

REPRESENTATIVES FOR PETITIONER: Stephen M. Hay, Tax Representative,  
Landmark Appraisals, Inc.<sup>1</sup>

REPRESENTATIVES FOR RESPONDENT: Lori Harmon, Deputy Assessor Hamilton  
County

---

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

BRIAN REDMAN	)	
	)	
Petitioner	)	
	)	
v.	)	Petition No.: 29-007-98-1-5-00004
	)	County: Hamilton
	)	Township: Fall Creek
HAMILTON COUNTY PROPERTY	)	Parcel No.: 13-15-09-03-08-022.00
TAX ASSESSMENT BOARD OF	)	Assessment Year: 1998
APPEALS and FALL CREEK	)	
TOWNSHIP ASSESSOR	)	
	)	
Respondents	)	
	)	

---

Appeal from the Final Determination of  
Hamilton County Property Tax Assessment Board of Appeals

---

\_\_\_\_\_  
**August \_\_, 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

---

<sup>1</sup> Mr. Hay is not a certified tax representative in Indiana and may not practice before the Board. See 50 IAC 15-5-2. Mr. Hay did not submit the client disclosure required by 50 IAC 15-5-5(b).

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**

1. Pursuant to Ind. Code § 6-1.1-15-3, Stephen M. Hay, Landmark Appraisals, Inc., filed a Form 131 on behalf of Brian Redman (the Petitioner) petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on May 25, 1999. The determination of the Hamilton County PTABOA was issued on May 10, 1999.

### **Hearing Facts and Other Matters of Record**

2. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on July 10, 2002 in Noblesville, Indiana before Dalene McMillen the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
3. The subject property is located at 10961 Windjammer Drive S, Indianapolis, Fall Creek Township, Hamilton County, Indiana. The Administrative Law Judge did not view the property.
4. The assessed value for the subject property as determined by the PTABOA for the assessment date of March 1, 1998 is:
5. Land: \$10,870            Improvements: \$47,670            Total: \$58,540
6. By phone July 9, 2002, Mr. Hay requested permission to fax testimony and evidence in lieu of attending the Board hearing scheduled July 10, 2002 at 11:15 a.m.

7. On July 9, 2002 at 3:07 p.m., Mr. Hay faxed testimony and evidence to be read onto the record at the July 10, 2002 Board hearing.

8. The following persons were present at the hearing:

For the Petitioner:

None

For the Respondent:

Lori Harmon, Deputy Assessor.

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

For the Petitioner:

None

For the Respondent:

Lori Harmon.

10. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1: A fax, dated July 9, 2002, from Stephen M. Hay to the Board and a copy of taxpayers' grounds for appeal from the 131 appeal.

For the Respondent:

Respondent's Exhibit 1: A copy of Fall Creek Township and Hamilton County PTABOA's response to the 131 petition, Brian Redman's 1998 property record card (PRC), a copy of the aerial map, Jerry Butler's PRC, William Redman's PRC, Bernard Palcisko's PRC, Jeffrey Mehaffie's PRC, Gene Boyd's PRC, Kevin Waltz's PRC, an exterior photograph of the subject structure, a copy of a page from Brian Redman's 1995 Final

Determination, and a copy of the settlement statement on Brian Redman's property, dated May 21, 1992.

11. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
  - A. Copy of the Form 131
  - B. Notice of Hearing.
  
12. The issues presented for consideration by the Board were:
  - Issue 1 – *Whether the grade of the structure is excessive.*
  - Issue 2 - *Whether the neighborhood classification is correct.*
  - Issue 3 – *Whether a negative influence factor to the land is warranted.*
  - Issue 4 – *Whether the Board has provided instruction for determining “the effect that location and use have on the value of real property”, nor for determining “the productivity of earning capacity of the land” for the subject property as required in I.C. 6-1.1-31-6.*
  - Issue 5 – *Whether the assessment is in accordance with Article X, Section 1 of the Indiana Constitution.*

### **Jurisdictional Framework**

13. 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 assessments or matters of administrative law and process.
  
14. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

## Indiana's Property Tax System

15. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, § 1.
16. 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.
17. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
18. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property's market value. See *Town of St. John V*, 702 N.E. 2d 1034, 1043 (Ind. 1998).
19. 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.
20. 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 affect.

21. New assessment regulations have been promulgated, but are not in affect for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

### **State Review and Petitioner's Burden**

22. The Board does not undertake to reassess property, or to make the case for the petitioner. The Board's decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
23. 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 Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 1230 (Ind. Tax 1998). ["Probative evidence" is evidence that serves to prove or disprove a fact.]
24. 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 Board of Tax Commissioners*, 715 N.E. 2d 1018 (Ind. Tax 1999). ["De minimis" means only a minimal amount.]
25. 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 Board in its evaluation of the evidence. See *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329 (Ind. Tax 1999). ["Conclusory statements" are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]

26. 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 Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.*, 743 N.E. 2d 247, 253 (Ind. Tax 2001), and *Blackbird Farms Apartments, LP v. Department Local Government Finance*, 765 N.E. 2d 711 (Ind. Tax 2002).
27. The Board 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 Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 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 to the Board (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 Board that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]

### **Discussion of the Issues**

Issue 1: Whether the grade of the structure is excessive

Issue 2: Whether the neighborhood classification is correct

Issue 3: Whether a negative influence factor to the land is warranted

Issue 4: Whether the Board has provided instruction for determining “the effect that location and use have on the value of real property”, nor for determining “the productivity of earning capacity of the land” for the

subject property as required in I.C. 6-1.1-31-6

Brian Redman Findings & Conclusions

29-007-98-1-5-00004

Page 7 of 10

28. The Petitioner's fax did not address these issues.
29. With no evidence or testimony being offered in support of these issues, the Petitioner has failed to meet his burden, therefore, these issues will not be discussed or further analyzed in these findings.

Discussion of Issue 5: *Whether the assessment is in accordance with Article X, Section 1 of the Indiana Constitution*

30. The Petitioner contends in his fax that his attorneys have assured the Petitioner that the 1998 assessment on the subject property violates both the U.S. and Indiana Constitutions.
31. The Respondent contends the mission of reassessment is to distribute the property tax burden in a uniform and equitable manner (50 IAC 2.2-2-1). Further that the Tax Court case of *Town of St. John*, states the 1995 Manual and schedules are to be used in assessing property until the next reassessment.
32. The applicable rule governing this issue is:  
***St. John V*, 702 N.E. 2d 1034, 1043 (Ind. Tax 1998)**  
Though the Courts have declared the cost tables and certain subjective elements of the Board's regulations constitutionally infirm, the assessment and appeals process continue under the existing system until a new property tax system is operative.

Analysis of Issue 5

33. The Petitioner presented no evidence or legal argument in support of this issue.



34. Petitioner has failed to meet his burden, therefore, there is no change in assessment with regard to this issue.

### **Summary of Final Determination**

#### Determination of Issue 1 – *Whether the grade of the structure is excessive*

35. There is no change in the assessment with regard to this issue.

#### Determination of Issue 2 – *Whether the neighborhood classification is correct*

36. There is no change in the assessment with regard to this issue.

#### Determination of Issue 3 – *Whether a negative influence factor to the land is warranted*

37. There is no change in the assessment with regard to this issue.

#### Determination of Issue 4 – *Whether the Board has provided instruction for determining “the effect that location and use have on the value of real property”, nor for determining “the productivity of earning capacity of the land” for the subject property as required in I.C. 6-1.1-31-6*

38. There is no change in the assessment with regard to this issue.

#### Determination of Issue 5 – *Whether the assessment is in accordance with Article X, Section 1 of the Indiana Constitution*

39. The Petitioner failed to meet his burden on this issue. No change is made in the assessment as a result of this issue.

The above stated findings of fact and conclusions of law 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

### **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.**