STATE OF INDIANA
Board of Tax Review

JAMES A. JR. and SUZANNE K. RUFFRA	) On Appeal from the Floyd County Property
	) Tax Assessment Board of Appeals
	)
Petitioner,	)
	) Petition for Review of Assessment, Form 131
v.	) Petition Nos. 22-008-00-1-5-00001
	) 22-008-00-1-5-00002
	) 22-008-00-1-5-00003
	)
	) Parcel Nos. 0084110025
	) 0084110026
	) 00840900015
FLOYD COUNTY PROPERTY TAX	)
ASSESSMENT BOARD OF APPEALS	)
And NEW ALBANY 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

1. Whether the assessment should be lowered due to the property being in the flood zone.

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, James A. Jr. and Suzanne K. Ruffra filed a petition requesting a review by the State. The Form 131 petition was filed on August 23, 2001. The Floyd County Property Tax Assessment Board of Appeals' (PTABOA) determination was issued on July 30, 2001.

3. Pursuant to Indiana Code § 6-1.1-15-4, a hearing was held on February 7, 2002 before Hearing Officer Jennifer Bippus. Testimony and exhibits were received into evidence. James A. Ruffra Jr. represented the Petitioners. Donald Banet represented the County.

4. At the hearing, the Form 131 petition was made part of the record and labeled as Board Exhibit A and the Notice of Hearing on Petition was labeled Board Exhibit B. The ORDER sent on February 15, 2002 is labeled Board Exhibit C. In addition, the following documents were submitted to the State:

   Petitioner's Exhibit A - A copy of the old and new flood insurance rate map provided to the New Albany City Plan Commission by the Federal Emergency Management Agency (FEMA)

   Petitioner's Exhibit B - The Elevation Certificate sent to the Ruffra's stating that the property located at 2108 Palmer Court is in the flood zone

   Petitioner's Exhibit C - The Elevation Certificate sent to the Ruffra's stating that the property located at 2110 Palmer Court is in the flood zone

Petitioner's Exhibit D - A letter sent to the Ruffra's stating that flood insurance is needed for the property at 2108 Palmer Court

Petitioner's Exhibit E - A letter sent to the Ruffra's stating that flood insurance is needed for the property at 2110 Palmer Court

Petitioner's Exhibit F - A copy of the special flood areas designations, showing the subject properties designated as Zone AE

Petitioner's Exhibit G - A copy of Ordinance Z-00-42, on special flood hazard areas

5. The properties are residential homes located at 2108 and 2110 Palmer Court, and 310 Country Club Drive, New Albany, Indiana, Floyd County.

6. The Hearing Officer did not view the property.

7. The assessed value as determined by the Floyd County PTABOA is:
   2108 Palmer Court
   Land: $6,900 Improvements: $29,300 Total: $36,200
   2110 Palmer Court
   Land: $7,800 Improvements: $27,000 Total: $34,800
   310 Country Club Drive
   Land: $8,000 Improvements: $33,300 Total: $41,300

8. The year under appeal is March 1, 2000.

9. On February 7, 2002, an ORDER was issued to both parties to meet on February 28, 2002 and attempt to reach an agreement on as many issues as possible. The Petitioner sent a letter dated February 27, 2002 stating that he had attempted to meet with Mr. Banet and submit the flood insurance policies, but was told Mr. Banet could not meet with him. The County submitted additional evidence on March 14, 2002 (Respondent’s Exhibit A) and the Petitioner submitted additional evidence on March 18, 2002 (Petitioner’s Exhibit H). Both submitted their evidence after the March 6, 2002 deadline issued on the order, but requested,

and were granted by phone, the extension of time. The parties were able to come to an agreement on the land, but not the residences. The County stated that a 30% influence factor would be applied to the land. The Petitioner agreed with the reduction to the land, but requested that obsolescence depreciation also be applied to the subject residences. The Petitioner requested relief in the way of "the amount of the cost for insurance per each property." .

Issue No. 1 - Whether the assessment should be lowered due to the property being in the flood zone.

10. Federal Emergency Management Agency (FEMA) redrew the flood maps for Floyd County in 2000 and the subject properties are now included in the flood plain. On the new map the flood rating is highlighted and shown at 448 feet, which raised the flood plain area by four feet. The subject properties are now three feet below the flood plain. *Ruffra testimony & Petitioner's Exhibits A, B, and C.*

11. The area was included in the new flood maps because development over the years is forcing more water downstream and causing more water run off. The culverts cannot handle the excess improvements (businesses, residences, apartments). If there is a heavy rain, the water spills out into the flood plain area. There is a creek behind the subject area. The subject area is not subject to river flooding, but to what happens when there is a heavy rain and the culverts cannot take all of the water. *Ruffra testimony*.

