

REPRESENTATIVE FOR PETITIONER:

John J. Kielty  
Janice A. Kielty

REPRESENTATIVES FOR RESPONDENT:

Hamilton County:  
Lori Harmon

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

JOHN J. and JANICE A. KIELTY , )  
 )  
Petitioner )

v. )

HAMILTON COUNTY PROPERTY )  
TAX ASSESSMENT BOARD )  
OF APPEALS, and CLAY )  
TOWNSHIP ASSESSOR )  
 )  
Respondents )

) Petition for Review of Assessment,  
) Form 131  
) Petition No. 29-003-95-1-5-00042  
) County: Hamilton  
) Township: Clay  
)  
) Parcel No. 1709310000011001  
)  
) Assessment Year: 1995

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

**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**

#### **Procedural History**

1. Pursuant to Ind. Code § 6-1.1-15-3 John J. and Janice A. Kielty filed a Form 131 petitioning the Board to conduct an administrative review of the above petition filed on January 10, 1997.

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

2. Pursuant to Ind. Code § 6-1.1-15-4, an administrative hearing was scheduled for June 29, 2000 at 3:00 p.m. Notice of said hearing was mailed to John J. and Janice A. Kielty at the address listed on the petition. Notice of the hearing was mailed on May 8, 2000.
3. On June 29, 2000, Hearing Officer John Robert Nussel conducted the administrative hearing on the Form 131 petition. Neither the Petitioners nor a representative appeared at the hearing. Ms. Lori Harmon represented Hamilton County.

4. The Petitioners did not contact the Board or the Hearing Officer prior to the scheduled hearing date and did not request a continuance of the hearing.
5. The Hearing Officer verified that notice of hearing was mailed, with proof of mailing (dated May 8, 2000), and also verified that the notice was not returned to the Board as not deliverable.
6. The subject property is located at 4010 West 121<sup>st</sup> Street, Zionsville, Clay Township, Hamilton County, Indiana.
7. The assessed value for the subject property as determined by the PTABOA for the assessment date as of March 1, 1995 is:  
Land: \$25,530                      Improvements: \$77,530                      Total: \$103,060
8. The following persons were present at the hearing:  
    For the Petitioner:  
        None  
  
    For the Respondent:  
        Lori Harmon, Deputy Assessor, Hamilton County
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:

**None**

For the Respondent:

**Respondent's Ex. 1** – Petitioners' property record card.

**Respondent's Ex. 2** – Petitioners' Final Assessment Determination Form 118, dated May 19, 1998.

**Respondent's Ex. 3** – Aerial photograph of the subject parcel and surrounding parcels.

For the Board:

**Board's Ex. A** – Form 131 petition, dated January 10, 1997.

**Board's Ex. B** – Notice of Hearing on Petition (Form 117), dated May 8, 2000.

**Board's Ex. C** – Proof of mailing of the Notice of Hearing on Petition (Form 117), dated May 8, 2000.

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

Issue 1 – *Whether the land value is excessive.*

Issue 2 – *Whether the grade of the structure is excessive.*

12. The Hearing Officer did not conduct an on-site inspection.

### **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 *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998) (*Town of St. John V*).
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 at 1039 – 40.

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. 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 Cinema, 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 land value is excessive

### Issue 2: Whether the grade of the structure is excessive

28. The Petitioners failed to appear at the administrative hearing.
29. With no evidence or testimony being offered in support of these issues, the Petitioners failed to meet their burden, therefore, these issues will not be discussed or further analyzed in these findings.

## Summary of Final Determination

### Determination of Issue 1 – Whether the land value is excessive

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

### Determination of Issue 2 – Whether the grade of the structure is excessive

31. There is no change in the assessment with regard to 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.

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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.**