# STATE OF INDIANA
# Board of Tax Review

| | | |
|---|---|---|
| ONE NORTH CAPITOL COMPANY, INC. | ) | On Appeal from the Marion County Property Tax Assessment Board of Appeals |
| | ) | |
| Petitioner, | ) | |
| | ) | Petition for Review of Assessment, Form 131 |
| v. | ) | Petition No. 49-140-95-1-4-00043 |
| | ) | Parcel No. 1017163 |
| MARION COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS And CENTER 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

Whether the base land rate is excessive.

## 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 IC 6-1.1-15-3, Baker & Daniels, on behalf of One North Capitol Company, Inc., filed a Form 131 petition requesting a review by the State. The Final Determination of the Marion County Property Tax Assessment Board of Appeals (PTABOA) was issued on June 23, 2000. The Form 131 Petition was filed on July 11, 2000.

3. Pursuant to IC 6-1.1-15-4, a hearing was held on March 8, 2001 before Hearing Officer Debra Eads. Testimony and exhibits were received into evidence. Stephen Paul and Marta Haza of Baker & Daniels and Michael C. Lady of Integra Michael C. Lady Advisors, Inc. represented the Petitioner. Brian McHenry represented the Marion County Assessor's Office. Ernest Clark represented the Center Township Assessor's Office.

4. At the hearing, the subject Form 131 was made a part of the record and labeled as Board's Exhibit A. The Form 117 Notice of Hearing was labeled Board's Exhibit B. In addition, the following exhibits were submitted into evidence:

   Petitioner's Exhibit 1 – Brief in support of real estate assessment appeal dated March 8, 2001.
   Petitioner's Exhibit 2 – Complete appraisal for subject property performed by Integra Michael C. Lady Advisors, Inc.

   Respondent's Exhibit 1 – Brief in support of Marion County PTABOA determination dated March 8, 2001.

Respondent's Exhibit 2 – Cover letter in support of the currently assigned land value with a plat map indicating base rates assigned to the subject property and surrounding properties.

5. The subject property is located at 1 North Capital Avenue, Indianapolis, Center Township, Marion County.

6. The Hearing Officer did not conduct an on-site inspection of the property.

## Land Base Rate

7. The land under appeal was assessed at $65.00 per square foot of primary land. The Petitioner contended that the land value should be $50.00 per square foot.

8. The Petitioner's contentions are that the values reflected in the Marion County Land Valuation Order are not indicative of the market value of land as of January 1, 1991, and that the Marion County Land Order is invalid. The Petitioner does not dispute that the base rate applied to the subject land is within the range established by the Marion County Land Order ($60 - $100 per square foot of primary land) (Paul Statement).

9. The Petitioner attempted to gain access to the information used in establishing the base land rates of the Marion County Land Order (Petitioner's Exhibit 1, tabs 5 – 10), but the Petitioner's efforts failed to locate sales data or maps used to establish the Land Order. (Paul Statement).

10. Mr. Lady examined thirteen (13) sales and determined six (6) of those sales to be most comparable to the subject. These six (6) sales occurred between July 1987 and May 1995 and were adjusted by 10% to 25%. Adjustments were made for location and physical characteristics. (Lady Testimony; Petitioner's Exhibit 2).

11. Mr. McHenry contended that the base rate assigned to the subject property is

within the range established on the Marion County Land Order. A vacant parcel adjoining the subject property and having the same owner (and the same assigned land base rate) was also initially appealed but the Petitioner withdrew the appeal. Mr. McHenry further contended that this withdrawal of the appeal for the vacant parcel indicated an acknowledgement by the Petitioner that the land base rate is correct.

12. Mr. Clark asserted that the plat map indicates that all taxable parcels located in the same block as the subject property are also assigned a base land rate of $65.00 per square foot.

## 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.

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 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.

## D. Conclusions Regarding Land Values

18. For the reasons set forth below, the State determines that the Petitioner cannot challenge the Land Order values by way of the Form130/131 appeal process. Alternatively, the State determines that the Petitioner's evidence failed to demonstrate that the value assigned to the property by way of the Land Order is incorrect.

