

**STATE OF INDIANA  
Board of Tax Review**

GREENTREE AT WEST LAFAYETTE,	)	On Appeal from the Tippecanoe County
	)	Property Tax Assessment Board of Appeals
	)	
Petitioner,	)	
	)	Petition for Review of Assessment, Form 131
v.	)	Petition No. 79-070-01-1-4-00001
	)	Parcel No. 170059160062
TIPPECANOE COUNTY PROPERTY	)	
TAX ASSESSMENT BOARD OF	)	
APPEALS, And WABASH 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 proper model and use-type were applied to the subject structure.

## 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, Greentree at West Lafayette, LLC (Greentree) filed a petition requesting a review by the State. The Form 131 was filed on November 01, 2001. The Tippecanoe County PTABOA's Final Determination was issued on October 8, 2001.
  
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was scheduled for January 23, 2002. Due to a closing of the Tippecanoe County Government building, the hearing was rescheduled for February 5, 2002, before Hearing Officer Patti Kindler. Testimony and exhibits were received into evidence. Duane R. Zishka, of Uzelac & Associates, Inc., represented Greentree. Tom Busch, County Attorney and Bob McKee, Lewis J Beeler and Larry Lahrman represented Tippecanoe County. Gary Smith and Eleanor J. Mlynarik appeared on behalf of Wabash Township.
  
4. At the hearing, the subject Form 131 petition was made part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition and the Rescheduled Notice of Hearing on Petition are consecutively labeled Board Exhibits B & C. The Waiver of the minimum advance notice of hearing was signed by the parties to the appeal and is labeled Board Exhibit D. In addition, the following items were received into evidence:

Petitioner's Ex. 1 – Comparable property #1 – Greentree at Fort Benjamin Harrison located in Lawrence Township, Marion County.

Petitioner's Ex. 2 – Comparable property #2 – Greentree at Westwood located in Columbus Township, Bartholomew County.

Petitioner's Ex. 3 – Comparable property #3 – Greentree at Post located in Warren Township, Marion County.

Petitioner's Ex. 4 – Comparable property # 4 – Greentree at Kokomo located in Center Township, Howard County.

Petitioner's Ex. 5 – Various apartment floor plans for the subject property.

Petitioner's Ex. 6 – Models from 50 IAC for apartments and nursing homes with pricing schedule.

Petitioner's Ex. 7 – Exterior photograph of subject property with copies of information regarding assisted living and nursing homes, and the Greentree Resident Occupancy Policy.

Petitioner's Ex. 8 – Copy of Tax Court decision for the Indianapolis Racquet Club, Inc., (49T10-9609-TA-00126) dated January 31, 2000.

Petitioner's Ex. 9 – Comparison of the reproduction cost per total square feet of the subject to the comparables.

Petitioner's Ex. 10 – Proposed PRC prepared by the Petitioner.

Petitioner's Ex. 11 – Copy of additional evidence for presentation to the parties, postmarked by State on 2/4/02.

Respondent's Ex. 1 – Copy of the subject PRC.

Respondent's Ex. 2 – Copy of 50 IAC for nursing home model and unit finish adjustments for apartments.

Respondent's Ex. 3 – Copy of a document from Greentree regarding "catered living" and monthly rental fees.

5. The assessed values under appeal for 2001 are:  
Land: - \$147,600                      Improvements: - \$1,714,800

6. The subject property is assessed as a nursing home and is located at 3575 Senior Place, West Lafayette (Wabash Township, Tippecanoe County). The hearing officer did not view the property.

**Whether the proper model and use-type were applied to the subject property.**

7. The subject property represents a three-story senior citizen assisted living facility assessed as a nursing home at 80% complete on the March 1, 2001 assessment date. The Petitioner contends that the property is designed as senior citizen apartments and should have been priced using the GCR apartment pricing schedule instead of the GCR nursing home pricing schedule. *Zishka Testimony; Petitioner's Ex. 7.*
8. The Petitioner claims that an assisted living community is separate and different than a nursing home in many ways, such as: 1) an assisted living community does not provide a high level of medical care and is not licensed, 2) those residing in an assisted living facility must have stable medical conditions, 3) the assisted living community consist of private residence core apartments with kitchenettes and private baths, and 4) 24-hour *skilled* nursing services are not provided as part of the monthly rent charged by assisted living facilities. *Zishka Testimony; Petitioner's Ex. 5 & 7.*
9. In support of his claims, the Petitioner submitted the property record cards (PRC) and exterior photographs for four (4) comparable Greentree assisted living properties located in central and southern Indiana. *Petitioner's Exs. 1 – 4.* All four (4) of the comparables were priced using the apartment model, two (2) with portions priced from the motel service or office models to account for the open service areas of the facilities. *Id.*
10. The Petitioner submitted a proposed PRC for the subject property using the apartment pricing schedule for the apartment units and the motel service pricing schedule for the percentage of service areas, as listed on the Assessor's PRC. *Zishka Testimony; Petitioner's Ex. 9.* In addition, the percentages of frame and brick exterior walls were taken directly from the County PRC, but some of the

extra plumbing fixtures were allotted for in the apartment unit pricing and therefore removed from the proposed PRC prepared by the Petitioner. *Id.*

