

REPRESENTATIVES FOR PETITIONER:

Milo Smith
Tax Consultants

REPRESENTATIVES FOR RESPONDENT:

Jefferson County:
Gail Sims
Elbert Hinds

Madison Township:
Don Thompson

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

TKC PROPERTIES, LLC,)	Petition for Review of Assessment,
)	Form 131
)	Petition Nos.: 39-011-99-1-4-00005
)	
Petitioner)	
)	
)	
)	County: Jefferson
)	
v.)	Township: Madison
)	
JEFFERSON COUNTY)	Parcel No.: 0110116200
PROPERTY TAX ASSESSMENT)	
BOARD OF APPEALS,)	
)	
Respondent)	Assessment Year: 1999

Appeal from the Final Determination of
Jefferson County Property Tax Assessment Board of Appeals

[October 9, 2002]

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. The issue presented for consideration by the Board is restated as:
Whether the land is priced correctly

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, Milo Smith of Tax Consultant Inc., filed a Form 131 on behalf of K.P. Oil, Inc. ("Petitioner") petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on October 5, 1999. The Jefferson County Property Tax Assessment Board of Appeals ("PTABOA") assessment determination is dated September 8, 1999.

Hearing Facts and Other Matters of Record

3. The Petitioner and the Respondents exchanged lists of exhibits and witnesses prior to the hearing.
4. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on June 13, 2002 at Madison, Indiana before Paul Stultz, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

5. The following persons were present at the hearing:

For the Petitioner:

Milo Smith, Tax Consultant Inc.

For the Respondent:

Gail Sims, Jefferson County Assessor

Elbert Hinds, President PTABOA

Don Thompson, Madison Township Assessor

6. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Milo Smith

For the Respondent:

Gail Sims

Elbert Hinds

Don Thompson

7. The Form 131 petition was made a part of the record and labeled as Board Exhibit 1. Notice of Hearing on Petition is labeled Board Exhibit 2.

8. The following exhibits were presented and are enclosed with K. P. Oil Inc. #39-011-96-1-4-00005A:

For the Petitioner:

Petitioner Exhibit A - Discloser Statement

Petitioner Exhibit B - Package of documents containing the following:

1. Two page statement of list of exhibits, summary of testimony, and conclusion
2. Copy of Jefferson County Land Valuation Order, page 7 of 13
3. Copy of Final Assessment Determination for subject property

4. Copy of Petition for rehearing with attached map
5. Copy of one page statement by Mr. Smith
6. Copy of letter dated December 23, 1998 from Tim Brooks, rehearing denial
7. Copy of letter dated February 9, 1999 from Tim Brooks, rehearing denial
8. Copy of IC 6-1.1-15-5
9. Copy of Final Determination for Petition # 39-011-1-4-0004, Steer #2, Inc.
10. Copy of 50 IAC 4.2-3-12(e)

For the Respondent, please note this evidence is with Little Champ Oil appeal #39-011-96-1-4-00004 :

Respondent Exhibit A - Plat map of subject property

Respondent Exhibit B - Plat map of comparable residential property

Respondent Exhibit C - Plat map of comparable residential property

Respondent Exhibit D - Three page statement of Respondent's position

9. Ms. Sims requested an extension of time to submit additional exhibits. Ms. Sims was granted five days to submit copies of the following exhibit and did so on June 20, 2002. The evidence is made a part of the record and labeled Respondent Exhibit E. Respondent Exhibit E is a package of documents containing the following, please note this evidence is with Little Champ Oil appeal #39-011-96-1-4-00004:

1. Cover sheet listing exhibits herewith
2. Copy of Jefferson County Land Evaluation Order, pages 2 and 3 of 13
3. Sample sales on Clifty Drive on the front foot basis
4. Copy of 1959 plat map of Clifty Drive
5. Copy of sheet showing refunds given to KP Oil, Funchs, Little Champ, Steer II, Kocolene Oil, and Craig with five pages of supporting documents
6. Copy of 50 IAC 2.2-4-17(c), rule 4 page 23
7. Copy of 50 IAC 2.2-4-6 (1), rule 4 page 5
8. Copy of 50 IAC 2.2-4-17 (a), rule 4 page 22
9. Copy of letter from J. Cornwell to the Jefferson County Council dated May 2, 1994

