

STATE OF INDIANA
Board of Tax Commissioners
Appeals Division

ROBERT HUGHES,)	On Appeal from the Jefferson County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petition for Review of Assessment, Form 131
)	Petition No. 39-010-01-1-4-00007
JEFFERSON COUNTY PROPERTY)	Parcel No. 0100085600
TAX ASSESSMENT BOARD OF)	
APPEALS And MADISON TOWNSHIP)	
ASSESSOR,)	
)	
Respondents.)	

Findings of Fact and Conclusions of Law

The Appeals Division (Appeals Division) of the State Board of Tax Commissioners (State Board), having reviewed the facts and evidence, and having considered the issues, now makes the following findings of fact and conclusions of law.

Issue

1. Whether the subject land should be classified as residential or commercial.

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, Milo E. Smith filed a Form 131 petition on behalf of Robert Hughes (Petitioner) requesting a review by the Appeals Division. The Form 131 petition was filed on September 7, 2001. The Jefferson County Property Tax Assessment Board of Appeals (PTABOA) Notification of Final Assessment Determination was issued on August 10, 2001.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on December 10, 2001, before Hearing Officer Jennifer Bippus. Testimony and exhibits were received into evidence. Mr. Smith represented the Petitioner. Gail Sims, Shelby County Assessor, and Don Thompson, Madison Township Assessor, represented the PTABOA.

4. The subject Form 131 petition was made a part of the record and labeled as Board's Exhibit A. Notice of Hearing on Petition was labeled as Board's Exhibit B. In addition, the following exhibits were submitted to the State Board:
 - Petitioner's Exhibit A - A copy of Ind. Code § 6-1.1-31-6 - *Bases for classification of real property - Instructions for assessment*
 - Petitioner's Exhibit B - A copy of 50 IAC 2.2-2-4 - *Appraisal and examination of buildings*
 - Petitioner's Exhibit C - A copy 50 IAC 2.2-1-45 - "Property class" defined
 - Petitioner's Exhibit D - A copy of the plat map of the subject property
 - Petitioner's Exhibit E - A photograph of the exterior of the subject property
 - Petitioner's Exhibit F - A copy of the zoning of the subject property

 - Respondent's Exhibit A - A copy of the testimony provided by Gail Sims at the State Board hearing
 - Respondent's Exhibit B - A copy of 50 IAC 2.2-4-17 (b) (3) - Commercial and Industrial acreage
 - Respondent's Exhibit C - A copy of the Form 135 - Affidavit of Destroyed or Removed Property filed by Mr. Hughes

5. The subject property is located at 3015 Clifty Drive, Madison, Madison Township, Jefferson County.
6. At the hearing, the parties agreed the year under appeal was 2001 and the True Tax Values of record were - Land: \$17,500 and Improvements: \$0.¹
7. The Hearing Officer did not view the subject property.
8. At the hearing, the Hearing Officer requested the following additional information from Mr. Smith: a Disclosure Statement and zoning of the subject property. Mr. Smith was given until December 20, 2001 to respond. Mr. Smith responded in a timely manner to this request. The Hearing Officer's Request for Additional Evidence and Mr. Smith's response to this request are entered into the record and labeled as Board's Exhibit C and Petitioner's Exhibit F, respectively.

**Issue No. 1 - Whether the subject land
should be classified as commercial or residential.**

9. The property under appeal is a vacant parcel located behind Clifty Engineering, a commercial property owned by the Petitioner. The Petitioner purchased the subject property and had the residence located on this property removed by the fire department in a training session. The land is now vacant and has not changed in any way from the original residential site. There have been no residential or commercial changes made to the property. The Petitioner does not at this time have any improvement plans in mind for the subject property. The Assessor changed the property classification to commercial and valued it accordingly when the residence was removed. *Smith Testimony.*
10. According to 50 IAC 2.2-1-45, "Property class" means a division of like properties generally defined by statute and generally based upon present use." There are residential homes on the other side of the subject area. The plat map shows that

¹ Effective March 1, 2001 "Assessed Valuation" equals "True Tax Value".

