

**STATE OF INDIANA
Board of Tax Commissioners
Appeals Division**

STEER #2, INC.,)	On Appeal from the Jefferson County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petition for Review of Assessment, Form 131
)	Petition No. 39-011-00-1-4-0004
JEFFERSON COUNTY PROPERTY)	Parcel No. 011009800
TAX ASSESSMENT BOARD OF)	
APPEALS and MADISON TOWNSHIP)	
ASSESSOR,)	
)	
Respondents.)	

Findings of Fact and Conclusions of Law

The Appeals Division (Appeals Division) of the State Board of Tax Commissioners (State Board), having reviewed the facts and evidence, and having considered the issues, now makes the following findings of fact and conclusions of law.

Issue

Whether the base rate used to value the land 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, Mr. Milo Smith on behalf of Steer #2 Inc. (Petitioner), filed a Form 131 petition requesting a review by the Appeals Division. The Form 131 petition was filed on September 18, 2000. The Jefferson County Property Tax Assessment Board of Appeals (PTABOA) Notification of Final Assessment Determination on the underlying Form 130 petition is dated August 26, 2000.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on July 24, 2001 before Hearing Officer Paul Stultz. Testimony and exhibits were received into evidence. Mr. Smith represented the Petitioner. The following individuals represented the PTABOA: Gail Sims, Secretary for the PTABOA, Delores Barns and Elbert Hinds, PTABOA members. Don Thompson, Madison Township Assessor, represented Madison Township. Margaret Hoffman, the Deputy Assessor, was also present.
4. At the hearing, the Form 131 petition was made a part of the record and labeled Board Exhibit A. Notice of Hearing on Petition is labeled as Board Exhibit B. In addition, the following exhibits were submitted to the State Board:
Petitioner's Exhibit 1 – Package of documents containing the following:
 - a. Copy of subject property record card (PRC)
 - b. Copy of page 1 of the Jefferson County Land Valuation Order (Land Order)
 - c. Copy of page 7 of 13 Land Order, Madison Township
 - d. Copy of 50 IAC 2.2-4-3(d)
 - e. Copy of IC 6-1.1-4-13.6(h)
 - f. Copy of Indiana Tax Court case *RHC Associates; Brands, Inc.; Robert Weber v. State Board of Tax Commissioners*
 - g. Copy of three (3) State Tax Board Final Assessments Determinations
 1. Little Champ Oil Co.
 2. KP Oil Co. Inc.
 3. Gerald & Margaret Funchs

- Respondent's Exhibit 1 – Copy of Plat Map #3 – Highland Heights
- Respondent's Exhibit 2 – Copy of Plat Map showing Clifty Drive from Wilson Avenue to Michigan Road (Old U. S. 421)
- Respondent's Exhibit 3 – List of synonyms for the word anomaly
- Respondent's Exhibit 4 – Copy of State Board Final Determination for James and Mary Craig
- Respondent's Exhibit 5 – Copy of three (3) residential PRCs
- Respondent's Exhibit 6 – Copies of four (4) Comparable Sales Books representing the third and fourth quarters for 1991 and the first and second quarters for 1992
- Respondent's Exhibit 7 - Package of documents containing the following
- a. Copies of four (4) State Board Final Determinations
 1. Gerald & Margaret Funchs
 2. Roy Prock D/B/A Presidential Estates
 3. Little Champ Oil Company
 4. KP Oil Company
 - b. Letter dated December 8, 1998 from Gail Sims, Jefferson County Assessor, to the Jefferson County Commissioners recommending they request a rehearing by the State Board for the four (4) appeals listed immediately above in (a)
 - c. Copy of IC 6-1.1-15-5
 - d. Copies of four (4) petitions by W. Goering requesting rehearings for the State Board Final Assessment Determinations listed immediately above in (a)
 - e. Copy of letter dated December 23, 1998 from Timothy Brooks, State Board Executive Secretary, to Mr. Goering, denying rehearings on the four (4) petitions
 - f. Copy of letter dated January 6, 1999 from Ms. Sims to Mr. Sabatine, Chairman of State Board, requesting that the rehearings for said Determinations be reconsidered
 - g. Copy of letter dated February 9, 1999 from Mr. Brooks to Ms. Sims stating the State Board will not rehear the said appeals

- h. Eight (8) copies of certified mail receipts
- i. Copy of plat map of Highland Heights
- j. Copy of map by Nancy Cutshall of the subject area
- k. Copy of page of dictionary with definitions of “intent” and “intention” highlighted
- l. State Board Final Assessment Determination – Appeal Number 37-007-93-0CI-00022 – Madison Heights Apartments
- m. Copy of definitions presented by the Township Assessor’s Association with influence factor highlighted
- n. Copy of page of dictionary with the definition of peculiarity highlighted
- o. Copy of statement stating the PTABOA supported the Madison Township Assessor in applying a positive influence factor to certain parcels on Clifty Drive.
- p. Duplicate copy of item (m) above
- q. Duplicate copy of item (n) above
- r. Copies of three (3) pages of the Land Order
- s. Copy of letter dated January 29, 2001 from Ms. Sims to Mr. Brooks
- t. Copy of letter dated February 16, 2001 from Ms. Sims to PTABOA members
- u. Copy of letter dated January 31, 2001 from Mr. Markt Lytle, Indiana State Representative, to Ms. Sims
- v. Copy of certified mail receipt.

