REPRESENTATIVE FOR PETITIONERS:

Milo Smith
Tax Consultants, Inc.

REPRESENTATIVES FOR RESPONDENTS:

Jefferson County:
Gail Sims, Jefferson County Assessor
Elbert Hinds, President of the Jefferson County Property Tax Assessment Board of Appeals

Madison Township:
Don Thompson, Madison Township Assessor

BEFORE THE
INDIANA BOARD OF TAX REVIEW

In the matter of:

GERALD & MARGARET FUNCHS,	)	Petition for Review of Assessment, Forms 131
	)	Petition Nos.: 39-011-97-1-4-00007A
Petitioners	)	39-011-98-1-4-00007
	)	39-011-99-1-4-00007
	)	
	)	County: Jefferson
	)	
v.	)	Township: Madison
	)	
JEFFERSON COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS and MADISON TOWNSHIP ASSESSOR,	)	Parcel No.: 0110117700
Respondents	)	Assessment Years: 1997, 1998, 1999

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

[October 9, 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".

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

Issue

1. The issue presented for consideration by the Board is restated as:

   Whether the land is priced correctly.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, Milo Smith of Tax Consultants, Inc., filed Forms 131 on behalf of Gerald and Margaret Funchs (Petitioners) petitioning the Board to conduct an administrative review of the above petitions. The Forms 131 were filed on October 5, 1999. The Jefferson County Property Tax Assessment Board of Appeals' (PTABOA) assessment determinations are dated September 8, 1999.

Hearing Facts and Other Matters of Record

3. The Petitioners and the Respondents exchanged lists of exhibits and witnesses prior to the hearing.

4. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on June 13, 2002, at Madison, Indiana, before Paul Stultz, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

5. The following persons were present at the hearing:

For the Petitioners:

Milo Smith, Tax Consultants, Inc.

For the Respondents:

Gail Sims, Jefferson County Assessor

Elbert Hinds, President of the PTABOA

Don Thompson, Madison Township Assessor

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

For the Petitioners:

Milo Smith

For the Respondents:

Gail Sims

Elbert Hinds

Don Thompson

7. The Form 131 petitions were made a part of the record and labeled as Board's Exhibit 1. Notices of Hearing are labeled Board's Exhibit 2.

8. The following exhibits were presented:

For the Petitioners:

Petitioners' Exhibit A - Disclosure Statement.

Petitioners' Exhibit B - Package of documents containing the following:

A. Two page statement of list of exhibits, summary of testimony, and conclusion.

B. Copy of Jefferson County Land Valuation Order, page 7 of 13.

C. Copy of Final Assessment Determination for subject property.

D. Copy of Petition for rehearing with attached map.
E. Copy of one page statement by Mr. Smith.
F. Copy of letter dated December 23, 1998, from Tim Brooks, Executive Secretary of the State Board of Tax Commissioners, rehearing denial.
G. Copy of letter dated February 9, 1999, from Tim Brooks, Executive Secretary of the State Board of Tax Commissioners, rehearing denial.
H. Copy of IC 6-1.1-15-5.
I. Copy of Final Determination for Petition # 39-011-1-4-0004, Steer #2, Inc.
J. Copy of 50 IAC 4.2-3-12(e), concerning a petition for correction of error.

For the Respondents:
Respondents' Exhibit A - Plat map of subject property.
Respondents' Exhibit B - Plat map of purported comparable residential property.
Respondents' Exhibit C - Plat map of purported comparable residential property.
Respondents' Exhibit D - Three page statement of Respondents' position.

9. Ms. Sims requested an extension of time to submit additional exhibits. Ms. Sims was granted five days and timely submitted Respondents' Exhibit E, containing the following:
A. Cover sheet listing exhibits.
B. Copy of Jefferson County Land Evaluation Order, pages 2 and 3 of 13.
C. Sample sales on Clifty Drive on the front foot basis.
D. Copy of 1959 plat map of Clifty Drive.
E. Copy of sheet showing refunds given to KP Oil, Funchs, Little Champ, Steer II, Kocolene Oil, and Craig with five pages of supporting documents.
F. Copy of a portion of 50 IAC 2.2-4-17(c), Commercial and industrial acreage.
G. Copy of a portion of 50 IAC 2.2-4-6 (1), Unit values.
H. Copy of a portion of 50 IAC 2.2-4-17 (a), Commercial and industrial acreage.
I. Copy of letter from J. Cornwell, Field Representative of the State Board of Tax Commissioners, to the Jefferson County Council dated May 2, 1994.
J. Copy of letter from M. Lytle, State Representative, to the Jefferson County Assessor's Office dated January 31, 2001.
K. Copy of Final Assessment Determination for Petition #37-007-93-OCI-00022,

Madison Heights Apartments.

