STATE OF INDIANA
Board of Tax Review

STEWART I COHN,	)	On Appeal from the Hamilton County
	)	Property Tax Assessment Board
Petitioner,	)	of Appeals
	)	
v.	)	Petition for Review of Assessment, Form 131
	)	Petition No. 29-003-95-1-5-00419
HAMILTON COUNTY PROPERTY TAX	)	Parcel No. 1713090002002000
ASSESSMENT BOARD OF APPEALS	)	
And CLAY TOWNSHIP ASSESSOR,	)	
	)	
Respondents.	)	

Petitioner Representative: Landman & Beatty
By: Ms. Shelia Murray
1150 Market Square Center
151 N. Delaware
Indianapolis, Indiana 46204

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 land value is excessive.
2. Whether a seventy percent (70%) negative influence factor should be applied to the 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, Mr. James Beatty, Landman & Beatty, on behalf of the Stewart I. Cohn (Petitioner), filed a petition requesting a review by the State Board. The Form 131 petition was filed on March 11, 1997. The Hamilton County Board of Review's final Determination was dated March 7, 1997.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on June 16, 1999 before Hearing Officer Dalene McMillen. Testimony and exhibits were received into evidence. Ms. Shelia Murray represented the Petitioner. Ms. Lori Harmon represented Hamilton County ("County Board").

4. At the hearing, the following documents were made part of the record and labeled as Board Exhibits:

   Board Exhibit A-copy of the Form 131 petition; and
   Board Exhibit B-Form 117, Notice of Hearing on Petition.

5. At the hearing, the Petitioner submitted the following documents:

   Petitioner's Exhibit 1-an amendment to the purchase agreement on the subject lot dated March 11, 1998;
   Petitioner's Exhibit 2-copy of 50 IAC 2.2-4-13 (d), Rule 4 page 19;.
   Petitioner's Exhibit 3-copy of page 8 of 30 of the Clay Township, Hamilton County Land Valuation Order;
   Petitioner's Exhibit 4-copy of page 11 of 30 of the Clay Township, Hamilton County Land Valuation Order;
   Petitioner's Exhibit 5-copy of Nancy Meek's 1995 property record card (PRC);
   Petitioner's Exhibit 6-copy of Glen Burk's 1995 PRC;

Petitioner's Exhibit 7-copy of Henry McLimore's 1995 PRC;
Petitioner's Exhibit 8-copy of William Dobbs's 1995 PRC;
Petitioner's Exhibit 9-copy of the purchase agreement between Stewart Cohn and 106th Street Development Inc. dated August 14, 1992.

6. At the hearing, the Respondent submitted the following documents:
Respondent's Exhibit 1-includes (a) Hamilton County Assessor's response to the Form 131 petition; (b) the Hamilton County Field Appraiser's worksheet on the subject lot; (c) copy of the plat map of the subject area with land values; (d) an aerial photograph of the subject area; (e) copy of page 8 of 30 of the Clay Township, Hamilton County Land Valuation Order; (f) the County Land Valuation Commission summary report for Coppergate; and (g) two aerial photographs of the subject lot with the calculations of pricing the subject lot on a front foot basis.

7. The Petitioner's property is located at 10566 Coppergate, Carmel, Indiana 46032, in Clay Township in Hamilton County.

8. The Hearing Officer did not view the property.

Issues 1 and 2-Land and Negative Influence Factor

9. At the hearing Ms. Murray testified to the following:
(a) The Petitioner purchased the subject lot in August of 1992 for $92,500.
(b) The subject property is undeveloped and has no water or sewage hook-up. The parcel is more than one acre. The County Board site valued the subject lot.
(c) The Petitioner is requesting the land receive a negative seventy percent (-70%) influence factor for being vacant land and similar to commercial useable undeveloped land.
(d) There are no guidelines for establishing influence factors to the land.

