

**STATE OF INDIANA**  
**Board of Tax Review**

In the matter of the Petition for Review )  
of Assessment, Form 131 ) Petition No.: 49-801-95-1-4-00017

Parcel No.: 8004813

Assessment Year: 1995

Petitioner: Puritan Home Funding Company, Inc.  
445 North Pennsylvania Street  
Suite 300  
Indianapolis, IN 46204

Petitioner Representative: 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.

**Issues**

1. Whether the land classification is correct.
2. Whether a negative influence factor should be applied to the land.
3. Whether the condition of the paving 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, Joseph Calderon of Dann Pecar Newman & Kleiman, on behalf of Puritan Home Funding Company, Inc. (the Petitioner) filed a Form 131 petition requesting a review by the State Board. The Form 131 was filed on January 8, 1998. The Marion County Board of Review's (County Board) Assessment Determination is dated December 12, 1997.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on October 20, 1998 before Hearing Officer Joan L. Rennick. Testimony and exhibits were received into evidence. Joseph Calderon represented the Petitioner. Pete Amundson represented Washington Township. No one appeared to represent Marion County or the County Board.
4. At the hearing, the subject Form 131 was made part of the record and labeled Board Exhibit A. Notice of Hearing on Petition was labeled Board Exhibit B. In addition the following exhibits were submitted to the State Board:  
Petitioner's Exhibit 1 – Aerial Map, spring 1994  
Petitioner's Exhibit 2 – Table 6-14 U.S. Neighborhood Shopping Centers  
Petitioner's Exhibit 3 – Base Map 18B, Zoning Marion County  
Petitioner's Exhibit 4 – page 17, Marion County Zoning Text
5. The following exhibits were submitted to the State Board after the hearing based

on a request made by the Hearing Officer for additional information:

Petitioner's Exhibit 5 – obsolescence information

Petitioner's Exhibit 6 – photographs of the subject's paving

Respondent's Exhibit 1 – page 116, Marion County Land Order, Washington Township

Respondent's Exhibit 2 – property record cards for comparable property, Corporate Square East

Respondent's Exhibit 3 – property record cards for comparable property, Vantage Apartments

6. The subject property is located at 4446 Allisonville Road, Indianapolis, Washington Township, Marion County. The Hearing Officer did not view the subject property.

**Issue 1 – Whether the land classification is correct.**

7. An aerial map shows the configuration of the property and some vacant land. The property is currently assessed as primary land; a portion of it should be valued as undeveloped. *Calderon Testimony*. Petitioner's Exhibit 1.
8. Some portion of the subject parcel should be valued as usable undeveloped. *Amundson Testimony*.
9. Mr. Amundson suggested assessing the paved area as primary land and the balance of the parcel as usable undeveloped. Mr. Calderon agreed to this breakdown of the land.

**Issue 2 – Whether a negative influence factor should be applied to the land.**

10. The subject parcel has severe negative characteristics such as no frontage on

Keystone Avenue and a small amount of frontage on “Old” Allisonville Road. When the state rerouted Allisonville Road, they essentially cut this area off, hurting the retail businesses on this corner. The subject is located in an area considered the southern boundary of the land order with the more expensive land being in the northern, more affluent area. South of the subject, commercial properties of similar use have land values half that of the subject. Area “J” at \$1.30 and Area “K” at \$1.80 base rate for primary land are similar to the subject with the subject falling somewhere in between. A 40% negative influence factor would be appropriate. The shape and size of the subject parcel would make it difficult to attract any business to this site; the only solution available to the taxpayer would be to purchase property fronting Keystone in order to give the subject frontage on Keystone, however that is not possible at this time. The improvement on the parcel is a body shop that has been allowed under a variance. Any expansion would require further variances. If the present business would leave, a retail use must be found to meet zoning requirements. The low traffic count on “Old” Allisonville Road combined with the egress and ingress problems would make this difficult. *Calderon Testimony.*

11. The Assessor and the County Board have looked at some of the properties in the area of the subject and have recognized the fact that higher land values do not apply. The Township and County Board are reviewing this entire area regarding obsolescence and the Land Order values. The Township and County Board have agreed to lower the land base rates to \$1.60 therefore eliminating the need to apply influence factors to the land. He was in agreement that a price reduction in the land was appropriate. *Amundson Testimony.*

### **Issue 3 – Whether the condition of the paving is correct.**

12. The paving is old and rough and is not in a fair or average condition. Photographs would be submitted to show the poor condition of the paving. *Calderon Testimony.* Petitioner’s Exhibit 6.

