

**STATE OF INDIANA  
Board of Tax Review**

BURROS T. & THELMA J. WARD	)	On Appeal from the Lake County
	)	Property Tax Assessment Board
Petitioners,	)	of Appeals
	)	
v.	)	Petition for Review of Assessment,
	)	Form 131
	)	Petition No. 45-006-01-1-5-00001
LAKE COUNTY PROPERTY TAX	)	Parcel No. 001-15-26-0130-0046
ASSESSMENT BOARD OF APPEALS	)	
And CALUMET 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:

**Issue**

Whether the assessment is inequitable when compared with neighboring properties.

## 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 IC 6-1.1-15-3, Burros T. and Thelma J. Ward (the Petitioners) filed a Form 131 petition requesting a review by the State. The Form 131 petition was filed on January 11, 2001. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued a determination on the underlying Form 130 petition on December 20, 2000.
  
3. Pursuant to IC 6-1.1-15-4, a hearing was held on July 26, 2001, before Hearing Officer Ellen Yuhan. Testimony and exhibits were received into evidence. Mr. Ward was self-represented. No one was present from the Lake County PTABOA or the Calumet Township Assessor's Office.
  
4. At the hearing, the Form 131 petition was made part of the record and labeled Board's Exhibit A. The Notice of Hearing was labeled Board's Exhibit B. In addition, the following exhibits were submitted as evidence:  
  
Petitioner's Exhibit 1 - Property record card for the subject property.  
Petitioner's Exhibit 2 - Property record card for 311 N. Elmer, Griffith  
(parcel 001-15-26-0127-0029).  
Petitioner's Exhibit 3 - An appraisal for the subject property.
  
5. The assessed value of the property as determined by the PTABOA is:  
Land: \$2,230    Improvements: \$11,030    Total: \$13,260.
  
6. The property is a residential dwelling located at 245 N. Elmer, Griffith, Calumet Township, Lake County.

7. The hearing officer did not view the property.

### **Testimony**

8. Petitioner contends that the subject property is assessed higher than several neighboring properties, which receive the same city services and would appraise for approximately the same value and referred to Article X of the Indiana Constitution states, “The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property, both real and personal.” Petitioner also stated that there was nothing specifically wrong with the assessment; the size and amenities listed are correct. (Ward Testimony; Petitioner’s Exhibits 1 –3).

### **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. 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. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State 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 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 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’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 V*, 702 N.E. 2d at 1040.

### **C. Inequitable Assessment**

18. Mr. Ward contended that the assessment of his property is inequitable when compared to neighboring properties that receive the same services and would conceivably be appraised for approximately the same value as the subject.
19. In support of his position, Mr. Ward cited Article X of the Indiana Constitution, which he contended provides for a uniform and equal rate of property assessment and taxation and a just valuation of all property.
20. Repeating, 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.
21. Mr. Ward also presented an appraisal of his residence as of January 21, 1999 (Petitioner’s Exhibit 3). This appraisal concluded that the fair market value of the home and land on that date was \$116,000, approximately \$76,000 more than the total true tax value of the parcel.



22. To repeat, 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*). The appraisal presented by Mr. Ward is therefore not probative evidence of an error in the assessment.
23. In further support of his contention, Mr. Ward identified (on the Form 131 petition) two purportedly comparable nearby properties. Mr. Ward attached the property record card of one of these purported comparable properties to the Form 131 petition. Mr. Ward opined that his home and these two homes should be assessed similarly because they receive the same public services.
24. The true tax value of “[b]uildings and other improvements [is] based on the cost of reproducing the improvement with new materials minus depreciation.” 50 IAC 2.2-2-1(c). True tax value is not based on the public services received by a homeowner.
25. Mr. Ward further contended that his residence is comparable to these neighboring homes. However, merely characterizing properties as comparable is insufficient for appeal purposes. Mr. Ward is required to present probative evidence that the purported comparable properties he offers are, in fact, comparable to the subject property. No such foundation was presented during testimony offered at the hearing. Mr. Ward offered no comparison of common features or amenities among the properties.
26. As discussed, Mr. Ward presented a property record card for only one of these purported comparable properties. Comparing the property record card of this neighboring property to the property record card for the Wards’ residence indicated several areas of difference between the two

- properties, including (but not limited to): year of construction; square footage; grade; and exterior wall construction type.
27. The difference in assessed values between the Wards' property and their neighbor's parcels is therefore the result of differences in the properties, rather than error in the assessment.
  28. Additionally, the appraisal offered by Mr. Ward contains a section identified as a "Comparable Property Photo Addendum." The professional appraiser, however, did not identify either of Mr. Ward's purported comparable properties for inclusion in this section, despite their proximity to the Wards' home. This exclusion from the appraiser's list of comparable properties further undermines Mr. Ward's contention that these properties are, in fact, comparable.
  29. Having failed to identify any comparable properties, Mr. Ward has not shown that his property has received disparate treatment in its assessment.
  30. Finally, even Mr. Ward testified that there was nothing specifically wrong with the assessment of his property. Mr. Ward acknowledged that the dimensions and amenities identified on the property record card are correct.
  31. For all the reasons above, the Petitioners failed to meet their burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

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.

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Chairman, Indiana Board of Tax Review