

STATE OF INDIANA
Indiana Board of Tax Review

In the matter of the Petition for Review)
of Assessment, Form 131) Petition No. : 27-020-98-1-5-00003

Parcel No. : 0200501580

Assessment Year: 1998

Petitioner: Alva J. Griffith
 225 E. 11th Street
 Jonesboro, IN 46938

Petitioner Representative: Terrance Kinnard
 UAW-GM Legal Services Plan
 220 South Norton Avenue
 Marion, In. 46952

Findings of Fact and Conclusions of Law

The Indiana Board of Tax Review, as successor agency to the State Board of Tax Commissioners (State Board), having reviewed the facts and evidence, and having considered the issues, now makes the following findings of fact and conclusions of law.

Issue

Whether the finished attic is measured correctly.

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, Alva J. Griffith (the Petitioner) filed a Form 131 petition requesting a review by the State Board. The Form 131 petition was filed on November 20, 1998. The Grant County Board of Review's (County Board) Assessment Determination on the underlying Form 130 is dated October 21, 1998.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on September 4, 2001 before Hearing Officer Paul Stultz. Testimony and exhibits were received into evidence. Mr. Kinnard represented the Petitioner as legal counsel. Ms. Amanda (Alva) Griffith and Mr. John Griffith were present. No one appeared on behalf of Grant County or Mill Township.
4. At the hearing, the Form 131 petition was made a part of the record and labeled Board Exhibit A. Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following exhibits were submitted to the state Board:
Petitioner's Exhibit 1 – Floor plan of subject residence.
5. The subject property is a residence located at 225 East 11th Street, Jonesboro, Mill Township, Grant County.
6. The Hearing Officer did not view the subject property.
7. At the hearing, the petitioner agreed the year under appeal is 1998 and the assessed values of record are:
Land \$1,270 Improvements \$30,730.

8. Ms. Amanda Griffith testified under oath that she legally changed her name from Alva to Amanda.

Issue - Whether the finished attic is measured correctly.

9. The floor plan provided shows that the only attic area is a 308 square foot (“SF”) area labeled bonus room. The said bonus room does not encompass the total area over the garage. There are load-bearing sidewalls and outside of these walls there is no attic area. Five photos of the area show the area between the ceiling of the first floor and the roof covered with blown insulation. The ceiling beams are the only things under the insulation. The photos show there is no flooring, walls, or any other interior finish. Ms. Griffith’s Testimony.

Conclusions of Law

1. The Petitioner is limited to the issues raised in the Form 131 petition filed with the State Board. Ind. Code § 6-1.1-15-1(e) and –3(d). See *also* Form 131 petition requiring the Petitioner to identify the specific grounds for appeal. The State Board has the discretion to address any issue once an appeal has been filed by the taxpayer. *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 in the Form 131 petition filed with the State Board.
2. The State Board 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 Board’s decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State Board to review the actions of the PTABOA, but does not require the State Board to review the initial assessment or undertake reassessment of the property. The State Board 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 Board 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 Board 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 Board 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 Board 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 Board’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 Board is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State Board 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 Board’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 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.
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 - Whether the finished attic is measured correctly.

18. Ms. Griffith presented evidence and testimony that shows the only finished attic area in the subject residence is a 308 square foot area referred to as a bonus room.
19. Ms. Griffith presented sufficient probative evidence to establish the total finished attic area of the subject residence and has met the burden of proof requirement.
20. 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. As stated in the Findings, no one appeared to represent the County or Township. Therefore, there was no rebuttal to the testimony and evidence presented by the Petitioner.
21. For the above reasons, the State Board determines the total finished attic area of the subject residence to be 308 square feet. There is a change in the assessment as a result of this issue.