

**STATE OF INDIANA
Board of Tax Review**

In the matter of the Petition for Review)
of Assessment, Form 131) Petition No.: 49-701-95-1-4-00008

Parcel No.: 7026581

Assessment Year: 1995

Petitioner: S A B Corporation
7690 N. Washington Bl.
Indianapolis, IN 46240

Petitioner Representative: Landman & Beatty
1150 Market Square Center
151 N. Delaware
Indianapolis, IN 46204

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issues

1. Whether the land value should have a 25% negative influence factor applied.
2. Whether the condition rating should be reduced to Fair.

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 fact.

2. Pursuant to Ind. Code § 6-1.1-15-3, James Beatty of Landman & Beatty, on behalf of S A B Corporation (the Petitioner), filed a petition requesting a review by the State. The Form 131 petition was filed on September 23, 1997. The Marion County Board of Review's Final Determination on the underlying form 130 petition was issued on August 29, 1997.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on August 23, 1999 before Hearing Officer Mark Bisch. Testimony and exhibits were received into evidence. Sheila Murray and James Beatty represented the Petitioner. William Birkle represented Warren Township. No one represented the Board of Review.

4. At the hearing, the subject Form 131 petition was made part of the record and labeled Board Ex. A. The original Notice of Hearing for July 19, 1999 was labeled Board Ex. B; the second Notice for August 5, 1999 was labeled Board Ex. C. In addition, the following exhibits were submitted to the State:
Petitioner Ex. 1-copy of commercial and industrial land values; copy of
County Land Valuation Order for Warren Township
Petitioner Ex. 2-exterior and Interior photos of subject property.

5. At the hearing, the hearing officer requested additional evidence from the Petitioner. The Petitioner submitted, as requested:
Petitioner Ex. 3-copy of the subject 1989 BOR property record card
(PRC); an explanation of the requested negative influence factor;
copy of the subject 1989 BOR Determination.

6. At the hearing, the hearing officer requested additional evidence from the Respondent. The Respondent submitted, as requested:
 - Respondent Ex. 1-copies of 14 PRCs of properties along the 38th Street corridor
 - Respondent Ex. 2-copy of the Warren Township Land Valuation Order with subject tract highlighted
 - Respondent Ex. 3-letter from Mr. Thomas M. Rybar
 - Respondent Ex. 4-copy of subject 1995 BOR PRC
 - Respondent Ex. 5-copy of subject 1989 BOR Determination
 - Respondent Ex. 6-copy of building permit dated 7-25-91 for subject; copy of subject 1989 BOR PRC.

7. The property is classified as retail and warehouse and is located at 6157 E. 38th Street, Indianapolis, Indiana (Warren Township, Marion County).

Issue 1-Influence Factor

8. Ms. Murray testified to the following:
 - (a) The Petitioner is requesting a negative influence factor of 25% be applied to the land.
 - (b) The subject 1989 property record card shows a –25% influence factor was applied due to the neighborhood.
 - (c) The requested –25% influence factor keeps the land value within the \$1.00 per square foot to \$2.00 per square foot range in the land order.
 - (d) The subject is not on a corner lot, is not a desirable location as to intersections and could have been priced at the low end of the range at \$1.00 per square foot.
 - (e) If it is determined the negative influence factor is not warranted then we request the land base rate be \$1.00 per square foot.
 - (f) The subject business could survive anywhere; it is more warehouse than retail and is not a heavily retailed area.
 - (g) The –25% influence factor that was applied in 1989 should be applied to the

1995 assessed value.

9. Mr. Birkle testified to the following:
 - (a) The Petitioner's statement that the -25% influence factor was applied in 1989 due to the neighborhood is incorrect.
 - (b) The influence factor was applied in 1989 for economic obsolescence because the property was vacant at that time.
 - (c) The neighborhood was a factor of the economic obsolescence that was applied to the land.
 - (d) He found no information that would indicate that a negative influence factor should be applied to the subject land.

Issue 2-Condition

10. Ms. Murray testified to the following:
 - (a) The Petitioner is requesting the condition rating be changed from "Average" to "Fair".
 - (b) The roof leaks and there are cracks in the walls and floor.
 - (c) The structure was built in 1955 with an effective year of construction of 1967.
 - (d) The condition based on the effective year of 1967 should be "Fair".
11. Mr. Birkle testified to the following:
 - (a) When S A B purchased the property in 1985 the facility was totally remodeled for their needs.
 - (b) The effective year of construction, 1967, was determined due to the remodeling done by S A B.
 - (c) The subject did have the condition problems referenced by the Petitioner.
 - (d) He talked to the manager of the property and the manager said there were no problems with the building other than some occasional leaks when it rains real hard.

Conclusions of Law

1. The Petitioner is 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. 50 IAC 17-5-3 Ind. Code §§ 6-1.1-15-1, -2.1, and -4. See also the Forms 130 and 131 petitions amended issue. 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) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).
10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. “Allegations, unsupported by factual evidence, remain mere allegations.” *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
11. The taxpayer’s burden in the State’s administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. In this way, the taxpayer properly

frames the inquiry as to “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Town of St. John V*, 702 N.E. 2d at 1040.

12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer’s case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not “triggered” if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State’s final determination merely because the taxpayer demonstrates flaws in it).

C. Review of Assessments After *Town of St. John V*

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property’s market value will fail.

