

**STATE OF INDIANA
Board of Tax Review**

MAXIMUM, LLC,)	On Appeal from the Elkhart County Property
)	Tax Assessment Board of Appeals
Petitioner,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition No. 20-025-97-1-3-00014
)	20-026-98-1-4-00021
ELKHART COUNTY PROPERTY TAX)	Parcel No. 25-06-11-101-004
ASSESSMENT BOARD OF APPEALS)	
And CONCORD 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 subject improvement should be priced from the GCK schedule.
2. Whether the appropriate condition rating has been applied to the improvement.
3. Whether the appropriate physical depreciation has been applied to the subject improvement.
4. Whether obsolescence depreciation is warranted.
5. Whether the grade factor is excessive.

6. Whether the State Board has provided instructions for determining the effects that location and use have on the value of real property, for determining the cost of reproducing improvements, and for determining the productivity of earning capacity of the land for the subject property as required by IC 6-1-1-31-6.
7. Whether the valuation method used to determine the assessed value of the subject property is not uniform nor at an equal rate and is not based upon a just valuation.

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 herein shall also be considered a finding of fact.
2. Pursuant to Ind. Code § 6-1.1-15-3, Landmark Appraisals, Inc. on behalf of Maximum, LLC (Petitioner), filed Form 131 petitions requesting a review by the State. The Elkhart County Board of Review's Final Determination on 20-025-97-1-3-00014 was issued on December 7, 1998; the Form 131 petition was filed on December 22, 1998. The Final Determination on 20-025-98-1-4-000021 was issued on December 28, 1998; the Form 131 petition was filed on January 7.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on October 18, 2001 before Hearing Officer Debra Eads. Testimony and exhibits were received into evidence. M. Drew Miller represented the Petitioner. Richard Schlueter represented Concord Township. No one was present to represent Elkhart County.
4. At the hearing, the Form 131 petitions were made part of the record and labeled Board Exhibits A. The Form 117 Notices of Hearing were labeled Board Exhibits B. In addition, the following exhibits were submitted to the State:

Petitioner's Exhibit 1-Exterior photograph of the subject property and the adjacent building

Petitioner's Exhibit 2-Exterior and interior photographs of the subject building.

The Respondent did not submit any exhibits.

5. The property is located at 1010 Rowe Street, Elkhart, Concord Township, Elkhart County. The hearing officer did not view the property.
6. A hearing for petition 20-025-98-1-4-00021 had been scheduled for October 31, 2001. Since that petition was for the same parcel and raised the same issues, the Petitioner and the Respondent agreed to hold the hearing originally scheduled for October 31, 2001 in conjunction with this hearing on October 18, 2001.

Issue 1-Pricing Schedule

7. Petitioner testified that there are two buildings on the subject property, a 16,400 square foot structure and a 24,000 square foot structure. The smaller building was priced from the GCK schedule. The larger building has 26-gauge metal walls, 14-gauge steel purlins and "X" framing and clearly qualifies as a GCK building. *Miller Testimony*. Petitioner's Exhibits 1 & 2.
8. Based on the Petitioner's evidence and testimony the subject building should be priced from the GCK schedule. However, in the absence of the Township Assessor, he has no authority to stipulate to an agreement. *Schlueter Testimony*.

Issues 2 –5 Condition, Physical Depreciation, Obsolescence and Grade

9. Mr. Miller executed a Withdrawal Agreement for these issues, but later wished to reinstate the depreciation issue.
10. Both Mr. Miller and Mr. Schlueter agreed that the 30-year life expectancy table the appropriate schedule for the subject building.

Issues 6 and 7- Instructions and Constitutionality

11. No evidence or testimony was submitted concerning these issues.

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; 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.
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.

D. Issue 1- Pricing Schedule

18. Mr. Miller testified to the components of the subject building and presented photographs illustrating the similarities between the subject building and the adjacent building, which is priced from the GCK schedule.
19. The Respondent did not refute the testimony and, in fact, verbally agreed with the Petitioner.

20. Since the testimony and evidence was not refuted, the State will change the assessment as a result of the schedule selection issue.

E. Issues 2- 5- Condition, Physical Depreciation, Obsolescence and Grade

21. Mr. Miller executed a Withdrawal Agreement for these issues, but later wished to reinstate the depreciation issue.
22. The use of the GCK pricing schedule requires the use of the 30-year life expectancy table.
23. Due to the change in the pricing schedule, a change will be made in the depreciation factor.
24. While Mr. Miller may have withdrawn the grade issue, he relied on a comparison between the subject building and the adjacent building to establish that the subject building should be priced from the GCK schedule. The grade factor applied to the adjacent building is “C”; this implies that the subject building should also be graded “C”.
25. Due to the change in the pricing schedule, a change is also made to the grade factor.

F. Issues 6 and 7 – Instructions and Constitutionality

26. No evidence or testimony was presented regarding these issues. Therefore, the State Board declines to change the assessment as a result of these issues.

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