

**STATE OF INDIANA  
Board of Tax Review**

LARRY SWANK	)	On Appeal from the Kosciusko County
	)	Property Tax Assessment Board of Appeals
	)	
Petitioner,	)	
	)	Petition for Review of Assessment, Form 131
v.	)	Petition No. 43-026-01-1-4-00004
	)	Parcel No. 008030152B
KOSCIUSKO COUNTY PROPERTY	)	
TAX ASSESSMENT BOARD OF	)	
APPEALS And TURKEY CREEK	)	
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**

1. Whether the grade of the subject property is correct.

## 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 Indiana Code § 6-1.1-15-3, Larry Swank filed a petition requesting a review by the State. The Kosciusko County Property Tax Assessment Board of Appeals' (PTABOA) final determination was issued on October 10, 2001. The taxpayer's representative, Edwin DeWald, filed the Form 131 petition on October 18, 2001.
  
3. Pursuant to Indiana Code § 6-1.1-15-4, a hearing was held on January 9, 2002, before Hearing Officer Jennifer Bippus. Testimony and exhibits were received into evidence. Edwin DeWald represented the Petitioner. Phillip Johns appeared as a witness for the Petitioner. Laurie Renier, Kosciusko County Assessor, and Darby Davis, Commercial and Industrial Appraiser for Kosciusko County, represented the Kosciusko County Assessor's Office. Mary Gervasi, Turkey Creek Township Assessor, and Shelly McKee, Commercial and Industrial Deputy Assessor, represented the Turkey Creek Township Assessor's Office.
  
4. At the hearing, the Form 131 petition was made part of the record and labeled as Board's Exhibit A, the Notice of Hearing was labeled as Board's Exhibit B, and the Disclosure Statement was listed as Board's Exhibit C.
  
5. At the hearing, the Petitioner submitted the following evidence:  
Petitioner's Exhibit A - Explanation of the Issue presented by the Petitioner.  
Petitioner's Exhibit B - A list of United States Department of Agriculture (USDA) Rural Development Program low-income housing units located in Indiana.  
Petitioner's Exhibit C - Photographs and a copy of the property record card for Eel River Apartments.

Petitioner's Exhibit D - Photographs and a copy of the property record card for Cromwell Estates Apartments.

Petitioner's Exhibit E - Photographs of Farm Valley Apartments.

Petitioner's Exhibit F - A copy of the State Final Determination for Farm Valley Place.

Petitioner's Exhibit G - Photographs and a copy of the property record card for Valley Forge Apartments.

Petitioner's Exhibit H - Photographs and a copy of the property record card for Milford Meadows Apartments.

Petitioner's Exhibit I - A Consultation Report for Greenhaus Apartments prepared for DeWald Property Tax Services.

Petitioner's Exhibit J - Photographs of the subject property.

6. At the hearing, the Respondent submitted the following evidence:

Respondent's Exhibit A - The Findings and Conclusions of the Kosciusko County PTABOA.

Respondent's Exhibit B - A copy of the final determination for M.D. Umbaugh & Claud Sympson issued by the State.

Respondent's Exhibit C - A copy of 50 IAC 2.2-11-3, General commercial residential (GCR) models.

Respondent's Exhibit D - Copies of property record cards for purported comparable properties in Kosciusko County with grades ranging from C to C-2.

7. The property is an apartment complex located at 201 E. Greenhaus Drive, Syracuse, Turkey Creek Township, Kosciusko County.

8. The Hearing Officer did not view the property.

9. The assessed value as determined by the Kosciusko County PTABOA is:

Land: \$14,200	Improvements: \$221,200	Total: \$235,400
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10. Mr. DeWald testified that he is compensated on a commission basis. Mr. DeWald testified that in order to be objective, he employed Mr. Johns as an independent fee appraiser. Mr. Johns' qualifications are included in Petitioner's Exhibit J.

**Issue No. 1 - Whether the grade of the subject property is correct.**

11. The building was originally assessed with a grade of C-2. The PTABOA agreed a grade change was in order and lowered the grade of the subject property to a D+1, but the grade is still incorrect. The grade of the subject property should be D. *DeWald Testimony.*
  
12. The subject apartments were built for qualified, low-income residents under the USDA Farmer's Home Administration Rural Development program. The apartments are manufactured housing that is assembled at the site. The interiors vary from the model in the Indiana Assessment Manual as follow: ceiling is tile, not drywall; metal doors; masonite flooring; wood panel on the walls, no drywall; no closet doors on many of the units (only curtains); low cost bathroom fixtures; wall heights seven (7) feet instead of eight (8) feet; low cost light fixtures. *DeWald Testimony.*
  
13. The owners built three other apartments, Eel River, Cromwell Estates, and Farm Valley Place, using the exact design, materials, and construction workmanship. They are identical properties and all three are graded D in their respective counties. The D grade was placed on Farm Valley Place based on a final determination by the State Board on July 7, 2000. *DeWald Testimony, Petitioner's Ex.'s C,D,E, and F.*

