STATE OF INDIANA
Board of Tax Review

GUARANTEE PROPERTIES, LP	)	On Appeal from the Hamilton County Board of Review
	)	
Petitioner,	)	
	)	Petition for Review of Assessment, Form 131
v.	)	Petition No. 29-018-95-1-5-00920
	)	Parcel No. 16-10-31-00-00-037.000
HAMILTON COUNTY BOARD OF REVIEW and CLAY TOWNSHIP ASSESSOR	)	
	)	
Respondents.	)	

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

1. Whether the land value is excessive.

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, Mr. James Beatty, Landman & Beatty, on behalf of Guarantee Properties LP (Petitioner), filed a From 131 petition requesting a review by the State. The Form 131 was filed on October 15, 1996. The Hamilton County Board of Review's (County Board) Assessment Determination on the underlying Form 130 is dated September 23, 1996.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on March 9, 2000 before Hearing Officer Dalene McMillen. Testimony and exhibits were received into evidence. Mr. James Beatty and Ms. Sheila Murray represented the Petitioner. Mr. Jim Pee represented Hamilton County. Ms. Dixie Packard represented Clay Township.

4. At the hearing, the following documents were made part of the record and labeled Board Exhibits:
   - Board Exhibit A – A copy of the 131 petition filed by Landman & Beatty.
   - Board Exhibit B – Form 117, Notice of Hearing on Petition.
   - Board Exhibit C – Request for additional evidence from the Petitioner and Respondent, dated March 9, 2000.

5. In addition, the following documents were submitted to the State:
   - Petitioner Exhibit 1 –A copy of the County Land Order summary page 240 of 725
   - Petitioner Exhibit 2 – A copy of the County Land Order for Clay Township page 12 of 30

Petitioner Exhibit 3 – A color-coded aerial map of the subject area (map 1)

Petitioner Exhibit 4 – A color-coded aerial map of the subject area (map 2)

Petitioner Exhibit 5 – A color-coded aerial map of the subject area (map 3)

Petitioner Exhibit 6 – A color-coded map key with a list of the land prices per acre

Petitioner Exhibit 7 – A list of each parcel within map 1, 2 and 3, with acreage size and primary land value

Petitioner Exhibit 8 – A photograph of the subject property

Petitioner Exhibit 9 – Eight property record cards from map 1 with the primary land value of $230,000 per acre

Petitioner Exhibit 10 – Fifteen property record cards from map 1 with the primary land value of $220,000 per acre

Petitioner Exhibit 11 – Twenty-eight property record cards from map 1 with the primary land value of $200,000 per acre

Petitioner Exhibit 12 – Fifteen property record cards from map 1 with the primary land value of $150,000 per acre

Petitioner Exhibit 13 – Twenty-one property record cards from map 1 with the primary land value of $120,000 per acre

Petitioner Exhibit 14 – One property record card from map 1 with the primary land value of $100,000 per acre

Petitioner Exhibit 15 – One property record card from map 2 with the primary land value of $100,000 per acre

Petitioner Exhibit 16 – One property record card from map 2 with the primary land value of $150,000 per acre

Petitioner Exhibit 17 – Six property record cards from map 2 with the primary land value of $220,000 per acre

Petitioner Exhibit 18 – One property record card from map 3 with the primary land value of $220,000 per acre

Petitioner Exhibit 19 – Four property record cards from map 3 with the primary land value of $150,000 per acre.

Petitioner Exhibit 20 – Two property record cards from map 3 with the primary land value of $100,000 per acre.

Respondent Exhibit 1 – Hamilton County Assessor's response to the 131 petition, a highlighted copy of the County Land Order for Clay Township page 12 of 30, a copy of the 1987 land sale and four 1995 property record cards for Steven White, a copy of the 1988 land sale and 1995 property record card for Firestone Tire & Rubber Co., a copy of the 1988 land sale and two 1995 property record cards for J & J Realty Enterprises (Jiffy Lube), and a plat map of the subject area.

