

**STATE OF INDIANA
Board of Tax Review**

BRIAN & KRISTEN BAKER)	On Appeal from the St. Joseph County
)	Property Tax Assessment Board
Petitioners,)	of Appeals
)	
v.)	Petition for Review of Assessment, Form 131
)	Petition No. 71-025-01-1-5-00272
ST. JOSEPH COUNTY PROPERTY)	Parcel No. 17-1004-0191
TAX ASSESSMENT BOARD OF)	
APPEALS And PORTAGE 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 subject property should be assessed as a mobile home.

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 IC 6-1.1-15-3, Brian & Kristen Baker, the Petitioners, filed a Form 131 petition requesting a review by the State. The Form 131 petition was filed on September 10, 2001. The St. Joseph County Property Tax Assessment Board of Appeals' (PTABOA) determination on the underlying Form 130 is dated August 10, 2001. The underlying Form 130 was filed May 8, 2001.

3. Pursuant to IC 6-1.1-15-4, a hearing was held on January 24, 2002 before Hearing Officer Joan L. Rennick. Testimony and exhibits were received into evidence. Kristen Baker, Petitioner, was self-represented. John Voorde, Respondent, represented Portage Township.

4. At the hearing, the subject Form 131 petition was made a part of the record and labeled Board Exhibit A. The Notice of Hearing on the Petition was labeled Board Exhibit B; the Hearing Sign In Sheet was labeled Board Exhibit C. In addition, the following items were received into evidence:

Petitioner's Exhibit 1 – Copy of 50 IAC 2.2-8-1 with definitions #5 and #9 starred
Petitioner's Exhibit 2 – Photograph of HUD label
Petitioner's Exhibit 3 – Photograph of house, label, and location of label
Petitioner's Exhibit 4 – Copy of 50 IAC 2.2-8-1.

5. The subject property is located at 56883 Oak Road, South Bend, Portage Township in St. Joseph County. The Hearing Officer did not view the property.

Testimony and Documents Regarding Classification

6. "Manufactured home" means a dwelling unit which was designed and built in a factory and bears a seal certifying that it was built in compliance with the Federal Manufactured Home and Safety Standards Act of 1974 (the "HUD Code"). A mobile home built on or after June 15, 1976, may be referred to as a manufactured home. 50 IAC 2.2-8-1(5) The subject property is a doublewide manufactured home purchased in 1998 and placed in a mobile home park. In 1999 the manufactured home was moved to a permanent basement foundation on the Petitioners' property. It was moved in two sections on its chassis and wheels. The second section was placed on the permanent basement foundation approximately a week after the first section. There are HUD labels attached to the manufactured home on the interior and the exterior. *Baker Testimony*. *Petitioner's Exhibits 1-4*.

7. The local taxing officials changed the pricing of the manufactured home from the mobile home schedule in Rule 8 to the residential dwelling schedule in Rule 7 because of the permanent basement foundation. The PTABOA lowered the grade and condition to compensate for the change. *Voorde 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.

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. 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 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.

Conclusions Regarding Home Classification

18. The Petitioner established the correct classification and pricing schedules by submitting photographs and the 50 IAC 2.2 regulations pertaining to the assessment, thus making a prima facie case.
19. 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
20. The local taxing officials changed the assessment of the Petitioners' manufactured home from the Mobile Home Cost Schedule to the Residential Dwelling Cost Schedule after it was placed on the owners' permanent basement foundation. The local officials believed that the move from the mobile home park to the owner's permanent foundation changed the classification of the home. In order to compensate for the change in schedule, the local taxing officials lowered the grade and condition of the structure.
21. The Respondent did not rebut the Petitioner's evidence or justify this decision with substantial evidence.
22. "Real property mobile home" means a mobile home that meets (1) of the following requirements:
 - (A) Located on land owned by the homeowner.
 - (B) Located on a permanent foundation. 50 IAC 2.2-8-1(9).

23. The subject property meets both requirements of location on land owned by the homeowner and location on a permanent foundation. The permanent foundation is a separate line entry in the "Summary of Improvements" section and is priced from the residential dwelling Schedule A, unfinished basement column.
24. Indicators for manufactured homes are the required HUD tags present in all homes built after June 15, 1976 and the steel undercarriage with necessary wheel assembly that transport manufactured homes to the site. The wheel assembly can be removed when placed on a permanent foundation and the steel undercarriage remains intact, as it is a necessary structural component. These manufactured homes are assessed in Indiana from the manufactured housing schedules. The mobile home cost schedules are located in 50 IAC 2.2-8-7. The sizes for mobile homes listed in the mobile home pricing schedules reflect the box size of the structure with the towing hitch subtracted.
25. The evidence and testimony submitted established the existence of the required HUD tags and the steel undercarriage with wheel assembly.
26. For the above reasons, the State Board changes the classification of the manufactured home from the residential dwelling schedule to the mobile home cost schedule.
27. The change in classification also necessitates a change in the grade as the mobile home specification chart provides for only three grades, "Custom", "Good", and "Economy".
28. "Custom " grade homes are constructed with better than average quality materials and workmanship. These homes have a high quality interior finish with abundant built-in features. The exterior walls have vinyl or wood lap siding with an abundance of high quality windows. The roof structure is pitched with asphalt shingles and the home resembles a conventional, residential home.

29. “Good” grade mobile homes are constructed with average quality materials and workmanship. These homes have an average quality interior finish with adequate built-in features. The exterior walls have aluminum or steel siding with a good quantity of average windows. The rood structure is normally flat with some models having a stepped roof over the living room.
30. “Economy” grade mobile homes are constructed with below average materials and workmanship. These homes have a cheaper interior finish with thin economy type paneling throughout and minimum built-ins. The exterior walls have aluminum or steel corrugated siding with a minimum number of cheaper windows. The roof structure has a straight roofline with a metal loose fitting roof.
31. As observed from Petitioner’s Exhibit 3, the subject property exhibits some characteristics of both “Custom” and “Good” grade mobile homes, but is predominantly “Good”. Since there are no intermediate grade classifications that apply to mobile homes, it is determined the subject be graded “Good” (100%).
32. The home minus the tow bar is 32' X 77' for a base price of \$35,900 from 50 IAC 2.2-8-7. The property record card (PRC) and the certificate of occupancy indicate air conditioning and an extra one-half bath that adds \$3,000 to the base price. The subject property is assumed to be "Good" grade, in average condition for its age, and in an average neighborhood. Depreciation is applied only during the general reassessment of real estate. The full (2,464 square feet) unfinished basement pricing is taken from the 50 IAC 2.2-7-11, Residential Dwelling Cost Schedule, shown as a line item in the Summary of Improvements section and adds \$19,800 for a total True Tax Value of \$58,700.
33. For all the reasons stated above, there is a change in the assessment.

Other Conclusions

34. If an appeal is filed on or before May 10 of a year in which the taxpayer has not received notice of assessment, a change in the assessment resulting from the appeal is effective for the most recent assessment date. Ind. Code § 6-1.1-15-1(d).
35. The Form 130 filed with the PTABOA on May 8, 2001 shows the assessment under appeal is for the March 1, 2001 assessment. The Form 115, dated August 10, 2001, shows the PTABOA determined the value for the March 1, 2001 assessment date. However, the Form 131 filed with the State shows the assessment under appeal is for the March 1, 2000 assessment.
36. The Form 131, Petition to the State Board for Review of Assessment, was filed within 30 days after the Petitioner received the Form 115 issued by the PTABOA.
37. For the reasons stated above, the State Board determination is applicable to the March 1, 2001 assessment date, as shown on the Form 130 and the Form 115.

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