

REPRESENTATIVE FOR PETITIONER:

Milo Smith, Tax Consultants, Inc.

REPRESENTATIVE FOR RESPONDENT:

Gail Sims, Jefferson County Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

MITE FEDERAL SAVINGS & LOAN D/B/A HOME FEDERAL SAVINGS BANK,	)	Petition for Review of Assessment,
	)	Form 131
	)	Petition No.: 39-011-95-1-4-00008
	)	
Petitioner	)	
	)	
	)	
v.	)	County: Jefferson
	)	
	)	Township: Madison
	)	
JEFFERSON COUNTY	)	Parcel No.: 0110133400
PROPERTY TAX ASSESSMENT	)	
BOARD OF APPEALS and	)	
MADISON TOWNSHIP	)	
ASSESSOR,	)	
	)	
Respondent	)	Assessment Year: 1995

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**

#### **Issues**

1. The issues presented for consideration by the Board are restated as:

*Whether the land is priced correctly.*

*Whether the grade is correct.*

*Whether the vault and vault door are assessed correctly.*

#### **Procedural History**

2. Pursuant to Ind. Code § 6-1.1-15-3, Milo Smith of Tax Consultants, Inc., filed a Form 131 on behalf of Mite Federal Savings & Loan d/b/a Home Federal Savings Bank (Petitioner) petitioning the Board to conduct an administrative review of the above petition. The Jefferson County Board of Review's (BOR) assessment determination is dated May 23, 1996. The Form 131 petition was filed on June 19, 1996.

#### **Hearing Facts and Other Matters of Record**

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on July 30, 1998, before Hearing Officer Paul Stultz.

4. The following persons were present at the hearing:

For the Petitioner:

Milo Smith, Tax Consultants, Inc.

For the Respondent:

Gail Sims, Jefferson County Assessor

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

For the Petitioner:

Milo Smith

For the Respondent:

Gail Sims

6. The Form 131 petition was made a part of the record and labeled as Board's Exhibit 1. The Notice of Hearing on Petition is labeled Board's Exhibit 2.

7. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 – A copy of page 7 of 13 of the Jefferson County Land Valuation Order for Madison Township.

Petitioner's Exhibit 2 – Two property record cards of purported comparable parcels.

Petitioner's Exhibit 3 – Copy of Ind. Code § 6-1.1-2-2, Assessment of property.

Petitioner's Exhibit 4 – A copy of the relevant portion of 50 IAC 2.2-11-4.1, Graded photographs of various commercial and industrial buildings.

Petitioner's Exhibit 5 – A copy of questions from a State Board Question and Answer session concerning vaults.

Petitioner's Exhibit 6 – A copy of *RHC Associates v. State Board of Tax Commissioners*, 618 N.E. 2d 70 (Ind. Tax 1993) (This Tax Court ruling is unpublished case law. Ind. Tax Court Rule 16(E) states that “Unless specifically designated ‘For Publication’, memorandum decision shall not be regarded as precedent nor cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel or the law of the case.”).

Petitioner's Exhibit 7 – A copy of 50 IAC 2.2-11-6, Schedule E, GC Special Feature (Banking Features).

For the Respondent:

Respondent's Exhibit 1 – A copy of the Summary Report, page 31 of 70, Jefferson County Land Valuation Order.

Respondent's Exhibit 2 – Property record card of the appealed property.

8. The subject property is located at 201 Clifty Drive, Madison, Madison Township, Jefferson County.
9. The hearing officer viewed the property on September 28, 1998.

### **Jurisdictional Framework**

10. 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.
11. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

## Indiana's Property Tax System

12. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
13. 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.
14. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
15. 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*).
16. 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.
17. 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.
18. 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

19. 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).
20. 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.]
21. 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.]
22. 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.]
23. 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).

24. The State will not change the determination of the County Board of Review 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 Issues**

#### ISSUE 1: *Whether the land is priced correctly.*

25. The BOR determined that the land should be valued at a base rate of \$900 per front foot. The Petitioner contended that the land should be valued at \$24,750 per acre.
26. Mr. Smith contended that, if the subject lot was not platted, its value would be substantially lower than the current \$115,880.
27. Mr. Smith presented page 7 of 13 of the Jefferson County Land Valuation Order for Madison Township (Land Order). The relevant portion of the Land Order, for the area known as Madison Hilltop, indicates that platted lots are to be assessed within a range of \$350 to \$900 per front foot. Non-platted lots in this area are to be assessed within a range of \$10,950 to \$24, 750 per acre of primary land.

