

**STATE OF INDIANA
Board of Tax Review**

CHARLES & CATHERINE GRIFFIN,)	On Appeal from the Elkhart County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petition for Review of Assessment, Form 131
)	Petition No. 20-011-01-1-5-00001
ELKHART COUNTY PROPERTY TAX)	Parcel No. 26-06-20-351-019
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:

Issue

Pursuant to the 14th Amendment's equal protection clause, the Petitioner seeks redress from the Residential Depreciation tables used to calculate the assessment to real property located at 3915 Doral Lane in Elkhart County.

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, Charles and Catherine Griffin (the Petitioners) filed a Form 131 petition requesting a review by the State. The Form 131 petition was filed on December 15, 2000. The Elkhart County Property Tax Assessment Board of Appeals' (PTABOA) determination on the underlying Form 130 was issued on November 16, 2000.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on August 22, 2001 before Hearing Officer Patti Kindler. Testimony and exhibits were received into evidence. Mr. and Mrs. Griffin were self-represented. Ms. Cathy Searcy represented the Elkhart County PTABOA. Mr. Robert J. Price represented Concord Township.

4. At the hearing, the Form 131 petition was made part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition is labeled Board Exhibit B. Board Exhibit C is a letter to the State Board from the Elkhart County Assessor with an attached request from the Petitioner. The subsequent reply from the State Board is labeled Board Exhibit D. In addition, the following exhibits were submitted as evidence:

Petitioner's Exhibit 1 – Copies of the residential depreciation tables used in Indiana for the reassessment years of 1949 through 1995

Petitioner's Exhibit 2 – Copies of the residential dwelling base price schedules for Indiana for the years 1979, 1989 and 1995

Petitioner's Exhibit 3 – Partial copy of *Board of Commissioners of Johnson*

County v. Johnson et al, dated October 27, 1909

Petitioner's Exhibit 4 – Copy of court decision for *Bielski v. Zorn*, 627 N.E. 2d 880 (Indiana Tax 1994)

Petitioner's Exhibit 5 – Property record cards (PRCs) for parcels located in neighborhoods that are classified as poor to very poor (parcels 25-06-08-328-003, 25-06-08-328-002, 25-06-08-327-009, 25-06-08-328-014, 25-06-08-327-014, 25-06-08-401-003, 25-06-08-401-003, & 25-06-08-401-008)

Petitioner's Exhibit 6 – Subject PRC (26-06-20-351-019)

Petitioner's Exhibit 7 – PRCs for parcels located in neighborhoods that are classified as good to excellent (parcels 01-05-02-327-021, 05-02-36-426-017, & 05-02-36-426-016)

Respondent's Exhibit A – Elkhart County PTABOA exhibits, which include (1) subject Form 115, (2) the PTABOA's Findings and Conclusions, (3) the subject Form 130, (4) exhibits submitted by the Petitioner and (5) exhibit submitted by the PTABOA at the County PTABOA hearing.

5. The assessed value of the property as agreed by the parties to the appeal for the year 2001 is:¹
Land: \$8,900 Improvements: \$65,600 Total: \$74,500.
6. The subject property is a dwelling located at 3915 Doral Lane, Elkhart, Indiana, Concord Township, Elkhart County.
7. The hearing officer did not view the property.

¹ Effective March 01, 2001, assessed valuations equal the true tax value. Prior to this year, the law required that assessed valuations be set at one-third the total true tax value. The Form 115 submitted by the PTABOA listed the assessed values as \$2,970 for land, and \$21,870 for improvements. These values were corrected by the PTABOA for the year 2001 and the true tax values were inserted. See PTABOA's Exhibit A.

Issue – The Constitutionality of the Depreciation Tables

8. The subject dwelling under appeal was constructed in 1993, is classified as average condition and is located in a neighborhood classified as average. The subject property is currently receiving 5% depreciation according to the Residential Depreciation Schedule. Mr. Griffin seeks redress from the residential depreciation tables used to figure the assessment of the subject property. PTABOA Findings, ¶ 27 (hearing testimony).

9. The Petitioner states that his claim is based on the 14th Amendment's equal protection clause, which protects individuals from state action, which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class. Petitioner testified he is receiving discriminatory treatment because his neighborhood is considered average, while other taxpayers in the same class may be considered to be in poor or very poor neighborhoods. In addition, he is subjected to discriminatory treatment, because the neighborhood factor that is assigned to his property increases the assessed values above \$23,000, which prevents him from receiving an attained age exemption. Indiana is going have to amend the assessment regulations "so that an average/average house can qualify" for an attained age exemption. *Griffin Testimony. Petitioner's Exhibit 4. Board Exhibit A.*

10. Petitioner contends that since Indiana implemented Title-50 in 1979 and the neighborhood factor was introduced to the depreciation tables, the tables have been unconstitutional and illegal because they do not treat people equally. The remedy has to be that there can only be one column of depreciation instead of thirteen columns as it is now. *Griffin Testimony. Board Exhibit A.*