L. Copy of the Version A, 2002 Real Property Assessment Guideline, chapter 2, page 11.

M. Three page copy of memorandum from the State Tax Board to County Assessors dated February 19, 1991.

N. 42 photos of property located on Clifty Drive, Madison, Indiana.

O. Copy of four sales disclosure forms of property located on Clifty Drive, Madison, Indiana.

P. Copy of subject property record card.

Q. Copy of an undated letter from Ms. Sims to Mr. Smith with four unsigned stipulation agreements.

10. Mr. Smith requested additional time to present a copy of a recent Tax Court ruling. A cover letter and a copy of *Walker Manufacturing Co. v. Department of Local Government Finance*, 772 N.E. 2d 1 (Ind. Tax 2002) were timely received and labeled Petitioners' Exhibits C and D, respectively.

11. The subject property is a service station located at 115 Clifty Drive, Madison, Madison Township, Jefferson County.

12. The Administrative Law Judge did not view the subject property.

13. At the hearing, the parties agreed the years under appeal are 1997, 1998 and 1999. The parties agreed the values of record for the three years under appeal are:
Land - $23,830
Improvements - $24,100

Jurisdictional Framework

14. 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.

15. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

Indiana's Property Tax System

16. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.

17. 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.

18. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).

19. 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*).

20. 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.

21. 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.

22. 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

23. 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).

24. 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.]

25. 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.]

26. 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.]

27. 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. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).

28. 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.]

Discussion of Issue

Issue: *Whether the land is priced correctly.*

29. The PTABOA determined that the land should be valued at a base rate of $900 per front foot. The Petitioners contended that the land should be valued at $24,750 per acre of primary land.

30. Mr. Smith contended the local officials changed the assessed value of the subject land for 1996, 1997, 1998 and 1999 from the value that was determined by the Board for 1995.[1]

31. Mr. Smith asserted that the local officials may change the 1995 land value determined by the Board only by appealing the 1995 determination to the Indiana Tax Court. Because

[1]Appeals were filed for all four years; the appeal concerning the 1996 assessment is discussed in a separate Board Final Determination issued simultaneously with this Determination.

the local officials did not appeal the Board's 1995 determination, Mr. Smith opined the PTABOA could not change the assessment for the subsequent years.

32. Mr. Smith further asserted that the subject platted lot, located on the south side of Clifty Drive, should be valued at $24,750 per acre to be equal and uniform with the comparable non-platted lots on the north side of Clifty Drive.

33. Ms. Sims contended that each tax year stands on its own.

34. Ms. Sims asserted that the subject property should be valued on a front foot basis with a base rate of $900 per front foot with a negative thirty percent influence factor. This is how the property was originally assessed for 1995. Ms. Sims contended the Jefferson County Land Valuation Order (Land Order) required the subject lot to be valued on a front foot basis.

35. Ms. Sims testified that the subject property is located on a commercial strip known as the Madison Hilltop and that this Hilltop property is the most valuable property in Jefferson County. Ms. Sims contended the result of the Board's action for 1995 made the value of the subject commercial property comparable to nearby residential property and that the Board's earlier determination was therefore in error.

36. Ms. Sims acknowledged that the Jefferson County Land Valuation Commission had assumed the north side of Clifty Drive was platted but, in fact, it is not. Ms. Sims indicated that she served as Chairman of the Land Valuation Commission and stated the Land Commission did not intend to value the north side of Clifty Drive at $24,750 maximum per acre, as described in the Land Order.

37. The applicable rules governing this issue are:

> **50 IAC 2.2-4-1(8)**
> "Front foot" means a strip of land one (1) foot wide that fronts on a desirable feature such as a road or lake…

50 IAC 2.2-4-2

(a) Each county shall establish a county land valuation commission to determine the value of all classes of residential, commercial, industrial, and agricultural homesites… (b) … Before January 1, 1993, the commission shall submit the values it finally determines to the state board of tax commissioners.

