

**STATE OF INDIANA
Board of Tax Review**

BANK ONE INDIANAPOLIS ASSOC.,)	On Appeal from the Marion County
)	Property Tax Assessment Board of
)	Appeals
Petitioner,)	
)	Petition for Review of Assessment,
)	Form 131
v.)	Petition No. 49-101-95-1-4-01164
)	Parcel No. 1008636
MARION COUNTY PROPERTY TAX)	
ASSESSMENT BOARD OF APPEALS)	
and CENTERTOWNSHIP 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:

Issues

1. Whether the land is valued correctly.
2. Whether obsolescence depreciation is warranted due to vacancy.

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 § 6-1.1-15-4, Warren, Warren and Associates, Inc. on behalf of the Bank One (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 was filed on August 27, 1998. The Marion County Board of Review's (County Board) Assessment Determination on the underlying Form 130 is dated July 31, 1998.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on June 3, 1999 before Hearing Officer, Joan L. Rennick. Testimony and exhibits were received into evidence. Mr. William Price and Mr. George Spenos represented the Petitioner. Mr. Frank Corsaro represented Center Township. No one appeared to represent Marion County.
4. At the hearing, the subject Form 131 was made a part of the record and labeled as Board Exhibit A. Notice of Hearing on Petition was labeled Board Exhibit B. In addition, the following exhibits were submitted to the State:

Petitioner Exhibit 1 – Brief containing:

Exhibit A: Copy of Plat

Exhibit B: Copy of a 118 for 1989

Exhibit C: Copy of STB property record card (PRC) for 1989

Exhibit D: Copy of Township PRC of Parcel 1-034391

Exhibit E: Copy of Township PRC of Parcel 1-007441

Exhibit F: Copy of County Board Final Determination for Parcel
1-007441

Exhibit G: Copy of 118 for 1989 for Parcel 1-034391

Exhibit H: Copy of Petitioner's Proposed PRC

Exhibit I: Copy of STB 118 dated 10/16/96

Exhibit J: Copy of Notice of Hearing dated 9/15/95

Exhibit K: Copy of brief provided to the State Board for 1989
assessment

Exhibit L: Copy of 50 IAC 2.2-10-7 (C&I) Building Depreciation

Exhibit M: Stance on evidence

Petitioner Exhibit 2 – Stance on Compensation

Respondent Exhibit 1 – PRC

5. The subject property is located at 450 E. Washington Street, Indianapolis, Center Township, Marion County.
6. The Hearing Officer did not view the subject property.

Issue No 1 – Whether the land is valued correctly.

7. Subject property consists of Lots 1 thru 3 including ½ of vacated Court Street, ½ of vacated Cleveland Avenue and to the midpoint of the vacated alley. Parcel comprises 44,100 square feet valued at \$22.00 per square foot (SF).
8. The Petitioner testified that land values in Center Township were increased by 5% to 20% across the board in the 1995 reassessment. Some of the land values remained the same or were lowered. *Spenos testimony.*
9. A plat map (Petitioner Exhibit 1A) showing the location of the subject property and two (2) other comparable properties, a Final Determination issued by the State for 1989 on subject Parcel 1008636 (Petitioner Exhibit 1B) and the County Board's Final Determination on Parcel 1007441 (Petitioner Exhibit 1F) were submitted into evidence by Mr. Spenos.
10. The Petitioner testified that the subject Parcel 1008636 received a deduction in primary base rate from \$20 per square foot to \$10 SF and Parcel 1007441 received a deduction in the secondary base rate to \$7 in the 1989 assessment. In the 1995 assessment, the base rate on Parcels 1007441 and 1034391 were increased 5%. The same treatment should be exercised for the subject property because it is in the same plat map location - "Square No. 60". *Spenos testimony & Petitioner Exhibits 1A, 1C, 1D, 1E and 1F.*

11. There is no objection by the Township to the lowering of the base rate to match the comparable properties because they are all in the same immediate area.
Corsaro testimony.

Issue No 2 – Whether obsolescence is warranted due to vacancy.

12. The Petitioner testified that in 1989 the State determined an obsolescence depreciation factor of 10% was to be applied to the assessment of the subject structure. However, the amount of obsolescence, in this appeal, should be higher because the subject structure is no longer used as an operation center and is being converted to office use. At the time of this appeal it is not being used.
Spenos testimony & Petitioner Exhibit 1C.
13. The Petitioner testified that in 1994 when AFNB and Bank One merged, all of the data processing was moved to Columbus and the subject facility was not used for several years. *Price testimony.*
14. The Respondent testified that having knowledge of the subject property, a 10% obsolescence depreciation factor for the subject property on a one- (1) year basis would be appropriate. *Corsaro testimony.*

Other Findings of Fact

15. A Stipulation Agreement form was sent to the Marion County Assessor with a cover letter. The letter requested the County sign the form within three (3) business days on the agreements reached between the taxpayer and the township at the State's administrative hearing. The form was not returned within the requested length of time and a follow-up telephone call on June 29, 1999 confirmed the requested completion of the form was not in the mail nor would be forth coming. The letter and stipulation form are entered into the record and labeled as Board Exhibit C.

Conclusions of Law

1. The Petitioner is 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. 50 IAC 17-5-3. See also the Forms 130 and 131 petitions authorized under Ind. Code §§ 6-1.1-15-1, -2.1, and -4. 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. See 50 IAC 17-6-3. “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.
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. One manner for the taxpayer to meet its burden in the State’s administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). 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 merely because 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. Issue No 1 – Whether the land is valued correctly.

18. It is the Petitioner's contention that the land value is incorrect at \$22 per square foot. The Petitioner opines the value should be \$10.50 per SF for primary land.
19. Mr. Corsaro, on behalf of Respondent Center Township, testified that he had no objection to the lowering of the land base rates to those values sought by the Petitioner (Findings of Fact ¶¶11).
20. Based on the undisputed testimony at the hearing, it is determined the land base rate be changed to \$10.50 for primary land. A change in the assessment is made as a result of this issue.

E. Issue No 2 – Whether obsolescence is warranted due to vacancy.

21. The Petitioner requests that the obsolescence depreciation applied in the State's 1989 Final Determination (Petitioner Exhibit 1B and C) be applied to the 1995 appeal under review. Mr. Spenos testified the same causes for functional and economic obsolescence that existed in 1989 existed in 1995.
22. Mr. Corsaro, on behalf of Respondent Center Township, testified that he was familiar with the subject structure, stated that he had no objection to the

Petitioner's request for the application of a 10% obsolescence depreciation factor to the structure for one (1) year.

23. Based on the undisputed testimony at the hearing, it is determined a 10% obsolescence factor should be applied to the subject structure for the appeal under review. A change in the assessment is made as a result of this issue.
24. It should be noted, obsolescence depreciation is a consideration that may change if additional problems are experienced or if current problems are cured. The assessment should be reviewed annually to determine if the amount of obsolescence has changed.

Summary of Final Determination

Determination of Issue 1 – *Whether the land is valued correctly.*

25. There is a change in the assessment as a result of this issue: the land base rate is changed to \$10.50 for primary land.

Determination of Issue 2 – *Whether obsolescence depreciation is warranted due to vacancy.*

26. There is a change as a result of this issue: 10% obsolescence should be applied for the year under appeal.

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