STATE OF INDIANA
Board of Tax Review

In the matter of the Petition for Review)
of Assessment, Form 131) Petition Number: 49-146-95-1-4-00022

Parcel Number: 1035545

Assessment Year: 1995

Petitioner: Puritan Home Funding Co.
445 N. Pennsylvania, Suite 300
Indianapolis, IN 46204

Petitioner Representative: Joseph D. Calderon
Dann Pecar Newman & Kleiman
One American Square, Suite 2300
Box 82008
Indianapolis, In 46282

Findings of Fact and Conclusions of Law

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

Issue

1. Whether the base rate of the land is excessive.

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, Joseph D. Calderon of Dann Pecar Newman & Kleiman, on behalf of Puritan Home Funding Company (the Petitioner), filed a From 131 petition requesting a review by the State Board. The Form 131 petition was filed August 31, 1998. The Marion County Board of Review's (County Board) Assessment Determination is dated July 31, 1998.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on August 31, 1999 before Hearing Officer Joan L. Rennick. Testimony and exhibits were received into evidence. Mr. Joseph D. Calderon, Attorney, Mr. David F. Hurley, Attorney, and Mr. Benton R. Marks, Agent, represented the Petitioner. Mr. Frank Corsaro represented Center Township. Mr. David F. Hurley was not sworn in.

4. Although written notice of the hearing was mailed to the County Assessor, no one was present at the hearing to represent either the County Assessor or the County Board.

5. At the hearing, the subject Form 131 was made a part of the administrative record and labeled Board Exhibit A. The Notice of Hearing was labeled Board Exhibit B. In addition, the following exhibits were submitted to the State Board:

   Petitioner's Exhibit 1 – Plat map
   Petitioner's Exhibit 2 – Appraisal of alley vacation, dated 5/28/97
   Petitioner's Exhibit 3 – Appraisal of alley vacation, dated 9/1/98

Petitioner's Exhibit 4 – Downtown office comparable chart
Petitioner's Exhibit 5 – Property record cards (PRC's) to show the base rates of comparable downtown properties

Respondent's Exhibit 1 – PRC
Respondent's Exhibit 2 – Summary report from the Marion County Land Valuation Order (Land Order)

6. The subject property is located at 301 West Washington Street, Indianapolis, Center Township, Marion County. The Hearing Officer did not view the subject property.

Issue - Whether the land base rate is excessive.

7. The present land valuation is excessive. A fair valuation could be achieved by using a lower base rate or by applying an influence factor. The assessor applied a negative 10% influence factor due to restrictions. The Marion County Land Order supports rates from $1 to $100 per square foot; a fair price would be $25 per square foot. One way to find the value of the parcel is to apply the income approach. Income is related to the use of the property; in this case, the usage is limited to parking because of the size and shape of the parcel. At the present time, the parcel is used for parking for the business at 309 W. Washington. If the spaces were to provide a net income of $7,500 annually, this amount capitalized at 10% would result in a market value of $75,000; this is considerably less than the current true tax value. Vacated right-of-ways, in most instances, have nominal values because they are advantageous only to the adjacent owners and to utility companies who have easements through the properties. *Calderon Testimony*. Petitioner's Exhibits 2-5.

8. The Petitioner did not want Senate Avenue vacated because they would lose their corner location with the construction of the Westin Hotel. The acquisition of the

4,275 SF parcel in the vacation of Senate Avenue in 1986 afforded their establishment parking at reasonable tax rates, but those rates skyrocketed as a result of the 1995 assessment. The utility companies have easements through the property and a large sewer goes through the eastern portion of the property. The only logical sale of this property would be to the Westin Hotel but the Westin has no use for the property. The Westin Hotel has a view of the park and the downtown area and is assessed using the same land base rate as the subject property that has severe restrictions. *Marks Testimony*.

Conclusions of Law

1. The Petitioner is limited to the issues raised in the Form 131 petition filed with the State Board. Ind. Code § 6-1.1-15-1(e) and –3(d). *See also* Form 131 petition requiring the Petitioner to identify the specific grounds for appeal. The State Board has the discretion to address any issue once an appeal has been filed by the taxpayer. *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 issue raised in the Form 131 petition filed with the State Board.

2. The State Board 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 appraisal system. It is too time-consuming, too costly, and wholly unrealistic for individual assessments to be made based upon individual evidence.

