

STATE OF INDIANA
Indiana Board of Tax Review

DAVID J. and PATRICIA L. PUND,)	On Appeal from the Marion County
)	Property Tax Assessment Board of
Petitioners,)	Appeals
)	
v.)	Petition for Review of Assessment
)	Form 131
MARION COUNTY PROPERTY TAX)	Petition No. 49-800-99-1-5-01088
ASSESSMENT BOARD OF APPEALS)	
and WASHINGTON TOWNSHIP)	
ASSESSOR,)	
)	
Respondents.)	

Findings of Fact and Conclusions of Law

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

Issue

The Punds characterize several homes as comparable to their home. The Pund home is assessed at a higher value than the “comparable” homes. Does this violate the statutory right to uniform and equal assessments?

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 be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-3, David J. and Patricia L. Pund (Petitioners), filed a Form 131 petition requesting a review by the State Board. The Form 131 was filed on September 14, 2000. The Marion County Property Tax Assessment Board of Appeals' (PTABOA) determination on the underlying Form 130 is dated August 25, 2000.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on March 14, 2001, before Hearing Officer Alyson Kunack. Testimony and exhibits were received into evidence. David and Patricia Pund were present and were self-represented. A. Peter Amundson represented Washington Township.
4. At the hearing, the subject Form 131 was made a part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition was labeled Board Exhibit B. In addition, the following exhibits were submitted to the State Board:
 - Petitioner Exhibit 1 – Property record card (PRC) for parcel #8045409 & photos of property
 - Petitioner Exhibit 2 – Sales flyer for 2115 Wilshire Road
 - Petitioner Exhibit 3 – Photos of 4256 Knollton
 - Petitioner Exhibit 4 – PRC for subject property

 - Respondent Exhibit 1 – PRC for subject property
 - Respondent Exhibit 2 – PRC for parcel #8005587 (4256 Knollton)
 - Respondent Exhibit 3 – PRC for parcel # 8009993 (2115 Wilshire)
 - Respondent Exhibit 4 – PRC for parcel # 8045409 (5247 Roland)
 - Respondent Exhibit 5 – Plat maps showing subject and “comparable” properties
5. The subject property is a residence located at 2440 West 39th Street, Indianapolis, Indiana. (Marion County, Washington Township).
6. The Hearing Officer did not view the property.

Additional Findings

7. The mainstay of the Petitioners' argument is that their home has been assessed at a higher value than other homes which they deem to be "comparable" homes and, therefore, the alleged over assessment violates the statutory right to uniform and equal assessment. Pund Testimony; Board Ex. A, Form 131 petition. Petitioners opine that the other homes are comparable because they are larger than the Pund residence, have more amenities than the Pund residence, and have a greater market value than the Pund residence. Board Ex. A, Form 131 petition. In addition, the "comparable" homes do not visually demonstrate any more or less deterioration than the Pund residence. Pund Testimony. In large part, the differences among assessments are due to the amount of depreciation received by the "comparable" older homes. Amundson Testimony & Respondent's Exs. 1 – 4.

8. The "glaring inequity" of Indiana's property tax system, which was declared unconstitutional by the courts, is demonstrated by comparing the assessment of the Pund residence with the "comparable" homes. Pund Testimony & Petitioner Exs. 1 – 4. Mr. Pund argues that the unconstitutional property tax system should not be used to value property.

Conclusions of Law

1. The Petitioners are 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 Board. 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 Board, however, the State Board 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 Petitioners are limited to the issues raised on the Form 131 petition filed with the State Board.

2. The Appeals Division 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.

Additional Conclusions Regarding Issue Raised

18. The fact that the home under appeal was assessed under a Regulation declared unconstitutional does not mean that the assessment will be invalidated on that basis. Real property is assessed under the current Regulation, 50 IAC 2.2, until a new assessment Regulation is in place. *Champlin Realty Co. v. State Board of Tax Commissioners*, 2001 WL 29091 (Ind. Tax 2001); *Whitley*, 704 N.E. 2d at 1121.
19. Declaring other homes “comparable” is insufficient to establish true comparability or to establish disparate tax treatment among similarly situated homes. Submitting photographs, property record cards, and the like without further explanation as to how these documents demonstrate comparability does not constitute the evidence needed to present a prima facie case. *Quality Stores, Inc. v. State Board of Tax Commissioners*, 740 N.E. 2d 939, 942 & 43 (Ind. Tax 2000).
20. Also, using market value to demonstrate comparability does not assist the Petitioners’ argument because Indiana assesses property based on reproduction cost. *Fleet Supply, Inc. v. State Board of Tax Commissioners*, 740 N.E. 2d 598, 600 (Ind. Tax 2000).
21. Physical depreciation is based upon a combination of age, condition, and neighborhood desirability. 50 IAC 2.2-7-9. A residential depreciation table is used to determine the amount of depreciation to which a home is entitled. *Id.* The general definition of depreciation relied upon by Mr. Pund (decrease in value due to deterioration) is different from the definition provided for in the Regulation. The definition within the Regulation is used to value property for tax purposes.
22. Petitioners did not present evidence demonstrating that the Regulation was incorrectly applied. Though Mr. Pund did not visually see any more or less

deterioration between his home and others, this comparison does not take into account other factors used to account for depreciation.

23. Finally, Indiana's property tax system is a mass appraisal system. As such, taxpayers do not receive a commercial grade/fee appraisal for property tax purposes. Instead, assessed value is determined by relying on mass appraisal techniques commonly used by tax assessors throughout the United States. Ind. Code § 6-1.1-31-3 (4)(permits the use of generally accepted practices of appraisers, including generally accepted property assessment valuation and mass appraisal principles and practices); *King Industrial Corp. v. State Board of Tax Commissioners*, 699 N.E. 2d 338,343, n. 4 (Ind. Tax 1998)(The Tax Court recognized the necessity of mass appraisal practices and some of their flaws). Depreciation schedules are a common mass appraisal technique and illustrate the typical loss in value for structures at various ages or effective ages. IAAO, *Property Assessment Valuation*, 2nd ed (1996).
24. For all of the reasons above, the Petitioners did not make a prima facie case of error in this assessment. Accordingly, there is no change in the assessment as a result of this issue.