STATE OF INDIANA
Board of Tax Review

KROOSWYK BROTHERS, LLC	)	On Appeal from the Lake County
	)	Tax Assessment Board of Appeals
Petitioner,	)	
	)	Petition for Review of Assessment,
	)	Form 131
v.	)	Petition No. 45-026-00-1-4-00006
	)	
LAKE COUNTY PROPERTY TAX	)	Parcel No. 27-0028-0066
ASSESSMENT BOARD OF APPEALS	)	
And NORTH 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:

Issues

1. Whether the building measurements on the property record card are incorrect.

2. Whether the rear part of the improvement should be priced from the General Commercial Kit (GCK) schedule and depreciated from the 30-year life table.

3. Whether the land pricing is incorrect.

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 IC 6-1.1-15-3, Milo E. Smith, on behalf of Krooswyk Brothers, LLC (the Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 was filed on September 18, 2000. The Lake County Property Tax Assessment Board of Appeals' (PTABOA) Final Determination on the underlying Form 130 was issued on August 25, 2000.

3. Pursuant to IC 6-1.1-15-4, a hearing was scheduled for March 21, 2001. Mr. Smith requested a continuance, and the hearing was rescheduled to May 17, 2001. In requesting the continuance, Mr. Smith signed a Continuance/Waiver (Board Exhibit C), effectively waiving the six-month deadline within which the State must conduct an administrative hearing in this appeal, and the forty-five day deadline within which the State must issue a determination in this appeal. The hearing was held on May 17, 2001 before Hearing Officer Joseph Stanford. Testimony and exhibits were received into evidence. Milo E. Smith represented the Petitioner. Victor E. Jens and Ronald F. Jaracz represented North Township. No one appeared on behalf of the PTABOA.

4. At the hearing, the subject Form 131 petition was made part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition is labeled Board Exhibit B. The signed Continuance/Waiver form is labeled Board Exhibit C. In addition, the following items were submitted into evidence:

Petitioner's Exhibit 1 – Summary of issues and contentions with (a) photographs, (b) the subject property record card (PRC), (c) copy of IC 6-1.1-31-6, (d) two (2) pages from *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.* (e) copy of 50 IAC 2.2-10-6.1, (f) copy of 50 IAC 2.2-2-4, (g) copy of 50 IAC 2.2-4-17, (h) Internet maps showing the location of the subject and a comparable, (i) the PRC for the land comparable (j) copy of a page from the Lake County Land Valuation Order, and (k) definition of secondary land from 50 IAC 22.-4-1
Petitioner's Exhibits 2-3 – Photographs of subject property illustrating the office wall height

Respondent's Exhibit 1 – Land Order.

5. Subsequent to the hearing, additional items were submitted. Upon request, Mr. Smith submitted a tax representative disclosure statement, which is labeled Petitioner's Exhibit 4. In addition, Mr. Jens submitted a current property record card, which reflects current measurements of the subject building. The current card is labeled Respondent's Exhibit 2.

6. The subject property is assessed as general office, light utility storage, and parking garage and is located at 2550 Industrial Road, Highland, North Township, Lake County. The hearing officer did not view the property. The parties agreed that the assessed value under appeal is $52,000 for land and $115,660 for improvements.

A. Issue No. 1 – Whether the building measurements on the property record card are incorrect

7. The wall height of the general office area, priced in "Column A" of the property record card, is assessed as a 15-foot wall height; the actual height is eight feet. The area priced as "Building D" is assessed as a 38-foot by 80-foot structure; the actual measurements of the building are 30 feet by 82 feet. *Smith Testimony. Petitioner's Exhibit 1, pages 1 and 2, Petitioner's Exhibits 2 and* 3.

8. Mr. Smith, however, agreed not to pursue the issue of wall height of the general office area if Mr. Jens would re-measure the wall height the next time he inspects the building. Mr. Jens agreed.

9. "Building D", which is assessed as a parking garage for the 2001 assessment, was recently measured but he cannot remember the measurements. He agreed that, subsequent to the hearing, he would check the 2001 property record card for the measurements, and he and Mr. Smith would then attempt to reach agreement on this issue. The parties stated that they would notify the hearing officer of the agreement. *Jens and Smith Testimony*.