Clifty Engineering fronts on Clifty Drive, but the subject property is an open field behind Clifty Engineering. The photograph shows the open area. *Smith testimony & Petitioner's Exhibits C, D, and E.*

11. 50 IAC 2.2-2-4(b) states, that changes in assessed value should be made as real property changes occur in its use. The subject property has not changed the use at the present time and if it changes in the future to a commercial area, at that time it would be valued at the commercial rate. *Smith testimony & Petitioner's Exhibit B.*
12. 50 IAC 2.2-4-17 states, that the amount of acreage that is vacant and held for future development is classified as usable undeveloped land. The subject property is currently priced as commercial and is valued at the base rate used for usable undeveloped land. The subject property is being held for future development. The time frame between the Form 135, Affidavit of Destroyed or Removed Property, October 20, 2000 and today's hearing, December 10, 2001, seems more than reasonable for the Petitioner to improve the land in the manner befitting a home-site. No such effort has been demonstrated. *Sims testimony & Respondent's Exhibit A and B.*
13. The owner clearly intends to use the property in the future as a commercial site and states his intention on the Form 135. Mr. Hughes has enhanced his commercial property by purchasing the subject property and even if the land is never developed it should still be priced as commercial useable undeveloped. *Sims and Thompson testimony & Respondent's Exhibit A.*
14. The subject property is located in a mixed zoning area and as the residences are torn down, the property becomes commercial. The property was classified as residential when Mr. Hughes purchased it, but when the home was removed it was reclassified as commercial. *Thompson Testimony.*

Conclusions of Law

1. The Petitioner is statutorily limited to the issues raised on the Form 130 petition filed with the County Board 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 Board. 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 Board, however, the Appeals Division of the State Board 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 Board.

2. The Appeals Division 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 Board's decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State Board to review the actions of the County Board, but does not require the State Board to review the initial assessment or undertake reassessment of the property. The State Board 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 County Board, the State Board 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 Board 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 Board 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 Board 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 Board’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 Board is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State Board 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 Board’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 Board'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.

Whether the subject land should be classified as residential or commercial.

18. The subject parcel originally had a residential structure on it. The County officials valued the parcel, at that time, using the residential land schedule. Sometime after the Petitioner purchased the property, the Petitioner had the local fire department remove the structure. With the removal of the residential structure, the County officials changed the way the land was valued from residential to usable undeveloped commercial land. It is the Petitioner's contention that this change is in error.
19. "Residential property' means vacant or improved land devoted to, or available for use primarily as, a place to live." 50 IAC 2.2-1-53.
20. Regarding commercial land classifications, "[t]he amount of acreage that is vacant and held for future development is classified as usable undeveloped land." 50 IAC 2.2-4-17(b).
21. Property class is "an index to identify the class of property... **The basis for classification is the predominant current use.**" 50 IAC 2.2-10-4 (emphasis

added). The current use is determined as of the assessment date, March 1, 2001. 50 IAC 2.2-1-11.

22. Mr. Smith contended that that the predominant use of the property had never changed and therefore the land classification should remain residential.
23. However, Mr. Smith failed to present any evidence that the predominant use of the land on the assessment date was as “a place to live.” Indeed, the record clearly refutes Mr. Smith’s contention.
24. Mr. Hughes, the owner of the property, provided an affidavit to the local taxing officials on October 20, 2000. In this affidavit, Mr. Hughes advised the Township assessor that the home had been razed “to clear lot for commercial addition in future.” Respondent’s Exhibit C. Neither party contended that any change in the use of the property occurred subsequent to the submission of this affidavit.
25. The plain language of Mr. Hughes’ affidavit is clear: the use of the land had changed from residential land to land that was being held for future commercial development.
26. By definition, usable undeveloped land has no improvements on it. Mr. Smith’s assertion that the land remains residential until commercial improvements are constructed on it is therefore contrary to the usual and ordinary meaning of the definition of usable, undeveloped land.
27. In further support of his position, Mr. Smith submitted evidence of the zoning of the property (Petitioner’s Exhibit F).
28. As indicated, however, the plain language of 50 IAC 2.2-10-4 indicates that the predominant current use, not zoning, is the primary basis for land classification.
29. Summarizing, on the assessment date the parcel contained no residence. Mr.

Hughes provided an affidavit in October 2000 advising the local officials that the land, rather than being used for residential purposes, was a vacant lot being held for a “commercial addition in [the] future.” Mr. Hughes’ description of the new use of the land is therefore remarkably similar to the definition of commercial usable undeveloped property contained in the Regulation, “acreage that is vacant and held for future development.” Based on Mr. Hughes’ own description of the predominant use of the property on the assessment date, the Township officials assessed the property as usable undeveloped land.

30. Having advised the local taxing officials that the vacant land is currently being held for a future commercial addition, the Petitioner cannot now be heard to complain when the land is, in fact, assessed as vacant commercial land being held for future development.
31. For all the reasons above, the Petitioner failed to meet his burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.