

**STATE OF INDIANA
Board of Tax Review**

Stanley Clark	)	On Appeal from the Tippecanoe County
	)	Property Tax Assessment Board
Petitioner,	)	of Appeals
)	
v.	)	Petition for Review of Assessment, Form 131
	)	Petition No. 79-004-01-1-4-00003
	)	Petition No. 79-004-01-1-4-00004
	)	Petition No. 79-004-01-1-4-00005
	)	Parcel No. 156-05806-0521
	)	Parcel No. 156-05806-0532
	)	Parcel No. 156-05806-0543
)	
TIPPECANOE COUNTY PROPERTY)	
TAX ASSESSMENT BOARD OF)	
APPEALS And FAIRFIELD TOWNSHIP)	
ASSESSOR,)	
)	
Respondents.)	

Findings of Fact and Conclusions of Law

The Indiana Board of Tax Review, as successor to the Appeals Division of the State Board of Tax Commissioners, 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 land should be priced as "industrial" land.

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 on behalf of Stanley Clark (Petitioner), filed Form 131 petitions requesting a review by the Appeals Division. The form 131 petitions were filed on September 24, 2001. The Tippecanoe County Property Tax Assessment Board of Appeals (PTABOA) Notification of Assessment Final Determinations on the underlying Form 130s are dated August 24, 2001.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on December 18, 2001 before Hearing Officer Joan L. Rennick. Testimony and exhibits were received into evidence. Mr. Milo Smith represented the Petitioner. Mr. Lawrence J. Lahrman, PTABOA member and Mr. Bob McKee, Tippecanoe County Assessor represented the PTABOA. Ms. Jan Payne, Fairfield Township Assessor and Gary Smith of Appraisal Research represented Fairfield Township.
4. At the hearing, the subject Form 131 petitions were made a part of the record and are labeled Board Exhibits A. The Notice of Hearing on the Petitions were labeled Board Exhibits B. The Hearing Sign In Sheet was labeled Board Exhibit C. The Tax Representative Disclosure Form was labeled Board Exhibit D. In addition, the following exhibits were submitted to the State Board:
 - Petitioner's Exhibit 1 – Copy of IC 6-1.1-31-6 (1)(iv)(v) highlighted
 - Petitioner's Exhibit 2 – Copy of subjects property record card (PRC) before PTABOA changes
 - Petitioner's Exhibit 3 – Copy of 50 IAC 2.2-1-45 "Property class" defined (highlighted)
 - Petitioner's Exhibit 4 – Copy of 50 IAC 2.2- 4-3 State board review of commission results (d) (highlighted)
 - Petitioner's Exhibit 5 – Tippecanoe County Land Valuation Order (Land Order) for Fairfield Township, page 7 with Township pricing highlighted
 - Petitioner's Exhibit 6 & 7 – Photographs of subject improvements

5. The subject property is located at 520 S. Farabee Drive, Lafayette, Fairfield Township, Tippecanoe County.
6. The Hearing Officer did not view the subject property.

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7. There are three (3) parcels under review in this appeal. Parcel #156-05806-0532 is assessed for improvements and land. Parcels #156-05806-0521 and 156-05806-0543 are assessed for land only. It is the Petitioner's contention that the land should be valued from the industrial section of the Land Order.
8. The PTABOA changed the pricing schedule of the bulk plant building (Parcel #156-05806-0532) from GCI to GCK, but did not change the classification of the land from commercial to industrial. *M. Smith testimony.*
9. The bulk plant building was originally priced as industrial, the subject parcels are located in an industrial park, and the land classification is based on use. The Tippecanoe County Land Order has commercial and industrial pricing in the same area as the subjects. Other areas of the state have classified bulk plants as industrial rather than commercial. *M. Smith testimony.*
10. The Farabee Industrial Park is industrial in name only. There is no industry within the park nor is the park zoned industrial. The park contains warehouses, garages and mom and pop shops. The subject parcels are surrounded by commercial properties. No wholesale distributors receive industrial pricing because nothing is manufactured on the premises. *Lahrman testimony.*
11. Usually the basis for industrial pricing is larger tracts of land and this is a small tract, therefore, commercial pricing is appropriate. *Payne testimony.*

12. The GCI pricing originally assigned to the bulk plant does not mean the use is industrial because commercial warehousing is only priced from the GCI schedule. The pricing schedule may have changed for the subject building, but the pricing code of the land has never changed. *G. Smith testimony.*

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 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 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 Board, however, 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 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.

