

**STATE OF INDIANA
Board of Tax Review**

VALU-LODGE OF FORT WAYNE & VINE GARDEN LIMITED)	On Appeal from the Allen County Property Tax Assessment Board of Appeals
)	
Petitioner,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition No. 02-073-00-1-4-00002
)	Parcel No. 80-0028-0094
ALLEN COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS And WASHINGTON TOWNSHIP ASSESSOR)	
)	
Respondents.)	

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State, having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

Whether a 66% land size adjustment should be re-applied to the property.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-3, the Petitioner filed a petition requesting a review by the State. The Property Tax Assessment Board of Appeals' (PTABOA) Final Determination was mailed on April 26, 2001. The Form 131 petition was filed on May 25, 2001.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was originally scheduled for November 20, 2001. The hearing was continued to December 5, 2001, because the PTABOA did not receive written notice of hearing. The hearing was again continued, to February 11, 2002, due to illness of the Petitioner's representative. On February 11, 2002, a hearing was held before Administrative Law Judge Joseph Stanford. Gregg DuCharme, of Integrity Tax Consulting, Inc., represented Valu-Lodge of Fort Wayne & Vine Garden Limited (Valu-Lodge). F. John Rogers (Attorney), Judith E.K. Dafforn, and Mike Ternet (County Assessor) represented the PTABOA. Jacquelyn K. Mahlock (Township Assessor) and Robin M. Thompson represented Washington Township.

4. At the hearing, the Form 131 petition was made part of the record and labeled Board's Ex. A. The hearing notices were labeled Board's Ex. B. In addition, the following exhibits were submitted to the State:
Petitioner's Ex. 1 – Land size chart.
Petitioner's Ex. 2 – Original 1998 property record card for subject property.
Petitioner's Ex. 3 – 1998 subject property record card after State determination.
Petitioner's Ex. 4 – 2000 subject property record card.
Petitioner's Ex. 5 – April 26, 2001 PTABOA Findings and Conclusions.
Petitioner's Ex. 6 – Second page of subject Notification of Final Assessment Determination (Form 115).

Respondent's Ex. 1 – 1995 Allen County Land Valuation Order.

Respondent's Ex. 2 – Memorandum in Support of Respondent.

5. The tax year under appeal is 2000. The assessed value under appeal is \$129,370 (land) and \$202,070 (improvements). The hearing officer did not view the property.
6. Mr. DuCharme contends that a 66% land size adjustment, which had been applied to the property prior to Valu-Lodge's complaint to the PTABOA and survived a 1999 State hearing, should be re-applied to the property. He argues that the issue was not part of the PTABOA hearing, therefore Valu-Lodge had no opportunity to respond locally to the removal of the adjustment.
7. The land size chart was developed by a previous Allen County assessor as a method of reducing the base rate of large parcels. For example, the subject parcel, which is approximately 6.37 acres, would be adjusted to 66% of its computed base rate. *Pet. Ex. 1*. The land size chart is not part of the county's land order. *DuCharme and Ternet testimony*.
8. Mr. DuCharme argues that, while the adjustment has been removed from some parcels, it is still applied to certain parcels. For example, a Holiday Inn across the street receives a 55% land size adjustment. He contends that the land size adjustment should be either applied consistently or removed from all parcels. Mr. DuCharme agrees that the manual does not support the adjustment, but argues that equity is needed.
9. Mr. Ternet agrees that the land size adjustment is inconsistently applied. Some townships in Allen County used the chart and some did not. In addition, the land size adjustment is applied inconsistently within townships. *Ternet testimony*.
10. When Mr. Ternet took office and first became aware that a land size adjustment had been applied to larger parcels, he initially decided to leave it alone because

the following reassessment would take care of it. However, reassessment was delayed. Mr. Ternet then thought it would be best to remove the adjustments. But due to the time and effort that would be involved, and the fact that it is sometimes impossible to tell from merely looking at a property record card whether an adjustment was applied, he decided to leave the adjustments. However, if an appeal is filed on a property, the PTABOA normally reviews the entire assessment. If the land size adjustment has been applied to a property that is under appeal, the adjustment is removed. *Ternet testimony*. Mr. Ternet contends that the adjustment gives the taxpayer a “double dip”, because there is already lower pricing for secondary and undeveloped land than for primary land.

11. Mr. DuCharme, however, argues that the PTABOA’s policy of removing the land size adjustments only from properties that are under appeal creates a disincentive to file an appeal, and treats taxpayers that file an appeal unfairly.

Conclusions of Law

1. The Petitioner is statutorily limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA’s action on the Form 130 petition. Ind. Code §§ 6-1.1-15-1, -2.1, and -4. See also the Forms 130 and 131 petitions. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA’s decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of

the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.

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

A. Indiana's Property Tax System

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

prescribed by statute and regulations was properly applied to individual assessments.” *Id* at 1040. Only evidence relevant to this inquiry is pertinent to the State’s decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).

10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
11. The taxpayer's burden in the State's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V*, 702 N.E. 2d at 1040.
12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with

substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not “triggered” if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State’s final determination 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’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. Whether a 66% land size adjustment should be re-applied to the property

18. The facts of this case are not in dispute. Certain large parcels in Allen County have a land size adjustment factor applied to the land assessment. This adjustment has been inconsistently applied among townships, and even within townships. The land size adjustment chart is not part of the Allen County Land Valuation Order and is not supported by the assessment manual. The adjustments have remained on the properties unless an appeal is filed, at which

time the adjustment is removed from the property under appeal.

19. Valu-Lodge argues that, in the name of fairness and equity, the adjustment should either be applied to the subject property or removed from all properties.
20. Clearly, the State cannot address the assessments of other properties in Allen County as a result of the filing of this appeal. The scope of this appeal is limited to the issues listed on the petition and to the property under appeal. Thus, the State will not remove the land size adjustment factor from other properties in Allen County.
21. As an alternative to removing the land size adjustment factor on other properties, Valu-Lodge requests that the 66% factor formerly applied to the subject parcel be reinstated. The question, however, is whether the reinstatement of the adjustment to the subject property would create, or even be a step in the direction of, equity and fairness.
22. Again, all parties agree that the land size adjustment is inconsistently applied, both among townships and within townships. While a taxpayer in Valu-Lodge's position can certainly find comparable properties where the adjustment has been applied, there are also many comparable properties where the adjustment has *not* been applied. Therefore, Valu-Lodge has not shown disparate treatment, only inconsistent assessment practices. Valu-Lodge has not proven that equity and fairness can be achieved, or even improved, by a reinstatement of the land size adjustment factor on the subject parcel.
23. Valu-Lodge also argues that the PTABOA's policy of removing the adjustment on properties that have been appealed is unfair and creates a deterrent to file an appeal. Even if Valu-Lodge could prove this argument, it does not serve as grounds for a change in the assessment. As discussed, authority for the land size adjustment does not exist in either the Land Order or the assessment manual.

24. The fact that the land size adjustment factor survived a State appeal hearing also does not serve as grounds to change the assessment. The issue was not under appeal, and the State did not address the issue. The PTABOA, on the other hand, was well within its rights at the local hearing to review the entire assessment and address the land size adjustment factor. The taxpayer, in this case, has exercised its right to have the additional issue addressed by the State.

25. In the final analysis, Valu-Lodge must prove error in the assessment and show that it is entitled to the adjustment that it requests. As all parties agreed, the land size adjustment chart is not a part of the County Land Valuation Order and not supported by the Indiana assessment manual. Thus, there is no legal basis for the adjustment requested by Valu-Lodge. Therefore, there is no change in the assessment.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review