### 1. General principles of land valuation in Indiana.

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

20. 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."

21. 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).

22. 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.

23. 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.

24. 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).

25. 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).

26. 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>**

27. 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).

28. 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.

29. 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.

30. 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).

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

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

33. 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.

34. 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).

35. 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.

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

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

38. 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).

39. 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.

40. 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).

41. 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 (5) 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. Prohibiting taxpayers from challenging certain aspects of the assessment system is not peculiar, and the Tax Court recognizes that taxpayers cannot challenge every aspect of the assessment system in individual appeals, i.e., taxpayers cannot 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).

47. 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.

48. 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. The Petitioner failed to demonstrate that the value assigned to the property by way of the Land Order is incorrect.**

49. 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).

50. The Marion County Land Valuation Commission was required to collect sales data and land value estimates to create a Land Order. This Land Order identified a range of land values that the assessor used as a base rate for determining the True Tax Value of property.

51. The parcel under appeal is included in a portion of the Marion County Land Order identified as Square 54. This area is defined by Illinois Street on the east, Capitol Avenue on the west, Washington Street on the south, and Market Street on the north. The values for primary land in Square 54 range from $60 to $100.00 per square foot.

52. The land under appeal was assessed at $65.00 per square foot of primary land, in accordance with the range identified in the Land Order. The Petitioner contended that the land value should be $50.00 per square foot of primary land.

53. The Petitioner first contended that the Marion County Land Order is invalid.

54. Mr. Paul contacted local assessing officials in an attempt to obtain copies of records prepared by the Marion County Land Valuation Commission. These local officials were unable to locate the records sought by Mr. Paul.

55. The Petitioner, however, failed to establish that any of the officials contacted by Mr. Paul were meaningfully involved in the preparation of the Land Order. Moreover, an inability to locate records in 2000 is not probative evidence that such records did not exist between November 1, 1991, and January 1, 1993, the period during which the base rates were determined. 50 IAC 2.2-4-2(b).

56. Additionally, statements of local assessing officials are not evidence of the activities of the Land Commission. "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)).

57. Even the Petitioner did not contend that the Land Commission was required by the Regulation to furnish its minutes and records to local assessors for permanent storage after completion of the Land Order.

58. Summarizing, the Petitioner failed to introduce into evidence any notes or minutes made at duly organized meetings of the Marion County Land Valuation Commission. The statements of local assessors proffered by the Petitioner are of no probative value in determining the actions taken, or not taken, by the Marion County Land Valuation Commission. The Petitioner has therefore failed to produce any evidence that the Marion County Land Order is invalid.

59. In further support of his client's claim, Mr. Paul introduced an appraisal report prepared by Integra Michael C. Lady Advisors, Inc. (the Lady Appraisal). The Lady Appraisal determined that the Sales Comparison approach was the best means to determine the value of the land.

60. The Lady Appraisal initially identified 14 purported comparable land sales that occurred between December 1986 and December 1995. These sales indicated a range of values from $20.92 per square foot to $87.72 per square foot of

primary land. None of the purported comparable properties are located in the area designated in the Land Order as Square 54.

61. In determining whether properties are truly comparable, "Factors and trends that affect value, as well as the influences of supply and demand, should be considered. The greatest comparability is obtained when the properties being compared are influenced by the same economic trends and environmental (physical), economic, governmental, and social factors. There may not be any comparability when one property is heavily influenced by one set of factors and another property is significantly affected by dissimilar factors." International Association of Assessing Officers (IAAO) Property Assessment Valuation, 103 (2nd ed. 1996).