6. The Petitioner's property is located at 1361 South Rangeline Road, Carmel, Indiana 46032, in Clay Township in Hamilton County.

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

8. At the hearing, Ms. Murray requested permission to provide the State with a response to the evidence submitted by County Board. March 14, 2000 was established as the deadline date for the submission of this information.

9. By letter dated March 13, 2000, Ms. Murray provided a response to the evidence submitted by the County Board at the State hearing. Ms. Murray's letter and aerial map have been entered into the record and labeled Petitioner Exhibit 21.

10. At the hearing, Mr. Pee was asked to provide the State with the County Land Order summary page for the area of Rangeline corridor from 96th street to 126th street (page 241 of 725) in Clay Township. March 14, 2000 was established as the deadline for the submission of this information.

11. By letter dated March 13, 2000, Mr. Pee provided the County Land order summary page for the area of Rangeline corridor from 96th street to 126th street (page 241 of 725) in Clay Township. Mr. Pee's letter and Clay Township summary page 241 of 725 has been entered into the record and labeled Respondent Exhibit 2.

12. By letter dated March 18, 2000, Mr. Pee responded to Ms. Murray's letter and aerial map dated March 13, 2000 (Petitioner Exhibit 21). Mr. Pee's letter has been entered into the record and labeled Respondent Exhibit 3.

13. By letter dated March 22, 2000, Ms. Murray responded to Mr. Pee's letter dated March 18, 2000 (Respondent Exhibit 3). Ms. Murray's letter has been entered into the record and labeled Petitioner Exhibit 22.

14. At the hearing, Mr. Beatty testified that Landman & Beatty is compensated on a contingency fee basis and that Ms. Murray is compensated on a salary basis from Landman & Beatty.

Issue – Land

15. Petitioner argued that the subject land is not priced according to the County Land Order for Clay Township. The County Land Order reads in pertinent part; that parcels east of Rangeline Road and west of US 431 corridor between 116th street to 126th street are to be priced from $65,000 per acre (low) to $217,000 per acre (high). The subject land is currently being priced at $220,000 per acre for primary land. The subject land was assessed at approximately $25,000 per acre in 1985. From 1985 to 1995 the subject land value has increased approximately 800%. Color-coded maps and property record cards have been submitted, showing the land price per acre, for properties that run concurrent to Rangeline Road, such as Carmel Drive and Keystone, which have land values from

$100,000 per acre up to $230,000 per acre. The comparable properties show the property values vary greatly within the same area. The Petitioner is requesting the subject parcel be priced from the middle of the range at $150,000 per acre, because there is no way to figure out a value on the half-acre parcel (subject). *Murray Testimony. Petitioner Exhibits 6-20*.

16. The Petitioner argued that the Respondent submitted land sales data from 1988, the first parcel is Mr. Steven White's property that reflects that the land sold for $217,800 per acre, however the true tax value on the property record card indicates the land is priced at $125,875 per acre or 48% below the actual sales price. Sale #2 the Firestone land sale is not comparable to the subject because of the size, it is 1.542 acres compared to the subject property, which is .57 acre. Sale # 3 Jiffy Lube at .213 is not comparable to the subject as the parcel (.23) is an additional parcel to a .49 acre parcel also acquired and it cannot be determined that the sale for the .213 acre is a fair market value transaction. The Township stated that they are aware of the inconsistent pricing of the land in the area and they plan on fixing the problem at the next reassessment. However, the Petitioner is entitled to have its value corrected for the 1995 reassessment. *Petitioner Exhibit 21*.

17. Respondent argued that at the County Board hearing the Petitioner failed to submit any probative evidence to support a change in the land value. The County Land Order page 240 of 725, east of Rangeline Road and west of US 431 corridor between 116th street and 126th street, submitted by the Petitioner does not apply to the subject property (Petitioner Exhibit 1). The subject property is priced from the County Land Order page 241 of 725, Rangeline corridor from 96th street to 126th street, in which the prices range from $43,600 per acre (low) to $300,000 per acre (high). The County has applied the County Land Order equally throughout the area. Smaller parcels in the subject area, as well as the subject parcel located in the center of the block of Rangeline Road have been assessed

at the $220,000 per acre. Three comparable land sales from 1987 and 1988 range in price from $210,000 per acre to $217,000 per acre. The County's position is that once the cost of developing the land is added into the comparable land sales, the current rate of $220,000 per acre is substantiated for the subject area. *Pee Testimony. Respondent Exhibits 1, pages 2-13 and 2*.