10. Copy of letter from M. Lytle to the Jefferson County Assessors Office dated January 31, 2001
 11. Copy of Final Assessment Determination for Petition #37-007-93-OCI-00022, Madison Heights Apartments.
 12. Copy of the Version A- Real Property Assessment Guideline chapter 2, page 11
 13. Three page copy of memorandum from State Tax Board to County Assessors dated February 19, 1991
 14. 42 photos of property located on Clifty Drive, Madison, Indiana
 15. Copy of four sales disclosures of property located on Clifty Drive, Madison, Indiana
 16. Copy of subject Property Record Card
 17. Copy of letter from Ms. Sims to Mr. Smith not dated with four stipulation agreements, unsigned
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10. Mr. Smith requested permission to present a Tax Court case subsequent to the hearing. A letter and a copy of the Tax Court case received July 15, 2002 are made a part of the record and labeled Petitioner's Exhibit C and D, respectively. Note this evidence is with Little Champ Oil appeal #39-011-96-1-4-00004
 11. The subject property is located at 431 Clifty Drive, Madison, Madison Township, Jefferson County.
 12. The Administrative Law Judge ("ALJ") did not view the subject property.
 13. At the hearing, the parties agreed the years under appeal are 1996, 1997, and 1998. The parties agreed the values of record for the three years under appeal are:
Land - \$30,230
Improvements - \$1,800

Jurisdictional Framework

14. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
15. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

Indiana's Property Tax System

16. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
17. Indiana has established a mass assessment system through statutes and regulations designed to assess property according to what is termed "True Tax Value." See Ind. Code § 6-1.1-31, and 50 Ind. Admin. Code 2.2.
18. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
19. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property's market value. See *Town of St. John V*, 702 N.E. 2d.
20. The Indiana Supreme Court has said that the Indiana Constitution "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", nor does it "mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant", but that the proper inquiry in tax appeals is "whether the system prescribed by statute and

regulations was properly applied to individual assessments.” See *Town of St. John V*, 702 N.E. 2d.

21. Although the Supreme Court in the *St. John* case did declare the cost tables and certain subjective elements of the State’s regulations constitutionally infirm, it went on to make clear that assessment and appeals must continue to be determined under the existing rules until new regulations are in effect.
22. New assessment regulations have been promulgated, but are not effective for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

State Review and Petitioner’s Burden

23. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
24. The petitioner must submit ‘probative evidence’ that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm’rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]
25. The petitioner has a burden to present more than just ‘de minimis’ evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm’rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]
26. The petitioner must sufficiently explain the connection between the evidence and petitioner’s assertions in order for it to be considered material to the facts.

'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]

27. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).

28. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case' and, by a 'preponderance of the evidence' proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of Issues

ISSUE 1: Whether the land is priced correctly

29. The subject property was transferred from K.P. Oil to TKC Properties LLC for the 1999 assessment year.
30. Mr. Smith contends the local officials changed the assessed value of the subject land for 1999 from the value that was determined by the Board for 1995. Mr. Smith claimed that the local officials can only change the 1995 land value determined by the Board by appealing the 1995 determination to the Indiana Tax Court. He asserted that the local officials did not appeal the Board's 1995 determination. He opined the PTABOA could not change the assessment, in subsequent years, regarding the issue determined by the Board.
31. Ms. Sims contends that each tax year stands on its own.
32. Mr. Smith states that the subject platted lot on the south side of Clifty Drive should be valued at \$24,750 per acre to be equal and uniform with the comparable non-platted lots on the north side of Clifty Drive.
33. Ms. Sims states that the subject property should be valued on a front foot bases with a base rate of \$900 per front foot ("ff") with a negative thirty percent influence factor. This is how the property was originally assessed for 1995. Ms. Sims claims the Jefferson County Land Valuation Order (Land Order) requires the subject lot to be valued on a front foot basis.
34. Ms. Sims opines the subject property is located on a commercial strip known as the Madison Hilltop and is the most valuable property in the county. Ms. Sims contends the result of the Board's action for 1995 made the value of the subject commercial property comparable to nearby residential property, thereby making the Board's determination an error.

35. Ms. Sims acknowledged that the Jefferson County Land Committee assumed the north side of Clifty Drive was platted but (in fact) it is not. Ms. Sims, as Chairman of the Land Committee, stated the Land Committee did not intend to value the north side of Clifty Drive based on the summary sheet per the Land Order at \$24,750 maximum per acre.

36. The applicable rules governing this Issue are:

50 IAC 2.2-4-2

(a) Each county shall establish a county land valuation commission to determine the value of all classes of residential, commercial, industrial, and agricultural homesites... (b) ... Before January 1, 1993, the commission shall submit the values it finally determines to the state board of tax commissioners.

50 IAC 2.2-4-3(d)

In making land assessments, the township assessors shall use the values as finally determined by the state board.

