STATE OF INDIANA
Board of Tax Review

HAROLD SCHROCK,	)	On Appeal from the Elkart County
	)	Board of Review
Petitioner,	)	
	)	Petition for Review of Assessment, Form 131
v.	)	Petition No.- 20-008-95-1-4-00004
	)	Parcel No. - 08-15-10-104-024
ELKHART COUNTY BOARD OF REVIEW and JACKSON 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:

This case initially came before the State on the Petition for Review of Assessment, Form 131, filed by Landmark Appraisals, Inc. for Harold Schrock. The issue raised on the petition was use-type allocation. The tax year in controversy is 1995.

On May 13, 1998, the State originally held a hearing on the Form 131 petition, in conjunction with a 1996 petition on the subject parcel on which the issue of obsolescence was raised. Subsequent to the hearing, decisions were issued by the Indiana Tax Court regarding a taxpayer's burden of proof on the issue of obsolescence. *See Clark v. State Board of Tax Commissioners,* 694 N.E. 2d 1231 (Ind. Tax 1998); and *Canal Square Limited Partnership v. State Board of Tax Commissioners,* 694 N.E. 2d

801 (Ind. Tax 1998). The State scheduled additional hearings on both the 1995 and 1996 petitions, giving the taxpayer and other interested parties an opportunity to present additional evidence in light of these Tax Court decisions.

Issue

1. Whether the use-type allocation is incorrect.

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.

A. Background of Administrative Appeal

2. The subject property is located on County Road 23, Goshen, Jackson Township, Elkhart County.

3. Landmark Appraisals, Inc., on behalf of Harold Schrock, filed a Form 130 with the Elkhart County Auditor disagreeing with the assessment of the subject property. On February 13, 1997, the Elkhart County Board of Review issued its assessment determination on the property. On February 24, 1997, the Petitioner filed a Form 131 petition with the State pursuant to Ind. Code § 6-1.1-15-3.

4. Pursuant to Ind. Code § 6-1.1-15-4, notice of hearing was timely given to the Petitioner. The hearing on the subject petition was held in conjunction with a 1996 petition on this parcel, on which the issue of obsolescence was raised. State hearing officer Richard Schultz conducted the hearing on May 13, 1998.

5. Subsequent to the hearing, decisions were issued by the Indiana Tax Court regarding a taxpayer's burden of proof on the issue of obsolescence. *See Clark*

v. State Board of Tax Commissioners, 694 N.E. 2d 1231 (Ind. Tax 1998); and *Canal Square Limited Partnership v. State Board of Tax Commissioners,* 694 N.E. 2d 801 (Ind. Tax 1998).

B. Additional Hearing Proceedings and Exhibits

6. As a result of the Tax Court decisions, an additional hearing on both the 1995 and 1996 petitions were scheduled for August 16, 2000. Proper notice was given to all parties.

7. Enclosed with the notice of additional hearing was a letter stating the reason for the hearing. The letter also stated that additional evidence could be submitted, and that evidence (documentation or testimony) previously submitted to the State would not automatically be included in the administrative record. Such evidence would have to be resubmitted at the additional hearing. These procedures applied to the issue of obsolescence, as well as any other issues raised on the appeal petition.

8. The additional hearing was held on August 16, 2000, before Hearing Officer Joseph Stanford. M. Drew Miller of Landmark Appraisals, Inc. represented the Petitioner. Veronica Williams represented Elkhart County.

9. The following documents are part of the administrative record and labeled as Board exhibits:
Board Ex. A – Subject Form 131
Board Ex. B – Notice of additional hearing and attached letter
Board Ex. C – Notice of original hearing held May 13, 1998.

10. In addition, the following item was submitted into evidence:
Respondent's Ex. 1 – Hearing notices, Forms 130 and 131, subject property record card.

11. Mr. Miller stated that he had no additional evidence or testimony to submit, and asked that evidence and testimony submitted at the May 13, 1998 hearing be incorporated into this hearing. He testified that he received the letter accompanying the notice of this additional hearing, stating that the purpose of the additional hearing was to allow the parties to submit additional evidence.

12. Ms. Williams stated that the previous County Board of Review made the decision concerning the subject petition. She stated that she has no problems with the previous decision.

C. Evidence and Testimony Submitted at Original Hearing

13. At the original hearing on May 13, 1998, Lance Rickard, Drew Miller, and David Pippen represented the Petitioner. The record shows that the following items were submitted into evidence:
Petitioner's Ex. 1 – Assessment Review and Analysis
Petitioner's Ex. 2 – Summary of sales.

14. Building No. 28 on the property record card is priced entirely as light manufacturing. Its actual use is 80% light warehouse and 20% light manufacturing. *Rickard Testimony.*

Conclusions of Law

1. The Petitioner is statutorily 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. Ind. Code §§ 6-1.1-15-1, -2.1, and –4. See also the Forms 130 and 131 petitions. 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 Form130/131 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. "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. *See also* Ind. Code § 4-21.5-2-4(a)(10) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).

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. 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.

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 even though 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.

D. Whether the use-type allocation is incorrect

18. "Use Type" represents the model that best describes the structure. Assessing officials are instructed to locate and use the model that best represents the structure being assessed. 50 IAC 2.2-10-6(a)(2).

19. The subject building identified as Sylvan Building #28 on the property record card, is currently priced entirely from the General Commercial Industrial (GCI) Light Manufacturing model and schedule. The Petitioner's undisputed testimony was that the actual use of the building is 80% light warehouse, and only 20% light manufacturing. The Petitioner therefore requests a reduction in the assessment.

20. To repeat, when selecting a model, the appropriate "use type" is the one that best describes the structure. Clearly, the actual use of the structure is relevant, at least as a "starting point." However, as stated in 50 IAC 2.2-10-6(a)(2), the most important analysis is a comparison between the actual structure and the model.

21. In comparing the GCI-Light Manufacturing and GCI-Light Warehouse models, there are several similarities. However, several subtle differences also exist. For example, the GCI-Light Manufacturing model calls for a semi-finished interior, while the GCI-Light Warehouse calls for an unfinished interior. While there is no testimony or evidence concerning the finish type of the subject building, the property record card shows that it is semi-finished, matching the GCI-Light Manufacturing model. Also, the GCI-Light Manufacturing model calls for 4% metal service doors, 4% overhead doors, 25% vented steel sash windows, and 600-ampere electrical service. The GCI-Light Warehouse model, on the other hand, calls for only 1% metal service doors, 4% overhead doors, and 200-ampere electrical service.

22. Despite two hearings, and two proverbial “bites at the apple”, the record is devoid of any evidence submitted by Landmark concerning the actual construction of the subject building, including any of the elements discussed above. The State cannot possibly conclude that the GCI-Light Manufacturing model best represents the subject building without any description or evidence concerning this building. Landmark merely summarily concludes that 80% of the building should be priced from a certain model based on a use chosen by its owner, but not necessarily best represented by its construction.

23. The State also notes that, while the County has determined that the GCI-Light Manufacturing model best represents the structure, the grade factor applied to the structure is “D-1” (70%). The County has recognized that the subject building lacks 30% of the cost shown in the model. Landmark, on the other hand, failed to identify any element lacking in the subject building that is called for in the GCI-Light Manufacturing model.

24. For the reasons set forth, Landmark has failed to meet its burden of proof concerning this issue. Therefore, there is no change in the assessment.

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.

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Chairman, Indiana Board of Tax Review