

REPRESENTATIVES FOR PETITIONERS: Brian and Kristen Baker, taxpayers

REPRESENTATIVES FOR RESPONDENT: Kevin Klaybor, Chief Deputy Assessor, St. Joseph County

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

BRIAN AND KRISTEN BAKER,)	
)	Petition No.: 71-025-01-1-5-00272 (Rehearing)
Petitioners,)	
)	County: St. Joseph
v.)	
)	Township: Portage
)	
)	Parcel No.: 1710040191
ST. JOSEPH COUNTY PROPERTY)	
TAX ASSESSMENT BOARD OF)	
APPEALS AND THE PORTAGE)	
TOWNSHIP ASSESSOR,)	Assessment Year: 2001
)	
Respondents.)	

**Appeal from the Final Determination of
St. Joseph County Property Tax Assessment Board of Appeals**

September 20, 2002

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issues

1. The issues presented for consideration by the Board were:

ISSUE 1 – *As a result of the Rehearing Order, the Board will review the issue of the grade factor applied to the manufactured home and basement foundation.*

ISSUE 2 – *As a result of the Rehearing Order, the Board will review the issue of the condition rating applied to the manufactured home and basement foundation.*

Procedural History

1. Pursuant to Ind. Code § 6-1.1-15-3, Kristen Baker filed a Form 131 on behalf of Brian and Kristen Baker petitioning the Board to conduct an administrative review of the above petition. The determination of the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) was issued on August 10, 2001. The Form 131 petition was filed on September 10, 2001.
2. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on January 24, 2002, before Joan Rennick, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2. Testimony and exhibits were received into evidence. On March 5, 2002, the Board issued its Final Determination for the subject appeal. In this Final Determination, the Board agreed with the Petitioners that the structure is better described as a manufactured home rather a residential dwelling. The Board further determined that the grade of the structure should be increased from “D-1” to “Good”; the condition was changed from Poor to Average.¹

¹ The quality of materials and workmanship in residential dwellings is indicated by grade, expressed in major grade classifications of “A” through “E”, with intermediate grade levels (such as “D-1”) falling between the major grades. 50 IAC 2.2-7-6. The quality of materials and workmanship for manufactured homes is expressed by the grade categories of “Custom”, “Good”, and “Economy.” 50 IAC 2.2-8-2.

3. The Petitioners requested a rehearing with the Board to review the issues of the grade and condition applied to the property. The rehearing request was granted on March 25, 2002.

Hearing Facts and Other Matters of Record

4. Pursuant to Ind. Code § 6-1.1-15-5, a rehearing was held on August 13, 2002, in South Bend before Administrative Law Judge Patti Kindler.

5. The following persons were present at the hearing:

For the Petitioners: Brian and Kristen Baker, taxpayers.

For the Respondent: Kevin Klaybor, St. Joseph County, Chief Deputy Assessor.

6. The following persons were sworn in as witnesses and presented testimony:

For the Petitioners: Brian and Kristen Baker

For the Respondent: Kevin Klaybor

7. The following exhibits were presented:

For the Petitioners: Petitioners' Exhibit 1 – A copy of the Mobile Home Grade Specification Table from 50 IAC 2.2-8-2.

Petitioners' Exhibit 2 - Various sample pieces of interior and exterior components from the subject home including: a sample of the vinyl siding, pieces of the interior kitchen cabinetry, door-jambes, door molding, drywall and drywall molding, and nails.

For the Respondent: Respondent's Exhibit 1 - Copy of the subject property record card with exterior photograph.

8. The following additional items are officially recognized as part of the record of proceedings:
- (A) The assessed value of the property as listed on the Board’s Final Determination is:

Land: \$4,700 Improvements: \$58,700 Total: \$63,400.

(B) The Hearing Officer did not inspect the subject property, which is assessed as a manufactured home located at 56883 Oak Road, South Bend (Portage Township, St. Joseph County).

Jurisdictional Framework

9. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
10. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

Indiana’s Property Tax System

11. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
12. Indiana has established a mass assessment system through statutes and regulations designed to assess property according to what is termed “True Tax Value.” See Ind. Code § 6-1.1-31, and 50 Ind. Admin. Code 2.2.
13. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).

14. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property's market value. See *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998) (*Town of St. John V*).
15. The Indiana Supreme Court has said that the Indiana Constitution “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”, nor does it “mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant”, but that the proper inquiry in tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” See *Town of St. John V*, 702 N.E. 2d at 1039-40.
16. Although the Supreme Court in the *St. John* case did declare the cost tables and certain subjective elements of the State's regulations constitutionally infirm, it went on to make clear that assessment and appeals must continue to be determined under the existing rules until new regulations are in effect.
17. New assessment regulations have been promulgated, but are not effective for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

State Review and Petitioner's Burden

18. The State does not undertake to reassess property, or to make the case for the petitioner. The State's decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
19. The petitioner must submit ‘probative evidence’ that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax*

Comm 'rs, 656 N.E. 2d 1230 (Ind. Tax 1998). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]

20. The petitioner has a burden to present more than just ‘de minimis’ evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm 'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]
21. The petitioner must sufficiently explain the connection between the evidence and petitioner’s assertions in order for it to be considered material to the facts. ‘Conclusory statements’ are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm 'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
22. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm 'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).
23. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a ‘prima facie case’ and, by a ‘preponderance of the evidence’ proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm 'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm 'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A ‘prima facie case’ is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner’s position is correct. The petitioner has proven his position by a ‘preponderance of the evidence’ when the petitioner’s evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]

Discussion of Issues

ISSUE 1: *Whether the grade applied to the manufactured home and basement is correct.*

24. The Petitioners contended the subject manufactured home is poorly constructed with low quality materials. The Petitioners asserted the home should be classified as “Economy” grade and the basement foundation should be graded a “D-1”.
25. The Respondent chose not to respond to the Petitioners’ contentions.
26. The applicable rules governing this issue are primarily found in 50 IAC 2.2-8, the mobile and manufactured home valuation. The approach to valuing mobile and manufactured homes is the application of a model to represent the typical type of mobile home construction. Those applicable rules include:

50 IAC 2.2-1-30

“Grade” is defined as the classification of an improvement based on certain construction specifications and quality of materials and workmanship.

50 IAC 2.2-8-2 includes the text of the Regulation, the mobile home grade specification table (50 IAC 2.2-8-2(b)), and graded photographs (50 IAC 2.2-8-6), all which provides guidelines for establishing grade. Subjectivity is used in the grading process. For assessing officials and taxpayers alike, however, the Regulation provides indicators for establishing grade.

50 IAC 2.2-8-2(a)

A model is a conceptual tool used to replicate the reproduction cost of a given mobile home based on typical construction materials. The model assumes that there are certain elements of construction that can be defined as specifications. These specifications create the average or “Good” grade mobile home. Grade is a concept used in the cost approach to account for deviations from the norm.

50 IAC 2.2-8-2(b)

The grade specification table illustrates the “Good” grade specifications. It provides the assessor with an indicator for establishing the differences between the subject mobile home and the model. An “Economy” grade mobile home does not mean it is inferior. It indicates that the type of materials used in construction is less costly than the materials in the “Good” grade mobile home. This difference in cost is reflected in the grade.

50 IAC 2.2-8-2(e)

The mobile home pricing schedules reflect the “Good” grade standards of quality and design. “Good” grade indicates a multiplier of one hundred percent (100%), “Custom” grade indicates a multiplier of one hundred twenty percent (120%), and “Economy” grade mobile homes indicates a multiplier of ninety percent (90%).

27. The applicable rule governing the grade factor assigned to the subject basement is:

50 IAC 2.2-8-4(a) informs assessors that if the permanent foundation for the mobile or manufactured home is a basement, it should be valued from the residential dwelling Schedule A basement column and entered as a separate line entry in the “Summary of Improvements” section.

50 IAC 2.2-7-6(e), which pertains to the basement foundation pricing in Schedule A, states that the pricing schedules found in 50 IAC 2.2-7-11 reflect the “C” grade standards of quality and design. The following schedule illustrates the multiplier applied to each of the listed grade classifications:

- (1) “A” grade indicates a multiplier of one hundred sixty percent (160%).
- (2) “B” grade indicates a multiplier of one hundred twenty percent (120%).
- (3) “C” grade indicates a multiplier of one hundred percent (100%).
- (4) “D” grade indicates a multiplier of eighty percent (80%).
- (5) “E” grade indicates a multiplier of forty percent (40%).

28. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The subject manufactured home is a 1998 Fortune brand home situated on a full-unfinished basement foundation.
 - b. The PTABOA determined that the property should be assessed as a conventional “stick-built” dwelling because it was situated on a permanent foundation.
 - c. The PTABOA lowered the grade of the home and basement foundation to a “D-1” grade factor to compensate for the inferior construction of the manufactured home and foundation.
 - d. The Petitioners filed a Form 131 appeal to the Board, contending the home should be assessed as a manufactured home.
 - e. The Board revised the classification of the home from conventional to manufactured home. The home was classified by the Board with a “Good” grade factor and listed as being in average condition.
 - f. The Petitioners filed for rehearing, contending that the grade factor and condition listed for the subject manufactured home were excessive.
 - g. The Petitioners asserted the manufactured home is constructed with low quality materials. In support for their contentions, the Petitioners submitted a copy of the Mobile Home Grade Specification Table with check marks. (Petitioners’ Ex. 1).
 - h. As further evidence of inferior quality, several broken items used in the construction of the home were submitted, including: drywall, moldings, cabinetry veneer, and vinyl siding. (Petitioners’ Ex. 2).
 - i. The Petitioners testified regarding several examples of the home’s poor quality and inferior construction materials including: The door molding falls off, the home is out of plumb and uneven, the home binds and twists on its foundation, the windows are rusted and loose, some of the cabinetry has fallen off, children’s plastic swords have penetrated the drywall, and an individual has fallen through the floor where the two sections meet. (Brian and Kristen Baker Testimony; Petitioners’ Ex. 2).

