

**STATE OF INDIANA
Board of Tax Review**

SHELBY STREET REALTY CORP.)	On Appeal from the Marion County
)	Property Tax Assessment Board
)	of Appeals
Petitioner,)	
)	
v.)	Petition for Correction of Error,
)	Form 133
)	Petition No. 49-500-96-3-4-00863
MARION COUNTY PROPERTY TAX)	
ASSESSMENT BOARD OF APPEALS)	
)	
Respondent)	

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 additional obsolescence is warranted for the subject property.

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, the Petitioner filed a petition requesting a review by the State. The Form 133 Petition was filed on May 24, 2000. The Form 115 Final Determination of the Marion County Property Tax Assessment Board of Appeals (PTABOA) was issued on April 28, 2000.
3. Pursuant to Ind. Code § 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. Donald Foley and Stephen Cobb represented the Petitioner. Kathy Price, Jeff Tracy and Fred Butler represented Perry Township. No one was present to represent Marion County.
4. At the hearing, the subject Form 133 petition was made part of the record and labeled Board Exhibit A. The Notice of Hearing is labeled Board Exhibit B. In addition, the following exhibits were submitted into evidence:

Petitioner's Ex. 1 – Ten (10) photos of the subject property

Petitioner's Ex. 2 – Cobb & Associates, Inc report of functional depreciation

Petitioner's Ex. 3 – PTABOA 115 Determination for subject property dated
September 25, 1998

Submitted with the Form 133 Petition and introduced into evidence at the hearing were the following exhibits:

Exhibit A – Form 115 Final Determination for subject property dated 4-28-2000

Exhibit B – Subject property record card

Exhibit C – Requested adjustments to property dated 5-6-99

Exhibit D – Site sketch of subject property

Exhibit E – *Mills v. State Board of Tax Commissioners* court finding

Exhibit F – Information from Handex Environmental, Inc. relating to site contamination

Respondent's Exhibit 1 – Four (4) photos of the subject property

Respondent's Exhibit 2 – Aerial photo of the subject site.

5. The subject property is located at 3000 S. Shelby Street, Indianapolis, Perry Township, Marion County, Indiana.
6. The Hearing Officer did not conduct an on-site inspection of the subject property.

Obsolescence

7. Mr. Foley testified to the following:
 - (a) The buildings on the subject property were built primarily in the 1920's with two (2) buildings added in the mid 1960's.
 - (b) The various ages and wall heights of the property create obsolescence for the subject property.
 - (c) The subject property underwent major environmental mediation at a cost in excess of \$ 300,000 subsequent to the assessment date.
 - (d) Several buildings have transite asbestos that has not been removed. The cost associated with the removal and disposal of the asbestos would exceed the value of the structures.
 - (e) Lack of truck docks of appropriate size, lack of rail siding and the "hodge-podge" nature of the subject structure limits the ability to use the subject property for an integrated use, thereby requiring multiple tenants with specialized uses.
 - (f) On the assessment date the occupancy was approximately 60%.

- (g) A Final Determination made by the Marion County Board of Review for the 1995 assessment year that granted 50% obsolescence to the subject property has not been accurately reflected in subsequent assessments made by the Township.
 - (h) A letter from Handex Environmental Inc. (Petitioner's Exhibit F) details the environmental contamination of the subject property as of 1998.
8. Mr. Cobb and Mr. Foley reviewed the ten (10) photographs submitted as Petitioner's Exhibit 1 and related the photographs to the site plan of the property that was submitted with a 1997 Form 131 Petition as Exhibit D.
 9. Mr. Cobb reviewed the sales information and subsequent obsolescence calculation for four (4) comparables included in Petitioner's Ex. 2.
 10. Ms. Price testified to the following:
 - (a) The Township properly applied the obsolescence granted by the Marion County Board of Review.
 - (b) The subject property is reviewed annually on March 1 in order to accurately determine the level of occupancy for each assessment year.
 - (c) She substantially agreed with the Petitioner with regard to physical depreciation and environmental limitations, however, various tenants utilize the subject property to some extent.
 11. Ms. Price asked Mr. Cobb if he had an estimate of the current market value of the subject property. Mr. Cobb replied that the land was more valuable than the buildings and without a calculation involving the rental income for the buildings he couldn't estimate a value.
 12. Mr. Butler testified that he has visited the property for several years on March 1, and that the majority of the buildings on the subject property have been at least partially occupied.

Conclusions of Law

1. The Petitioner is statutorily limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 130 petition. Ind. Code §§ 6-1.1-15-1, -2.1, and -4. See also the Forms 130 and 131 petitions. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.

2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

A. Indiana's Property Tax System

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.
4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State's decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review

- to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
 9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See also Ind. Code § 4-21.5-2-4(a)(10) (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.

Obsolescence

18. The issue of obsolescence requires the assessor to make a judgment as to whether obsolescence exists and then to determine the amount of obsolescence to be applied. Therefore, obsolescence is a subjective issue and is not correctable with a Form 133 Petition.
19. A Form 133 petition is available only for those errors that can be corrected without resort to subjective judgment. *Reams v. State Board of Tax Commissioners*, 620 N.E. 2d 758 (Ind. Tax 1993).
20. Clearly obsolescence does not fall within this limited range of errors that may be corrected by way of a Form 133 petition. Accordingly, the Petitioner did not raise a proper issue before the State, and the petition is denied.

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