STATE OF INDIANA
Board of Tax Review

INDIANAPOLIS RACQUET CLUB, INC.	)	On Appeal from the Marion County Property
	)	Tax Assessment Board of Appeals
	)	
Petitioner,	)	
	)	Petition for Review of Assessment, Form 131
v.	)	Petition No. 49-800-95-1-4-000367
	)	Parcel No. 8048124
MARION COUNTY PROPERTY TAX	)	
ASSESSMENT BOARD OF APPEALS	)	
And WASHINGTON 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:

Issues

1. Whether the land value is correct.

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, Indianapolis Racquet Club, Inc. (IRC) filed a petition requesting a review by the State. IRC received the County Board of Review's (BOR) Final Determination on November 19, 1999. The Form 131 petition was filed on December 17, 1999.

Background of Administrative Appeal

3. The Petitioner's evidence makes frequent reference to the land base rate values for IRC's 1989 assessment, and the decision by the Indiana Supreme Court regarding the assessment for 1989. *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.*, 743 N.E. 2d 247 (Ind. 2001). For the tax year 1989, the relevant portion of the Marion County Land Order (Land Order) contained a chart that identified certain areas of concentrated commercial activity in Washington Township and prescribed a range of values within which land in those areas must be assessed. All but one of the areas identified by the Land Order were identified by location, e.g., "Graham Rd. & 71st (Rt. 37) & So. on 37 to 61st." *Id* at 703. The remaining area was simply identified as "Township-other." *Id*. The prior Supreme Court decision did not make any determination of the parcel's value. The Land Order that is relevant to the appeal at hand does not have the "catch-all" provision like the previous Land Order.

4. A general reassessment of all real property was required as of March 1, 1995 (50 IAC 2.2-2-2). Each county was required to establish a land valuation commission to determine base rates that reflected the January 1, 1991, value of residential, agricultural homesite, commercial, and industrial land. The commission was required to hold a public hearing on the base rates by November 30, 1992. Final

base rate values were to be forwarded to the State by January 1, 1993 (50 IAC 2.2-4-2).

5. The Marion County Land Valuation Commission was required to collect sales data and land value estimates from licensed real estate brokers. Using this information, the Land Valuation Commission was further required to delineate general geographic areas, subdivisions, or neighborhoods based on characteristics that distinguish a particular geographic area, subdivision, or neighborhood from the surrounding areas. These characteristics include: (1) range of improvement values; (2) zoning; (3) restrictions on land use; and (4) natural geographic features, such as waterways, lakes, major roads, or streets (50 IAC 2.2-4-4).

6. During this reassessment, the Washington Township portion of the Land Order was changed from the 1989 Land Order to create 11 distinct valuation areas. IRC's property was specifically included in Area D, which is bordered by Keystone Avenue on the west, 79th Street on the south, the Township Line on the east, and 96th Street (the County Line) on the north.

Administrative Hearing and Exhibits

7. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on August 16, 2001, before Hearing Officer Ronald Gudgel. Testimony and exhibits were received into evidence. Stephen E. DeVoe and Eliza Houston, both with the law firm of Henderson, Dailey, Withrow & DeVoe, represented IRC.[1] A. Peter Amundson represented both the Washington Township and the Marion County Assessor's Offices.

[1] Mr. DeVoe testified that he is also the President of IRC.

8. At the hearing, the Form 131 petition was made part of the record as Board's Exhibit A. The transcript of the trial testimony before the Indiana Tax Court on May 2, 1997, was labeled Board's Exhibit B.

9. In addition, the following exhibits were submitted:
Petitioner's Exhibit 1 – A copy of relevant portions of the Marion County Land Order, with maps.
Petitioner's Exhibit 2 – A written summary of Mr. DeVoe's argument.
Petitioner's Exhibit 2A – A written summary of the argument presented by Mr. DeVoe at the administrative hearing for petition 49-800-91-3-4-00001 et al., and incorporated by reference into Petitioner's Exhibit 2.