- j. The Petitioners further contended that the basement grade should be kept at the County's "D-1" grade rating. The basement walls are not level and the foundation is cracked, possibly because the builder put the foundation only four and one half feet (4.5') in the ground and the earth was not compacted when the foundation was backfilled. (Kristen Baker Testimony).
- k. The Petitioners have contacted consumer and government agencies regarding the poor quality of the subject manufactured home and the basement foundation.
- l. The Michigan built manufactured home was purchased in Indiana in 1999. The retailer went out of business after the home was purchased leaving the Petitioners without any recourse regarding their complaints. (Brian & Kristen Baker Testimony).

Analysis of ISSUE 1

29. The Petitioners contend that the manufactured home is poorly constructed with inferior materials. In support of their argument, the Petitioners presented testimony, a mobile home grade specification table with checkmarks, and various construction components from the manufactured home.
30. The Petitioners testified that most of the checkmarks fall within the "Economy" grade table. Some of the checkmarks were made in the "Custom" grade column and others were made to the "Good" grade column. (Petitioners' Ex. 1) The Petitioners asserted that even the two components in the subject home that are classified as "Custom" are inferior, such as the thin, easily breakable vinyl siding piece submitted. (Petitioners' Ex. 2).
31. The Petitioners submitted a broken piece of drywall as evidence of the subject's low cost interior finish. In addition, the Petitioners presented a broken piece of molding that is to be attached to the drywall, but will not stay on. The Petitioners demonstrated how easily the nail, which holds the molding to the wall, bends. (Petitioners' Ex. 2). Further

testimony elaborated on how other interior components such as the “wood” door jambs are actually constructed from a cardboard material covered in contact paper.

32. The Petitioners’ evidence is further supported by testimony that they have appealed to South Bend’s Channel Sixteen consumer watch program to help them recover their loses in the home, the St. Joseph County Building Inspector, and legal agencies in both Michigan and Indiana.
33. The County official did not rebut the Petitioners’ testimony. In fact, documentation shows that the Township Assessor testified at the local PTABOA hearing that based on a personal inspection, the home and the basement foundation had construction problems and the construction was clearly inferior. Further, the Proposed Finding submitted by the St. Joseph PTABOA clearly state that the grade and condition of the home were lowered due to the inferior construction of the subject property. (*See* attachments to Board’s Ex. A, Form 131 petition).
34. The Petitioners have presented sufficient probative evidence regarding the quality of the manufactured home and basement foundation to establish a prima facie case. The Respondent did not rebut any of the Petitioners’ testimony or evidence. Therefore, by a preponderance of the evidence, the Petitioner’s prevail and the manufactured home will be classified as “Economy” grade. The basement foundation was graded a “D-1” by the Portage Township Assessor after a personal onsite inspection. The grade of the basement will be revised to the “D-1” originally set by the Township. A change is made to the assessment of the manufactured home and basement foundation as a result of this issue.

ISSUE 2: *Whether the condition rating applied to the manufactured home and basement is correct*

35. The Petitioners contended the three-year-old subject manufactured home is literally “falling apart” and the Poor condition rating applied by the PTABOA should be reinstated.

36. The Respondent chose not to respond to the Petitioners' contentions.

37. The applicable rule governing this issue is:

50 IAC 2.2-8-3(d)(6)

Condition is a judgment of the physical condition of the mobile home relative to its age. Condition ratings range from very poor to excellent. Assessors are instructed to apply the appropriate condition as follows:

- (A) Excellent condition indicates that the structure is in excellent condition relative to its age.
- (B) Very Good condition indicates that the structure is in very good condition relative to its age. There is slight evidence of deterioration, but it is in significantly better condition than would normally be expected.
- (C) Good condition indicates that the structure is in good condition relative to its age. There is minor deterioration, but it is in somewhat better condition than would normally be expected.
- (D) Average condition indicates that the structure is in average condition relative to its age, or in a condition that would normally be expected.
- (E) Fair condition indicates that the structure is in fair condition relative to its age. The degree of deterioration is somewhat worse than would normally be expected.
- (F) Poor condition indicates that the structure is in poor condition relative to its age. The deterioration is significantly worse than would normally be expected.
- (G) Very Poor condition indicates that the structure is in very poor condition relative to its age. The deterioration of the structure is extreme compared to what would normally be expected. The degree of deterioration indicates that the structure is approaching unsoundness.