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*), *aff'g in part and rev'g in part Town of St. John III.*

5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. art X, § 1 (a), requires the creation of a uniform, equal, and just system. 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 Tax 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 County Board (or County Property Tax Assessment Board of Appeals (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 County Board (or 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 detailed 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 requires to give weight to evidence that is not probative of the errors the taxpayers allege. W*hitley,* 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 is not "triggered" if the taxpayer does not present 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 the true tax value is not necessarily identical to fair market value, any tax appeal that seeks a reduction in assessed value solely 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 law 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 V,* 702 N.E. 2d at 1040.

D. Conclusions Regarding Land Value

18. For the reasons set forth below, the State Board determines that the Petitioners cannot challenge the Land Order values by way of the Form 130/131 appeal process. Alternatively, the State Board determines that the Petitioners' evidence failed to demonstrate that the value assigned to the property by way of the Land Order is incorrect.

1. General principles of land valuation in Indiana.

19. Indiana's approximately 3 million land properties are valued on a mass appraisal basis.

20. The General Assembly has recognized that assessing officials cannot provide a commercial-grade/fee appraisal for every parcel in the State, but must instead rely on mass appraisal techniques commonly used by tax assessors throughout the United States. Ind. Code § 6-1.1-31-3(4) permits the use of "generally accepted practices of appraisers, including generally accepted property assessment valuation and mass appraisal principles and practices."

21. The Tax Court has similarly recognized the necessity of mass appraisal practices (and some of their flaws). *See King Industrial Corp. v. State Board of Tax Commissioners*, 699 N.E. 2d 338, 343, n. 4 (Ind. Tax 1998)(The use of land

classifications are commonly used to save time and money when assessing property).

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

23. 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.

24. For the 1995 reassessment, the county land valuation commission determined the value of non-agricultural land (i.e. commercial, industrial, and residential land) by using the rules, appraisal manuals and the like adopted by the State Board. 50 IAC 2.2-2-1. *See also* Ind. Code §§ 6-1.1-4-13.6 (West 1989) and –31-5 (West 1989). By rule, the State Board decided the principal that sales data could serve as a proxy for the statutory factors in Ind. Code § 6-1.1-31-6. Accordingly, each county land valuation commission collected sales data and land value estimates and, on the basis of that information, determined the value of land within the County. 50 IAC 2.2-4-4 and –5. The county land valuation committee then held a public hearing on the land order values. 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).

25. The State Board reviewed the land orders established by the county land valuation committee, and could make any modifications deemed necessary for uniformity and equality purposes. Ind. Code § 6-1.1-4-13.6(f)(West 1989); *Mahan*, 622 N.E. 2d at 1061. After the State Board completed its review of the county land order, the State Board was required to give notice to the affected assessors. In turn, only county and township assessors could appeal the State

Board's determination of values. *Id* at 4-13.6(g); *Poracky v. State Board of Tax Commissioners*, 635 N.E. 2d 235, 239 (Ind. Tax 1994)("An appeal of a land order, just as an appeal of a judgment or order, must follow the prescribed procedural mandates."). The final stage in the process provided for dissemination of the State Board's final decision on the land order: "[t]he 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 appeal. Township assessors shall use the values as determined by the commission and modified by the State Board in making assessments." Ind. Code § 6-1.1-4-13.6(h).

26. Agricultural land was valued at $495 per acre with adjustments permitted for such things as soil productivity and influence factors. 50 IAC 2.2-5-6 and –7.

2. Taxpayers must challenge Land Order values in a timely and appropriate manner; Namely: They must challenge the values at the local level before the State Board adopts the County Land Order.

27. The Tax Court has consistently held that taxpayers must follow the required appeals procedures when challenging property tax assessments. *The Kent Company v. State Board of Tax Commissioners*, 685 N.E. 2d 1156, 1158 (Ind. Tax 1997)("The law is well-settled that a taxpayer challenging a property tax assessment must use the appropriate means of doing so."); *Williams Industries v. State Board of Tax Commissioners*, 648 N.E. 2d 713, 718 (Ind. Tax 1995)(The legislature has created specific appeal procedures by which to challenge assessments, and taxpayers must comply with the statutory requirements by filing the proper petitions in a timely manner).