(e) According to 50 IAC 2.2-4-13 (d), residential acreage parcels containing more than one acre, with no dwelling can be priced as excess acreage. The Hamilton County Land Order excess acreage ranges from $800 to $10,000.

(f) The subject lot was assessed in 1989 for $148 a front foot and given a negative thirty percent (-30%) influence factor for being undeveloped. In 1995 the lot was assessed for $540 a front foot and the property record card does not indicate the lot was given any negative influence factor for being undeveloped.

(g) The Petitioner submitted comparable properties within the subject subdivision that indicate the comparable properties were given a negative fifteen percent (15%) influence factor when the lot is undeveloped.

(h) The County Land Valuation Order calls for the lots within the subject subdivision to be priced on a front foot basis. The subject lot and lot 30 are priced using a site value.

(i) Hamilton County does not have any records on file to show how the land values were established for Clay Township for the 1995 County Land Valuation Order.

10. At the hearing Ms. Harmon testified to the following:

(a) The subject property has been fairly and uniformly assessed with other lots within the subject subdivision. The site value of the subject lot does fall within the County Land Valuation Order.

(b) The County did allow a negative fifteen percent (-15%) influence factor to the land when it is undeveloped.

(c) The county field appraiser's property record card shows in the memorandum section that the land of the subject property is to be changed to $114,000 site value when the lot is developed. The Respondent indicated that although the current property record card does not show the negative fifteen percent (-15%) influence factor for being undeveloped, the subject property is receiving the negative fifteen percent

(-15%) for being undeveloped. The calculation is as follows; developed lot value $114,000 minus negative fifteen percent (-15%) influence factor equals $96,900 undeveloped land value. At the beginning of the reassessment our computer system would not allow any influence factors on the property record card when the lot was site valued, so all the calculation were done manually, the computer system was later fixed so the influence factors would appear on the property record card.

(d) To further demonstrate the subject lot is valued fair and equitable, the lot located next door to the subject lot is a developed lot that is valued at $115,000. (Respondent's Exhibit 1)

(e) The subject lot was priced using the site value approach, due to being an irregular shape and this method is permissible according to the Regulation.

(f) If the subject lot was priced using the front foot method the lot would have been calculated as follows; effective frontage 233 feet and effective depth of 287 feet, the base rate is $540 and the depth factor is 1.08; multiply $540 by 1.08 equals $583 adjusted rate; multiply $583 by the effective frontage of 233 feet equals an extended value of $135,840. The County would have allowed the subject property a negative ten percent (-10%) influence factor for excess frontage and a negative fifteen percent (-15%) influence factor for undeveloped. The land would have been calculated as follows; $135,840 extended value multiplied by negative ten percent (-10%) and negative fifteen (-15%) influences factors for a true tax value of $101,880.

(g) The Metropolitan Indianapolis Board of Realtors (MIBOR) records indicated the subject property sold in June of 1998 for $130,000.

11. The Hearing Officer asked Ms. Murray the following questions:

Hearing Officer: Is the subject property zoned residential?
Ms. Murray: Yes.

Hearing Officer: Is any land in the subject neighborhood zoned commercial?
Ms. Murray: No.

Hearing Officer: Do you have any market analysis or appraisals on the subject property?
Ms. Murray: No.

Hearing Officer: Do you have any sales from 1991 and 1992 for the subject area to indicate the land value established by the Hamilton County Land Commission is inaccurate?
Ms. Murray: No.

12. The Hearing Officer asked Ms. Harmon the following questions:

Hearing Officer: Is the standard lot in the subject subdivision over an acre?
Ms. Harmon: Yes, the standard lot size is width 192 feet and length 290 feet.

Hearing Officer: Was the land value and standard lot size for the subject area established by the Hamilton County Land Commission?
Ms. Harmon: Yes, the land value was established by the Hamilton County Land Commission and approved by the State Board.

Hearing Officer: When the Hamilton County Land Commission established the land values for the subject area, did they use the sales from the subject area?
Ms. Harmon: Yes.