Respondent's Exhibit 1 – A copy of the property record card.

10. The property is located at 8249 Dean Road, Indianapolis, Washington Township, Marion County.

11. The hearing officer did not inspect the property.

Issue No. 1 - Whether the land value is correct.

12. The BOR determined that the land base rate for the parcel under appeal should be $4.80 per square foot of primary land. Mr. DeVoe contended that the land base rate should be $2.40 per square foot of primary land.

13. In support of his position, Mr. DeVoe asserted that IRC's parcel was incorrectly included in a section of the 1995 Land Order identified as Area D. Mr. DeVoe opined that IRC's parcel is not comparable to other parcels contained in Area D.

14. Additional facts will be presented as necessary.

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 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. "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 V*, 702 N.E. 2d at 1040.

Issue No. 1 - Whether the land value is correct.

18. The Marion County Land Valuation Commission was required to collect sales data and land value estimates to create a Land Order. This Land Order (as amended on December 12, 1994) identified a range of land values that the assessor used as a base rate for determining the True Tax Value of property.

19. The property under appeal is included in a section of the Land Order (Area D) that has base rates ranging from $4.80 to $5.10 per square foot of primary land.

20. The BOR determined that the land base rate for the parcel under appeal should be $4.80 per square foot of primary land. Mr. DeVoe contended that the land base rate should be $2.40 per square foot of primary land.

Conclusions Regarding Land Value

21. For the reasons set forth below, the State determines that the Petitioner cannot challenge the Land Order values by way of the Form 130/131 appeal process.

1. General principles of land valuation in Indiana.

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

23. 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."

24. The Tax Court has similarly recognized the necessity of mass appraisal practices (and some of their flaws). *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).

25. 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.

26. 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.

27. 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).

28. 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 completed its review of the county land order, the State was required to give notice to the affected assessors. In turn, only county and township assessors could appeal the State's determination of values. *Id* at 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 Board in making assessments." Ind. Code § 6-1.1-4-13.6(h).

29. 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. <u>Taxpayers must challenge Land Order values in a timely and appropriate manner; Namely: They must challenge the values at the local level before the State adopts the County Land Order.</u>

30. 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).

31. 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.

32. 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.

33. 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).

34. 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'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 for the next general reassessment, remedied the Court's due process concerns. *Town of St. John III,* 690 N.E. 2d at 384, n. 31).

35. The State respectfully concludes that *Town of St. John V* changed the landscape regarding the issue of taxpayers' entitlement to challenge land order values.

36. 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.

37. 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).

38. 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.

39. 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 their assessment (i.e., the taxpayer's property should have been valued from one section of the land order rather than another).

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

41. 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).

42. 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.

43. 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).

44. 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.

45. 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 easily have said so in clear terms.

46. Further, it is absurd to conclude 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. It is just as absurd to conclude 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.

47. 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 has an obligation to ensure

uniform assessments on a *mass appraisal* basis.

48. The State 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.

49. 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).

50. 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.

51. Though taxpayers are not entitled to challenge land order values, they are entitled to receive adjustments to land values if their properties possess peculiar attributes that do not allow them to be lumped with 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. <u>The Petitioner failed to demonstrate that the value assigned to the property by way of the Land Order is incorrect.</u>

52. 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 party claiming that the land valuation order is invalid bears the burden to show the order is not in accordance with law." *Indianapolis Racquet Club, Inc. v. State Board of Tax Commissioners*, 722 N.E. 2d 926, 931 (Ind. Tax 2000). IRC has failed to meet its burden in this appeal.

53. In the attachment to the Form 131 petition, IRC contended that "The values applied to this land are based on only location and do not take into account the use, productivity, earning capacity, applicable zoning provisions, accessibility to highways and other criteria required by Indiana Code Section 6-1.1-31-6(a)(1) and Rule 4 of the 1995 Assessment Manual."

