

**STATE OF INDIANA
Board of Tax Review**

DONALD W. & BERNICE M. SIBAL)	On Appeal from the Elkhart County
)	Board of Review
)	
Petitioner,)	
v.)	Petition for Review of Assessment, Form 131
)	Petition No. 20-030-98-1-5-00002
ELKHART COUNTY BOARD OF)	Parcel No. 30-11-15-480-014
REVIEW and ELKHART 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:

Issues

1. Whether the grade factor applied to the residence is appropriate.
2. Whether the neighborhood rating applied to the subject is appropriate.
3. Whether the proper amount of depreciation has been applied to the subject.

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, Landmark Appraisals, Inc., on behalf of Donald and Bernice Sibal (the Petitioners), filed a Form 131 petition requesting a review by the State. The Elkhart County Board of Review (County Board) issued its determination on the underlying Form 130 petition on October 1, 1998. The Form 131 petition was filed on October 8, 1998.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on March 12, 2002 before Administrative Law Judge Debra Eads. Testimony and exhibits were submitted into evidence. Stephen Hay of Landmark Appraisals represented the Petitioner. Rebecca Inbody, Elkhart Township Assessor and R. Eugene Inbody represented Elkhart Township. No one was present to represent the County Board. The Petitioner, Donald Sibal, was also present.

4. At the hearing, the Form 131 was made a part of the record and labeled Board Exhibit A. The Form 117 Notice of Hearing was labeled Board Exhibit B. In addition, the following exhibits were submitted into evidence:
Petitioner's Exhibit 1 – Rule 7, pages 12, 53 and 54 from 50 IAC 2.2; subject property record card with suggested pricing; two (2) exterior photographs

Respondent's Exhibit 1 – Subject property record card; Form 115, dated October 1, 1998; Form 11, dated June 29, 1998; three (3) building permits for the subject; 1995 State Board Final Determination for the subject.

5. The subject property is located at 1601 Canton Drive, Goshen, Elkhart Township, Elkhart County.

6. The Administrative Law Judge did not conduct an on-site inspection of the property.

Issue No. 1 – Grade Factor

7. Petitioner testified that the grade of the subject dwelling falls between the “B” and “C” grade classifications as described in 50 IAC 2.2 The grade specification with checkmarks indicates the Petitioners’ opinion of the grade classification that best describes the subject dwelling. The Petitioner requests a “B-2” grade factor. *Hay Testimony. Petitioner’s Exhibit 1.*
8. Petitioner testified that the taxes on his current home dramatically increased from the taxes on his previous home. *Sibal Testimony.*
9. A Determination from the State Board of Tax Commissioners for the 1995 assessment year has been issued regarding the same issues addressed in this 1998 appeal. The Findings from the State Board of Tax Commissioners for the 1995 assessment year upheld the assessment of the Elkhart County Board of Review. *Ms. Inbody’s Testimony. Respondent’s Exhibit 1, pages 7-22.*

Issue No. 2 – Neighborhood Rating

10. The Petitioner failed to submit any evidence or testimony regarding the neighborhood rating issue.

Issue No. 3 - Depreciation

11. More depreciation should be applied to the subject dwelling in order to “better align the excessive assessment with those of equally valued older homes”. *Hay Testimony.*

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. Grade Factor

18. "Grade" means the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.
19. Grade is used in the cost approach to account for variations from the norm or "C" grade. The quality and design of a building are the most significant variables in establishing grade. 5- IAC 2.2-10-3.
20. The determination of the proper grade requires assessors to make a variety of subjective judgments regarding variations in the quality of materials and workmanship and the quality of style and design. *Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d 1058, 1064 (Ind. Tax 1993). For assessing officials and taxpayers alike, however, the Manual provides indicators for establishing grade. The text of the Manual (see 50 IAC 2.2-10-3), models and graded photographs (50 IAC 2.2-11-4), assist assessors in the selection of the proper grade factor.

21. The major grade classifications are A through E. 50 IAC 2.2-10-3. The cost schedules (base prices) in the Manual reflect the C grade standards of quality and design. The following factors (or multipliers) are assigned to each major grade classification:

“A” grade	160%
“B” grade	140%
“C” grade	100%
“D” grade	80%
“E” grade	40%

Intermediate grade levels ranging from A+10 through E-4 are also provided for in the Manual to adequately account for quality and design factures between major grade classifications. 50 IAC 2.2-10-3(c).

22. The check marked grade specification table and photographs submitted by the Petitioner represent the unsupported opinion of the Petitioner and have no probative value.

23. “Without further explanation...the photographs of the residence and the check marked grade specification table were merely conclusory statements.” *Bernacchi v. State Board of Tax Commissioners*, 727 N.E. 2d 1133,1136 (Ind. Tax 2000)

24. Assuming arguendo that the subject dwelling has construction factors less than those required to support the assigned grade factor, the responsibility of quantifying how those deficiencies affect the grade factor remains with the Petitioner. The Petitioner did not attempt to quantify an appropriate grade factor.

25. For the reasons indicated above the Petitioner failed to meet the burden regarding the grade factor issue. Accordingly, no change is made to the assessment.

E. Neighborhood Rating

26. The Petitioner failed to submit evidence or testimony regarding the neighborhood rating issue. Accordingly, no change is made to the assessment.

F. Depreciation

27. The Petitioners' representative contends that more depreciation should be applied to the subject dwelling in order to "better align the excessive assessment with those of equally valued older homes".
28. The Petitioner failed to submit evidence regarding the depreciation issue.
29. The tax representative's conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
30. For the above reasons, the State declines to change the depreciation factor. The decision of the Elkhart County Board of Review is maintained.

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