Hearing Officer: Did the Hamilton County Land Commission conduct a public hearing on the land values established for the 1995 reassessment?
Ms. Harmon: Yes.

Conclusions of Law

1. The petitioners are 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 Petitioners 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 taxpayers. *Joyce Sportswear Co. v. State Board of Tax Commissioners,* 684 N.E. 2d 1189, 1191 (Ind. Tax 1997), appeal dismissed. 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 of Tax Commissioners 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. Issue 1-Land Value

18. For the reasons set forth below, the State Board determines that the Petitioner cannot challenge the Land Order values by way of the Form 130/131 appeal process. Alternatively, the State Board determines that the Petitioner's evidence failed to demonstrate that the value assigned to the property by way of the Land Order is incorrect.

1. General principles of land valuation in Indiana.

19. Indiana's approximately 3 million land properties are valued on a mass appraisal basis.

20. The General Assembly has recognized that assessing officials cannot provide a commercial-grade/fee appraisal for every parcel in the State, but must instead rely on mass appraisal techniques commonly used by tax assessors throughout the United States. Ind. Code § 6-1.1-31-3(4) permits the use of "generally accepted practices of appraisers, including generally accepted property assessment valuation and mass appraisal principles and practices."

21. The Tax Court has similarly recognized the necessity of mass appraisal practices (and some of their flaws). *See King Industrial Corp. v. State Board of Tax Commissioners*, 699 N.E. 2d 338, 343, n. 4 (Ind. Tax 1998)(The use of land classifications are commonly used to save time and money when assessing property).

22. Land valuation – through land order – is the one part of Indiana's assessment system that actually approximates fair market valuation through the use of sales data.

23. Ind. Code § 6-1.1-31-6(a)(1) states that land values shall be classified for assessment purposes based on acreage, lots, size, location, use, productivity or earning capacity, applicable zoning provisions, accessibility, and any other factor that the State Board determines by rule is just and proper.

24. For the 1995 reassessment, the county land valuation commission 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 a 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. The county land valuation committee then held a public hearing on the land order values. Ind. Code § 6-1.1-4-13.6(e)(West 1989); *See Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d 1058, 1061 (Ind. Tax 1993).

25. The State Board reviewed the land orders established by the county land valuation committee, and could make any modifications deemed necessary for uniformity and equality purposes. Ind. Code § 6-1.1-4-13.6(f)(West 1989); *Mahan*, 622 N.E. 2d at 1061. After the State Board completed its review of the county land order, the State Board was required to give notice to the affected assessors. In turn, only county and township assessors could appeal the State Board's determination of values. *Id* at 4-13.6(g); *Poracky v. State Board of Tax Commissioners*, 635 N.E. 2d 235, 239 (Ind. Tax 1994)("An appeal of a land order, just as an appeal of a judgment or order, must follow the prescribed procedural mandates."). The final stage in the process provided for dissemination of the State Board's final decision on the land order: "[t]he county assessor shall notify all township assessors in the county of the values as determined by the commission and as modified by the [State Board] on review or

appeal. Township assessors shall use the values as determined by the commission and modified by the State Board in making assessments." Ind. Code § 6-1.1-4-13.6(h).

26. Agricultural land was valued at $495 per acre with adjustments permitted for such things as soil productivity and influence factors. 50 IAC 2.2-5-6 and –7.

2. Taxpayers must challenge Land Order values in a timely and appropriate manner; Namely: They must challenge the values at the local level before the State Board adopts the County Land Order.

27. The Tax Court has consistently held that taxpayers must follow the required appeals procedures when challenging property tax assessments. *The Kent Company v. State Board of Tax Commissioners*, 685 N.E. 2d 1156, 1158 (Ind. Tax 1997)("The law is well-settled that a taxpayer challenging a property tax assessment must use the appropriate means of doing so."); *Williams Industries v. State Board of Tax Commissioners*, 648 N.E. 2d 713, 718 (Ind. Tax 1995)(The legislature has created specific appeal procedures by which to challenge assessments, and taxpayers must comply with the statutory requirements by filing the proper petitions in a timely manner).