37. Evidence and testimony considered particularly relevant to this determination include the following:

A. The Board's Final Assessment Determination for petition #39-011-95-1-4-00005 concerns the same lot and issue for the 1995 assessment year. These findings state that the subject parcel was not platted and to follow the Land Order should be priced at no higher than \$24,750 per acre. The Property Record Card ("PRC") describes the subject lot as platted. The subject lot is incorrectly described as not platted in the findings above.

(Petitioner's Ex. B, tab 2). (see the subject's PRC)

B. The copy of page 7 of 13 of the Jefferson County Land Valuation Order. This exhibit states that commercial / industrial platted lots are valued as high as \$900 per ff. (Petitioner's Ex. B, tab 1)

- C. Petitioner's testimony that the Land Order must be followed.
(Smith testimony)
- D. Petitioner's position that the platted lots on the south side of Clifty Drive should be valued at \$24,750 per acre to be equal and uniform with the non-platted lots on the north side of Clifty Drive.
(Smith testimony)
- E. Respondent Exhibits B and C – plat maps of four nearby residential property with Real Property Cards. These exhibits demonstrate that the Board valued the subject property similar to nearby residential property. Ms. Sims testified that the Boards action valued the parcels that were appealed similar to the presented residential plots. (Sims testimony)
- F. Respondent's forty two (42) photos of properties located on the north and south side of Clifty Drive between Wilson Avenue and Michigan Road show that property on both sides of the street have similar characteristics. (Respondent Exhibit E)
- G. Respondent's position that the non-platted lots on the north side of Clifty Drive should be valued at a base rate of \$900 per ff with a negative thirty percent influence factor. (Sims testimony)
- H. Lots on the north side of Clifty Drive are not platted. Lots on the south side of Clifty Drive are platted. This is true for the area of Clifty Drive starting at Wilson Avenue going east to Michigan Road.

Analysis of ISSUE 1

- 38. The Board has adjudicated several appeals regarding land value in the subject area referred to as the Madison Hilltop.
- 39. The Board finds the background of this appeal significant. The Board in prior appeals; one by the prior owner K. P. Oil (#39-011-95-1-4-00005), James & Mary Craig (#39-011-99-1-4-00002), and Steer (#39-011-00-1-4-00004); determined

that the Land Order required that the subject lots are to be priced at no more than \$24,750 per acre.

40. The Board based its determination on the 1995 appeal for the subject lot by describing the subject lot as not platted. As noted, defining the subject lot as not platted was an error. The subject lot is platted.
41. Mr. Smith claimed that the local officials could not change the assessed value in subsequent years regarding issues determined by the Board. He supported his claim with a copy of 50 IAC 4.2-3-12(e) and a copy of the Indiana Tax Court case *Walker Manufacturing Co. v. Department of Local Government Finance*. 50 IAC 4.2-3-12(e) discusses filing a Form 133 petition when the Board made the determination. The above Tax Court case discusses the fallacy of a Petitioner re-filing Form 133 petitions due to missing the court filing deadline of 45 days in the filing of an appeal to Tax Court regarding the original Form 133 petitions. Mr. Smith failed to establish a connection between the two pieces of evidence used to support his argument. This evidence is not relevant and cannot support his claim.
42. Ms. Sims testified that each tax year stands by itself. The Indiana Tax Court agrees with her. "In Indiana, each tax year is separate and distinct." *Williams Industries v. State Board of Tax Commissioners*, 648 N.E. 2d 713 (Ind. Tax 1995).
43. Local officials have been creative in developing methods to circumvent the Land Order they created. One method was to use an equalization procedure to value parcels on the north side of Clifty Drive. The current position of the Board to this approach can be found in the written findings for James and Mary Craig Petition # 39-011-99-1-4-00002 issued October 18, 2000 (Board Exhibit 3). The equalization procedural used to value the parcels on the north side of Clifty Drive was addressed in Conclusions of Law ¶¶33 through ¶¶43 of said appeal. The Board determined in the said appeal that the PTABOA did not follow the correct

procedures to issue an equalization order for the property under discussion. Therefore, the Board determined that the steps taken by the township assessor to assess the non-platted lots on the north side of Clifty at \$900 per ff by using a positive influence factor, under the direction of the PTABOA, were not sustainable.