5. The subject property is located at 730 Clifty Drive, Madison, Madison Township, Jefferson County.

6. The Hearing Officer did not view the subject property.

7. At the hearing, the parties agreed the year under appeal was 2000 and the assessed values of record are:

Land - \$37,830

Improvements - \$35,570.

8. The Hearing Officer requested a Disclosure Statement from Mr. Smith. The Hearing Officer received the statement on August 1, 2001. The Disclosure Statement was made a part of the record and labeled Petitioner's Exhibit 2.
9. The Hearing Officer contacted Mr. Thompson by phone to request calculations used to value the subject land. Mr. Thompson sent by facsimile on July 31, 2001 two (2) PRCs demonstrating the requested calculations. This evidence was entered into the record and labeled Respondent's Exhibit 8.

Issue - Whether the base rate used to value the land is correct.

10. The parcel under review is a .8 acre parcel located on a commercial strip on the north side of Clifty Drive in Madison, Indiana between Wilson Avenue and Michigan Road. Michigan Road is marked on Respondent's Exhibit 2 as US 421. This area is known as Madison Hilltop. Parcels, located on the north side of Clifty Drive between Wilson Avenue and Michigan Road, are non-platted parcels. Parcels located on the south side of Clifty Drive, between Wilson Avenue and Michigan Road, are platted. *Smith Testimony & Petitioner's Exhibit 1.*
11. The Land Order used for the 1995 reassessment in Jefferson County provided a range of values from \$350 to \$900 per front foot for platted, commercial/industrial parcels. The Land Order also provided a range of values between \$10,950 and \$24,750 per acre for primary commercial/industrial land that was not platted. *Smith Testimony & Petitioner's Exhibit 1.*
12. The result of determining the land value described above per the Land Order resulted in a vast disparity between similar parcels. To avoid this disparity between parcels, parcels located on the north side of the street were valued on a per acre basis then given positive influence factors so that their land values would be comparable with parcels on the south side of the street that were valued using the front foot method of valuation. *Sims Testimony.*

13. Several property tax appeals for tax year 1995 were filed with the State Board claiming that non-platted commercial land in the subject area should have been valued on an acreage basis. There were some appeals filed with the State Board claiming that the platted parcels on the south side of Clifty Drive were very similar to the non-platted parcels on the north side, and therefore, these platted parcels should have a similar value as the non-platted parcels. The State Board determined in each case that the local assessor had to follow the Land Order. These determinations required the parcels under review to be priced at a value no higher than \$24,750 per acre. *Petitioner's Exhibit 1 and Respondent's Exhibits 4 and 7.*
14. In a "Not for Publication" Indiana Tax Court Case *RHC Associates; Brands, Inc.; Robert Weber v. State Board of Tax Commissioners*, case numbers 49T10-9204-SC-00019, 49T10-9205-SC-00026, and 49T-10-9205-SC-00027, the Tax Court stated it would not uphold local assessors going beyond their authority in setting land values without any authorization from the State Board. *Smith Testimony & Petitioner's Exhibit 1.*
15. IC 6-1.1-4-13.6(h) states, "The county assessor shall notify all township assessors in the county of the values as determined by the commission and as modified by the state board on review or on appeal. Township assessors shall use the values as determined by the commission and modified by state board in making assessments." *Smith Testimony & Petitioner's Exhibit 1d).*
16. The local officials determined there was a serious situation due to four(4) State Board Final Determinations, Gerald Funchs, Roy Prock DBA Presidential Estates, Little Champ Oil, and KP Oil Co. The local officials sent several letters requesting the State Board rehear the above appeals. All requests for rehearing were denied. *Petitioner's Exhibit 7.*
17. The intent of the Land Committee was to set base rates for both sides of Clifty Drive similar and equal to the market. The PTABOA recommended and

supported the Madison Township Assessor's actions to apply positive influence factors to return the land assessments for subject properties to where they were before the State Board's determinations lowered the land assessments. *Sims Testimony*.

18. Copies of four (4) Comparable Sales Books, representing the third and fourth quarters for 1991 and the first and second quarters for 1992 were submitted into evidence. This evidence has blue tabs for residential sales and pink tabs for commercial sales. The marked sales represent sales of both residential and commercial properties at various locations in Jefferson County. The tabs state that 13% of the sale price was used to extract the land value. The land values set by the State Board in their final determinations (see Finding of Fact ¶13) are comparable to the selected residential land values from the Comparable Sales Books. *Sims Testimony. Thompson Testimony. Respondent's Exhibits 5 & 6.*

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 Board. 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 Board, however, the Appeals Division of the State Board 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 Board.