28. Mr. Smith asserted that based on Ind. Code § 6-1.1-2-2 (“All tangible property which is subject to assessment shall be assessed on a just valuation basis and in an uniform and equal manner.”), the land should be valued at no more than \$24,750 per acre of primary land.

29. Mr. Smith introduced two purported comparable property record cards in the same area. These properties are not platted and are priced on the front foot method. Mr. Smith opined that the Land Order requires all non-platted lots to be valued on the acreage method. (Petitioner’s Exhibit 2).

30. Ms. Sims did not testify concerning this issue. The property record card describes the property as “Lot 7 replat of plats 3 & 4 Highland Hgts.” (Respondent’s Exhibit 2).

31. 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...

32. Evidence and testimony considered particularly relevant to this determination include the following:
- A. The Property Record Card (PRC) indicates the subject lot is platted. (Respondents' Exhibit 2).
  - 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. (Petitioner's Exhibit 1).

Analysis of ISSUE 1

33. The PTABOA determined that the land should be assessed at a base rate of \$900 per front foot. The Petitioner contended the land should be assessed at no more than \$24,750 per acre of primary land.
34. Petitioner's Exhibit 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 are valued from \$350-\$900 per front foot.
35. The parcel under appeal is a platted lot described as Lot 7 replat of plats 3 & 4 Highland Hgts. (Respondent's Exhibit 2). The parcel under appeal was, in fact, assessed as a platted lot in accordance with the Land Order.
36. The Petitioner has 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.

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

ISSUE 2: *Whether the grade is correct.*

38. The BOR determined that the grade of the building should be “B+1”. The Petitioner contended that the grade should be reduced to “B-1”.
39. Mr. Smith contended that a comparison of the structure to the pictures contained in 50 IAC 2.2-11-4 support his client’s position.
40. Representing the Jefferson County Assessor’s Office, Ms. Sims testified: “It looks more like a fast food restaurant. It is very minimal in design. I agree it should be a “B-2.”
41. The applicable rule governing this issue is:  
**50 IAC 2.2-1-30**  
Grade is defined as the classification of an improvement based on certain construction specifications and quality of materials and workmanship.
42. Evidence and testimony considered particularly relevant to this determination include the testimony provided by both parties.

Analysis of ISSUE 2

43. The parties agree that the current grade is in error. As a result of this undisputed testimony, the grade of the building is changed to a “B-1”, as requested by the Petitioner. A change in the assessment is made as a result of this issue.

ISSUE 3: Whether the vault and vault door are assessed correctly.

44. The BOR determined that the vault should be assessed as a money vault. The Petitioner contended that the vault is a record storage type vault with a door that has a six-hour fire rating.
45. The hearing officer observed, at the time of the inspection of the building, the following:
- (a) The vault in question is used for record storage.
  - (b) There is a small money safe in the corner of the room.
  - (c) There is no mechanical opening device or timer associated with the operation of a vault door.
46. The applicable rule governing this issue is:
- 50 IAC 2.2-11-6, Schedule E, GC Special Feature (Banking Features)**  
Containing the cost schedules for money vaults, record storage vaults, and vault doors.
47. Evidence considered particularly relevant to this determination includes the observations of the hearing officer made during the property viewing on September 28, 1998.

Analysis of ISSUE 3

48. The Petitioner has met its burden concerning this issue. It is determined that this feature is a record storage vault with a six-hour fire rating record storage vault door. There is a change in the assessment as a result of this issue.

## Summary of Final Determination

### Determination of ISSUE 1: *Whether the land is priced correctly.*

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

### Determination of ISSUE 2: *Whether the grade is correct.*

50. The Petitioner met its burden on this issue. The grade of the building is changed to “B-1.” Accordingly, there is a change to the assessment as a result of this issue.

### Determination of ISSUE 3: *Whether the vault and vault door are assessed correctly.*

51. The Petitioner met its burden on this issue. It is determined that the vault should be assessed as a record storage vault with a six-hour rating record storage vault door. Accordingly, there is a change to 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.

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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.**