REPRESENTATIVE FOR PETITIONER:

Milo Smith
Tax Consultants, Inc.

REPRESENTATIVES FOR RESPONDENTS:

Jefferson County:
Gail Sims, Jefferson County Assessor
Elbert Hinds, President of the Jefferson County Property Tax Assessment Board of Appeals

Madison Township:
Don Thompson, Madison Township Assessor

BEFORE THE
INDIANA BOARD OF TAX REVIEW

In the matter of:

K.P. OIL, INC.,	)	Petition for Review of Assessment,
	)	Form 131
	)	Petition No.: 39-011-96-1-4-00005A
	)	
Petitioner	)	
	)	
	)	
	)	County: Jefferson
	)	
v.	)	Township: Madison
	)	
JEFFERSON COUNTY	)	Parcel No.: 0110116200
PROPERTY TAX ASSESSMENT	)	
BOARD OF APPEALS and	)	
MADISON TOWNSHIP	)	
ASSESSOR,	)	
	)	
Respondents	)	Assessment Year: 1996

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

Issue

1. The issue presented for consideration by the Board is restated as:

   Whether the land is priced correctly.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, Milo Smith of Tax Consultants, Inc., filed Forms 131 on behalf of K.P. Oil, Inc. (Petitioner) petitioning the Board to conduct an administrative review of the above petition. The Jefferson County Property Tax Assessment Board of Appeals' (PTABOA) assessment determination is dated September 8, 1999. The Form 131 was filed on October 5, 1999.

Hearing Facts and Other Matters of Record

3. The Petitioner and the Respondents exchanged lists of exhibits and witnesses prior to the hearing.

4. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on June 13, 2002 at Madison, Indiana before Paul Stultz, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

5. The following persons were present at the hearing:

   For the Petitioner:

   Milo Smith, Tax Consultants, Inc.

   For the Respondents:

   Gail Sims, Jefferson County Assessor

   Elbert Hinds, President PTABOA

   Don Thompson, Madison Township Assessor

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

   For the Petitioner:

   Milo Smith

   For the Respondents:

   Gail Sims

   Elbert Hinds

   Don Thompson

7. 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.

8. The following exhibits were presented:

   For the Petitioner:

   Petitioner's Exhibit A - Disclosure Statement.

Petitioner's Exhibit B - Package of documents containing the following:

A. Two page statement of list of exhibits, summary of testimony, and conclusion.
B. Copy of Jefferson County Land Valuation Order, page 7 of 13.
C. Copy of Final Assessment Determination for subject property.
D. Copy of Petition for rehearing with attached map.
E. Copy of one page statement by Mr. Smith.
F. Copy of letter dated December 23, 1998, from Tim Brooks, Executive Secretary of the State Board of Tax Commissioners, rehearing denial.
G. Copy of letter dated February 9, 1999, from Tim Brooks, Executive Secretary of the State Board of Tax Commissioners, rehearing denial.
H. Copy of IC 6-1.1-15-5.
I. Copy of Final Determination for Petition # 39-011-1-4-0004, Steer #2, Inc.
J. Copy of 50 IAC 4.2-3-12(e).

For the Respondents:

Respondents' Exhibit A - Plat map of subject property.

Respondents' Exhibit B - Plat map of purported comparable residential property.

Respondents' Exhibit C - Plat map of purported comparable residential property.

Respondents' Exhibit D - Three page statement of Respondents' position.

9. Ms. Sims requested an extension of time to submit additional exhibits. Ms. Sims was granted five days and timely submitted Respondents' Exhibit E, containing the following:

A. Cover sheet listing exhibits.
B. Copy of Jefferson County Land Valuation Order, pages 2 and 3 of 13.
C. Sample sales on Clifty Drive on the front foot basis.
D. Copy of 1959 plat map of Clifty Drive.
E. Copy of sheet showing refunds given to KP Oil, Funchs, Little Champ, Steer II, Kocolene Oil, and Craig with five pages of supporting documents.
F. Copy of a portion of 50 IAC 2.2-4-17(c).
G. Copy of a portion of 50 IAC 2.2-4-6 (1).
H. Copy of a portion of 50 IAC 2.2-4-17 (a).

I. Copy of letter from J. Cornwell, Field Representative of the State Board of Tax Commissioners, to the Jefferson County Council dated May 2, 1994.

