

of the Petitioner. The record of the Administrative Hearing reflects the summation and acceptance of the following issues:

1. Whether the commercial land assessment is in error because of the use of residential assessment forms.
2. Whether the assessment violates Ind. Code § 6-1.1-31-6(a)(1) and/or Ind. Code § 6-1.1-31-6(b)(1) with respect to classification based on location, use, and productivity or earning capacity.
3. Whether the assessment of the property is unconstitutional.
4. Whether the land base rate is correct.

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, Michael L. Muenich, on behalf of Harold G. Muenich and/or George A. Muenich Trust (Petitioner), filed Form 131 petitions requesting a review by the State Board. Regarding Pet. No. 45-023-95-1-5-00023, the Form 131 was filed on October 7, 1998. The Lake County Board of Review's (County Board) Assessment Determination is dated September 10, 1998. Regarding Pet. No. 45-023-95-1-5-00024, the Form 131 was filed on October 2, 1998. The Lake County Board of Review's (County Board) Assessment Determination is dated September 11, 1998.
3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was scheduled for May 3, 1999 (Board Exhibit B). The hearing was rescheduled for May 6, 1999 (Board Exhibit C). The Petitioner requested a continuance, which was granted (Board Exhibit D). The hearing was rescheduled for July 20, 1999 (Board Exhibit E).

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on July 20, 1999, before Hearing Officer Kurt Ott. Testimony and exhibits were received into evidence. Michael Muenich and Bill McCabe represented the Petitioner. Karen Smiley represented North Township.

5. At the hearing, Board exhibits were made a part of the record:

Board Exhibit A – (45-023-95-1-5-00023) The Form 131 with attachments:

1. A copy of the Board of Review assessment determination;
2. A Copy of the Form 130;
3. A copy of a letter from Henry R. Bennett, Jr. to Michael L. Muenich dated December 5, 1996;
4. A copy of Township Assessor's response dated March 17, 1998;
5. A copy of a letter from Michael L. Muenich to Lake County Board of Review dated January 3, 1997;
6. A copy of Ind. Code § 6-1.1-15-12;
7. A copy of Reasons for Petition Defect;
8. A copy of the property record card for parcel 007-26-35-0125-0003 showing the 1995 assessment;
9. A copy of tax information;
10. A copy of Reasons for Petition Defect;
11. A copy of Data display;
12. A list of assessed valuations and taxes paid for each parcel;
13. A copy of the 1994 pay 1995 real estate tax bill for both parcels;
14. A copy of a Form 11 R/A for assessment effective March 1, 1995;

Board Exhibit A1 – (45-023-95-1-5-00024) The Form 131 with attachments:

1. A copy of the Form 130;
2. A copy of the Board of Review assessment determination;
3. A copy of an Inventory and Appraisal;
4. A copy of a Vacant Land Appraisal prepared by Bill McCabe;
5. A copy of the Board of Review assessment determination;
6. A copy of the Form 130;

7. A copy of Township Assessor response dated June 30, 1997;
 8. A list of assessed valuations and taxes paid for each parcel;
 9. A notice of Appearance signed by Michael L Muenich submitted to the Board of Review;
 10. A motion to consolidate filed with the Board of Review;
 11. A copy of a Form 11 R/A assessment effective March 1, 1995;
 12. A copy of the 1994 pay 1995 real estate tax bill for both parcels;
- Board Exhibit B (B1) – A Notice of Hearing;
- Board Exhibit C (C1) – Notice of Hearing Reschedule – May 6, 1999;
- Board Exhibit D (D1) – A Continuance/Waiver dated May 6, 1999;
- Board Exhibit E – Notice of Hearing Reschedule – July 20, 1999;
- Board Exhibit F – A Limited Power of Attorney;
- Board Exhibit G – A copy of a property record card that shows the 1995 land assessment for parcel 007-26-35-0125-0003;
- Board Exhibit H – A copy of a property record card that shows the 1998 land assessment for parcel 007-26-35-0125-0003. (After local correction of the base rate.); and
- Board Exhibit I – A copy of a property record card that shows the 1995 land assessment for parcel 007-26-35-0125-0004.
6. At the hearing the following exhibits were submitted to the State Board:
 - Petitioner’s Exhibit 1 – A copy of an Inventory and Appraisement document;
 - Petitioner’s Exhibit 2 – A copy of a Vacant Land Appraisal prepared by Bill McCabe;
 - Petitioner’s Exhibit 3 – A copy of a Quitclaim deed;
 - Petitioner’s Exhibit 4 – A copy of the Summary Report page for Hammond from the Lake County Land Valuation Order; and
 - Petitioner’s Exhibit 5 – An income and expense report for 1995 through 1999.
 7. The subject property is a vacant lot (both parcels) used for parking located on Russell Street in Hammond, Indiana, North Township, Lake County, Indiana.

