

**STATE OF INDIANA
Board of Tax Review**

JOHN & HARRY SMITH,)	On Appeal from the Vanderburgh County
)	Board of Review
Petitioners,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition No. 82-029-97-1-4-10029
)	Parcel No. 1165030029024
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:

Issue

1. Whether the structure on this parcel had value on March 1, 1997.

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, James Angermeier, on behalf of John & Harry Smith, the Petitioners, filed a petition requesting a review by the State. The Form 131 petition was filed on February 13, 1998. The Vanderburgh County Board of Review's (County Board) final determination on the underlying Form 130 is dated January 16, 1998.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on June 8, 2000 before Hearing Officer Betsy Brand. James Angermeier represented the petitioner. Tammy Elkins and Khris Seger represented the Vanderburgh County Board. Dorothy Joest represented Pigeon Township. Also present were members of the West Side Nut Club: Dennis Fehrenbacher, president; Dennis Feldhaus, past president; and Dick Barchet.
4. At the hearing, the subject Form 131 petition was made a part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition was labeled Board Exhibit B. In addition, the following exhibits were submitted to the State:
Petitioner's Exhibit 1 – A copy of a letter from Dennis Feldhaus, 1997 president of the West Side Nut Club, to the Vanderburgh County Assessor's Office describing the chronological events prior to purchase of the subject property.
Petitioner's Exhibit 2 – Photographs of the subject property depicting floor tile and roofing tar.

Respondent's Exhibit 1 – Summary of Issues and Response with Attachments:

- a. A copy of the minutes from the January 8, 1998 Board of Review hearing.
- b. A copy of the Board of Review final determination dated January 16, 1998.
- c. A property record card for the subject property.
- d. A plat map for the subject property.
- e. Photographs of the subject property that were submitted as evidence to the Board of Review.
- f. A photograph of the subject property as of June 2, 2000.

5. The structure located on the subject property on March 1, 1997 was a vacant building formerly used as a grocery store. The property located at 2101-2105 W. Franklin St., Evansville, Pigeon Township, Vanderburgh County, Indiana is now used as a parking lot. The Hearing Officer did not view the subject property.

Testimony Regarding Credibility of Witness

6. Mr. Angermeier testified he would receive no compensation for his services in this case. He testified he was the Vanderburgh County Assessor for twenty- four (24) years. According to his testimony he is not Level II certified.

Testimony and Documents Regarding Improvement Value

7. John & Harry Smith were the owners of record of the subject property on March 1, 1997. The West Side Nut Club offers testimony and documents in this case because it was the intention and goal of the club to purchase the property and to remove the existing building prior to March 1, 1997. According to testimony by Mr. Angermeier, the West Side Nut Club bears the burden of the tax liability based on the March 1, 1997 assessment.
8. Mr. Angermeier contends the brick and mortar of the subject building had no value on March 1, 1997. Mr. Angermeier testified the utilities were disconnected on February 13, 1997, in preparation for the demolition of the structure. Mr. Angermeier testified the acquisition of the property and subsequent demolition of the structure was delayed through no fault of the West Side Nut Club.
9. Referencing Petitioner's Exhibit 1, Mr. Feldhaus testified it was the intention and goal of the West Side Nut Club to purchase the subject property and to remove the existing building prior to March 1, 1997. Mr. Feldhaus testified that, through no fault of the club, the closing was delayed until March 4, 1997 and the subsequent razing of the structure took place on March 17, 1997. Mr. Feldhaus

contends the structure had no value or use as of March 1, 1997. Mr. Feldhaus testified that on March 1, 1997, the exterior walls were standing and the roof was in place but the structure had been completely gutted.

10. Ms. Joest testified that Pigeon Township took into consideration that the building was vacated and stripped when the property was assessed. She testified the assessed value was determined based on the structure as of March 1, 1997. She testified the structure was priced as utility storage without plumbing or heat. She testified fifty percent (50%) obsolescence depreciation was applied to the structure. Ms. Joest testified the assessed value of the improvements was lowered from \$14,730 to \$8,970.
11. Ms. Elkins testified the Vanderburgh County Board of Review applied an additional twenty-five percent (25%) obsolescence depreciation to the building for a total of seventy-five percent (75%) obsolescence depreciation. Ms. Elkins testified the assessed value for March 1, 1997 reflected on the Board of Review Final Determination is land \$7,500 and improvements \$8,970.
12. Mr. Seger testified Pigeon Township was aware the building was being prepared for razing and they virtually stripped the assessment by changing the use to utility storage without plumbing or heat.
13. Referencing Respondent's Exhibit 1e, Mr. Feldhaus testified the photographs were submitted to the Vanderburgh County Board of Review. He testified, with the exception of one, the photographs were taken on March 17, 1997, the day the structure was razed.

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)

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

13. position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
14. 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).
15. 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*

16. 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.
17. 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.

18. 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. Conclusion Regarding Improvement Value

19. The Petitioner contends the existing structure on this property March 1, 1997, was without value because it had been prepared for razing. The property record card indicates the structure was assessed as utility storage without plumbing and a negative adjustment for lack of heat was applied. In addition to the physical depreciation of fifty percent (50%), seventy five percent (75%) obsolescence depreciation was applied. The property record card shows an assessed value for the improvements of \$8,970.
20. All tangible property, which is subject to assessment, shall be assessed on a just valuation basis and in a uniform and equal manner. Ind. Code § 6-1.1-2-2.
21. "Assessment date" means:
 - (1) March 1 for all tangible property, except mobile homes as defined in Ind. Code § 6-1.1-7-1.
 - (2) January 15 for mobile homes as defined in Ind. Code § 6-1.1-7-1.Ind. Code § 6-1.1-1-2.
22. According to testimony that was offered by the Petitioners' witnesses it was the intention of the West Side Nut Club to purchase the subject property and raze the existing structure before March 1, 1997. Due to delays the property was not acquired until March 4, 1997 and the actual demolition took place on March 17, 1997.
23. Because the club had readied the structure for razing prior to March 1, 1997, they contend it had no value or use on March 1, 1997. Testimony of the Petitioners' witnesses indicates the property was without utilities on March 1 but

the structure was still standing on that date. The photographs presented in Respondent's Exhibit 1e show a structure on the subject parcel. Mr. Feldhaus testified the photographs were taken on March 17, the date of the demolition of the structure. Mr. Feldhaus testified that on March 1, 1997, the exterior walls of the structure were standing and the roof was in place.

24. Ms. Joest testified the Township was aware the structure was vacant and was being readied for demolition. She testified the structure was priced accordingly. The Vanderburgh County Board of Review approved additional obsolescence depreciation further lowering the assessed value.
25. As stated previously, to meet their burden, the taxpayers must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayers 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).
26. In this case the evidence offered by the Petitioners supports the fact that there was a structure existing on the subject parcel March 1, 1997. The local officials have determined the value of the improvements is \$8,970. The taxpayers have the burden of proving the assessed value is in error.
27. 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.

28. The Petitioners did not identify properties that are similarly situated nor did they establish disparate treatment between the contested property and other similarly situated properties.
29. Taxpayers are expected to make detailed factual presentations to the State regarding alleged errors in assessment. *Id.* "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)).
30. In this case specific errors in the assessment were not identified. The Petitioners merely made the broad statement that the improvement had no use or value on March 1, 1997.
31. For all the reasons stated above the Petitioners have failed to meet their burden. Accordingly, there is no change in the assessment as a result of this appeal.

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