54. IC 6-1.1-31-6(a) states, in relevant part, that "With respect to the assessment of real property, the rules of the state board of tax commissioners shall provide for:

(1) the classification of land on the basis of:
(i) acreage;
(ii) lots;
(iii) size;
(iv) location;
(v) use;
(vi) productivity or earning capacity;
(vii) applicable zoning provisions;
(viii) accessibility to highways, sewers, and other public services or facilities; and
(ix) any other factor that the board determines by rule is just and proper

55. The Marion County Land Valuation Commission was further required to delineate

general geographic areas, subdivisions, or neighborhoods based on characteristics that distinguish a particular geographic area, subdivision, or neighborhood from the surrounding areas. These characteristics include: (1) range of improvement values; (2) zoning; (3) restrictions on land use; and (4) natural geographic features, such as waterways, lakes, major roads, or streets. 50 IAC 2.2-4-4(c).

56. IRC presented no evidence in support of its contention to establish that the Marion County Land Commission considered only location when delineating the areas contained in the Land Order.

57. As discussed, the Indiana Supreme Court determined that Marion County officials failed to consider relevant characteristics of IRC's land when determining which section of the Land Order to use in valuing the property during the 1989 assessment. *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.*, 743 N.E. 2d 247 (Ind. 2001)

58. Unlike the proceedings concerning the 1989 assessment, however, IRC presented no evidence concerning the factors that were considered during the 1995 assessment. A discussion of procedures used to place the property in a Land Order category in 1989 is not probative evidence of the procedures used to categorize the property during the 1995 reassessment.

59. For example, the categories in the 1995 Land Order are not the same categories contained in the 1989 Land Order. During the 1989 reassessment, the local taxing officials determined that the parcel was located in a category described as "Allisonville Road W. to Keystone on 86th St. fr Dean Rd. Keystone No. to I-465 Interch fr 86th St." (82nd Street Corridor). *Indianapolis Racquet Club, Inc.*, 722 N.E. 2d at 930.

60. In the 1995 Land Order, IRC's property was specifically included in Area D, which is bordered by Keystone Avenue on the west, 79th Street on the south, the

Township Line on the east, and 96th Street (the County Line) on the north. (Petitioner's Exhibit 1).

61. At the Tax Court proceedings in 1997, even IRC agreed that the area surrounding the parcel was undergoing new development. Describing the 82nd Street Corridor area identified in the 1989 Land Order, Mr. DeVoe testified, "The specific properties [contained within the Land Order category] is [sic] going to vary from time to time because there is continuing construction in the area." (Transcript, page 24, lines 23-25).

62. Mr. DeVoe further testified, "Physically, it [IRC's property] was located between the two hottest commercial developments in town, Keystone at the Crossing and Castleton. When you're talking about its immediate – what was physically located to it, it was all starting [on March 1, 1989] to develop, yes." (Transcript, page 56, lines 14-18).

63. The record is clear: Area D, identified in the 1995 Land Order, was a larger geographical section than the 82nd Street Corridor contained in the 1989 Land Order. Additionally, the area contained in the former 82nd Street Corridor was changing between 1989 and 1995 as a result of new development.

64. The fact that IRC's property was incorrectly included in the 1989 82nd Street Corridor is therefore not probative evidence that the property was also incorrectly included in Area D of the 1995 Land Order. Instead, IRC must establish that, during the 1995 reassessment, "the political subdivision [was not] correctly broken down into neighborhoods consisting of comparable parcels of property and the parcels within a neighborhood [were not] comparable with those from which the sales data is derived." *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.*, 743 N.E. 2d 247, 251-52 (Ind. 2001).