8. The Hearing Officer did not view the property.

Testimony and Documents Regarding the Use of Residential Assessment Forms

9. The taxpayer received a Notice of Assessment, Form 11 R/A. The assessment for the commercial land was recorded in error on a residential property record card. Petitioner contends this may indicate other errors. (*Muenich testimony* and Board Exhibits A14 and G.)
10. Use of the wrong form does not indicate an error in the amount of the assessment. The Township will use the correct form as directed in 50 IAC 2.2. (*Smiley testimony.*)

**Testimony and Documents Regarding Violation of
IC 6-1.1-31-6(a)(1) and IC 6-1.1-31-6(b)(1)**

11. Parcel no. 007263501250003 and parcel no. 007263501250004 are adjoining parcels that are used as a parking lot. Renting parking spaces to nearby businesses for their employees use generates income. The parking lot does not produce enough income to cover its' expenses. (*Muenich testimony* and Petitioner's Exhibit 5.)
12. In 1982 parcel no. 007263501250003 was valued at eight thousand dollars (\$8000). In 1995 the entire lot (both parcels) was valued at eight thousand dollars (\$8000). (*Muenich testimony* and Petitioner's Exhibits 1 and 2.)
13. Using an income approach in the appraisal of the property would produce an unrealistic value. The property does not produce enough income to cover real

estate taxes. The most accurate method used in appraising property is the sales comparison method, which was used in this case. The comparison of three sales determined a market value of \$8,000 for Lot 3, Muenich's 2nd addition (both parcels). (*McCabe testimony* and Petitioner's Exhibit 2.)

Testimony and Documents Regarding Constitutionality of the Assessment

14. In *Town of St. John v. The State Board of Tax Commissioners*, the Indiana Tax Court ruled that while market value cannot be used as the sole criteria the True Tax Value has to bear some relation to the market value or earning capacity of the real estate. The appraised market value of the property (both parcels) is eight thousand dollars (\$8000) while the current True Tax Value is more than three times that amount. (*Muenich testimony*.)

Testimony and Documents Regarding Land Base Rate

15. According to the Lake County Land Valuation Order the base rate for valuing the property cannot exceed two hundred dollars (\$200) per front foot. The local officials corrected the base rate per front foot for parcel no. 7263501250003 in 1998 but failed to correct parcel no. 007263501250004. (*Muenich testimony*.)

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.

Conclusions Regarding the use of Residential Forms

18. The Petitioner contends because the Township used the incorrect forms to record the assessment of the subject property the assessment may be in error. No probative evidence was presented to show an error in the assessment because of this issue.
19. Ms. Smiley acknowledged the use of residential forms for the commercial assessment and testified the Township would comply with 50 IAC 2.2 by placing the assessment information on commercial property forms. However, the use of the correct forms will not change the amount of the assessment.
20. The Petitioner has failed to submit evidence that an error exists in the assessment because of this issue. Accordingly, no change is made to the assessment.

Conclusions Regarding Violation of IC 6-1.1-31-6(a)(1) and/or IC 6-1.1-31-6(b)(1)

21. Ind. Code § 6-1.1-31-6(a)(1) states, “With respect to the assessment of real property, the rules of the state board of tax commissioner shall provide for:
- (1) the classification of land on the basis of:
 - (i) acreage;
 - (ii) lots;
 - (iii) size;
 - (iv) location;
 - (v) use;
 - (vi) productivity or earning capacity;

- (vii) applicable zoning provisions;
- (viii) accessibility to highways, sewers, and other public services or facilities; and
- (ix) any other factor that the board determines by rule is just and proper;”

22. Ind. Code § 6-1.1-31-6(b)(1) states, “With respect to the assessment of real property, the rules of the state board of tax commissioners shall include instructions for determining:

- (1) the proper classification of real property;
- (2) the size of real property;
- (3) the effects that location and use have on the value of real property;
- (4) the depreciation, including physical deterioration and obsolescence, of real property; the cost of reproducing improvements; the productivity or earning capacity of land; and
- (5) the true tax value of real property based on the factors listed in this subsection and any other factor that the board determines by rule is just and proper.”

23. Local Assessors are not required to consider each of the factors listed to arrive at a value for the property. In *State Board of Tax Commissioners v. Indianapolis Racquet Club*, 743 N.E. 2d 247 (Ind. 2001), the Supreme Court of Indiana held: “We agree with the State Board and IRC that use of comparable sales is an appropriate assessment procedure, and that it is well within the discretion of the State Board to promulgate rules that give appropriate consideration to the nine statutory factors by looking to actual sales data, and making the rational assumption that the cumulative effect of the individual factors is reflected in the sales prices reached by buyers and sellers in the market. Accordingly, we disagree that the State Board or local assessors are required to assess each parcel in the light of the effect of each statutory factor on its valuation.” *Id.*, at 251.