11. As currently priced as a nursing home, the cost of the subject building is \$42.21 per square foot. *Petitioner's Ex. 9.* The comparables submitted have an average price per square foot of \$33.50, well below the cost per square foot for the subject building. *Id.* If the subject property were priced as a mixture of motel service and residential apartments, then the average price of \$33.08 per square foot would be more in line with the other Greentree properties. *Petitioner's Ex. 10.*
12. The Petitioner claims that the model, which best represents the subject property is the GCR apartment model. *Zishka Testimony.* As further support of his contentions, the Petitioner submitted a copy of the *Indianapolis Racquet Club, Inc. v. State Board of Tax Commissioners* Indiana Tax Court case published on January 31, 2000, which states that the best model that most closely resembles the physical structure of a facility should be used when no model is listed in 50 IAC for a property. *Zishka Testimony; Petitioner's Ex. 8.*
13. 50 IAC does not have a pricing model that specifically represents assisted living facilities for senior citizens. Therefore, the County assessed the subject by referring to the model that they concurred was closest to the subject's use, which is the nursing home model. *Smith Testimony; Respondent's Ex. 2 & 3.* The County determined that the facility offers central dining rooms, nursing care stations, large recreation and physical therapy areas, lounge areas, program coordinators, monitoring, and wellness checks, which are all features offered in a nursing home facility. *Smith Testimony; Respondent's Ex. 3.*
14. The County contends that due to all the various special features and the health services offered, the building most closely fits the nursing home schedule. *Smith Testimony; Respondent's Ex. 2.* Although the facility is labeled an assisted living

community instead of a nursing home, there are few differences in the services offered. *McKee Testimony*.

### **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. Whether the proper model and use-type were applied to the subject property**

18. The guidelines for selecting the appropriate pricing schedule for a building are discussed in 50 IAC 2.2-10-6.1. The model is a conceptual tool used to replicate reproduction cost of a given structure using typical construction materials. The model assumes that there are certain elements of construction for a given use type. 50 IAC 2.2-10-6.1. In addition, there are four (4) “association groupings” for commercial buildings, and each grouping has a separate schedule to facilitate

selection. The four (4) groupings are General Commercial Mercantile (GCM), General Commercial Industrial (GCI), General Commercial Residential (GCR), and General Commercial Kit (GCK).

19. In assessing the subject building, the County has used the GCR nursing home model and pricing schedule, which includes those use types generally associated with commercially operated residential nursing home facilities.
20. The Petitioner contends that the subject facility is not a nursing home, but an apartment complex that caters to senior citizens. The Petitioner contends that the subject structure cannot be a nursing home because there is no around-the-clock care from licensed nurses, the occupants are required to have stable medical conditions, the occupants do not share a room or bath facilities, and the facility is not licensed as a nursing home. Thus, the Petitioner claims that the County used the wrong schedule to price the subject buildings.
21. 50 IAC 2.2-10-6.1 directs assessing officials to select and use the pricing schedule and model that best represents the structure being assessed. Therefore, in this appeal, the Petitioner has the burden of proving that the subject structure qualifies to be valued from the GCR apartment pricing schedule and that the apartment model best represents the subject buildings.
22. The selection of the proper schedules to assess improvements clearly requires subjective judgment. In the case at bar, there was conflicting evidence and testimony between the parties regarding the appropriate or “best” pricing schedule for the subject property.
23. However, the Petitioner did establish disparate treatment between the contested property and other similarly situated properties to meet his burden in this case.
24. The Petitioner submitted copies of the PRC, photographs and descriptions of four

(4) purported comparable Greentree assisted living properties. Each of the properties submitted is very similar to the subject in construction style, materials, building footprint, age, condition, and use.

25. After reviewing the exterior photographs of the four (4) purported comparables and the subject, it is determined that the design of all is nearly identical. The four (4) purported comparables and the subject were built by the same company, and used for identical purposes. The age of the buildings is comparable, as is the condition. The materials used in the construction of the four (4) purported comparables and the subject is determined to be similar. For all the reasons above, the four (4) other Greentree properties are determined to be comparable to the subject.
26. All four of the comparables were priced using the apartment model. Portions of two of the submitted comparable were priced from the office model and the motel service model to account for service areas not included in a typical apartment model.
27. The Petitioner submitted a proposed PRC for the subject property. The Petitioner testified that “to be fair” the percentage of open areas derived from the Assessor’s PRC, was priced from the motel service model to account for the open areas on the first, second and third floors of the building that serve as gathering areas.
28. The Petitioner has met his burden of proof in this case by showing disparate treatment by submitting similar properties, which were priced from the apartment pricing schedules. The County offered substantial testimony that the subject improvements may be best represented by the nursing home model. However, they did not offer any comparable properties to dispute the Petitioner’s claims of disparate treatment.

29. For all of the reasons above, the Petitioner has met his burden of proof. There is a change in the assessment as a result of this issue. The subject will be priced as an apartment, with open areas priced from the motel model, just like the comparables submitted by the Petitioner.

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