16. Although the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.
17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

Issue 1-Influence Factor

18. Calculations of land value are extensively discussed in 50 IAC 2.2-4. Once land value is determined, influence factors can be applied to account for characteristics that are particular to that parcel. 50 IAC 2.2-4-1(12) and -10(9).
19. Land Order values may be adjusted by the application of influence factors. An influence factor is defined in 50 IAC 2.2-4-10 as "a condition peculiar to the lot that dictates an adjustment to the extended value to account for variations from the norm." Influence factors may be applied for the following conditions: topography; under improved property; excess frontage; shape or size; a misimprovement to the land; restrictions; and other influences not listed elsewhere.
20. To prevail in an appeal for the application of a negative influence factor, the Petitioner must present both "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor at the administrative level." *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999).
21. The Petitioner concludes a negative influence factor of 25% should be applied or the land base rate should be \$1.00 per square foot rather than \$1.50 per square foot.

22. The Petitioner submitted a copy of the Warren Township Land Valuation Order (Petitioner Ex. 1). This highlighted land order shows the range for subject tract is \$1.00 per square foot to \$2.00 per square foot. The subject is currently priced within the Land order at \$1.50 per square foot.
23. In 1989, the subject received a 25% deduction from the land. The Petitioner claims it was an influence factor due to the neighborhood. The Respondent claims it was obsolescence due to the building being vacant.
24. Regardless of the reason for the 25% deduction in 1989, the Petitioner's burden in this appeal is clear. The Petitioner must show that the property warrants an influence factor and quantify the influence factor the property deserves. (See Conclusions of Law ¶ 20).
25. The Petitioner, in this case, did not present any evidence indicating the property warrants a negative influence factor. Instead, the Petitioner presents evidence of the influence factor from the 1989 reassessment and claims they should have one in 1995 also.
26. The Petitioner did not meet its burden to show the property warrants an influence factor. Even if the Petitioner did show the property warrants an influence factor, there was no quantification presented to show how the negative influence affected the subject property. Accordingly, there will be no change in the assessment as a result of this issue.
27. The Petitioner requested that if a negative influence factor was not applied the base rate be reduced to \$1.00 per square foot.
28. The Respondent submitted copies of fourteen (14) property record cards along the 38th Street corridor (Respondent Ex. 1). These cards show all properties with a primary land base rate of \$1.50 per square foot. The cards are highlighted to show

the reason, if any, for a negative influence factor. The Respondent showed that other properties situated in the area are priced at the same base rate as the subject.

29. The Petitioner failed to identify any similarly situated properties that would indicate the pricing of the subject at \$1.50 is incorrect. The Petitioner did not meet its burden in this appeal. Accordingly, there is no change in the assessment as a result of this issue.

Issue 2-Condition

30. Condition is a judgment of the physical condition of the item relative to its age. See 50 IAC 2.2-10-5-(8).
31. Subjectivity is used in establishing the condition of the structure. For assessing officials and taxpayers alike, however, the Manual provides indicators for establishing condition. The text of the Manual (see 50 IAC 2.2-10-5-(8)-A through G), and commercial and industrial building depreciation (see 50 IAC 2.2-10-7(b) all provide guides for establishing condition.
32. Physical depreciation is determined by the combination of age and condition. Each type of building has a life expectancy that is determined by the building components and the use of the building. See 50 IAC 2.2-10-7(c), 50 IAC 2.2-11-7, and 50 IAC 2.2-12-6.
33. Physical depreciation on a commercial and industrial building is a combination of age and condition. To apply physical depreciation, the assessor must select the correct life expectancy table and identify the condition and age of the building. See 50 IAC 2.2-10-7(d).
34. "Deterioration" means impairment of structural condition evidenced by the wear and tear caused by physical use and the action of the elements. See 50 IAC 2.2-1-23.

35. “Depreciation” means loss in value from all causes. It may be further classified as follows: (1) Physical, which refers to the loss of value caused by physical deterioration. See 50 IAC 2.2-1-20.
36. The Petitioner concludes the condition rating should be “Fair” rather than “Average”. The Petitioner offered interior and exterior photographs of the subject structure (Petitioner Ex. 2). These photos show cracks and mildew in the concrete block walls and cracks in the concrete paving.
37. The Respondent submitted a copy of a building permit dated 9-25-91 for the subject (Respondent Ex. 6). The Respondent stated this permit was issued for the tear off and re-roof of 14,000 square feet.
38. The Respondent submitted a copy of the subject 1989 County Board property record card (Respondent Ex. 6). The card shows the condition rating of the improvement as Good.
39. The Petitioner bears the responsibility of presenting probative evidence in order to establish a prima facie case. In order to establish a prima facie case, the Petitioner must present evidence sufficient to establish a given fact that if not contradicted will remain fact.
40. The Petitioner’s burden to show an incorrect condition of the subject 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.
41. The Petitioner did not present any evidence of comparable properties. Instead, the Petitioner submitted photographs of the subject. Photographs are helpful, however, they alone are not probative evidence in determining the condition of the building.

Mere references to photographs or regulations, without explanation, do not qualify as probative evidence. *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329, 333 (Ind. Tax 1999).

42. The Petitioner failed to identify any comparable properties to indicate the subject's condition is incorrect. The Petitioner failed to establish disparate treatment between the subject and other similarly situated properties.
43. The Petitioner failed to meet its burden in this appeal. Accordingly, there is no change in the assessment as a result of this issue.

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