65. To establish the factors considered by the Marion County Land Valuation Commission in the preparation of the 1995 Land Order, IRC was required to

present minutes and records of the Commission's meetings. "The Court…notes that it is well settled law in Indiana that 'boards and commissions speak or act officially only through the minutes and records made at duly organized meetings.'" *Indianapolis Racquet Club, Inc.*, 722 N.E. 2d at 934, n. 10 (citing *Scott v. City of Seymour*, 659 N.E. 2d 585, 590 (Ind. Ct. App. 1995)).

66. However, IRC failed to introduce into evidence any such records or minutes made at duly organized meetings of the Marion County Land Valuation Commission. The record is therefore void of any evidence concerning sales data, the process by which neighborhoods were determined, or any other criteria considered by the Land Valuation Commission when it included IRC's property in Area D during the preparation of the 1995 Land Order.

67. Having failed to present any evidence to identify the factors that were considered by the Marion County Land Valuation Commission at the time it created Area D or placed IRC's parcel in Area D, IRC has therefore failed to demonstrate that the Commission did not consider all required factors in its decision making process. Any assertion that IRC's parcel was placed in a section of the Land Order based solely on location is merely an assumption on the part of IRC. "Allegations, unsupported by factual evidence, remain mere allegations." *Whitley*, 704 N.E. 2d at 1119 (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 890, 893 (Ind. Tax 1995)).

68. IRC's unsubstantiated conclusions concerning the formulation of the 1995 Land Order do not constitute probative evidence. *Id*.

69. IRC further contended that its property is not comparable to other properties grouped in Area D, alleging, "The values applied to this land are based on those of other neighboring properties but these neighboring properties are not comparable properties." (Attachment to the Form 131 petition).

70. IRC elaborated on this contention at the administrative hearing, asserting that

"This parcel differs materially from the surrounding properties with respect to significant factors and its use for other purposes is substantially limited by its zoning. Further, the usage had been established long before the surrounding areas and it is a low intensity, special commercial usage…the difference in the commercial use between this property and the other commercial properties with which it is grouped in the 1995 [Land] Order is a big difference in use." (Petitioner's Exhibit 2).

71. However, IRC failed to establish that its parcel is not comparable to other properties contained in Area D.

72. As discussed, in the Court proceedings concerning the 1989 assessment, IRC presented evidence that the local taxing officials did not consider differences in zoning and the fact that the parcel did not have frontage or direct access to the 82nd Street Corridor when determining the category in which to place IRC's parcel. *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.*, 743 N.E. 2d 247, 252 (Ind. 2001). However, IRC did not establish that the Land Valuation Commission similarly failed to consider any required factors during the preparation of the 1995 Land Order.

73. Instead, IRC merely alleged that "This parcel differs materially from the surrounding properties with respect to significant factors and its use for other purposes is substantially limited by its zoning. Further, the usage had been established long before the surrounding areas and it is a low intensity, special commercial usage." (Petitioner's Exhibit 2). IRC additionally contended that "Further, the difference in the commercial use between this property and the other commercial properties with which it is grouped in the 1995 [Land] Order is a big difference in use." Id.

74. However, IRC presented no evidence to support the claim that its parcel differed from others in Area D in 1995 with respect to various unidentified "significant factors".

75. Similarly, although IRC also alleged a "big difference in use", it failed to discuss the use in 1995 of other commercial properties contained in Area D.[2]

76. Although IRC identified a difference in zoning, it failed to present any evidence to establish that the Commission did not recognize and consider this difference at the time the Land Order was promulgated. As discussed, zoning is only one criterion in determining land value. IRC did not discuss the impact of the zoning difference or even establish that this difference, in fact, created any loss of market value to the land. Simply identifying one difference in characteristics among properties does not establish that IRC's property was improperly included in Area D.

77. Absent any discussion of the other properties contained in Area D, IRC has failed to establish that its parcel is not comparable to those properties. Similarly, IRC has failed to establish that the sales data used to establish Area D was not obtained from the sale of properties comparable to IRC's parcel. IRC has therefore failed to meet its "burden to show the [land] order is not in accordance with law." *Indianapolis Racquet Club, Inc.*, 722 N.E. 2d at 931 (Ind. Tax 2000).