14. In Kosciusko County, two apartment complexes were examined. Valley Forge and Milford Meadows were built to modern apartment standards and are significantly superior in design, materials and workmanship to the subject property. The grade of each of these two apartment complexes is C-2. *DeWald Testimony, Petitioner's Ex's. G and H.*
15. Petitioner contends the evidence presented by Ms. Davis does not quantify the grade of D+1 assigned to the property. Ms. Davis did not use standard appraisal practices governed by USPAP to assess the property. Mr. Johns, the Petitioner's witness, can be held legally liable for his opinions on the subject property. This makes a difference when it comes to the final value. *DeWald's Testimony.*
16. At the request of Mr. DeWald, Mr. Johns inspected the property and several comparable properties. Mr. Johns specifically considered the issues regarding the quality of design, materials, and workmanship. Mr. Johns was to not only compare the features of the properties but to quantify the differences. *Johns' Testimony.*
17. The Marshall Valuation Service (MVS) manual was used as the basis for determining the quality of the specific features of multiple residence complexes (the relevant page is included as an addendum in Petitioner's Ex. I). Using MVS, the subject is best described as a Class D, Low cost-Fair type structure. The three properties similar to the subject, Eel River, Farm Valley Place, and Cromwell Estates, are also best described as Class D, Low cost-Fair type structures. The two properties in Kosciusko County, Valley Forge and Milford Meadows, are superior property in terms of quality and best described as Class D, Fair-Average type structures. *Johns' Testimony, Petitioner's Ex. I.*
18. Mr. Johns' calculations show the subject is identical to the three D grade properties, but 14% less costly to construct than the C-2 properties (Valley Forge and Milford Meadows). *Johns' Testimony, Petitioner's Ex. I.*

19. The Petitioner's representative used Regulation 17 to compute the difference in the cost of materials used for construction of the subject property with the costs contained in the model. Two of these comparisons had a total of 4% and 5% difference in cost, but all of the comparisons and calculations for the various adjustments were not analyzed. All of the differences in the adjustments should have been compared, but were not. *Davis Testimony, Respondent's Ex. A.*
20. Respondent contends reducing the grade of the subject property would create inequity among the apartments in Kosciusko County. By using comparisons from other counties, the equity that has been established will be destroyed. There are several apartments in Kosciusko County that are similar to the subject with grades ranging from C to C-2. *Davis Testimony, Respondent's Ex. D.*
21. Respondent contends the judgments made by the consultant are all opinions. The consultant's judgment is not any better than the County official's judgment. *Davis Testimony.*
22. The grade assigned by the PTABOA is correct. *Gervasi 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.

#### **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’s decision.

### **B. 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.)

### **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'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 V*, 702 N.E. 2d at 1040.

### **Issue No. 1 - Whether the grade of the subject property is correct.**

18. The PTABOA determined that the grade of the property should be D+1. The Petitioner contended the grade of the property should be D.

19. "Grade" means the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.
20. "Grade is used in the cost approach to account for the deviations from the norm or 'C' grade. The quality and design of a building are the most significant variables in establishing grade." 50 IAC 2.2-10-3(a).
21. Subjectivity is used in grading property. For assessing officials and taxpayers alike, however, the Regulation provides indicators for establishing grade. The text of the Regulation (see 50 IAC 2.2-10-3) and graded photographs (50 IAC 2.2-11-4.1) provide guides for establishing grade.
22. In support of its position, the Petitioner presented photographs and property record cards of other properties that it had constructed using the same design and quality of materials as the property under appeal. All of these comparable properties have been graded D. Additional photographs were offered to show the contrast between the subject and apartment complexes graded C-2.
23. The Petitioner has made a prima facie case by identifying similarly situated properties and establishing disparate treatment between the contested property and the other apartment complexes.
24. 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 their decision with substantial evidence.
25. The County officials identified several features of the property and compared these to the costs presented in the unit in place schedules (50 IAC 2.2-15-1). This analysis, however, was not comprehensive and focused on only selected items.

26. In further support of their position, the County officials submitted property record cards of purported comparable properties with grades ranging from C to C-2.
27. Merely characterizing properties as comparable is insufficient for appeal purposes. The local officials are required to present probative evidence that the purported comparable properties offered are, in fact, comparable to the subject property. However, the local officials offered no comparison of common features or amenities among the properties.
28. Additionally, even the Kosciusko County PTABOA concluded that these purported comparable properties offered by the local officials are, in fact, superior to the property under appeal. As discussed, the PTABOA reduced the grade of the property under appeal from C-2 to D+1.
29. For all of the reasons set forth above, it is determined the grade of the subject property is D. A change in the assessment is made as a result of this issue.

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.

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Chairman, Indiana Board of Tax Review