50 IAC 2.2-4-3(d)

In making land assessments, the township assessors shall use the values as finally determined by the state board.

50 IAC 2.2-4-6(1)

Front foot value is a whole dollar amount applied to the most desirable frontage of a parcel…

50 IAC 2.2-4-6(3)

The acreage method of valuing land is appropriate where a particular use requires a large amount of land…

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

    A. The Board's Final Assessment Determination for petition #39-011-95-1-4-00007 concerns the same Petitioners and the same issue for the 1995 assessment year. These findings concluded that the subject parcel was not platted and, to comply with the Land Order, should be priced at no higher than $24,750 per acre. The property record card (PRC) indicates the subject lot is platted. (Petitioners' Ex. B, tab 2); (Respondents' Ex. E, tab 16, PRC).
    B. The copy of page 7 of 13 of the Jefferson County Land Valuation Order indicates that commercial / industrial platted lots are valued at a high value of $900 per front foot. (Petitioners' Ex. B, tab 1).

C. Petitioner's testimony that the Land Order must be followed. (Smith testimony).

D. Testimony establishing the Petitioners' position that the platted lots on the south side of Clifty Drive should be valued at $24,750 per acre to be equal and uniform with the non-platted lots on the north side of Clifty Drive. (Smith testimony).

E. Respondents' Exhibits B and C – plat maps of four nearby residential properties with property record cards. These exhibits demonstrate that the earlier Board Final Determination valued the subject property similar to nearby residential properties.

F. Respondents' 42 photos of properties located on the north and south side of Clifty Drive between Wilson Avenue and Michigan Road show that property on both sides of the street have similar characteristics. (Respondents' Exhibit E).

G. Testimony in support of the Respondents' position that the non-platted lots on the north side of Clifty Drive should be valued at a base rate of $900 per front foot with a negative thirty percent influence factor. (Sims testimony).

H. Testimony in support of the contention that lots on the north side of Clifty Drive are not platted. Lots on the south side of Clifty Drive are platted. This is true for the area of Clifty Drive starting at Wilson Avenue going east to Michigan Road. (Sims testimony).

Analysis of Issue

39. The PTABOA determined that the land should be assessed at a base rate of $900 per front foot. The Petitioners contended the land should be assessed at no more than $24,750 per acre of primary land.

40. The pertinent facts regarding the procedural matters in this appeal are undisputed. On December 2, 1998, the Board determined, in an appeal of the 1995 assessment, that the

Land Order required that the subject parcel should be priced at no more than $24,750 per acre.

41. The Board, in its prior determination, concluded that the subject parcel was not platted. As noted, evidence presented at the administrative hearing for the current appeals indicates that the parcel under appeal is, in fact, platted.

42. Upon receipt of the Board's Final Determination, the 1995 assessment was changed by the PTABOA to comply with the Board's decision. However, the local officials recognized the Board's error in concluding that the parcel was not platted. On September 8, 1999, the PTABOA issued Forms 115, Notification of Final Assessment Determination, informing the Petitioners that the assessed values for the assessment years of 1996 through 1999 would be as originally assessed (pursuant to the provisions of the Land Order applicable to platted property on a front foot basis). Upon receipt of these Forms 115, the Petitioners filed appeals for these subsequent years.

43. The steps in the assessment process relevant to this appeal have been described as follows:

> "In [1995], a general reassessment of all the property in Indiana took effect. IND. CODE 6-1.1-4-4. The next general reassessment will take effect in [2002]. *Id.* [See also *Town of St. John v. State Board of Tax Commissioners*, 729 N.E.2d 242, 246 (Ind. Tax Ct. 2000) (*St. John VI*)]. Thus, the property values assigned in the [1995] general reassessment are carried forward from year to year until the next general reassessment takes effect. *See id*. Nevertheless, assessing officials may assess or reassess real property between general reassessments. IND. CODE 6-1.1-4-30. Interim assessments are made to reflect changes to the property which may increase or decrease its general reassessment value. *See* IND. CODE 6-1.1-4-25.
>
> A taxpayer must receive notice [footnote omitted] of her property's value in both the year a general reassessment takes effect, as well as in any year in which an interim assessment is made. IND. CODE 6-1.1-4-22. This notice serves to