62. Merely characterizing properties as comparable is insufficient for appeal purposes. The Petitioner is required to present probative evidence that the purported comparable properties it offers are, in fact, comparable to the subject property. No such foundation was presented in either the appraisal report or during testimony offered at the hearing. For example, the Lady Appraisal presented no explanation as to the manner in which properties with such diverse parcel size as 3,705 to 59,128 square feet are comparable to the subject property. Additionally, the Lady Appraisal offered no comparison of common features or amenities among the properties, and no discussion of whether the purported comparable properties are all "influenced by the same economic trends and environmental (physical), economic, governmental, and social factors." *Id*.

63. Mere conclusory statements regarding the comparability of the parcels do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.

64. The Lady Appraisal then selected the seven "most comparable" sales from this list of 14 purported comparable sales. The Lady Appraisal contended that "After an adjustment process, which compensates for significant differences between

these sales and the Property, these sales provide an indication of the Property's land value." (Petitioner's Exhibit 2, page 25).

65. Once again, the Lady Appraisal offered no explanation as to the reason the seven selected sales were deemed to be "most comparable."

66. "Adjustments are usually made for market conditions (time of sale), location, and physical characteristics." IAAO Property Assessment Valuation, 105 (2nd ed. 1996).

67. There are several flaws in the adjustment process employed by the Lady Appraisal.

68. For example, the Lady Appraisal uses a so-called "blended adjustment" technique purporting to combine both qualitative and quantitative analysis. The following chart illustrates the blended adjustment technique presented at the administrative hearing:

| Relative Comparisons | Pre-assigned quantitative adjustment |
|---|---|
| Slight Adjustment | 5% |
| Moderate Adjustment | 10% |
| Fair Adjustment | 15% |
| Significant Adjustment | 20% |
| Large Adjustment | 25% plus |

(Petitioner's Exhibit 2, page 27).

69. "It cannot be overemphasized that the amount of any adjustment is to be derived from the real estate market." IAAO Property Assessment Valuation, 106 (2nd ed. 1996).

70. The Lady Appraisal provides no explanation for its choice of pre-assigned quantitative adjustments ranging from 5% to 25%, rather than (for example) 1% to 5% or 80% to 100%. The arbitrary selection of a percentage adjustment, without presenting any foundation for the selected percentages, fails to establish any correlation between the percentages selected and the market response to the differences in the properties.

71. Additionally, the Lady Appraisal failed to explain the criteria used to determine when it is appropriate to make a "slight adjustment" rather than a "moderate adjustment" or "large adjustment."

72. As discussed, the appraisal acknowledged that there are "significant differences" between the purported comparable parcels and the property under appeal. Given the wide discrepancy in values identified by the Lady Appraisal ($20.92 per square foot to $87.72 per square foot of primary land), the correct application of proper adjustments to the sales prices of purported comparable properties has a major impact in the determination of value.

73. The Lady Appraisal's proposed adjustment technique, however, is nothing more than a subjective judgment multiplied by an arbitrarily assigned percentage. The result of this calculation is not a verifiable quantification of value, but simply an unsubstantiated conclusory statement.

74. Repeating, mere conclusory statements contained in the appraisal do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.

75. As discussed, the Lady Appraisal acknowledged a wide discrepancy of values for properties located in the central business district of Indianapolis. None of these values, however, was based on sales of properties located in Square 54. Further, no explanation was offered for omitting sales data of properties actually located in the same geographical category as the parcel being challenged.

76. Finally, a vacant parcel owned by the Petitioner adjacent to the subject property was also initially appealed. That appeal was subsequently withdrawn. The Lady Appraisal, however, failed to offer any reason why the parcel under appeal should be assessed at $50.00 per square foot, but the adjoining parcel is correctly assessed at $65.00 per square foot.

77. In fact, the record indicated that all of the taxable parcels in Square 54 were valued at $65.00 per square foot. (Respondent's Exhibit 2). The Petitioner has therefore failed to identify properties that are similarly situated to the contested property and to establish disparate treatment between the contested property and other similarly situated properties. *Town of St. John V*, 702 N.E. 2d at 1040.

78. For all the reasons above, the Petitioner failed to meet its burden in this appeal. Accordingly, no change is made to the assessment.

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