78. Indeed, even IRC has failed to identify any alternative portion of the 1995 Land Order, in lieu of Area D, that better describes the classification of IRC's parcel.

79. Finally, IRC contended, "Petitioner believes that the appropriate rate should be approximately 50% of the base rate for the surrounding properties for primary areas." (Petitioner's Exhibit 2).

80. In support of its position, IRC contended "there were no other properties in

[2] IRC's claim of a "big difference in use" is identical to testimony presented during the Tax Court proceedings for the 1989 appeal. Specifically, this language was offered to describe the difference between Keystone at the Crossing and IRC's parcel. (Transcript, page 118, lines 9-20). Demonstrating a difference in use between the parcel under appeal and only one other selected commercial enterprise in an entire section of the Land Order is not persuasive evidence of error in the formulation of the 1995 Land Order.

Washington Township in 1989 which are truly comparable to this property." (Petitioner's Exhibit 2).

81. However, IRC failed to introduce any evidence to establish that there were no comparable properties in Washington Township at the time the 1995 Land Order, rather than the 1989 Land Order, was prepared.

82. Even assuming, arguendo, that no comparable properties existed in Washington Township at the time the 1995 Land Order was prepared does not help IRC's argument.

83. "No two parcels of land are exactly alike. They might be identical in size and physical characteristics, but each parcel has a unique location and is likely to differ from other parcels in some way. Typical differences requiring adjustments are in time of sale, location, and physical characteristics. Adjustments may also need to be made for atypical financing. Other differences may become apparent with the study of the environmental (physical), economic, governmental, and social factors affecting the sale property and the subject property." International Association of Assessing Officers (IAAO) Property Assessment Valuation, 76 (2nd ed. 1996).

84. IRC claimed that no comparable properties exist in Washington Township. However, IRC failed to identify any comparable properties located outside of Washington Township, make appropriate adjustments, and then demonstrate that the adjusted values of the comparable properties differ from the assessed value of the parcel under appeal, as required by generally accepted standards of assessment and appraisal practice.

85. Further, IRC identified no comparable properties that were valued at $2.40 per square foot of primary land to demonstrate that its parcel has received disparate treatment. *Town of St. John V*, 702 N.E. 2d at 1040.

86. IRC therefore presented no evidence in support of its proposed land value. Instead, IRC based its proposed value only upon its conclusion that "the rates actually used for these unusual properties in the past have been far less than those applied to more highly developed properties which surround this property." (Petitioner's Exhibit 2). However, land values included in a prior assessment's Land Order are not probative evidence concerning the accuracy of the values contained in the 1995 Land Order. Indeed, "[t]he primary function of a mass appraisal system is maintaining accurate values. As markets change, properties must be reappraised to reflect current conditions." Gloudemans, Robert J. 1999. *Mass Appraisal of Real Property*, page 27. Chicago: International Association of Assessing Officers. As discussed, IRC acknowledged that new development was occurring in the vicinity of its parcel during the time period between the 1989 and 1995 assessment dates.

87. IRC's unsubstantiated conclusions concerning the value of the parcel do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.

88. Summarizing, the delineation of parcel categories in the 1995 Land Order is different from the categories contained in the 1989 Land Order. The record indicated that commercial developments in the 82nd Street Corridor changed during the period between 1989 and 1995. However, the bulk of the evidence presented by IRC concerned only the preparation of the 1989 Land Order, rather than the procedures used by the Marion County Land Valuation Commission in preparing the 1995 Land Order. IRC did not offer sufficient evidence to distinguish its parcel from other properties contained in Area D. IRC also did not present evidence of any comparable properties that were priced at its proposed new value. Finally, even IRC failed to identify any alternative portion of the 1995 Land Order that better described the classification of its parcel.

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

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