

REPRESENTATIVE FOR PETITIONER: Francis E. Sullivan, Senior Tax Analyst, GATX Rail Corporation.

REPRESENTATIVES FOR RESPONDENT: William Rivich, Deputy North Township Assessor; Ronald F. Jaracz, Land Appraiser, North Township Assessor's Office.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

GENERAL AMERICAN)	
TRANSPORTATION CORP. ¹)	
)	
Petitioner)	Petition No.: 45-024-01-1-3-00030
)	County: Lake
v.)	Township: North
)	Property Parcel No.: 007-24-31-0035-0003
)	Assessment Year: 2001
)	
NORTH TOWNSHIP ASSESSOR)	
)	
Respondent)	
)	

Appeal from the Final Determination of the
Lake County Property Tax Assessment Board of Appeals

[December 5, 2002]

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

¹ General American Transportation Corporation is now known as GATX Rail Corporation.

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Findings of Fact and Conclusions of Law

Procedural History

1. Pursuant to Ind. Code § 6-1.1-15-3, General American Transportation Corporation (GATX) filed a Form 131 petitioning the Board to conduct an administrative review of the above petition.

2. On September 4, 2001, the Lake County Property Tax Assessment Board of Appeals (PTABOA) issued a Notice of Final Assessment Determination that reflected the following changes to the assessed values:

	Assessment	PTABOA Decision	Amount of Reduction
Land	\$872,000	\$87,200	\$784,800
Improvements	\$3,344,200	\$1,140,900	\$2,203,300
Total	\$4,216,200	\$1,228,100	\$2,988,100

3. The Notice of Final Assessment Determination identified the reason for this reduction as “Bldg usage. Plant closed, so twp gave 85% economic obs. and functional.”

4. On February 4, 2002, the PTABOA issued a “Corrected Copy” of the Notice of Final Assessment Determination. This corrected determination changed the assessed value of the land from \$87,200 back to the original \$872,000.

5. The Petitioner testified that, at the time of receipt, a “post-it” type note was attached to the “Corrected Copy” explaining that the increase in the assessed land value reflected the correction of a typographical error. The local officials also testified that the land value of \$87,200 contained in the original Notice of Final Determination represented a typographical error rather than a PTABOA decision to reduce the assessed value of the land from \$872,000.

6. In response to the “Corrected Copy” of the Notice of Final Assessment Determination, the Petitioner filed the Form 131 petition. The petition was not date stamped at the local level but was received by the Board on March 8, 2002. No objection was raised at the administrative hearing by the Respondent concerning the timeliness of the filing. The Form 131 petition is therefore deemed to have been filed in a timely manner.

Hearing Facts and Other Matters of Record

7. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on September 16, 2002, before Ellen Yuhan, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

8. The following persons were present at the hearing:

For the Petitioner:

Francis E. Sullivan, Senior Tax Analyst, GATX.

For the Respondent:

William Rivich, Deputy North Township Assessor; and

Ronald F. Jaracz, Land Appraiser, North Township Assessor’s Office.

9. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Francis E. Sullivan.

For the Respondent:

William Rivich and Ronald F. Jaracz.

10. The following exhibits were presented:
 - For the Petitioner:
 - Petitioner's Exhibit 1 – Letter from GATX to the Lake County Assessor.
 - For the Respondent:
 - Respondent's Exhibit 1 – Property record card.

11. The following additional items are officially recognized as part of the record of proceedings:
 - Board's Exhibit A - the Form 131 petition including the following attachments:
 - a. Written explanation in support of the Petitioner's request for a reduction of land value.
 - b. Letter from CB Richard Ellis, Inc. Brokerage Services to GATX.
 - c. List of commercial and industrial properties (value per acre).
 - d. News release dated February 9, 2001.
 - e. Environmental reserve expenditure forecast (one page of twenty-one).
 - f. Form 130 petition (with two attachments: letter to GATX employees regarding plant closing and list of parcels originally appealed).
 - g. Corrected Notification of Final Assessment Determination issued February 4, 2002.
 - h. Original Notification of Final Assessment Determination issued September 4, 2001.
 - i. List of commercial and industrial properties (value per acre).
 - j. Real Property Maintenance Reports for purported comparable commercial and industrial properties.

12. The property is a railcar rebuild/repair facility that is currently vacant. The property is located at 4245 Railroad Avenue, East Chicago, North Township, Lake County. The Administrative Law Judge did not view the property.