13. Although he visited the subject property, he had not inspected the condition of the paving since he did not realize that it was an issue. *Amundson 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 issues 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 required to give weight to evidence that is not probative of the errors the taxpayers allege. *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 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. Issue 1 – Whether the land classification is correct.**

18. There are four (4) categories of commercial and industrial land. Those categories are primary, secondary, usable undeveloped and unusable undeveloped. The amount of acreage necessary to support the existing facility and its purposes is classified as primary. The acreage that is used in the enterprise, but not on a regular basis, is classified as secondary. The amount of acreage that is vacant and held for future development is classified as usable undeveloped land. The amount of vacant acreage that is unusable for commercial or industrial purposes, and not used for agricultural purposes, is classified as unusable undeveloped. Normally, large tracts are partitioned to indicate the various uses of the individual tract. Small acreage tracts of one (1) acre or less are often utilized as a primary building site and require the primary land classification. 50 IAC 2.2-4-17(b).
19. In reviewing the County property record card, the State Board finds that the subject parcel consists of 32,887 square feet, 13,735 square feet is paved and .088 acres is right-of-way (determined by the County Board). Based on the testimony presented, the parties agreed the amount of land under the paving be valued as primary land (13,735 square feet) with the remainder of the parcel being valued as usable undeveloped (15,319 square feet).
20. It is determined the land be valued in the following manner:  
Primary – 13,735 SF  
Usable Undeveloped – 15,319 SF  
Right-of-Way - .088 acres (determined by the County Board).

21. The agreement between the Township and the Petitioner is a decision between these parties and the State Board will accept this agreement based on the undisputed testimony of record. In doing so, the State Board does not decide the propriety of this agreement, either explicitly or implicitly.

**E. Issue 2 – Whether a negative influence factor should be applied.**

22. Land Order values may be adjusted by the application of influence factors. An influence factor is defined in 50 IAC 2.2-4-10 as “a condition peculiar to the lot that indicates an adjustment to the extended value to account for variations from the norm.” Influence factors may be applied for the following conditions: topography, under improved property, excess frontage, shape or size, a misimprovement to the land, restrictions, and other influences not listed elsewhere.
23. In the case at bar, the parties agreed the land should be valued with a base rate for primary land at \$1.60 per square foot and usable undeveloped at \$ .48 cents per square foot. However, these values are not found in the Land Order for this area (Area E). The range for Area E is \$2.40 to \$3.20 per square foot for primary land and \$ .72 to .96 per square foot for usable undeveloped land.
24. Testimony by Mr. Amundson indicates that the County and the County Board have concerns for this area regarding land values as well as the application of obsolescence. Mr. Amundson testified the County and Township were taking a closer look at this area as it compares to the Broad Ripple area. The Broad Ripple area being the more affluent northern boundary of Area E.
25. The undisputed testimony presented shows the parties to be in agreement in valuing the primary land at \$1.60 per square foot and the usable undeveloped at \$ .48 per square foot and establishes the fact that the County recognizes inequities within the designated area for the subject parcel. For these reasons, it

- is determined a negative influence factor should be applied to the land to obtain the agreed upon value.
26. Since the values indicated for the subject area within the Land Order can not be changed within the scope of this appeal, the only option available to reflect the agreement reached between the parties is to apply a negative 33% influence factor to the land value. A change in the assessment is made as a result of this issue.
  27. The agreement between the Township and the Petitioner is a decision between these parties and the State Board will accept this agreement based on the undisputed testimony of record. In doing so, the State Board does not decide the propriety of this agreement, either explicitly or implicitly.

**F. Issue 3 – Whether the condition of the paving is correct.**

28. 50 IAC 2.2-10-5(d)(8) defines condition as “a judgment of the physical condition of the item relative to its age. “Average” to indicate the structure is in average condition relative to its age, or the condition in which it would normally be expected. “Fair” to indicate the structure is in fair condition relative to its age. The degree of deterioration is somewhat worse than would normally be expected. “Poor” to indicate the structure is in poor condition relative to its age. The degree of deterioration is significantly worse than would normally be expected.”
29. Mr. Calderon testified that the condition of the paving is neither “average” nor “fair” and should be changed to “poor”. Mr. Amundson stated that he had not looked at the condition of the paving at the time he inspected the subject property.
30. The Hearing Officer requested, and received in a timely manner, photographs (Petitioner’s Exhibit 6) of the paving in question from Mr. Calderon.

31. The photographs showed an area that has deteriorated greatly over time. Extensive cracking marks the paving along with numerous potholes of varying sizes. Based on the evidence and testimony, the paving is determined to be in “poor” condition. A change in the assessment is made as a result.

Issued this \_\_\_\_ day of \_\_\_\_\_, 2002

By the Indiana Board of Tax Review