28. As previously stated, Ind. Code § 6-1.1-4-13.6(e)(West 1989) provided for a public hearing held by the local officials regarding values contained within the county land order. Once the public hearing was held, the only statutory means

for requesting a change or challenging a land order was an administrative appeal to the State Board *by the county and township assessors*. Ind. Code § 6-1.1-4-13.6(g)(West 1989); *Poracky*, 635 N.E. 2d at 238 & 39.

29. Taxpayers did not have the right to challenge the values established by the county land orders after the county land commission made a determination on them.

30. The State Board is aware of Tax Court decisions that go against limiting taxpayers' rights to challenge land order values at the State administrative level. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365 (Ind. Tax 1998).

31. Moreover, the Tax Court implicitly found that Ind. Code § 6-1.1-4-13.6 (West 1989) violated the requirements of due course of law (due process) because the statute did not provide for taxpayer hearings prior to the State Board's "final say" on land values. *Town of St. John III*, 690 N.E. 2d at 373, n. 2, & 384, n. 31. (It is believed that the Tax Court also found that the amended version of Ind. Code § 6-1.1-4-13.6, effective 1998, remedied the Court's due process concerns. *Town of St. John III,* 690 N.E. 2d at 384, n. 31).

32. The State Board respectfully concludes that *Town of St. John V* changed the landscape regarding the issue of taxpayers' entitlement to challenge land order values.

33. Article X, § 1, of the Indiana Constitution was the basis of the Tax Court's ruling that a taxpayer may challenge his land order valuation in an individual appeal. *Zakutansky*, 691 N.E. 2d at 1368.

34. The Tax Court's basis for its finding was reversed by the Supreme Court in *Town of St. John V.* The Property Taxation Clause (Article X, § 1, of the Indiana

Constitution) "[R]equires . . . a system of assessment and taxation characterized by uniformity, equality, and just valuation, but the Clause does not require absolute and precise exactitude as to the uniformity and equality of each individual assessment. *The tax system must also assure that individual taxpayers have a reasonable opportunity to challenge whether the system prescribed by the statute and regulations was properly applied to individual assessments, but the Clause does not create a personal, substantive right of uniformity and equality.*" *Town of St. John V*, 702 N.E. 2d at 1040. (Emphasis added).

35. Further, the Tax Court's finding that the assessment system violated the Due Course of Law Clause in *Town of St. John III* was expressly nullified by the Supreme Court in *Town of St. John V,* 702 N.E. 2d at 1040, n. 8.

36. Accordingly, a taxpayer is not constitutionally entitled to file an appeal to the State challenging the values established by a promulgated land order on an individual appeal basis. Taxpayers may, however, administratively appeal the application of the land order to his assessment (i.e., the taxpayer's property should have been valued from one section of the land order rather than another).

37. Furthermore, the statutes do not give taxpayers the right to challenge land order valuation.

38. Indiana courts have consistently held that a statute does not require interpretation unless a statute is unclear and ambiguous. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189 (Ind. Tax 1997). Unambiguous language within a statute cannot be construed in a manner that expands or limits its function. *Cooper Industries, Inc. v. Indiana Department of State Revenue*, 673 N.E. 2d 1209 (Ind. Tax 1996). Words, unless statutorily defined, are to be given their plain, ordinary, and usual meaning given in the

dictionary. *Knauf Fiber Glass, GmbH v. State Board of Tax Commissioners*, 629 N.E. 2d 959 (Ind. Tax 1994).

39. It is just as important to recognize what a statute does not say as it is to recognize what a statute does say. *Peele v. Gillespie*, 658 N.E. 2d 954 (Ind. App. 1995); *Million v. State*, 646 N.E. 2d 998 (Ind. App. 1995). Concerning land orders, the statute clearly said that county and township assessors could appeal to the State Board. The statute does not give taxpayers the right to challenge land order values after the public hearing at the county level.

40. Although statutory construction is a judicial task, it is also the task of the administrative agency charged with administering the statute. *Riley at Jackson Remonstrance Group v. State Board of Tax Commissioners*, 663 N.E. 2d 802 (Ind. Tax 1996); *Auburn Foundry, Inc. v. State Board of Tax Commissioners*, 628 N.E. 2d 1260 (Ind. Tax 1994).

