

**STATE OF INDIANA
Board of Tax Review**

In the matter of the Petition for Review)
of Assessment, Form 131) Petition Number: 82-027-97-1-4-00083

Parcel Number: 0971017094003

Assessment Year: 1997

Petitioner: Al Folz
 Knight Township Assessor
 221 Civic Center Complex
 Evansville, Indiana 47708

Taxpayer: Vann Park Limited Partnership
 700 South Green River Road
 Evansville, Indiana 47715

Taxpayer's Representative: Ice Miller Donadio & Ryan
 Ms. Sandra Bickel
 One American Square, Box 82001
 Indianapolis, Indiana 46282-0002

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

Whether obsolescence depreciation is warranted.

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, the Knight Township Assessor filed a petition requesting a review by the State. The Form 131 petition was filed on March 10, 2000. The Vanderburgh County Board of Review's (County Board) determination was issued on February 16, 2000.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was to be held on May 17, 2001 before Hearing Officer Jennifer Bippus. Testimony and exhibits were received into evidence. John Gerard, Knight Township Real Estate Deputy, and Joe Gries, Knight Township Land Coordinator, represented Knight Township (Petitioner). Tammy Elkins represented Vanderburgh County. Sandy Bickel and Maureen Haugland represented Vann Park Limited Partnership (Taxpayer).

4. The subject Form 131 petition was made part of the record and labeled Board Exhibit A. The Notice of Hearing was labeled Board Exhibit B. The Request for Additional Evidence, signed by both the Petitioner and the Taxpayer's Representative, was labeled Board Exhibit C. In addition, the following documents were submitted to the State:

Petitioner's Exhibit A - Copy of the minutes from the County Board's meeting held on February 3, 2000;

Petitioner's Exhibit B - Copy from 699 *North Eastern Reporter, 2d Series*, page 340, item 4;

Petitioner's Exhibit C - Copy from 694 North *Eastern Reporter*, 2d Series, page 1242, item [22];

Taxpayer's Exhibit A - Photographs of the subject property;

Taxpayer's Exhibit B - Income and Rent Guideline Calculations for Vann Park;

Taxpayer's Exhibit C - Copy of Vann Park 60% Median Family Income Rent History;

Taxpayer's Exhibit D - Copy of the percentage request and calculations for the amount of obsolescence requested by the Taxpayer; and

Taxpayer's Exhibit E - Copy of the 1999 Appraisal Report for Vann Park Apartments, prepared by Don R. Scheidt & Co., Inc.

5. At the hearing, the Petitioner requested additional time to respond to the evidence presented by the Taxpayer. The Petitioner was given 10 days to respond. The Taxpayer was given 10 days to respond to Petitioner's additional evidence. Both the Petitioner and the Taxpayer's Representative responded to the Request for Additional Evidence in a timely manner. The Petitioner's response is labeled as Petitioner's Exhibit D and the Taxpayer's response is labeled as Taxpayer's Exhibit F respectively.
6. The County did not submit any evidence at the hearing.
7. The subject property is an apartment complex located at Van Park Circle, Evansville, Knight Township, Vanderburgh County. The Hearing Officer did not view the property.
8. The parties agreed that the Assessed Value under appeal is:
Land: \$6,500 Improvements: \$276,730 Total: \$283,230

Issue - Whether obsolescence depreciation is warranted.

9. The township contends that there is no documentation to support the obsolescence applied to the building, only an opinion. The last page of the minutes submitted points out that Mr. Koch, a member of the County Board, entertained the motion of giving the Vann Park Apartments 8% obsolescence. The Board voted to accept the 8%. There is no back up material to support this 8% within the County Board's minutes and also no explanation as to why the 8% was agreed upon. There is a need for quantification of the obsolescence. *Gerard Testimony*. Petitioner's Exhibits A, B, and C.

10. At the County Board hearing, for taxing year 1997, the request made to the Board was that 44% and 54% obsolescence be granted for 1997 and 1998 respectively. *Bickel Statement*.

11. The taxpayer's claim for obsolescence is due to deed restrictions. The Petitioner does not believe the figures provided by the taxpayer for the Vann Park project are stated correctly and therefore, are meaningless. The date of the appraisal is before the units were actually built. The income stated may not be indicative of future income. The first full year of operation for phase IV was 1997. There is a discrepancy between the improvement value provided from the appraisal and the Marshall Swift cost method. The market value of the tax credits is inaccurate and would directly affect the amount of obsolescence. After viewing the comparables, the logical conclusion is that Vann Park is not suffering a loss in value due to deed restrictions. Petitioner's Exhibit D.

13. The Taxpayer responded (Taxpayer's Ex. F) to the Petitioner's additional evidence (Petitioner's Ex. D) on a point-by-point basis and contended that the Township had not supported any of its allegations.

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.

D. Issue- Whether obsolescence depreciation warranted.

18. The Petitioner failed to meet his burden in this case. The Petitioner did not submit evidence to demonstrate that the obsolescence granted by the County Board was not warranted. The Petitioner did not submit any probative evidence indicating either obsolescence did not exist or that a different amount of obsolescence is warranted. As a result, the burden never shifted to the County to rebut the Petitioner's evidence and justify its decision with substantial evidence.
19. The Petitioner requested additional time to review the Taxpayer's evidence submitted at the hearing. Both parties' sent responses as additional evidence, but the responses did not change the determination made for the case at hand. The responses addressed the original obsolescence plea made by the Taxpayer, but did not address the concern of this case, in which the Petitioner was trying to make a case against the County Board, not the Taxpayer.
20. The Taxpayer did not file the Form 131 and it was not the Taxpayer's responsibility to make the case in this hearing. The Taxpayer submitted the same evidence that was provided at the County Board's hearing, but did not specify that additional obsolescence was being sought at the current State hearing. The Township Assessor failed to meet his burden of proof and,

therefore, the burden never shifted to the County to rebut the Township's evidence and justify its decision with substantial evidence. The County Board's decision is presumed correct in appeal proceedings before the State. 50 IAC 17-6-3.

21. For all of the above reasons, the State denies the petition filed by the Township Assessor. The decision of the Vanderburgh County Board of Review is maintained. There is no change to the assessment as a result of this issue and the obsolescence will remain at 8% for the subject property.

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.

Commissioner, Indiana Board of Tax Review