28. As previously stated, Ind. Code § 6-1.1-4-13.6(e)(West 1989) provided for a public hearing held by the local officials regarding values contained within the county land order. Once the public hearing was held, the only statutory means for requesting a change or challenging a land order was an administrative appeal to the State Board *by the county and township assessors*. Ind. Code § 6-1.1-4-13.6(g)(West 1989); *Poracky*, 635 N.E. 2d at 238 & 39.

29. Taxpayers did not have the right to challenge the values established by the county land orders after the county land commission made a determination on them.

30. The State Board is aware of Tax Court decisions that go against limiting taxpayers' rights to challenge land order values at the State administrative level. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365 (Ind. Tax 1998).

31. Moreover, the Tax Court implicitly found that Ind. Code § 6-1.1-4-13.6 (West 1989) violated the requirements of due course of law (due process) because the statute did not provide for taxpayer hearings prior to the State Board's "final say" on land values. *Town of St. John III*, 690 N.E. 2d at 373, n. 2, & 384, n. 31. (It is believed that the Tax Court also found that the amended version of Ind. Code § 6-1.1-4-13.6, effective 1998, remedied the Court's due process concerns. *Town of St. John III,* 690 N.E. 2d at 384, n. 31).

32. The State Board respectfully concludes that *Town of St. John V* changed the landscape regarding the issue of taxpayers' entitlement to challenge land order values.

33. Article X, § 1, of the Indiana Constitution was the basis of the Tax Court's ruling that a taxpayer may challenge his land order valuation in an individual appeal. *Zakutansky*, 691 N.E. 2d at 1368.

34. The Tax Court's basis for its finding was reversed by the Supreme Court in *Town of St. John V.* The Property Taxation Clause (Article X, § 1, of the Indiana Constitution) "[R]equires . . . a system of assessment and taxation characterized by uniformity, equality, and just valuation, but the Clause does not require absolute and precise exactitude as to the uniformity and equality of each individual assessment. *The tax system must also assure that individual taxpayers have a reasonable opportunity to challenge whether the system prescribed by the statute and regulations was properly applied to individual assessments, but the Clause does not create a personal, substantive right of*

uniformity and equality." *Town of St. John V*, 702 N.E. 2d at 1040. (Emphasis added).

35. Further, the Tax Court's finding that the assessment system violated the Due Course of Law Clause in *Town of St. John III* was expressly nullified by the Supreme Court in *Town of St. John V,* 702 N.E. 2d at 1040, n. 8.

36. Accordingly, a taxpayer is not constitutionally entitled to file an appeal to the State challenging the values established by a promulgated land order on an individual appeal basis. Taxpayers may, however, administratively appeal the application of the land order to his assessment (i.e., the taxpayer's property should have been valued from one section of the land order rather than another).

37. Furthermore, the statutes do not give taxpayers the right to challenge land order valuation.

38. Indiana courts have consistently held that a statute does not require interpretation unless a statute is unclear and ambiguous. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189 (Ind. Tax 1997). Unambiguous language within a statute cannot be construed in a manner that expands or limits its function. *Cooper Industries, Inc. v. Indiana Department of State Revenue*, 673 N.E. 2d 1209 (Ind. Tax 1996). Words, unless statutorily defined, are to be given their plain, ordinary, and usual meaning given in the dictionary. *Knauf Fiber Glass, GmbH v. State Board of Tax Commissioners*, 629 N.E. 2d 959 (Ind. Tax 1994).