11. To further his claim regarding the constitutionality of the depreciation tables, Mr. Griffin submitted a copy of *Board of Com'rs of Johnson County v. Johnson et al.* Supreme Court of Indiana, October 27, 1909, which states in pertinent part that different kinds of property may be taxed in different ways. Taxation which applies to portion of class and omits portion is not uniform and equal within Constitution, which requires just valuation of all property, so that burden may be distinguished with uniformity. The preceding Indiana Supreme Court decision implies that all residential property must be taxed equally, and therefore the depreciation tables based on the neighborhood factor are unconstitutional. *Griffin Testimony. Petitioner's Exhibit 3.*
12. The Respondent (Township) stated that the subject property's neighborhood rating of average for the subject assessment is correct. Therefore, the assessment is correct. Mr. Griffin's objections are not with the subject's condition and neighborhood ratings, but rather that the depreciation tables are unconstitutional. *Price Testimony.*
13. The PTABOA denied the appeal because the Petitioner failed to establish a prima facie case by offering probative evidence of the percentage of depreciation that should be applied to the property. In addition, the issues of condition and neighborhood rating were not listed on the Form 130 or discussed at the PTABOA hearing. *Searcy Testimony. Respondent's Exhibit A (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*, 702 N.E. 2d at 1040.

D. Issue- The Constitutionality of the Depreciation Tables

18. The Petitioners claim that the residential depreciation tables are “unconstitutional and illegal” and seek redress pursuant to the 14th Amendment to the United States Constitution, which protects an individual from state action that selects him for discriminatory treatment. The Petitioners further support their theory by citing an Indiana Supreme Court decision from 1909, which states that everyone must be taxed in a class using the same method. The Petitioners imply that the depreciation tables classify taxpayers into different groups resulting in inequalities.
19. It appears that the Petitioners' true grievance is that they are ineligible for an attained age exemption because the assessed values (1) are over the allowable limit to obtain said exemption and (2) have risen dramatically since 1979 – the year that the neighborhood factor was introduced to the state's depreciation tables. The Petitioners admit that they are upset because they will never be eligible for an attained age exemption because the assessed values continue to increase each reassessment. Since the Petitioners' assessed values are above the required limit to obtain an attained age exemption, they declare the system unfair and unjust.

20. The Petitioners have confused the term exemption with the term deduction. “Deduction “ means a situation where a taxpayer is permitted to subtract a fixed dollar amount from the assessed value of his property. Ind. Code § 6-1.1-1-5. The attained age deduction was instituted to shelter certain adults over sixty-five who had a restricted income and held title to minimal assets. It appears that since the Petitioners are ineligible to receive the attained age deduction, they have determined the depreciation tables are at the root of the problem and used this as the issue listed on the petition to seek redress from said tables.
21. Reduced to its essence, the Petitioners’ appeal consists of a generalized grievance against a tax assessment that the Petitioners perceive as excessive. The Petitioners have not established that their property was assessed in a manner contrary to the provisions of 50 IAC 2.2. Instead, the Petitioners merely seek a reduction in their tax assessment – whether by reducing the neighborhood rating assigned to them, or by reducing the overall assessment, which they claim is nothing more than a “graduated income tax.”
22. Assuming *arguendo* that taxpayers are entitled to challenge the constitutionality of the prescribed depreciation tables in individual appeals (See ¶ 17), they must present probative evidence to make a prima facie case that their individual assessment is incorrect. The Petitioners have failed to make such a case in this appeal.
23. The Petitioners did not offer any substantial evidence of why the neighborhood factor within the depreciation tables was in error, other than it prevented them from eligibility to obtain the attained age deduction. The Petitioners merely stated that it was unequal and unconstitutional, and should not be considered when determining residential depreciation.
24. The Petitioners submitted eight property record cards for improvements located

in “poor” and “very poor” neighborhoods. It is unclear what this evidence was to show, since only one of the properties was receiving any depreciation.

Furthermore, these properties were considerably smaller than the subject, lacked the same amenities, and were graded lower. Clearly any differences were not due to the depreciation tables.

25. The Petitioners failed to identify comparable properties within their neighborhood classification to demonstrate that their property was erroneously assessed - the first prong of the two-prong burden articulated in *Town of St. John V* was not met. Even the Township Assessor, who was supportive of the Petitioners’ contention of unconstitutionality, testified that the subject property’s neighborhood classification of average is correct.
26. Having failed to identify properties located in the subject’s neighborhood that are comparable to the subject property, the Petitioners failed to provide sufficient information concerning their claims of inequality. The Petitioners offered no probative evidence that there was any error in their assessment at all, only that the assessment has risen. Therefore, the Petitioners must fail in their claim to seek redress from the depreciation tables because they are unconstitutional.
27. Though 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 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.
28. For all the reasons set forth, the appeal is denied.

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