13. The assessed value for 2001 as determined by the Lake County PTABOA on February 4, 2002, is:
Land: \$872,000 Improvements: \$1,140,900 Total: \$2,012,900.

14. The issue presented for consideration by the Board was:
Whether the land value is excessive and should be reduced to the \$87,200 valuation as shown on the original Notification of Final Assessment Determination.

Jurisdictional Framework

15. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
16. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

Indiana's Property Tax System

17. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
18. Indiana has established a mass assessment system through statutes and regulations designed to assess property according to what is termed "True Tax Value." See Ind. Code § 6-1.1-31, and 50 Ind. Admin. Code 2.2.
19. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).

20. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property's market value. See *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998) (*Town of St. John V*).
21. The Indiana Supreme Court has said that the Indiana Constitution “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”, nor does it “mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant”, but that the proper inquiry in tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” See *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
22. Although the Supreme Court in the *St. John* case did declare the cost tables and certain subjective elements of the State's regulations constitutionally infirm, it went on to make clear that assessment and appeals must continue to be determined under the existing rules until new regulations are in effect.
23. New assessment regulations have been promulgated, but are not effective for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

State Review and Petitioner's Burden

24. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
25. The petitioner must submit ‘probative evidence’ that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax*

Comm 'rs, 656 N.E. 2d 1230 (Ind. Tax 1998). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]

26. The petitioner has a burden to present more than just ‘de minimis’ evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm 'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]
27. The petitioner must sufficiently explain the connection between the evidence and petitioner’s assertions in order for it to be considered material to the facts. ‘Conclusory statements’ are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm 'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
28. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm 'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. Department of Local Government Finance*, 765 N.E.2d 711 (Ind. Tax, 2002).
29. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a ‘prima facie case’ and, by a ‘preponderance of the evidence’ proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm 'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm 'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A ‘prima facie case’ is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner’s position is correct. The petitioner has proven his position by a ‘preponderance of the evidence’ when the petitioner’s evidence is

sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]

Procedural Issues

30. Before addressing the substantive issue of land value contained in the Form 131 petition, the Board will address two preliminary procedural arguments raised during the administrative hearing:

Whether the PTABOA determined at the local hearing to reduce the land value to \$87,200.

Whether the issue of land value was contained in the Form 130 petition filed with the PTABOA.

Procedural ISSUE 1: *Whether the PTABOA determined at the local hearing to reduce the land value to \$87,200.*

31. The Petitioner contended that, at the local hearing, the PTABOA determined that the land value should be reduced to \$87,200. The Petitioner further contended that the “Corrected Copy” of the Notification of Final Assessment Determination reversed this earlier decision “in an arbitrary and capricious manner.” (Board’s Exhibit A, attachment to the Form 131 petition).
32. The Respondents contended that the PTABOA never considered land value and that the \$87,200 amount represented only a typographical error.
33. The original Notification of Final Assessment Determination offered the following explanation for the reduction given by the PTABOA: “Bldg usage. Plant closed, so twp gave 85% economic obs. and functional.” (Board’s Exhibit A, attachment to the Form 131 petition).

34. The memorandum section of the property record card states “Gavew [sic] 85% obsol to all bldg a/c of plant closing. Will take off when bldgs are sold and used.” (Respondent’s Exhibit 1).
35. Obsolescence is “a diminishing of a property’s desirability and usefulness brought about by either functional inadequacies or overadequacies inherent in the property itself, or adverse economic factors external to the property.” 50 IAC 2.2-1-40.
36. In Indiana’s true tax value system of assessment, economic and functional obsolescence may be applied only to improvements; it is not applied to land. 50 IAC 2.2-10-7(e). The PTABOA determination, which reduced the assessed value because of obsolescence, therefore clearly changed the value of only the improvements, not the land.
37. Additionally, the application of an 85% reduction to the original assessed land value of \$872,000 does not result in a new value of \$87,200.
38. The Board concludes that the indicated land value of \$87,200 contained in the original Notification of Final Assessment Determination was a typographical error and not a determination by the PTABOA to reduce the land value from the Township Assessor’s determination of \$872,000.

Procedural ISSUE 2: Whether the issue of land value was contained in the Form 130 petition filed with the PTABOA.

39. The Respondents contended that the Form 130 petition presented at the PTABOA did not contain the issue of land value.
40. The Petitioner contended that it appealed the assessed value of the parcel, which included both land and improvements.