"trigger" a taxpayer's right to challenge the reassessment or assessment if she believes it to be erroneous. *See* I.C. 6-1.1-15-1. If, however, a taxpayer does not receive notice for a year in which a general reassessment takes effect or in which an interim assessment is made, her annual tax bill constitutes notice for the purposes of triggering her right to challenge her assessment. IND. CODE 6-1.1-15-13. When no changes occur to the property to affect its general reassessment value, the general reassessment values are merely carried over. As a result, the taxpayer receives a tax bill only, which indicates the net value of the property and the amount of tax due." *Williams Industries v. State Board of Tax Commissioners*, 648 N.E.2d 713, 715-16 (Ind. Tax 1995).

44. The 1995 values, as determined by the Board, must therefore carry forward until: (1) the next general reassessment, or (2) an interim assessment is made by the local officials.

45. The PTABOA made such an interim assessment for the years 1997 through 1999, in accordance with Ind. Code § 6-1.1-4-25.[2]

46. Both parties agreed: (1) that lots on the north side of Clifty Drive between Wilson Avenue and Michigan Road are not platted, while lots on the south side of Clifty Drive in the same area are platted; and (2) that the Land Order has different values for platted and non-platted lots in this area. (Smith & Sims testimony).

47. The Petitioners contended that platted and non-platted properties should be valued equally. The Petitioners further contended that the value of all the properties, both platted and non-platted, should be at the lesser rate of $24,750 per acre.

48. However, the Petitioners presented no evidence in support of the contention that the value of platted and non-platted lots are the same. Even if the values are the same, the Petitioners presented no evidence to establish that the value of the parcel under appeal is $24,750 per acre rather than $900 per front foot.

[2] The notice also purported to include 1996. The validity of the notice, as it pertains to 1996, is addressed in separate findings issued simultaneously with this Determination.

49. Instead, the Petitioners presented a Board Final Determination for the 1995 assessment (Petitioners' Exhibit B). However, evidence of a prior assessment is not probative in these appeals. In Indiana, each assessment and each tax year stands alone. *Glass Wholesalers, Inc. v. State Board of Tax Commissioners*, 568 N.E.2d 1116, 1124 (Ind. Tax 1991). The Board declines to find that the findings of the prior determination are so directly applicable to the facts and circumstances of this matter, as to dictate the conclusions suggested by the Petitioner. The Board is aware that the position taken in this determination is contrary to its position taken in the 1995 appeal by the Petitioner. The Board finds the 1995 determination was in error. The subject lot was previously identified as not platted when, in fact, the lot is platted. The Board is not obligated to perpetuate a past error and will not do so.

50. The Petitioners further argued that the local officials could not change the assessed value in subsequent years regarding an issue previously determined by the Board, citing to 50 IAC 4.2-3-12(e) and *Walker Manufacturing Co. v. Department of Local Government Finance*, 772 N.E. 2d 1 (Ind. Tax 2002). However, both of these cited authorities discuss the filing of a Form 133 petition for an assessment year in which the Board has made a prior determination. The Petitioners failed to establish the relevance of the cited material to the facts in these appeals, which involve Forms 131 filed for subsequent years. As discussed, interim assessments are permitted by Ind. Code § 6-1.1-4-25.

51. Petitioners' Exhibit B (tab 1), a copy of page 7 of 13 of the Land Order, is persuasive and convincing evidence. In clear terms, the Land Order states commercial/industrial platted lots in this location are to be valued within a range of $350-$900 per front foot.

52. The parcel under appeal is a platted lot described as lot 23 Highland Heights Plat 3 11-25-19 (Respondents' Ex. E, tab 16, property record card). The parcel under appeal was assessed as a platted lot, in accordance with the Land Order.

53. The Petitioners have failed to demonstrate that the local officials erred in assessing the parcel from the portion of the Land Order describing platted lots, or erred in assessing this parcel from the high value of the range given in the Land Order.

54. For all the reasons above, the Petitioners failed to meet their 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 is priced correctly*

55. The Petitioners did not meet the required burden in this appeal. Accordingly, there is no change in the assessment as a result of this issue.

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.