44. Petitioner Exhibit B (tab 1), copy of page 7 of 13 of the Land Order is very persuasive and convincing. In clear terms the Land Order states commercial / industrial platted lots are valued at a high value of \$900 per ff, commercial / industrial non-platted lots are valued at a high value of \$24,750 per acre. This is probative evidence.
45. Mr. Smith testified that the Land Order must be followed. (Smith testimony). The Board agrees that the Land Order should be followed.
46. The evidence demonstrates that following the Land Order values commercial lots on the north side of Clifty Drive at values similar for nearby residential lots. The evidence indicates that there are similarities between lots on the north side of Clifty Drive with lots on the south side of Clifty Drive. (Respondent Exhibits B, C (plat maps) and E (42 photos)). This evidence is meaningful and persuasive.
47. Both parties presented testimony and agree to two (2) facts. One, that lots on the north side of Clifty Drive between Wilson Avenue and Michigan Road are not platted, and that lots on the south side of Clifty Drive in the identical area are platted. Two, that the Land Order has different values and methods to value platted and non-platted lots in said area. (Smith & Sims testimony)
48. Both parties, in one instance, argue the Land Order should be followed, and in the other instance, argue to deviate from the Land Order to maintain equality and uniformity between lots on both sides of Clifty Drive that the parties agree are comparable. The Petitioner and the Respondent exchange arguments depending on what side of Clifty Drive is under review. (Smith & Sims testimony)

49. A major road or street, such as Clifty Drive, can be used to delineate one neighborhood from another. 50 IAC 2.2-4-4(c) states "... the commission shall delineate general geographic areas, subdivisions, or neighborhoods based on a characteristics that distinguish a particular geographic area, subdivision, or neighborhood from the surrounding area. The basis for delineation are such things as the following:

- (1) Range of improvement values
- (2) Zoning
- (3) Restrictions on land use
- (4) Natural geographic features, such as waterways, lakes, and *major roads, or streets.*

These boundaries are included in the commission's report to the state board of tax commissioners."

50. No one disputed Ms. Sims' interpretation of what the "intent" of the Jefferson County Land Committee was at the time the Land Order was written.

51. The Board will not give weight to Ms. Sims testimony concerning the "intent" of the land committee. A determination of intent is not appropriate or required in this appeal. The Board will give substantial weight to the final product of the land committee, the Land Order.

52. The Board can afford little weight to the testimony and exhibits presented by Ms. Sims regarding 50 IAC 2.2-4-6 and 2.2-4-17. These sections of the IAC are addressing procedures used to develop a Land Order. The development of the Land Order is not in dispute. The issue is whether the local officials are properly implementing the Land Order. 50 IAC 2.2-4-17(c)(8), regarding influence factors, is to be applied to a particular lot in a neighborhood to account for variations from the norm. The norm being the base lot used to value the lots in that neighborhood. An influence factor is not to be applied to a whole neighborhood, but is to be applied to a particular lot within a neighborhood. For these reasons,

this evidence was not considered probative to this issue. (Sims testimony and Respondent Exhibit E, pages 8, 9, and 10)

53. The Petitioner's evidence and testimony supports valuing the lot based on the Land Order. The same Land Order requires platted lots to be valued at a high of \$900 per ff. The subject lot is platted with a description of lots 2 and 3 Highland 11-25-2.1. There is no testimony or evidence in the record to dispute using the high value of \$900 per ff. The Board determined the subject lot should be valued at \$900 per ff.
54. The Board determined that the Land Order is more persuasive evidence than the argument that the Land Order should not be followed to maintain equality and uniformity between lots on both sides of Clifty Drive. This is true regardless of whether the Petitioner or the Respondent is proposing the argument to deviate from the Land Order.
55. The Board determined in the Craig appeal (Board Exhibit 3) that the PTABOA did not follow the correct procedures to issue an equalization order for the property under discussion. The Board determined that the steps taken by the Township Assessor to assess the non-platted lots on the north side of Clifty at \$900 per ff by using a positive influence factor, under the direction of the PTABOA, were not sustainable.
56. The Board determined the Petitioner's attempts to equalize the platted lots on the south side of Clifty Drive with the non-platted lots on the north side of Clifty Drive must also fail.
57. 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. Taxpayers do not have the right to challenge the values established by the county land orders after the county land commission made a determination on them. The Board's rationale for this position

can be found in the written findings for Berry and Judy Stern petition #49-601-95-1-5-00001R ¶¶42 through 62 on pages 17 through 22 of 32.

58. The Board is aware that the position taken in this determination is opposite to the position taken in the 1995 appeal regarding the same lot. The Board finds error with the 1995 determination. One, the subject lot was identified as not platted when in fact the lot is platted. Two, it is an error in this instant to depart from the Land Order to maintain equality and uniformity between lots on both sides of Clifty Drive.
59. The Board finds no logical reason to perpetuate past errors. The Board is not obligated to perpetuate a past error and will not do so. Accordingly, there is no change in the assessment as a result of this issue.

Summary of Final Determination

Determination of ISSUE 1: *Whether the land is priced correctly*

60. The Petitioner did not meet the required burden and established a prima facie case by the preponderance of the evidence that the Land Order should not be followed. Accordingly, there is no change in the assessment as a result of this issue.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.