tax Commissioners' Regulations. In particular the allocation of the land types is incorrect. The County is submitting a proposed breakdown of the land type classifications. (Respondent's Ex. 1)

21. The Petitioner's representative objected to the testimony and evidence submitted by the Respondent on the land-type classification.

Conclusions of Law

1. The Petitioner is limited to the issues raised in the Form 131 petition filed with the State . Ind. Code § 6-1.1-15-1 (e) and –3 (d). See *also* Form 131 petition requiring the Petitioner to identify the specific grounds for appeal. 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), appeal dismissed. In this appeal, the parties did not present additional issues.
- 2.
3. 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

4. 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.
5. 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*).
6. 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.

7. 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

8. 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)).
9. In reviewing the actions of the County Board, 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.

10. It is 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.

11. 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)).

12. 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.

13. 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.

14. 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).
15. 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*

16. 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.
17. 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.

18. *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 – Land Base Rate

19. As discussed, subsequent to the administrative hearing, the parties entered into a stipulation agreement reflecting that the base rate of the primary land should be \$100,000 per acre. The parties further agreed that a ten percent negative influence factor should be applied to the primary land.
20. The State accepts the parties' stipulation and agreement identified immediately above. In doing so, the State does not decide the propriety of this agreement, either explicitly or implicitly.
21. There is a change in the assessment as a result of this issue.

Issue No. 2 & 3 - Building Use-type & Obsolescence

22. At the hearing, Ms. Norman and Ms. Harmon agreed to the following: 45,269 square feet of the building is best described as GCM general office; 7,343 square feet of the building is best described as GCM utility storage; and the building should receive a 5% reduction because the structure was incomplete on March 1, 1997. (Note: the parties stipulated to the 1999 reproduction cost new, less 10% normal physical depreciation, and less a 5% incompleteness adjustment).

23. The State accepts the parties' stipulation and agreement identified immediately above. In doing so, the State does not decide the propriety of this agreement, either explicitly or implicitly.
24. There is a change in the assessment as a result of this issue.

Issue No. 4 – Constitutionality of the assessment

25. At the hearing, Ms. Harmon testified that the County would agree with the Petitioner's issue that the assessment is not in accordance with the State's Regulation; in pertinent part, the allocation of the land types is incorrect.
26. The Form 130/131 process of review is clearly outlined by statute. The County had the opportunity to address the issue of the land type allocation at the Form 130 petition hearing acted upon by the County Board. For the County to raise a new issue at the State level of appeal circumvents the review of the issues and does not follow the prescribed statutory scheme required by the statutes and case law.
27. To repeat, Ind. Code § 6-1.1-15-3 requires the State to review the actions of the County Board, 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)).

28. The Petitioner did not address or develop this issue. No change is made in the assessment as a result of this issue.

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