12. The area is zoned AE, which is the flood fringe area, not the flood way. The bank requires flood insurance for the subject properties mandated by federal law. The restrictions from the County Flood Ordinance place a burden on the property owners of the flood area and the restrictions de-value the subject properties. In order for a homeowner to make any structural improvements over $1000, the

structural alterations must be five feet above the flood plain. Reconstruction or repairs to a damaged building that are valued at more than 50% of the market value cannot be made. If something happens to the building and it is determined that the value to repair is 50% of the value of the structure, the structure cannot be rebuilt. *Ruffra testimony & Petitioner's Exhibits F and G*.

13. The only flooding in the area was 1997, and at that time the water went half way up the front yard. The flooding was caused by heavy rain. *Ruffra testimony.*

14. A variance will not be given to place these residences outside the flood plain. There is flood insurance for the property on Country Club Drive, but the insurance for the properties on Palmer Court has not yet been purchased. The bank has been lenient thus far, but the home loans will be pulled unless the insurance is purchased in the near future. *Ruffra 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 § 6-1.1-15-12.

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.

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 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.

Whether the assessment should be lowered due to location in the flood zone.

1. Land

18. The parties submitted additional evidence, Petitioner's Exhibit H and Respondent's Exhibit A. The additional evidence shows that the County recognizes the fact that the land is in a flood zone and that the Petitioner must obtain flood insurance. The County applied a negative 30% influence factor to the land as is standard in Floyd County for a flood zone property. The Petitioner agreed with the County that a negative 30% influence factor should be applied to the land for being in the flood zone.

19. Based on the parties agreeing to the application of a negative influence factor of 30% to the subject land, there is a change in the assessment of the land as a result of this application.

2. Improvements

20. Though the parties agreed to the application of a negative influence factor to the land, the parties did not agree on whether an influence factor (obsolescence depreciation) should be applied to the subject residences for being in the flood zone. The County did not apply any obsolescence to the residences. The Petitioner requested that obsolescence be applied to the residences in the amount equal to or greater than the amount of the flood insurance policies that were required for the residences by the lender.

21. 50 IAC 2.2-7-9 (d) "Dwelling depreciation" specifically addresses obsolescence depreciation in the following manner: "Obsolescence depreciation is seldom applied to residential dwellings. There must be an extremely abnormal circumstance involved with a residential dwelling before obsolescence depreciation applies."

22. In the case at bar, the Petitioner has not shown that the subject structures suffered from any "extremely abnormal circumstance" due to consistent flooding damage, which in turn could have the potential of a negative impact on the subject structures. Being in a flood zone may require parties to obtain flood insurance, but this is at the discretion of the lender and does protect both the lender and the taxpayer from damage. Being in a flood zone does not mean the property is adversely affected by constant flooding conditions.

23. 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.

24. Additionally, regarding obsolescence, the taxpayer has a two-prong burden of proof: (1) the taxpayer has to prove that obsolescence exists, and (2) the taxpayer must quantify it. *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1233 (Ind. Tax 1998).

25. The Petitioners cannot merely request an influence factor (obsolescence) be applied to the subject structures to cover the required flood insurance premiums. The Petitioner must show that obsolescence (a loss in value) exists and then quantify that amount they seek.

26. As stated above in ¶ 23, to meet their burden the Petitioners must identify similar structures to that of the subject and then to establish disparate treatment between the subject and the other similarly situated properties. If the Petitioner submitted into evidence other homes in the subject's geographic area (flood

zone) that required flood insurance and could show that these structures had indeed had obsolescence applied to them, then the Petitioner would have met their burden.

27. Once the Petitioner sustained his burden, the burden would have then shifted to the local officials to rebut the Petitioner's evidence and to justify its decision with evidence of their own. However, that is not what has occurred in this appeal.

28. All the Petitioner did was to conclude that since he must pay flood insurance premiums that he deserves to have that amount deducted from the assessment of the structures. The Petitioner fails to show how the paying for flood insurance has an adverse impact on the subject structures. Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.

29. In letters from FEMA, Petitioner's Exhibits D and E, they indicate that the subject structures are in a "special flood hazard area" requiring flood insurance. Under section "E" entitled COMMENTS it states in part, "If the borrower would like to avoid flood insurance, correct procedure would be for the borrower to apply for a Letter of Map Amendment/Revision (LOMA/LOMR), which, if granted by the Federal Emergency Management Agency, would officially amend or revise the new map to remove the subject building from the SFHA." The Petitioner did not submit any evidence to indicate whether he applied for such a revision and was denied.

30. For all the reasons set forth above, there is no change in the assessment to the subject structures as a result of the obsolescence issue.

SUMMARY OF STATE DETERMINATIONS

Issue - Whether the assessment should be lowered due to the subject property being in a flood zone.

a. Based on the parties reaching an agreement, a 30% negative influence factor is applied to the land.
b. No influence factor (obsolescence) is applied to the improvements.

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

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Chairman, Indiana Board of Tax Review