39. It is just as important to recognize what a statute does not say as it is to recognize what a statute does say. *Peele v. Gillespie*, 658 N.E. 2d 954 (Ind. App. 1995); *Million v. State*, 646 N.E. 2d 998 (Ind. App. 1995). Concerning land orders, the statute clearly said that county and township assessors could appeal

to the State Board. The statute does not give taxpayers the right to challenge land order values after the public hearing at the county level.

40. Although statutory construction is a judicial task, it is also the task of the administrative agency charged with administering the statute. *Riley at Jackson Remonstrance Group v. State Board of Tax Commissioners*, 663 N.E. 2d 802 (Ind. Tax 1996); *Auburn Foundry, Inc. v. State Board of Tax Commissioners*, 628 N.E. 2d 1260 (Ind. Tax 1994).

41. Time after time, the General Assembly has shown that it knows how to enact legislation that gives taxpayers the right to review by the State Board. For example: (1) the State Board reviews applications for Enterprise Zone Inventory Credits and issues a determination regarding eligibility under Ind. Code § 6-1.1-20.8-3, (2) the State Board reviews the denial of property tax exemptions under Ind. Code § 6-1.1-11-8, (3) the State Board reviews the denial of a deduction for rehabilitated residential property under Ind. Code § 6-1.1-12-25.5, (4) the State Board reviews the denial of a deduction for resource recovery systems under Ind. Code § 6-1.1-12-28.5, and the State Board reviews the denial of a deduction for coal conversion systems, hydroelectric power devices, and geothermal energy heating/cooling devices under Ind. Code § 6-1.1-12-35.

42. For matters concerning Enterprise Zone Inventory Credits, rehabilitated residential property, coal conversion systems, and the like, the General Assembly quite explicitly provided for an administrative review by the State. The General Assembly did not, however, provide for State review by taxpayers challenging land order valuations. Such silence is meaningful. To repeat, in construing a statute, it is just as important to recognize what the statute does not say as it is to recognize what the statute does say. The statutes regarding land orders do not provide for a taxpayer appeal to the State Board regarding land order values. If the General Assembly meant for such an appeal to be available to taxpayers, it could easily have said so in clear terms.

43. Further, it is absurd to conclude that the General Assembly somehow forgot to provide for a taxpayer's right to appeal land order values when it explicitly provided for such an appeal to the State Board by county and township assessors. It is just as absurd to conclude that the General Assembly chose to implicitly and obliquely provide for a taxpayer's appeal to the State Board regarding land order valuation, when the General Assembly explicitly and clearly provided for such an appeal by the local assessors. Statutes are not construed in a manner that requires absurd results. *Matonovich v. State Board of Tax Commissioners*, 705 N.E. 2d 1093 (Ind. Tax 1999). Again, if the General Assembly meant for such an appeal to be available to taxpayers, it could have easily said so in clear terms. It did not.

44. The absence of explicit or plausible implicit appeal rights is easily explained. Once a land order is promulgated, every parcel of property in the county is assessed according to it. Such "across the board" application results in uniform land value. If individual taxpayers are able to question valuation on an individual appeal basis, uniformity ceases to exist. The State Board has an obligation to ensure uniform assessments on a *mass appraisal* basis.

45. The State Board recognizes the Form 130/131 petition process provided for by Ind. Code §§ 6-1.1-15-1 through –4, which is "triggered" by a local assessment. Though the General Assembly has provided for individual assessment appeals, neither the Constitution nor the statutes creates entitlement to make every challenge desired.

46. Prohibiting taxpayers from challenging certain aspects of the assessment system is not peculiar, and the Tax Court recognizes that taxpayers can not challenge every aspect of the assessment system in individual appeals, i.e., taxpayers can not challenge base rates provided by the cost schedules in the Regulation. *Town*

of St. John III, 690 N. E. 2d at 374; *Dawkins v. State Board of Tax Commissioners,* 659 N.E. 2d 706, 709 (Ind. Tax 1995).