41. Time after time, the General Assembly has shown that it knows how to enact legislation that gives taxpayers the right to review by the State Board. For example: (1) the State Board reviews applications for Enterprise Zone Inventory Credits and issues a determination regarding eligibility under Ind. Code § 6-1.1-20.8-3, (2) the State Board reviews the denial of property tax exemptions under Ind. Code § 6-1.1-11-8, (3) the State Board reviews the denial of a deduction for rehabilitated residential property under Ind. Code § 6-1.1-12-25.5, (4) the State Board reviews the denial of a deduction for resource recovery systems under Ind. Code § 6-1.1-12-28.5, and the State Board reviews the denial of a deduction for coal conversion systems, hydroelectric power devices, and geothermal energy heating/cooling devices under Ind. Code § 6-1.1-12-35.

42. For matters concerning Enterprise Zone Inventory Credits, rehabilitated residential property, coal conversion systems, and the like, the General Assembly quite explicitly provided for an administrative review by the State. The

General Assembly did not, however, provide for State review by taxpayers challenging land order valuations. Such silence is meaningful. To repeat, in construing a statute, it is just as important to recognize what the statute does not say as it is to recognize what the statute does say. The statutes regarding land orders do not provide for a taxpayer appeal to the State Board regarding land order values. If the General Assembly meant for such an appeal to be available to taxpayers, it could easily have said so in clear terms.

43. Further, it is absurd to conclude that the General Assembly somehow forgot to provide for a taxpayer's right to appeal land order values when it explicitly provided for such an appeal to the State Board by county and township assessors. It is just as absurd to conclude that the General Assembly chose to implicitly and obliquely provide for a taxpayer's appeal to the State Board regarding land order valuation, when the General Assembly explicitly and clearly provided for such an appeal by the local assessors. Statutes are not construed in a manner that requires absurd results. *Matonovich v. State Board of Tax Commissioners*, 705 N.E. 2d 1093 (Ind. Tax 1999). Again, if the General Assembly meant for such an appeal to be available to taxpayers, it could have easily said so in clear terms. It did not.

44. The absence of explicit or plausible implicit appeal rights is easily explained. Once a land order is promulgated, every parcel of property in the county is assessed according to it. Such "across the board" application results in uniform land value. If individual taxpayers are able to question valuation on an individual appeal basis, uniformity ceases to exist. The State Board has an obligation to ensure uniform assessments on a *mass appraisal* basis.

45. The State Board recognizes the Form 130/131 petition process provided for by Ind. Code §§ 6-1.1-15-1 through –4, which is "triggered" by a local assessment. Though the General Assembly has provided for individual assessment appeals,

neither the Constitution nor the statutes creates entitlement to make every challenge desired.

46. Prohibiting taxpayers from challenging certain aspects of the assessment system is not peculiar, and the Tax Court recognizes that taxpayers can not challenge every aspect of the assessment system in individual appeals, i.e., taxpayers can not challenge base rates provided by the cost schedules in the Regulation. *Town of St. John III,* 690 N. E. 2d at 374; *Dawkins v. State Board of Tax Commissioners,* 659 N.E. 2d 706, 709 (Ind. Tax 1995).

47. Instead, the challenges that can be made by way of the statutory Form 130/131 administrative appeal process are limited or qualified by Ind. Code § 6-1.1-4-13.6(g)(West 1989). Only by reading the statutes in such a way – taxpayers can challenge the application of the land order to individual assessments, but cannot challenge the underlying values of the same – is a harmonious statutory scheme preserved.

3. Properties with peculiar attributes may receive land value adjustments by way of influence factors.

48. Though taxpayers are not entitled to challenge land order values, they are entitled to receive adjustments to land values if their properties posses peculiar attributes that do not allow them to be lumped with surrounding properties for land value purposes. Such adjustments, either upward or downward adjustments, can be made by way of influence factors applied to the property. *Phelps Dodge v. State Board of Tax Commissioners,* 705 N.E. 2d 1099, 1105 (Ind. Tax 1999).

4. The Petitioners failed to demonstrate that the value assigned to the property by way of the Land Order is incorrect.

49. At the hearing, the Petitioner's representative declared that the sole issue is the excessive land valuation of the subject property. The Petitioner is of the opinion the land base rate should either be lowered or a negative influence factor should be applied.

50. The Petitioner's representatives testified that the parcel has numerous restrictions on it, such as the inability to develop the parcel due to its shape and size and the existence of easements. The Petitioner, though, failed to provide any documentation supporting these claims. For example, a copy of the easements could show the use of the land may have some restrictions.