41. Neither party produced a record of the PTABOA proceedings. The Form 130 petition contended “A significant reduction in assessed valuation is warranted because of the following facts.” Two paragraphs follow this assertion, describing factors contributing to the close of the business. No specific amount of claimed reduction is identified.
42. When appealing a PTABOA decision issued prior to January 1, 2002, a Petitioner was limited to “issues specifically addressed during the hearing before the PTABOA” or “that are a direct result of the findings and determinations of the PTABOA.” 50 IAC 17-5-3.
43. On appeals of PTABOA decisions issued after January 1, 2002, however, the Petitioner may include on the Form 131 petition new issues that were not discussed at the county level. IC 6-1.1-15-4(k).
44. As discussed, the “Corrected Copy” of the Notice of Final Assessment Determination was dated February 4, 2002. The Petitioner is consequently able to include new issues on the Form 131 petition filed for the Board’s review. Accordingly, the procedural issue of whether land value was discussed at the PTABOA hearing becomes moot.
45. The Board will therefore address the issue of whether the land valuation is excessive.

Discussion of the Issue

ISSUE: *Whether the land value is excessive and should be reduced to the \$87,200 valuation as shown on the original Notification of Final Assessment Determination.*

46. The Petitioner contended that the original determination of the Lake County PTABOA should be final and that the total land value should remain at \$87,200 as shown on the original Notification of Final Assessment Determination.

47. The Respondent contended that the total land value of \$87,200 on the original Notification of Final Assessment Determination was a typographical error and the total land value should be \$872,000.

48. The applicable rules governing this Issue are:

50 IAC 2.2-4-17

The procedure for valuing commercial and industrial acreage tracts, the characteristics used to delineate geographic areas, and descriptions of the four land classifications are discussed in this section.

50 IAC 2.2-4-10(a)(9)

Discusses conditions/influence factors that dictate an adjustment to the extended value to account for variations from the norm and the codes and descriptions for those factors.

49. Evidence and testimony considered particularly relevant to this determination include the following:

- a. A Form 130 petition was filed requesting a reduction in the assessed valuation for the subject parcel; the Petitioner contended that the definition of parcel included both land and improvements.
- b. The land, consisting of 34.881 acres, was originally assessed by the Township officials as primary land at a rate of \$25,000 per acre.
- c. In response to the Petitioner's appeal, the Lake County PTABOA issued a Notification of Final Assessment Determination assessing the land at \$87,200 and the improvements at \$1,140,900. The Respondents contended that subsequently a corrected notification was issued raising the land assessment to \$872,000 because a typographical error had been made on the original notification.
- d. The Petitioner presented a letter from Mr. Thomas C. Brown, Vice President of CB Richard Ellis, Inc. Brokerage Services (CB Ellis). In this letter, Mr. Brown opined that the total price for the land, real estate, and personal property would not exceed \$2 million. The Petitioner contended that, with the personal property

assessed at \$1.5 million, the land and improvements would have a maximum combined value of \$500,000.

- e. The Petitioner asserted that the assessments of several non-residential properties in the same township and range demonstrate that the subject is over valued. These properties are assessed at the same or lower value per acre, but they are operating businesses; the GATX facility at this location has been closed. The Petitioner contended that there should be a distinction in land values between properties that are operating businesses and those that are not.
- f. The Petitioner further contended that potential environmental concerns, such as monitoring downstream groundwater, would cause a potential purchaser to want a reduction in price.

Analysis of the Issue

- 50. The Petitioner asserted that the assessed valuation of the land should be reduced to the amount shown on the original Notification of Final Assessment Determination, \$87,200 (\$2,500 per acre of primary land).
- 51. The Respondents contended that the land was correctly valued at \$25,000 per acre of primary land.
- 52. In support of its position, the Petitioner submitted a letter from CB Ellis dated February 27, 2002, in which the total fair market value of the land, real estate, and personal property was determined to be \$2 million. (Board's Exhibit A, attachment to the Form 131 petition).
- 53. Although this letter contains an opinion concerning the total value of the GATX facility, it provides no estimate of the portion of the total value that is applicable to the land. Further, no discussion was presented to explain the factors considered when determining the purported total value of \$2 million.