10. On June 4, 2001, Mr. Jens faxed the 2001 property record card to the hearing officer. The 2001 property record card is identical to the 2000 card, except for the conversion of assessed value from 33% of true tax value to 100%. Neither party contacted the hearing officer after June 4, so it is assumed that no agreement was reached.

B. Issue No. 2 – Whether the rear part of the improvement should be priced from the GCK schedule and depreciated from the 30-year life table

11. The improvement identified as "Building D" on the property record card should be priced from GCK schedule; it is unfinished with no insulation. The three-wall building features a metal back wall, and the other two walls are concrete. He characterized the building as a "lean-to." The improvement identified as "Building E" on the property record card should be priced from the GCK schedule. This building is a pre-engineered structure with no heat. The "X" bracing and tapered beams are shown in the photographs. *Smith Testimony. Petitioner's Exhibit 1(a)*.

12. "Building D" is not a kit building. The three-wall building features a metal back wall, and the other two walls are concrete. "Building E" has heavy steel I-beams disqualifying this building from GCK pricing. The first four feet of the entire building is concrete. *Jens Testimony*.

C. Issue No. 3 – Whether the land is priced incorrectly

13. The subject parcel is industrial land, not commercial land. The parcel is classified as commercial (class 399) on the subject property record cards. The correct classification is industrial (class 480). *Smith Testimony. Petitioner's Exhibit 1(b).*

14. The land valuation order for the area of the subject provides for primary land values from $20,000 per acre to $65,000 per acre. Since the property is industrial, which costs less than commercial, and not located on a major road, the primary land should be valued at $20,000 per acre. Furthermore, only 1.4 of the 2.4 acres is primary land; the rest should be priced as secondary because it is used for secondary parking and storage. *Smith Testimony. Petitioner's Exhibits 1(f) through 1(k)*.

15. The subject parcel was actually priced as secondary land, at $65,000 per acre, even though the land is primary. He did not consider the subject parcel as primary because it is not located on the main road; parcels on the main road are priced at $150,000 per acre. *Jaracz Testimony*.

16. While Mr. Jaracz identified map area "7P" as the area containing the subject property, Mr. Smith submitted values from map area "7B."

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. Issue No. 1 – Whether the building measurements on the property record card are incorrect

18. The only remaining disagreement concerning the issue of building measurements is whether "Building D" is incorrect. While the sketch on the property record card shows this building to be 38 feet by 80 feet (3,040 square feet), the Petitioner contends the correct dimensions are 30 feet by 82 feet (2,460 square feet).

19. A closer look at the subject property record card, however, reveals that the assessment of this building does not match the sketch. "Building D", which is priced as a parking garage in "Column C" of the property record card, is priced as 8% of a 30,026 square foot building. Thus, the actual assessment shows this building to be 2,402 square feet (30,026 multiplied by 8%). This basically matches the Petitioner's opinion of the correct square footage. Evidently, the local officials have already corrected the assessment of this building, but did not correct the sketch.

20. Because the assessment of "Building D" already matches the Petitioner's description, in terms of square feet, there is no change in the assessment as a result of this issue.

E. Issue No. 2 – Whether the rear part of the improvement should be priced from the GCK schedule and depreciated from the 30-year life table

21. The GCK schedule is utilized for valuing pre-engineered and pre-designed pole buildings that are used for commercial and industrial purposes. 50 IAC 2.2-10-6(a)(1)(D). The components of these buildings are specified within the GCK schedule itself. 50 IAC 2.2-11-6. Buildings classified as a special purpose design are not valued using the GCK pricing schedule. 50 IAC 2.2-10-6(a)(1)(D).

22. The Petitioner contends that Buildings "D" and "E" should be priced from the GCK schedule. However, very little factual evidence concerning these buildings was submitted. The Petitioner relies on five photographs and a conclusory statement that the buildings are "kit-type structures" to make his case.

23. As stated previously, taxpayers are expected to make factual presentations to the State Board 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 Petitioner's presentation lacks even basic facts about these buildings, such as the gauge of the exterior walls, and the gauge of the girts and purlins.

