STATE OF INDIANA
Board of Tax Review

INDUSTRIAL CONTRACTORS, INC.	)	On Appeal from the Vanderburgh
	)	County Board of Review
	)	
Petitioner,	)	
	)	Petition for Review of Assessment, Form 131
v.	)	Petition No. 82-029-95-1-4-00748
	)	Parcel No. 11-590-29-001-006
VANDERBURGH COUNTY	)	
BOARD OF REVIEW	)	
And PIGEON 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 is classified correctly.

2. Whether the framing of the structure is correct. (Withdrawn)

3. Whether obsolescence depreciation should be applied to the structure. (Withdrawn)

4. Whether the condition of the structure is correct. (Withdrawn)

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, Richard Archer with Ernst and Young, on behalf of Industrial Contractors Inc. (the Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 petition was filed on September 3, 1996. The Vanderburgh County Board of Review's (County Board) Assessment Determination on the underlying Form 130 was issued August 2, 1996. (The petition was timely filed, as September 2 was a holiday.)

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on November 20, 2001 before Hearing Officer Paul Stultz. Testimony and exhibits were received into evidence. Mr. Archer represented the Petitioner. Mr. J. F. Rick Barter represented Vanderburgh County.

4. At the hearing, the Form 131 petition was made a part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition is labeled Board Exhibit B; the Withdrawal Agreement is labeled as Board Exhibit C. In addition, the following exhibits were submitted:

   Petitioner's Exhibit 1 – Copy of page 23 of 28 of the County Land Valuation Order

   Respondent's Exhibit 1 – Copy of Disclosure of Sales Information for subject property.

5. The subject property is located at 491 Northwest First Street, Evansville, Pigeon Township, Vanderburgh County.

6. The Hearing Officer did not view the subject property.

7. At the hearing, the parties agreed the year under appeal is 1995 and the assessed values of record are:

Land	$3,970	Improvements	$71,130.

8. The subject parcel is assessed at $2.50 per square foot ("sf"). This is mathematically equivalent to $108,900 per acre. The parcel is measured in sf so Pigeon Township converted the Land Order rate of $108,900 per acre to a rate per sf. The Petitioner is not contesting the conversion.

Issue 1- Land Value

9. The Petitioner contends the subject land was assessed as commercial and the improvement as industrial improvements. The improvements are assessed correctly, but the land should be assessed at a rate of $40,000 per acre, or less, as shown on the last line of page 23 of 28 of the County Land Valuation Order. This is the only line on the land order for Pigeon Township that addresses industrial acreage. The subject is located in an area defined as "Diamond Av Ex fr Knight Twp line to Pigeon Creek on West." *Archer Testimony. Petitioner's Exhibit 1*.

10. A Disclosure of Sales Information demonstrates the subject parcel was sold with two other related parcels for approximately $19.92 per sf. It is the County's position that the land is not over assessed. *Barter Testimony. Respondent's Exhibit 1*.

Issues 2-4- Frame type, Obsolescence, and Condition

11. These issues were withdrawn. Please refer to Board Exhibit C.

Conclusions of Law

1. The Petitioner is statutorily limited to the issues raised on the Form 130 petition filed with the County Board of Review or issues that are raised as a result of the County Board'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 County Board. Ind. Code §§ 6-1.1-15-1 and –2.1. If the taxpayer, township assessor, or certain members of the County Board disagree with the County Board'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 County Board 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. Issue-Land Value

18. 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."

19. 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).

20. 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.

21. 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.

22. 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).

23. 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 Board'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 Board'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 Board] 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).

24. The Petitioner argued that the last line on the Land Order (Petitioner's Exhibit 1) was the proper value to use for the subject parcel, as that line was the only line that specified a value for industrial parcels. The Petitioner contends that because the improvements were valued from the General Commercial Industrial (GCI) schedule the subject parcel must be assessed as commercial,

25. 50 IAC 2.2-4-17 does not make the distinction between commercial and industrial land that the Petitioner is suggesting. The Vanderburgh Land Valuation Order does not make such a distinction.

26. While true that the improvements were valued from the GCI schedule, which is generally associated with industrial related operations, this is not the only criteria used in deciding the land value. As noted previously, land values shall be classified for assessment purposes based on acreage, lots, size, location, use, productivity or earning capacity, applicable zoning provisions, and accessibility.

27. The land is valued on a square foot basis, which is not a unit value normally associated with industrial land. The Petitioner did not present any evidence to show the land was valued incorrectly based on location, zoning, size, accessibility or earning capacity.

28. The Petitioner did admit that the subject parcel is in the area defined by the Land Order as "Diamond Av Ex fr Knight Twp line to Pigeon Creek on West".

29. The Petitioner did not submit probative evidence to establish a prima facie case.

30. For the above reasons, the State declines to change the assessment. The determination of the Vanderburgh County Board of Review is upheld.

Issue 2-4- Framing type, Obsolescence, and Condition

31. The Petitioner withdrew these issues at the hearing. Please refer to Board Exhibit C. There is no change in the assessment as a result of these issues.

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