47. Instead, the challenges that can be made by way of the statutory Form 130/131 administrative appeal process are limited or qualified by Ind. Code § 6-1.1-4-13.6(g)(West 1989). Only by reading the statutes in such a way – taxpayers can challenge the application of the land order to individual assessments, but cannot challenge the underlying values of the same – is a harmonious statutory scheme preserved.

3. Properties with peculiar attributes may receive land value adjustments by way of influence factors.

48. Though taxpayers are not entitled to challenge land order values, they are entitled to receive adjustments to land values if their properties posses peculiar attributes that do not allow them to be lumped with surrounding properties for land value purposes. Such adjustments, either upward or downward adjustments, can be made by way of influence factors applied to the property. *Phelps Dodge v. State Board of Tax Commissioners,* 705 N.E. 2d 1099, 1105 (Ind. Tax 1999).

4. The Petitioners failed to demonstrate that the value assigned to the property by way of the Land Order is incorrect.

49. Assuming *arguendo* that taxpayers are entitled to challenge land order values in individual appeals, they must present probative evidence to make a prima facie case that the assessment is incorrect. The Petitioner has failed to make such a case in this appeal.

50. Ms. Murray testified that the price of the subject lot increased from $148 per front foot with a negative thirty percent (30%) influence factor to $540 per front foot

with no adjustment for being undeveloped. Ms. Murray stated that the County Land Valuation Order calls for the subject subdivision to valued on a front foot basis, but the subject lot and lot #30 are valued on a site basis. Ms. Murray also stated that Hamilton County does not have any records on file to show how the land values were established.

51. Repeating, 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.

52. The Petitioner's testimony and documentation did not contradict the value established by the Hamilton County Land Commission for the 1995 assessment. The County Land Valuation Order references a summary report for this subdivision showing a base rate per front foot and a value range for the sites. The Petitioner's assessment is within that range.

53. Value is based on a mass appraisal system. Individuals cannot argue that their assessment is wrong based upon individual evidence. The Petitioner did identify similarly situated properties, but did not establish disparate treatment between the contested property and the other similarly situated properties.

54. For all reasons set forth above, the Petitioner failed to meet his burden in this appeal. Accordingly, the State Board declines to change the assessment as a result of this issue.

E. Issue 2-Negative Influence Factor

55. Pursuant to 50 IAC 2.2-4-1(12) "influence factor" is a multiplier that is applied to the value of land to account for characteristics of particular parcel of land that are

peculiar to that parcel. The factor may be positive or negative and is expressed as a percentage.

56. Ms. Murray's testimony indicates the Petitioner is requesting a negative seventy percent (-70%) influence factor to the land, because the land is undeveloped. The requested negative seventy percent (-70%) influence factor is the amount that commercial primary land is reduced when the land is classified as useable undeveloped. Ms. Murray also testified the current property record card does not indicate the Petitioner is receiving any negative influence factor for being undeveloped.

57. Ms. Harmon testified the county currently gives a negative fifteen percent (-15%) influence factor to undeveloped land. Ms. Harmon further testified the subject property would be site valued at $114,000 if it was developed. But due to computer problems the subject property was given the negative fifteen percent (-15%) influence factor manually and the current true tax value of the land is $96,900, which is the $114,000 minus negative fifteen percent (-15%) influence factor for being undeveloped.

58. Through the testimony and evidence, it is determined the subject lot is zoned residential and not commercial, therefore the commercial land classification and negative influence factor for useable undeveloped would not be appropriate for the subject lot.

59. To prevail in an appeal for the application of a negative influence factor, the Petitioner must present "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor at the administrative level. Influence factors may be quantified by the use of market data in order to effectively reflect the actual deviation from the market value assigned a piece of property through the Land Order." *Phelps Dodge v. State Board of Tax Commissioners,* 705 N.E. 2d 1099 (Ind. Tax 1999).

60. For all the reasons set forth above, the Petitioner failed to meet his burden in this appeal. Accordingly, the State Board declines to change the influence factor.

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