24. In addition, the few facts that are known about these buildings would tend to suggest that neither is best described by GCK schedule pricing. Two of the three walls of "Building D" are concrete, not metal. Clearly, this type of structure would not be best described by the GCK schedule.

25. Concerning "Building E", Mr. Jens' unrebutted testimony is that this building contains heavy, load-bearing steel beams. While Mr. Jens' testimony neither proves nor disproves whether the building should be priced using the GCK schedule, it highlights the lack of factual evidence submitted concerning this building.

26. For the reasons set forth, the Petitioner has failed to meet its burden of proof that either "Building D" or "Building E" is priced from the wrong

schedule. Therefore, there is no change in the assessment as a result of this issue.

F. Issue No. 3 – Whether the land is priced incorrectly

27. Land valuation – through land order – is one part of Indiana's assessment system that actually approximates fair market value through the use of sales data.

28. Ind. Code 6-1.1-31-6(a)(1) states that land values shall be classified for assessment purposes based on acreage, lots size, location, use, productivity or earning capacity, applicable zoning provisions, accessibility, and any other factor that the State Board determines by rule is just and proper.

29. The county land valuation commission collects sales data and land value estimates and, on the basis of that information, determines the value of land within the county. 50 IAC 2.2-4-4 and –5. The commission then holds a public hearing on the land order values. The State Board reviews land orders established by the county land valuation commission, and may make any modifications deemed necessary for uniformity and equality purposes. Ind. Code 6-1.1-4-13.6(e)(West 1989); See *Mahan v. State Board of Tax Commissioners,* 622 N.E. 2d 1058, 1061 (Ind. Tax 1993). Once the land order values are established and approved, township assessors must use these values in making assessments. Ind. Code 6-1.1-4-13.6(h).

30. The Petitioner contends that the land order requires the subject parcel's primary land to be valued between $20,000 and $65,000 per acre. The local officials have priced the land at $65,000 per acre. The Petitioner also contends, however, that the subject parcels are industrial, which is

less expensive than commercial land. Therefore, the parcels should be valued at the low end of the range. The Petitioner requests a value of $20,000 per acre.

31. Even if the State were to assume that the land order values for the subject parcel are as the Petitioner contends, he has submitted no evidence of the actual values of these parcels. The Petitioner merely offers a conclusory statement that industrial land is worth less than commercial land. Conclusory statements alone do not constitute probative evidence of error in the assessment.

32. Furthermore, the land order values submitted by the Petitioner are, in fact, incorrect. Mr. Jaracz clearly demonstrated at the hearing that the correct "map area" of the subject parcel is 7P:33A. The Petitioner incorrectly chose summary values for map area "7B." The land order (Respondent's Exhibit 1) shows that the subject parcel's primary land must be priced between $75,000 and $150,000 per acre.

33. The subject property record card classifies all of the land on the parcel as primary land. Mr. Jaracz, however, explained that the parcel was priced within the range for secondary land, because it is not on a major road. As a result, the local officials' pricing of this parcel, at $65,000 per acre for primary land, is not in accordance with the land order, and contrary to law.

34. Because the assessment of this parcel is illegal, it is determined that a change in the assessment must be made. To be in accordance with the land order, the pricing of the primary land on the parcel must be increased to the minimum of the range shown, or $75,000 per acre.

35. In addition to the above contention, the Petitioner alleges that only one acre of the 2.4 acres should be classified as primary land, with the rest

classified as secondary. The Petitioner contends that the remaining 1.4 acres of this parcel are used for yard storage and for parking areas not regularly used.

36. The Petitioner did not offer any measurements to show the area of the parcel he considers to be primary. The footprint of the improvements, the buildings and the paving, total 1.53 acres. Therefore, the State hereby determines 1.53 acres be classified as primary and valued at $75,000, the minimum for primary in this section. The remaining area, .87 acres will be valued at the minimum for secondary land, which is $52,500.

37. For the above reasons, there is a change resulting in an increase of the land 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.

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Chairman, Indiana Board of Tax Review