54. Additionally, the land value base rates contained in the Lake County Land Order reflect the value of residential, agricultural homesite, commercial, and industrial land as of January 1, 1991. 50 IAC 2.2-4-2(b). The Petitioner failed to demonstrate the relevancy of an opinion of value dated February 27, 2002, to the January 1, 1991, land values.
55. For all of the above reasons, the Board does not find the letter from CB Ellis to be probative of the alleged error in the assessment.
56. In further support of its position, the Petitioner identified twenty-one industrial parcels that it contended are comparable to the property under appeal.
57. Merely characterizing properties as comparable is insufficient for appeal purposes. For example, the size of the parcels contained on the Petitioner's list range from 0.89 acres to 89.618 acres. Additionally, the Petitioner presented no comparison of lot shapes, topography or geographical features, or lot accessibility and uses. *Blackbird Farms*, 765 N.E. 2d at 715. Further, although these parcels are located in the same township and range as the subject property, no evidence was presented to demonstrate that these properties are all assessed from the same portion of the Lake County Land Order. The Petitioner's unsubstantiated conclusions concerning the comparability of these properties do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
58. Even assuming these properties are comparable fails to establish any disparate treatment of the Petitioner's property. The Petitioner highlighted only six of these properties as varying in price from \$25,000 per acre, the base rate of the GATX's parcel. The remaining fifteen of these twenty-one parcels were priced at a comparable rate to the Petitioner's property.
59. For the six properties identified by the Petitioner as having been assessed at a lesser base rate, the Petitioner divided the total land assessment of the parcel by the acreage to arrive at an average price per acre.

60. This calculation, however, fails to account for different land classifications or influence factors, both of which affect the total true tax value of land.² The Petitioner failed to submit any evidence, such as property record cards, to demonstrate that the land classification of the parcel under appeal is similar to the land classification of the six purported comparable properties. Indeed, undisputed testimony from the Respondents indicated that at least two of these six properties contain secondary land or influence factors.
61. The Petitioner observed that its purported comparable properties are on-going businesses, and contended that, because the GATX facility is closed, its land should be valued at a lesser amount. The Petitioner, however, did not offer any evidence to substantiate this contention or to quantify that any loss in market value would result in the proposed total land value of \$87,200 (\$2,500 per acre). The Petitioner's unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
62. Additionally, none of these purported comparable properties are priced at the value sought by the Petitioner, \$2,500 per acre of primary land.
63. For all of the above reasons, the Board does not find the Petitioner's evidence concerning purported comparable properties to be probative of the alleged error in the assessment.
64. The Petitioner also submitted a document identified as an "Environmental Reserve Expenditure Forecast as of 03/31/2001." The Petitioner asserted that this document represented future expenditures for the monitoring of downstream groundwater.
65. The mandate of the local taxing officials is to assess the true tax value of the property on the assessment date, in this case March 1, 2001. "In determining true cash [tax] value, **'only facts as they exist on the first day of March each year are material** to the determination of questions of assessment and valuations of property for purposes of

² The four classifications of industrial acreage are primary, secondary, usable undeveloped, and unusable undeveloped. 50 IAC 2.2-4-17(b). An influence factor is "a condition peculiar to the lot that dictates an adjustment to the extended value to account for variations from the norm." 50 IAC 2.2-4-10(a)(9).

taxation.”” *Governours Square Apartments v. State Board of Tax Commissioners*, 528 N.E. 2d 864, 866 (Ind. Tax 1987) (citing *Stark v. Kreyling*, (1934), 207 Ind. 128, 132, 188 N.E. 680, 681) (Emphasis added). The Petitioner failed to demonstrate the relevancy of a forecast of future expenditures, prepared as of March 31, 2001, to the true tax value of the land on the assessment date of March 1, 2001.

66. The Petitioner again failed to present any market data to establish that these projected monitoring expenditures would reduce the land value to \$2,500 per acre. The Board therefore does not find the Petitioner’s evidence concerning projected groundwater monitoring to be probative of the alleged error in the assessment.
67. GATX has failed to present any probative evidence in support of its claim that the total true tax value of the land should be \$87,200.
68. For all the reasons above, the Petitioner failed to meet its burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

Summary of Final Determination

Determination of ISSUE: *Whether the land value is excessive and should be reduced to the \$87,200 valuation as shown on the original Notification of Final Assessment Determination.*

69. The Petitioner did not meet the burden of proof in this appeal. Accordingly, there is no change in the assessment.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.