J. Copy of letter from M. Lytle, State Representative, to the Jefferson County Assessor's Office dated January 31, 2001.

K. Copy of Final Assessment Determination for Petition #37-007-93-OCI-00022, Madison Heights Apartments.

L. Copy of the Version A-2002 Real Property Assessment Guideline, chapter 2, page 11.

M. Three page copy of memorandum from State Tax Board to County Assessors dated February 19, 1991.

N. 42 photographs of property located on Clifty Drive, Madison, Indiana.

O. Copy of four sales disclosures of property located on Clifty Drive, Madison, Indiana.

P. Copy of subject property record card.

Q. Copy of an undated letter from Ms. Sims to Mr. Smith with four unsigned stipulation agreements.

10. Mr. Smith requested additional time to present a copy of a recent Tax Court ruling. A cover letter and a copy of *Walker Manufacturing Co. v. Department of Local Government Finance*, 772 N.E.2d 1 (Ind. Tax 2002) were timely received and labeled Petitioner's Exhibits C and D, respectively.

11. The subject property is a service station located at 431 Clifty Drive, Madison, Madison Township, Jefferson County.

12. The Administrative Law Judge did not view the subject property.

13. At the hearing, the parties agreed the year under appeal is 1996.

Jurisdictional Framework

14. 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.

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

Indiana's Property Tax System

16. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.

17. 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.

18. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).

19. 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*).

20. 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.

21. 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.

22. 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

23. 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).

24. 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.]

25. 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.]

26. 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.]

27. 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).

28. The State will not change the determination of the County Property Tax Assessment Board of Appeals 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 Issue

Issue: *Whether the land is priced correctly.*

29. The PTABOA determined that the land should be valued at a base rate of $900 per front foot. The Petitioner contended that the land should be priced at its 1995 assessed value of $24,750 per acre of primary land.

30. In support of this argument, Mr. Smith testified that the 1995 assessment for this parcel had been previously appealed; the Board's Final Determination in that appeal concluded

that the land should be priced at $24,750 per acre. Mr. Smith contended the local officials changed the assessed value of the subject land for the assessment years of 1996, 1997, 1998, and 1999, increasing the value that was determined by the Board for the 1995 assessment.[1]

31. Mr. Smith asserted that the local officials may change the 1995 land value determined by the Board only by appealing the 1995 determination to the Indiana Tax Court. Because the local officials did not appeal the Board's 1995 determination, Mr. Smith opined the PTABOA could not change the assessment for the subsequent years.

32. The Petitioner additionally contended that the local officials did not timely change the 1996 assessment, noting that IC 6-1.1-9-4 mandates that changes in assessments must be made within three years from the assessment date.

33. Mr. Smith further asserted that the subject platted lot, located on the south side of Clifty Drive, should be valued at $24,750 per acre to be equal and uniform with the comparable non-platted lots on the north side of Clifty Drive.

34. Ms. Sims contended that each tax year stands on its own.

35. Ms. Sims asserted that the subject property should be valued on a front foot basis with a base rate of $900 per front foot with a negative thirty percent influence factor. This is how the property was originally assessed for 1995. Ms. Sims contended the Jefferson County Land Valuation Order (Land Order) required the subject lot to be valued on a front foot basis.

36. Ms. Sims testified that the subject property is located on a commercial strip known as the Madison Hilltop and that the Hilltop property is the most valuable property in Jefferson County. Ms. Sims contended the result of the Board's action for 1995 made the value of

[1] Appeals were filed for all four years; the appeals concerning the 1997, 1998, and 1999 assessment years are discussed in separate Board Final Determinations issued simultaneously with this Determination.

the subject commercial property comparable to nearby residential property and that the Board's earlier determination was therefore in error.

37. Ms. Sims acknowledged that the Jefferson County Land Valuation Commission had assumed the north side of Clifty Drive was platted but, in fact, it is not. Ms. Sims indicated that she served as Chairman of the Land Valuation Commission and stated the Land Commission did not intend to value the north side of Clifty Drive at $24,750 maximum per acre, as described in the Land Order.

38. The applicable rules governing this issue are:

50 IAC 2.2-4-1(8)

"Front foot" means a strip of land one 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…

IC 6-1.1-9-4

"Real property may be assessed, or its assessed value increased, for a prior year under this chapter only if the notice required by section 1 of this chapter is given within three (3) years after the assessment date for that prior year."

39. Evidence and testimony considered particularly relevant to this determination include the following:

    A. The Board's Final Assessment Determination for petition #39-011-95-1-4-00005 concerns the same Petitioner and the same issue for the 1995 assessment year. These findings concluded that the subject parcel was not platted and, to comply with the Land Order, should be priced at no higher than $24,750 per acre. The Property Record Card (PRC) indicates the subject lot is platted. (Petitioner's Ex. B, tab 2); (Respondents' Ex. E, tab 16, PRC).

    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 Ex. B, tab 1).