51. The Petitioner's representatives also claimed that before Senate Avenue was vacated, the subject property was in a choice corner location, which added value to the land. The Petitioner's representatives further alleged that the vacation of Senate Avenue decreased the value of the subject parcel. However, the Petitioner representatives did not present any evidence, such as an appraisal for the subject property, before and after the vacation of the street, to document how the vacation of the street affected the property's worth.

52. The Petitioner representatives submitted appraisals for two (2) alleys that have been vacated (Petitioner's Exhibits 2 and 3). Neither of the two (2) properties is in close proximity of the subject parcel. While the appraisals for the two (2) properties arrive at values for those tracts, there is no evidence presented by the Petitioner to show how these parcels and the subject are comparable. The fact that they are alleys or alleyways is not the determining criteria in making them comparable to one another.

53. The Petitioner, in this regard, has not established that these properties are relevant to the subject property or to this appeal.

54. It should be noted, lying less than 200 feet west of the subject parcel is another vacated street (Osage Street) also with frontage on West Washington Street like that of the subject parcel. The Petitioner's representatives did not include any information on this parcel in their analysis even though it seems to be most similar to the subject.

55. The Petitioner's representatives submitted a list of thirty (30) downtown office properties showing the land base rate per square foot applied to those parcels (Petitioner's Exhibit 4). The land base rates range from $65.00 per square foot to $10.00 per square foot. The Petitioner again, has not identified the criteria used to compare the thirty (30) purported comparables to the subject or to make an analysis as to how the properties are comparable. The exhibit lists the base rate per square foot of the land, but does not indicate whether any influence factors have been applied to those parcels. The Petitioner did not include a map showing the locations of the purported comparable parcels. Nor did the Petitioner address how the location of the purported comparables affects their value. Again, the Petitioner has not explained how the information contained in this exhibit relates to the subject property and the issue under review.

56. If the Petitioner is relying on the range of base rates for these thirty (30) properties as evidence that land value in the downtown area varies, he is correct. But one would expect the land value to be different in different areas of "downtown", just as one would expect land values of properties within the same immediate geographic area to be valued similarly.

57. The Petitioner's representatives also submitted PRCs for fifteen (15) of the thirty (30) downtown properties listed in Petitioner's Exhibit 4. (Petitioner's Exhibit 5a through 5t). The Petitioner's representatives testified that the County recognized

some restrictions and applied a negative 10% influence factor to the parcels. A review of this exhibit shows that of the fifteen (15) properties only one (1) received a negative influence factor of 10% for “restrictions”. The PRC does not explain the restrictions that determined the application of the factor. The Petitioner did not establish how this evidence was relevant to the appeal under review.

58. A review of a plat map showing the subject property (Petitioner's Exhibit 1) and the list of downtown office properties (Petitioner's Exhibit 4) reveals that the parcel lying to the east and the two (2) parcels lying to the west of the subject property have the same land base rate ($55 per square foot) as the subject. This establishes that the County valued properties in the same area having frontage on Washington Street in a like and uniform manner.

59. Also included in the Petitioner’s representative’s testimony is the suggestion that the Income Approach to Value could be used to determine the value of the property. The Petitioner’s representatives indicated the subject property is being used by the business at 309 West Washington Street and that the income stream could still be valued as though renting these spaces at $60 per month. The Petitioner’s representatives determined the income to be $9,000 per year and after expenses it would generate $7,500 per year. The Petitioner’s representatives then applied a capitalization rate of 10% to achieve an alleged market value. However, none of the information stated is supported by any documentation. There are no rental agreements, no audited expense statements, and no discussion on how the capitalization rate was determined by the Petitioner. The Petitioner’s representative’s statements are conclusory and not considered probative evidence.

60. Accordingly, the first prong of the two-prong burden was not met. Having failed to provide probative evidence that would support an application of an additional

negative influence factor, the Petitioner also failed to present probative evidence to quantify an additional negative influence factor.

61. Taxpayers are required "to do something more than simply allege that an error exists in the assessment . . . " *Whitley*, 704 N.E. 2d at 1119.

62. Taxpayers are expected to make detailed factual presentations to the State Board regarding alleged errors in assessment. *Id.* "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)).

63. For all the above reasons, there is no change in the assessment as a result of this issue.

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