50 IAC 2.2-8-5(b)

Condition, the degree of wear and tear displayed by a mobile home, is determined relative to the age of the structure. Condition measures the remaining usefulness

of the mobile home based on its age. For example, a new mobile home normally displays little or no wear or deterioration. Consequently, no deterioration for a new mobile home indicates an average condition. A twenty (20) year old mobile home with no evidence of wear or tear relative to its age is in excellent condition. A twenty-five (25) year old mobile home, which has been maintained on a regular basis and has evidence of normal deterioration, is classified as average.

50 IAC 2.2-8-5(c)(2)

For mobile homes built on or after June 15, 1976, the physical depreciation is determined by the combination of age and condition.

50 IAC 2.2-8-5(d)

Physical depreciation for stick-built room additions, basements and exterior features are determined by using the residential depreciation table located in 50 IAC 2.2-8-8. The table provides a factor using the age, condition, and neighborhood desirability.

38. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The Petitioners contended the subject manufactured home is built with low quality materials, which are falling apart and showing excessive wear and tear. (Brian and Kristen Baker Testimony; Petitioners' Ex. 2).
 - b. The manufactured home binds and twists on its foundation, which is cracked and uneven. (Kristen Baker Testimony).
 - c. The floor has separated and is off center, the molding is falling off the walls and the drywall is damaged. (Kristen Baker Testimony; Petitioners' Ex. 2).
 - d. The two separate sections of the manufactured home are put together with 1' x 2's on 24" centers and the walls and floors are uneven. To correct the problem, the whole mid section would have to be removed and 2' x 4's installed. (Kristen Baker Testimony).
 - e. The Respondent chose not to respond to this issue at the Board hearing.

- f. The County PTABOA , based on the recommendation of the Township Assessor’s onsite inspection of the subject property, lowered the condition of the home and foundation to “Poor.”
- g. The Board, after the initial hearing the Form 131 appeal, revised the condition of the property from “Poor” to “Average” after changing the classification of the home from a conventional to a manufactured home.

Analysis of ISSUE 2

- 39. The Petitioners contended that the condition of the subject manufactured home and foundation should be rated “Poor.” The Petitioners supported their contentions with substantial testimony and the submission of various components, such as molding, cabinetry, and drywall that were damaged and broken in normal daily use. (Petitioners’ Ex. 2).
- 40. The Petitioners contended that they have tried to repair several items in the three-year-old manufactured home, but the cost to cure the problems is substantial due to the structural condition of the home. (See ¶ 38). The Petitioners asserted that many of the problems in the home cannot be properly corrected because the walls and floors are not level, and the materials are inferior.
- 41. The County did not rebut any of the Petitioner’s testimony. In contrast, the PTABOA’s Proposed Findings indicate the Portage Township Assessor offered testimony at the local PTABOA hearing that the manufactured home’s condition rating should be lowered to “Poor”. (See attachments to Board’s Ex. A, Form 131 petition).
- 42. The Petitioners have presented sufficient probative evidence regarding the condition of the manufactured home and basement to establish a prima facie case. The Respondent did not rebut any of the Petitioners’ testimony or evidence at the Board hearing. Instead, the PTABOA agreed with the Petitioners at the County meeting that the condition of the manufactured home should be classified as “Poor”.

43. Therefore, by a preponderance of the evidence supported by substantial testimony, the Petitioners prevail and the manufactured home and basement foundation will be revised to the “Poor” condition rating. A change is made to the assessment of the manufactured home and basement foundation as a result of this issue.

Summary of Final Determination

Determination of ISSUE 1: *Whether the grade applied to the manufacture home and basement foundation is correct.*

44. The Petitioner’s established a prima facie case in support of their position and met their burden, by a preponderance of the evidence. The Respondent did not present any evidence to rebut. Accordingly, the grade factor assigned to the manufactured home should be amended to “Economy” and the basement grade should be amended to “D-1”.

Determination of ISSUE 2: *Whether the condition applied to the manufactured home and basement foundation is correct.*

45. The Petitioners established a prima facie case in support of their position and met their burden, by a preponderance of the evidence. The Respondent did not present any evidence to rebut. Accordingly, the condition assigned to the manufactured home and basement foundation should be amended to “Poor” condition.²

² Although a change was made to the condition ratings of the manufactured home and basement, the change did not affect the assessment figures. The condition rating is expressed as a variable of the depreciation tables. No depreciation is allowed for the property, which was constructed subsequent to March 1, 1995, for the subject assessment period. Real property improvements constructed after March 1, 1995, shall not receive a physical depreciation allowance. (See 50 IAC 2.2-1-21 and 50 IAC 2.2-8-5(c)(2)).

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.