2. The Appeals Division 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 Board’s decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State Board to review the actions of the PTABOA, but does not require the State Board to review the initial assessment or undertake reassessment of the property. The State Board 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 Board 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 Board 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 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 State Board 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 Board'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 Board is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State Board 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 Board'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 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.
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 - Whether the base rate used to value land is correct.

18. The Madison Township Assessor plainly equalized the subject property under the direction and support of the PTABOA, just as he equalized all unplatted commercial lots in the subject area. He knew the commercial land in the subject area should be valued according to the 1995 Land Order for commercial

unplatted acreage, and changed the basis of value of the subject's lot from a front foot value to an acreage value. After using the acreage value, the Assessor equalized by applying a positive influence factor so there was no difference between valuing the land on an acreage basis and valuing the land on a front foot basis.

19. The State Board had determined that the PTABOA had acted in error in their procedure to equalize land values in the subject area. Refer to Respondent's Exhibit 4- State Board Final Determination – James & Mary Craig- Petition # 39-011-99-1-4-00002. Conclusions of Law ¶¶34 through 45. This appeal is included in the evidence and does not need to be repeated here. *Respondent's Exhibit 4*
20. Mr. Smith and Ms. Sims provided probative evidence that the subject lot should be valued on the per acre basis at no more than \$24,750 per acre. This is plainly stated in the County Land Order. *Petitioner's Exhibit 1 and Respondent's Exhibit 7.*
21. The Township Assessor's action to value the subject lot on a front foot basis by applying an influence factor has to be addressed. The assessed values of properties must initially fall within the range of values provided for in the Land Order. Certain properties, however, possess peculiar attributes that do not allow them to be lumped with surrounding properties for valuation purposes. *Phelps Dodge*, 705 N.E. 2d at 1105; 50 IAC 2.2-4-17(c)(10). For this reason, the concept of influence factors has been developed to allow for an upward or downward adjustment from the value established by the land order. *Id.*
22. Before an influence factor is applied, a peculiar attribute must be shown and a factor must be quantified. *Phelps Dodge*, 705 N.E. 2d at 1105 & 06. The record is void any quantified increase in value on account of a peculiarity.
23. Respondent's Exhibit 8, two (2) PRCs for the subject parcel, demonstrates the procedure used to value the subject lot. One card used the per acre method, the

other used the front foot method. The calculations are as follows:

PRC #1- .8 acres times \$24,750 (base rate) = \$19,800. \$19,800 times 573% (positive influence factor, card reflects 473%, in error) = \$113,450.

Mathematically 573% has to be multiplied times \$24,750 to obtain result of \$113,450. PRC #2- 175 feet (effective frontage) times \$927 (adjusted rate) = \$162,225 times 30% (negative influence factor) = \$113,560. The value used on the PRC is \$113,500.

24. The only reason the Township Assessor used a positive influence factor to value the subject lot was to circumvent the Land Order and value the subject lot on a front foot basis. As explained in Conclusion of Law ¶19 above, the State Board had determined that the local officials did not use A Township Assessor may use positive (or negative) influence factors to correct anomalies in the application of the Land Order to particular parcels. Such anomalies might be corrected through the use of comparable sales information of the type presented by Respondent in Respondent's Exhibit 6 or other data relevant to the influence factor at issue.

24.25. Although comparable sales data may be used to justify the application of influence factors, even the very substantial ones imposed by Respondent's evidence is not sufficient in this case to accomplish that goal Respondent's Exhibit 6 contains multiple 19 examples of residential sales that appear to support the acreage price currently contained in the Land Order, i.e. a top base rate of \$24,750 per acre.¹ However, with respect to the three commercial properties highlighted in Respondent's Exhibit 6, Respondent fails to establish any similarity between these "comparables" the correct procedure to change land assessments based on a equalization order and the subject property. Nor does Respondent provide any calculations to support that such "comparables" did sell for a per acre or per front foot price that is consistent with the values sought for the subject property.

¹ Respondent did not offer any testimony on the method of calculating the comparables or any explanation of the use of 13% as the percentage of the sales price that was used to extract the land value from the sales of improved property. However, Petitioner did not object to the introduction of such evidence.

26. Testimony given by Ms. Sims in the *Little Champ Appeal* stated that the County Board of Review (predecessor to the PTABOA) gave blanket negative influence factors of 25% to 30% to lots in the subject area. *Respondent's Exhibit 7*. This only adds confusion to the issue at hand. It is not ascertainable how the local officials intended to value land in the subject area, when all actions are considered.

26-27. The value for the subject unplatted lot is ascertainable from the Land ~~Order,~~Order. The sales data provided by Respondent does not support the application of the influence factor of 573% (minus the blanket negative factor of 30%). The subject lot should be valued on per acre basis of no more than \$24,750 per acre. Since the amount of \$24,750 was not contested, that amount will be used to value the subject lot. There is a change in the assessment as a result of this issue.

Issued this _____ day of _____, 2002
by the Indiana Board of Tax Review