STATE OF INDIANA
Board of Tax Review

SOUTHERN INDIANA GAS & ELECTRIC COMPANY,	)	On Appeal from the Posey County Board of Review
Petitioner,	)	
v.	)	Petition for Review of Assessment, Form 131
	)	Petition No. 65-019-95-1-3-00013
POSEY COUNTY BOARD OF REVIEW and MARRS TOWNSHIP ASSESSOR,	)	Parcel No. 0080208300
Respondents.	)	

Findings of Fact and Conclusions of Law

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

Issues

1. Whether the PAR of buildings 1 and 2 are correct.
2. Whether the grade of buildings 1 and 2 are correct.
3. Whether the coal conveyor tunnels are real or distributable 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, Southern Indiana Gas and Electric Company (SIGECO) filed a Form 131 petition requesting a review by the State Board. The Posey County Board of Review's Final Determination on the underlying Form 130 is dated August 9, 1996. The Form 131 petition was filed on September 6, 1996.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on March 10, 1998 before Hearing Officer Dennis Neuhoff. Testimony and exhibits were received into evidence. Donald Burke, SIGECO's Manager of Budgets, Taxes and Plant Accounting, represented the Petitioner. Rita Sherritz represented the Posey County Assessor's Office.

4. At the hearing, the subject Form 131 petition was made part of the record and labeled Board's Exhibit A. Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following exhibits were submitted to the State Board:

Petitioner's Exhibit 1 – A binder containing the following exhibits: (a) a copy of the Form 131 petition; (b) a State Board memorandum dated June 30, 1994 concerning the assessment of power generating stations; (c) 1989 property record card; (d) 1995 property record card; (e) valuation report; (f) valuation comparison report; (g) written testimony of Donald J. Burke.

Petitioner's Exhibit 2 – 1995 property record card.

Petitioner's Exhibit 3 - A State Board memorandum dated June 30, 1994 concerning the assessment of power generating stations.

The Respondent did not present any documentary evidence at the hearing.

5. The subject property is part of the A.B. Brown Generating Station located near West Franklin, Marrs Township, Posey County. The Hearing Officer viewed the

property on May 18, 1998. Lansy J. Holm, Jr., SIGECO's Superintendent of Material Handling, was present at the property viewing.

Issue No. 1 – Whether the PAR of buildings 1 and 2 are correct.

6. The County assessed building 1 using five (5) sections, with four (4) different wall heights and two (2) different PARs. The County assessed building 2 using five (5) sections, with four (4) different wall heights and three (3) different PARs.

7. The Petitioner contends that building 1 should have been assessed using one (1) section, with an average wall height and one (1) PAR. The Petitioner also contends that building 2 should have been assessed using one (1) section, with an average wall height and one (1) PAR. The Petitioner presented a State Board memo dated June 30, 1994 in support of its position.

8. Building 1 contains 52,488 square feet and has a perimeter of 1,061 linear feet. Building 2 contains 48,828 square feet and has a perimeter of 1,048 linear feet.

9. Building 1 and 2 contain the power generating structures, and are sometimes referred to as unit 1 and unit 2.

Issue No. 2 – Whether the grade of buildings 1 and 2 are correct.

10. The County Board assigned a grade of C+2 to both buildings 1 and 2. The Petitioner claims the buildings should be graded a C, and presented State Board memo dated June 30, 1994 in support of its position.

Issue No. 3 – Whether the coal conveyor tunnels are real or distributable property.

11. The Petitioner opines that the Coal Conveyor Tunnels should be assessed as distributable property and not as real property. The Petitioner stated that

SIGECO has been reporting the Coal Conveyor Tunnels with the personal property returns prior to the hearing, even though the Respondent was still assessing them as real property.

Conclusions of Law

1. The Petitioner is limited to the issues raised in the Form 131 petition filed with the State Board. Ind. Code § 6-1.1-15-1(e) and –3(d). *See also* Form 131 petition requiring the Petitioner to identify the specific grounds for appeal. The State Board has the discretion to address any issue once an appeal has been filed by the taxpayer. *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 in the Form 131 petition filed with the State Board.

2. The State Board 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 PTABOA, 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 PTABOA, 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.

D. PAR

18. The Petitioner contends that buildings 1 and 2 should be assessed using a single PAR, average wall height, and one section.

19. The State Board issued a memo concerning assessing power generating stations on June 30, 1994. This memo states on page 5:
"Perimeter to Area Ratio (PAR):

The perimeter-to-area ratio of a power generating plant structure is calculated by adding the structure's exterior wall measurements together and dividing the total linear feet of walls by the total square area of the structure. The main structure should not be divided into separate sections according to wall heights. …" emphasis in original. (Petitioner Exhibit 3).

20. According to this memo, the buildings that comprise the power generating plant should not be divided into separate sections, as was done by the Respondent in this case.

21. There is a change in the assessment as a result of this issue. Building 1 was assessed as one section containing 52,488 square feet with 1,061 linear feet. The PAR of building 1 is 2. This calculation also affected some other changes, such as an average wall height adjustment, partition adjustment, heating and air conditioning adjustments, and the sprinkler adjustment.

22. Building 2 was also assessed as one section containing 48,828 square feet with 1,048 linear feet. The PAR of building 2 is 2. This calculation also affected some other changes such as an average wall height adjustment, partition adjustment, heating and air conditioning adjustments, and the sprinkler adjustment.

E. Grade

23. Buildings 1 and 2 were assigned a grade of C+2 by the Respondent. The Petitioner contends the grade of the buildings should be a C.

24. The State Board memo regarding the assessment of power generating structures issued on June 30, 1994 states:

> "[T]he grade assigned to a power generating plant structure should only represent a variation from the C grade classification. Thus, structures valued from the power generating plant model should have a grade assigned in the C-2 to C+2 range with most structures being assigned a C grade." Petitioner Exhibit 3, page 10.

25. The Respondent failed to follow the State Board memo with regard to PAR instructions, so there is some lingering doubt whether the Respondent followed the memo with regard to the grade issue.

26. As a result of an on site inspection, it was concluded that the subject had metal exterior walls, average quality foundation, minimal finish added, and no above average features, except its imposing size.

27. The Respondent did not present any evidence indicating why it graded the subject a C+2, the highest grade possible for a power generating plant structure.

28. For all the above reasons, the grade of buildings 1 and 2 are changed to C.

F. Coal Conveyor Tunnels

29. Tunnels are assessed either as real property or as distributable property. According to the State Board memo, Tunnel (passenger and vehicular) are locally assessed real property. Tunnels, waste heat, or processing are assessed as distributable property. (Petitioner Exhibit 3, page 3).

30. The Petitioner stated that the coal conveyor tunnels are used in the processing at the plant. Therefore, they should be assessed as distributable property.

31. After inspecting the tunnels, it was determined that they are used in the processing at the plant and should be assessed as distributable property.

32. For the above reasons, there is a change in the assessment as a result of this issue.

Issued this ____ day of _____, 2002
by the Indiana Board of Tax Review.