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.

Conclusions regarding Land Value

18. 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.

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

20. 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."

21. 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).

22. 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.

23. 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.

24. 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).

25. 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. Ind. Code § 6-1.1-4-13.6(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).

26. 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

27. 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).

28. 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.

29. 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.

30. 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).

31. 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).

32. 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.

33. 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.

34. 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).

35. 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.

36. 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).

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

38. 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).

39. 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.

40. 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).

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. 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).

47. 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.

48. 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.

18. *Assuming arguendo* that taxpayers are entitled to challenge land order values in individual appeals, they must present probative evidence to make a prima facie case that the assessment is incorrect. The Petitioner has failed to make such a case in this appeal.

19. The Petitioner presented testimony that the price of the land increased 800% from 1989 assessment to the 1995 assessment. The Petitioner argues that this increase was excessive.

20. In Indiana, each tax year is separate and distinct. See *Williams Industries v. State Board of Tax Commissioners,* 648 N.E. 2d 713 (Ind. Tax 1995). This is especially true when the Petitioner relies on obsolete regulations to support allegations.

21. The Petitioner did not present facts that demonstrated that the system prescribed by statute and regulations was not properly applied to the assessment against the subject property. See *Town of St. John V.*

22. The Petitioner submitted color-coded maps and the property record cards for the properties located in the same areas as the subject property, which have land values ranging from $100,000 per acres to $230,000 per acre, to demonstrate that the property values vary greatly within the same area.

23. The procedure for valuing commercial and industrial acreage tracts is similar to the valuation method for other types of land. However, sales information on existing business properties is less reliable and less available. The Land Commission must draw upon the expertise of its members to establish the basis of valuing these types of tracts. The Land Commission must determine general geographic areas that can be delineated based on characteristics that distinguish them from other areas. The delineation is normally based on such things as zoning, major roads, or streets, natural geographic features like waterways or lakes, and the availability of certain modes of transportation. These geographic areas are the basis for establishing land values. 50 IAC 2.2-4-17 (a).

24. Within each geographic area, the Land Commission may establish broad use classes based on either the current use or probable use of the commercial or industrial properties. Identifying broad use classes helps ensure that certain classes of similar type properties are analyzed and valued consistently by the Land Commission. By determining broad use classes for each geographic area, the Land Commission can compare unit values and establish base rates to treat all properties equitably. 50 IAC 2.2-4-17 (d).

25. "Geographic area or boundaries" refer to the identified boundaries of the geographic area. This is the name of a subdivision, a map number, a section number, street coordinates of an area of a city or town, a color designated on a set of maps, or in some cases, an entire township. 50 IAC 2.2-4-18 (7).

26. Merely characterizing properties as comparable is insufficient for appeal purposes. The Petitioner is required to present probative evidence that the purported comparable properties offered are, in fact, comparable to the subject property. In determining whether properties are truly comparable, "Factors and trends that affect value, as well as the influences of supply and demand, should be considered. The greatest comparability is obtained when the properties being compared are influenced by the same economic trends and environmental (physical), economic, governmental, and social factors. There may not be any comparability when one property is heavily influenced by one set of factors and another property is significantly affected by dissimilar factors." *IAAO Property Assessment Valuation,* Second Edition, page 103. The Petitioner's conclusory statements that the properties are comparable do not constitute probative evidence. *Whitley,* 704 N.E. 2d at 1119.

27. The Petitioner failed to produce a market analysis to demonstrate the land value applied to the subject land is incorrect.

28. For all reasons set forth above, the Petitioner failed to meet the burden in this appeal. Accordingly, no change is made in the assessment as a result of this issue.

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