Analysis of Issue

40. 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.

41. Before considering the Petitioner's objection to the assessed value, the Board must address the Petitioner's procedural argument: whether the Form 115, Notification of Final Assessment Determination for 1996, was timely issued by the PTABOA.

42. The pertinent facts regarding the procedural matter in this appeal are undisputed. On December 2, 1998, the Board determined, in an appeal of the 1995 assessment, that the Land Order required that the subject lot should be priced at no more than $24,750 per acre.

43. The Board, in this prior determination, concluded that the subject lot was not platted. As noted, evidence presented at the administrative hearing for the current appeal indicates the lot under appeal is, in fact, platted.

44. Upon receipt of the Board's Final Determination, the 1995 assessment was changed by the PTABOA to comply with the Board's decision. However, the local officials recognized the Board's error in concluding that the parcel was not platted. On September 8, 1999, the PTABOA issued Forms 115, Notification of Final Assessment Determination, informing the Petitioner that the assessed values for the assessment years of 1996 through 1999 would be as originally assessed (pursuant to the provisions of the Land Order applicable to platted property on a front foot basis). Upon receipt of these Forms 115, the Petitioner filed appeals for these subsequent years.

45. The steps in the assessment process relevant to this appeal have been described as follows:

> "In [1995], a general reassessment of all the property in Indiana took effect. IND. CODE 6-1.1-4-4. The next general reassessment will take effect in [2002]. *Id.* [See also *Town of St. John v. State Board of Tax Commissioners*, 729 N.E.2d 242, 246 (Ind. Tax Ct. 2000) (*St. John VI*)]. Thus, the property values assigned in the [1995] general reassessment are carried forward from year to year until the next general reassessment takes effect. *See id*. Nevertheless, assessing officials may assess or reassess real property between general reassessments. IND. CODE 6-1.1-4-30. Interim assessments are made to reflect changes to the property which may increase or decrease its general reassessment value. *See* IND. CODE 6-1.1-4-25.
>
> A taxpayer must receive notice [footnote omitted] of her property's value in both the year a general reassessment takes effect, as well as in any year in which an interim assessment is made. IND. CODE 6-1.1-4-22. This notice serves to "trigger" a taxpayer's right to challenge the reassessment or assessment if she believes it to be erroneous. *See* I.C. 6-1.1-15-1. If, however, a taxpayer does not

receive notice for a year in which a general reassessment takes effect or in which an interim assessment is made, her annual tax bill constitutes notice for the purposes of triggering her right to challenge her assessment. IND. CODE 6-1.1-15-13. When no changes occur to the property to affect its general reassessment value, the general reassessment values are merely carried over. As a result, the taxpayer receives a tax bill only, which indicates the net value of the property and the amount of tax due." *Williams Industries v. State Board of Tax Commissioners*, 648 N.E.2d 713, 715-16 (Ind. Tax 1995).

46. The 1995 values, as determined by the Board, must therefore carry forward until: (1) the next general reassessment, or (2) an interim assessment is made by the local officials.

47. Although interim assessments by the local officials are permitted by statute, such interim assessments must be made in a timely manner.

48. The relevant portion of IC 6-1.1-9-4 states:

> "Real property may be assessed, or its assessed value increased, for a prior year under this chapter only if the notice required by section 1 of this chapter is given within three (3) years after the assessment date for that prior year."

49. The Form 115, Notification of Final Assessment Determination, for the 1996 interim assessment was mailed by the PTABOA on September 8, 1999. The notice was therefore not issued within the statutory three-year period after the assessment date of March 1, 1996 and cannot be considered valid and effective as notice for a change to the 1996 assessment.

50. An appeal petition contesting the 1996 assessment was required to be filed within forty-five days after notice of a change in the assessment was given to the taxpayer, or May 10 of that year, whichever was later. Ind. Code § 6-1.1-15-1. (If no notice was given, the receipt by the taxpayer of the tax bill constitutes notice for purposes of initiating an appeal. Ind. Code § 6-1.1-15-13).

51. The Form 131 petition was not filed until October 5, 1999, in response to the interim assessment notice. However, because the interim assessment notice was untimely issued, it does not "trigger" any new right of appeal. Therefore, the Form 131 petition contesting the 1996 assessment was also untimely filed.

52. Because neither the interim assessment notification nor the Form 131 petition was timely, the Board does not have subject matter jurisdiction over this appeal and does not have the authority to hear and decide the issue of land value raised by the Petitioner.

Summary of Final Determination

Determination of Issue: *Whether the land is priced correctly.*

53. The Board has no subject matter jurisdiction to hear this appeal.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

____

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.