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18. The Petitioner opines that the land should be valued as industrial lands and not commercial lands. Mr. M. Smith submitted highlighted sections from 50 IAC 2.2 and the Indiana Code to support this position.
19. For the 1995 reassessment, the county land valuation commissions 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 Board. 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 Board decided the principal that sales data could serve as 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.

20. 50 IAC 2.2-4-1(b) states in part, “the commission shall establish base rates that reflect the January 1, 1991, value of residential, agricultural homesite, commercial and industrial land.”
21. 50 IAC 2.2-4-17(a) states, “The procedure for valuing commercial and industrial acreage tracts is similar to the valuation methods for other types of land. However, sales information on existing business properties is less reliable and less available. The commission must draw on the expertise of its members to establish the basis of valuing these types of tracts. The commission must determine general geographic areas that can be delineated based on characteristics that distinguish them from other areas. This delineation is normally based on such things as zoning, major roads or streets, natural geographic features like waterways or lakes, and the availability of certain modes of transportation. These geographic areas are the basis for establishing land values, as well as reporting the values to the state board of tax commissioners.”
22. Before applying the evidence to reduce the contested assessment, the Appeals Division must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.
23. The Petitioner submitted a copy of Ind. Code § 6-1.1-31-6(a), (b) and (c), Bases for classification of real property – Instructions for assessment. It states in part, “With respect to the assessment of real property, the rules of the state board of tax commissioners shall provide for: (1) The classification of land on the basis of:
 - (i) Acreage;
 - (ii) Lots;
 - (iii) Size;
 - (iv) Location;
 - (v) Use;

- (vi) Productivity or earning capacity;
 - (vii) Applicable zoning provisions;
 - (viii) Accessibility to highways, sewers, and other public services or facilities;
and
 - (ix) Any other factor that the board determines by rule is just and proper.
24. Mr. M. Smith highlighted two (2) out of the nine (9) criteria that he considered the most important, those being location and use. In doing so, Mr. M. Smith ignores the other considerations giving no explanation as to why those considerations are less important or less of a factor than the ones he chose to highlight.
25. In addition, Mr. M. Smith submitted a copy of 50 IAC 2.2-1-45 which defined “Property class” to mean, “a division of like properties generally defined by statute and generally based upon present use.” A review of an Indiana Commercial & Industrial Property Record Card shows that “property class” is divided into four (4) categories or numbering systems, namely: (1) 200 series – Mineral, (2) 300 Series – Industrial, (3) 400 Series – Commercial and (4) Residential. The “property class” number indicates the use of the property. For examples, 411 - Hotels or 465 - Commercial Warehouses.
26. The County testified that the properties surrounding the parcels under review are all commercial entities and are valued from the same section of the Land Order as the parcels under review. Mr. M. Smith does not present any evidence to show that properties within the same area are valued any differently than the subjects.
27. As stated in Conclusions of Law ¶¶9, 10, and 11, it is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. Taxpayers are expected to make factual presentations to the State Board regarding alleged errors in assessment. These presentations should both outline the alleged errors and support the allegations with evidence. ”Allegations, unsupported by factual evidence, remain mere allegations. The

State Board is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. 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.

28. The Petitioner failed to identify any similarly situated properties to the contested properties and failed to show that the contested properties were being treated differently than those of the similarly situated. No evidence was presented to show that any of the properties within the same geographic area as those of the subject properties were being treated differently than any other commercial properties in the immediate area. Mr. M. Smith's assertion that other bulk plants throughout the state have had their land classifications changed from commercial to industrial is mere speculation. Mr. M. Smith failed to present any evidence in support of this statement. Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
29. 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).
30. For all the reasons set forth above, the Petitioner failed to show that the land was incorrectly valued by the local assessing officials. No changes are made in the assessments as a result of this issue.

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