24. The testimony and evidence entered in the record by the Petitioner relates mainly to the market value of Lot 3 Muenich's 2nd Addition to Hammond (the subject of this appeal). The record is devoid of evidence regarding the classification of land on the basis of location, use or productivity or earning capacity. In addition no evidence was presented regarding instruction (or lack of instruction) by the State Board for determining the effects that location and use have on the value of real property.
25. Petitioner's Exhibits 1 and 2 offer information regarding market value of the subject property. Petitioner's Exhibit 3 clarifies title to parcel no. 007-26-35-0125-0003, described as "The East Seventy (70) feet of Lot Three (3) in Muenich's second Addition to the City of Hammond, Lake County, Indiana." Petitioner's Exhibit 4, a summary page from the Lake County Land Valuation Order addresses the issue of land base rate. Finally, Petitioner's Exhibit 5, a report of disbursements and receipts, verifies testimony that the property generates less income than the expense of the property.
26. Petitioner's Exhibit 1, an appraisal of the subject properties, arrive at a value of \$8,000 for both parcels (together) using the sales comparison approach. However, the appraisal does not identify how the properties used as "comparables" are comparable to the subject. Instead, the appraisal merely identifies certain properties as comparable.
27. In addition, the appraisal is purported to be: "subject to the requirements of the Code of Professional Ethics and Standards of Professional Conduct of the appraisal organizations with which the Appraiser is affiliated." However, the Appraiser does not list any appraisal organizations with which he is affiliated with. The Appraiser lists six realtor associations, but there are no appraisal associations or organizations listed.

28. Taxpayers are required “to do something more than simply allege that an error exists in the assessment . . . “ *Whitley*, 704 N.E. 2d at 1119.
29. Taxpayers are expected to make detailed factual presentations to the State Board regarding alleged errors in assessment. *Id.* “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)).
30. The Petitioner has failed to prove the assessment determined by the local officials violated Ind. Code § 6-1.1-31-6(a)(1) and/or Ind. Code § 6-1.1-31-6(b)(1). Accordingly, there is no change in the assessment as a result of this issue.

Conclusions Regarding Constitutionality of the Assessment

31. The Petitioner contends the Tax Court ruled in *Town of St. John v. The State Board of Tax Commissioners* that True Tax Value has to bear some relation to the market value of the property. It is the petitioner’s contention that the True Tax Value determined by the local officials is more than three (3) times the amount of the alleged market value, thus unconstitutional.
32. The property was valued in accordance with the applicable rules, which do take into account factors that relate to the market value of land for creating the land order base rate, but not on an individual parcel basis. The True Tax Value is not required to equate to Fair Market Value. The degree of relationship is dependent on the accuracy of the market value appraisal.
33. Though 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.

34. *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.
35. Accordingly, the existing rules govern the appeal of this 1995 assessment. There is no change in the assessment as a result of this issue.

Land Valuation

36. Land values are determined in a two-step process. First, the county land valuation commission establishes base rates reflecting the value for all types of land. Second, after a public hearing is held at the local level, these values are submitted to the State Board for review and /or modification. The State Board then certifies these land values to the local officials to use in the land valuation. 50 IAC 2.2-4-3.
37. “In making land assessments, the township assessors shall use the values as finally determined by the State Board.” 50-2.2-4-3(d) (Emphasis added.)
49. When a Land Order specifically provides for values for a specific land classification, the plain language of the classification must be followed as written. To do otherwise would render the Land Valuation Order meaningless. *Indianapolis Historic Partners v. State Board of Tax Commissioners*, 694 N.E. 2d 1224 (Ind. Tax 1998).

Conclusions Regarding Land Base Rate

50. The Petitioner contends the land base rate for valuing the property cannot exceed two hundred dollars (\$200) per front foot. Petitioner's Exhibit 4, the Lake County Land Valuation Order Summary Report for Russell Street, shows a per front foot base rate ranging from one hundred fifty dollars (\$150) to two hundred dollars (\$200).
51. The property that is the subject of this appeal is located on Russell Street in Hammond, North Township, Lake County.
52. Board Exhibit H, the property record card for parcel no. 7263501250003, shows that in 1998 the local officials lowered the base rate to two hundred dollars (\$200) in compliance with the Lake County Land Valuation Order.
53. The Board of Review determination for parcel no. 7263501250003 shows the 1995 pay 1996 land assessment was corrected to reflect a front foot value of two hundred dollars (\$200) in compliance with the Land Valuation Order. However, the property record card does not show the correction for 1995 pay 1996 as indicated by the Board of Review determination. The correction is shown on the property record card as a correction to the 1998 assessment.
54. The Township did not dispute the evidence submitted by the Petitioner.
55. For this 1995 assessment, it is determined the land base rate per front foot for both parcels is two hundred dollars (\$200). Accordingly a change is made in the assessment as a result of this issue.

Summary of Final Determination

Issue No. 1 – Use of Residential Forms – No Change.

Issue No. 2 – Valuation Statutes – No Change.

Issue No. 3 – Constitutionality – No Change.

Issue No. 4 – Land Base Rate – Change Made – For 1995 the Base Rate of Both parcels should be \$200.

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