

**STATE OF INDIANA
Board of Tax Review**

TIMOTHY & SHARON GERDON,)	On Appeal from the Harrison County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petition for Review of Assessment, Form 131
)	Petition No. 31-004-01-1-5-00004
HARRISON COUNTY PROPERTY TAX)	Parcel No. 004-0155800
ASSESSMENT BOARD OF APPEALS)	
And HARRISON 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

1. Whether 1,782 square feet of concrete should be assessed as a patio.

2. Whether the basement is properly assessed.

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, Timothy Gerdon (Petitioner) filed a Form 131 petition requesting a review by the State. The Form 131 petition was filed with the State on December 17, 2001. The Harrison County Property Tax Assessment Board of Appeals (PTABOA) Notification of Final Assessment Determination on the underlying Form 130 is dated November 30, 2001.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on February 27, 2002, before Hearing Officer Paul Stultz. Testimony and exhibits were received into evidence. Timothy and Sharon Gerdon represented themselves. Paul Saulman, County Assessor, represented Harrison County. Eugene Kirkham, Township Assessor, and Karen Hunter, Deputy Township Assessor, represented Harrison Township.

4. At the hearing, the subject Form 131 petition was made a part of the record and labeled as Board's Exhibit A. Notice of Hearing on Petition is labeled as Board's Exhibit B. In addition, the following exhibits were submitted to the State:
Petitioner's Exhibit 1 – Twenty-nine (29) photographs of the exterior area of the subject property.
Petitioner's Exhibit 2 – Eight (8) photographs of the subject structure's basement area.

5. The subject property is a residence located at 5595 Union Chapel Road S.E., Corydon, Harrison Township, Harrison County.

6. The Hearing Officer did not view the subject property.

7. At the hearing, the parties agreed the year under appeal is 2001 and the assessed values of record are:

Land	\$4,100
Improvements	\$75,600

Issue No. 1 - Whether 1,782 square feet of concrete should be assessed as a patio.

8. Petitioner contends that the contested area, 1,782 square feet (SF) of concrete, is a driveway. Vehicles are parked in this area and it should not be valued as a patio. *Gerdon testimony.*
9. The Petitioner submitted twenty-nine (29) photos of the exterior of the subject property with the majority of the photographs showing the contested concrete area. *Petitioner's Exhibit 1.*
10. Respondent testified that the subject property was inspected on October 6, 2001. A visual inspection of the contested concrete area and the basement was made at that time. *Hunter testimony.*
11. Respondent testified that an employee of the Department of Local Government Finance (DLGF), one of the successor agencies of the State Board of Tax Commissioners, advised that if the area did not approach a garage it was to be assessed as a patio. *Hunter testimony.*

Issue No.2 - Whether the basement is assessed correctly.

12. Eight (8) photographs of the subject basement were submitted into evidence. Petitioner stated that the photographs show that the basement is not finished in the same manner as the living area above it. Petitioner further testified that the basement area has some unfinished plumbing, some areas with ceiling tiles not

in place, carpeting that was laid on the floor and not affixed to the floor and an unfinished staircase. *Gerdon testimony*.

13. Respondent testified that the basement, has interior finish including partitioning for the bedroom and bathroom, and was assessed as a finished basement. However, no inspection of the upper living area was done as a comparison for the finish of the basement. *Hunter testimony*.
14. Respondent testified that the home is assessed as a mobile home and that is why the basement has a higher assessment than the home. *Hunter 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.

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.

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.

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 merely because the taxpayer demonstrates flaws in it).

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.

Issue No. 1- Whether the 1,782 square feet of concrete should be assessed as a patio.

18. 50 IAC 2.2-7-5 states, "Residential dwellings may have exterior features such as a frame porch or concrete patio attached to the dwelling. These are referred to as exterior features." 50 IAC 2.2-7-11, Schedule E.2 is to be used to value such exterior features.
19. The parties are not in dispute regarding the size of the concrete area under review (1,782 SF); however, the parties disagree as to whether or not the improvement should be valued.
20. Mr. Gerdon contends this area is a driveway and that driveways are not valued in

residential assessments. Ms. Hunter, on the other hand, claims the same area is a patio and patios are assessable per 50 IAC 2.2-7-5.

21. Mr. Gerdon submitted into evidence twenty-nine (29) photographs (Petitioner's Exhibit 1). The majority of the photographs show a gravel driveway from the road in front of the subject property up to the contested area as well as the contested area itself. Some of Mr. Gerdon's photographs show a vehicle and a small camper parked on this area.
22. Ms. Hunter's position is based on a conversation with an employee of the DLGF (Findings of Fact ¶11).
23. As stated in Conclusions of Law ¶9 and 10, the burden of proof is on the person petitioning the agency for relief. Taxpayers are required to make factual presentations regarding alleged errors in the assessment. The taxpayer's presentations should both outline the alleged errors and support the allegations with evidence.
24. The Petitioner's have met their burden by making a factual presentation that both outlined the alleged error and supported that allegation with evidence (photographs).
25. Conclusions of Law ¶14 states, "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."
26. The Respondent's position is based solely on a conversation with an employee of the DLGF. The Respondent presented no other evidence to show that the area under review should be valued as a patio.
27. For the reasons set forth above, it is determined that the concrete area under review is an extension of the driveway and should not be assessed. A change in

the assessment is made as a result of this issue.

Issue No.2 - Whether the basement is assessed correctly.

28. Mr. Gerdon contends that the basement should not be assessed as a finished basement as the County has determined. Mr. Gerdon supports this position with photographs of the basement area that show some unfinished plumbing, some areas with ceiling tiles not in place, carpeting that was laid on the floor and not affixed to the floor and an unfinished staircase.
29. 50 IAC 2.2-7-8.1(a)(5) states in part, “If the basement has finished living quarters, then the basement finish is added to the unfinished basement. Basement living quarters are the living area within the basement that is finished in a fashion consistent with the main living area.”
30. 50 IAC 2.2-7-7.1(c)(4)(F) states in part, “A basement recreation room is a finished area that is not finished in a fashion consistent with the main living area of a dwelling.” Types of recreation rooms are as follows:
 - (i) “Rec 1” indicates flooring and ceiling finish.
 - (ii) “Rec 2” indicates flooring, ceiling, and interior wall finish.
 - (iii) “Rec 3” indicates flooring, ceiling, interior wall finish, and partitioning.
 - (iv) “Rec 4” indicates flooring, ceiling, interior wall finish, partitioning, and built-ins.
31. Mr. Gerdon opines that the photographs show that the basement is not finished in the same manner as the rest of the home. Mr. Gerdon’s testimony was not contested or disputed by the Respondents. In fact, Ms. Hunter testified that she had not inspected the main living area of the home nor did she have any knowledge concerning the main living area.
32. As stated in Conclusions of Law ¶¶9 and 13, it is the fundamental principle of

administrative law that the burden of proof is on the person petitioning the agency for relief. 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.”

33. Based on Mr. Gerdon’s undisputed testimony, the evidence presented by Mr. Gerdon and in consideration of 50 IAC 2.2-7-8.1(a)(5) and 50 IAC 2.2-7-7.1(c)(4)(F), it is determined the basement area is not finished in a fashion consistent with that of the main living area. It is also determined to value the basement area as a “Rec 3” recreation room due to the concrete floor, partially finished ceiling, interior wall finish, partitioning and some completion of plumbing fixtures.

34. A change in the assessment is made 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.

Chairman, Indiana Board of Tax Review