

**STATE OF INDIANA
Board of Tax Review**

In the matter of Petition for)
Review of Assessment, Form 131) Petition Number: 29-003-96-1-5-00002

Parcel No. 1709330004006000

Assessment Year: 1996

Petitioner: Michael Gordon
 1476 Gwynmere Run
 Carmel, IN 46032

Taxpayer Representative: Landmark Appraisals, Inc.
 7246 E. CR 800 North, #A
 Syracuse, IN 46567

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 the pending with the State Board of Tax Commissioner (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division) is hereafter, without distinction, referred to as "State". The State, having reviewed the facts and evidence, and having considered the issues, now makes the following findings of fact and conclusions of law.

Issue

Whether obsolescence should be applied to equalize the assessment.

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 Ind. Code § 6-1.1-15-3, Stephen Hay of Landmark Appraisals, on behalf of Michael Gordon (Petitioner), filed a Form 131 petition requesting a review by the State Board. The Form 131 was filed on October 18, 1999. The Hamilton County Board of Review's (County Board) Assessment Determination is dated September 15, 1999.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on July 31, 2001, before Hearing Officer Alyson Kunack. Testimony and exhibits were received into evidence. Stephen Hay and Drew Miller represented the Petitioner. Debbie Folkerts and Kim Powell represented Hamilton County.

4. At the hearing, the subject Form 131 petition was made a part of the record and labeled Board Exhibit A. The Notice of Hearing was labeled Board Exhibit B, and the County property record card (PRC) was labeled Board Exhibit C. In addition, the following exhibits were submitted to the State Board;
 - Petitioner's Exhibit 1 – Evidence packet containing sales ratio study

 - Respondent's Exhibit 1 – Form 11
 - Respondent's Exhibit 2 – County Assessor's response to petition

5. The subject property is a residence located at 1476 Gwynmere Run, Carmel, Indiana, Hamilton County, Clay Township. The Hearing Officer did not view the property.

6. At the hearing, there was a dispute as to the year of appeal. Although the petition was filed in 1999, there was a failure by the Township to give the

Petitioner's representative notice of a Form 11 issued for 1996. The Petitioner's representative did file as soon as the Petitioner informed them of the Form 11. Also, there was a duly executed Power of Attorney form on file for the time the Form 11 was issued. Therefore, this appeal will be considered for 1996.

Whether obsolescence should be applied to equalize the assessment.

7. The Petitioner's representative stated that according to a sales ratio study for 26 older homes and 44 newer homers in Hamilton County, there is a gross over assessment of newer homes. The older homes have an average dollar value to assessment ratio of 14 %, whereas the same ratio for newer homes is 23.9%. This is further supported with data from the Indiana Fair Market Value study. As a result of this inequity, the Petitioner requests 41% obsolescence be applied to the subject property, which will equalize the dollar value to assessment ratios. *Miller Testimony. Petitioner's Exhibit 1.*
8. The Respondent testified that the sales ratio study has been rejected by the Tax Court in previous cases. *Folkerts Testimony. Respondent's Exhibit 2.*
9. The subject property currently has a 1995 appeal in Tax Court.

Conclusions of Law

1. The Petitioner is limited to the issues raised in the Form 131 petition filed with the State. Ind. Code § 6-1.1-15-1(e) and –3(d). See also Form 131 petition requiring the Petitioner to identify the specific grounds for appeal. The State has the discretion to address any issue once an appeal has been filed by the taxpayer. *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 in 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 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 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. Accordingly, the Tax Court will not reverse the State'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'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.

D. Whether obsolescence should be applied to equalize the assessment.

New vs. Old Homes

18. The Petitioner seeks a reduction in the assessed value of his property, claiming that newer homes are over-assessed under Indiana's real estate property tax system when compared to older homes. This claim is based on a market value comparison, and therefore, it must fail.
19. In support of the issue, the Petitioner's representative submitted page 13 of the Report of the Indiana Fair Market Value Study (Petitioner Exhibit 1). The State did not consider this evidence for the purposes of this appeal. P.L.63-1993, Section 3(a) required the State to conduct a study to determine the impact of converting the current true tax value system to a system based on fair market value (the "Market Value Study"). Section 3(f) of the Public Law prohibits the use

of the Market Value Study and all data gathered pursuant to the Study from being used in assessment appeals and refund petitions.

20. Petitioner's Exhibit 1 (sales ratio and comparable sales information) is seriously flawed and does not warrant a reduction in assessed value in this appeal.

21. Using market value as a comparison, the Petitioner's theory is that new and old homes receive disparate treatment under the true tax value system. Yet Indiana's true tax value system is based on reproduction cost calculated by way of the regulation, 50 IAC 2.2-1-1. This system, including the use of the cost tables, remains in effect until a new property tax system is operative. True tax value does not attempt to determine the fair market value of the property. The statute governing true tax value states explicitly that it is not the same as fair market value. Ind. Code § 6-1.1-31-6(c). The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *Town of St. John V*, 702 N.E. 2d at 1038. Thus, the evidence submitted demonstrates at best that assessments of old and new homes are not consistent with their market values. This evidence is immaterial to the propriety of the assessment of the home under appeal and does not warrant a change in assessment.

22. In addition, the market value comparison is only based on sales price and the age of the home, which destroys the credibility and the validity of it. Nothing in the comparison indicates what is included in the sales price listed. For example, one sale could include a house, detached garage, tool shed, and an aboveground swimming pool. Another sale could include a house with attached garage and an in-ground swimming pool. Amenities or improvements influence sales price. Further, no consideration was given to the size of the land, the location of the property, the size of the home, the school district within which the property is located, or the zoning of the area. Two identical houses—one located on a lake and the other located next to a wastewater treatment facility—will not have the same sales price. Yet, the Petitioner's representative developed a market comparison without taking such information into consideration, and then

concluded that the differences in value are the result of a flawed tax system.

23. For the reasons set forth above, the Petitioner's representative has failed to identify properties that are similarly situated to the property under appeal. Accordingly, the first prong of the two-prong burden was not met. Having failed to identify properties that were similarly situated, the sales comparison did not demonstrate that the subject home was being treated any differently than similarly situated properties.
24. The Petitioner's representative's comparison wholly fails to address the inquiry as to whether the true tax value system that is prescribed by statute and regulations was properly applied to the assessment against the subject property. *See Town of St. John V*, 702 N.E. 2d at 1040.
25. When the petitioner fails to submit probative evidence of the error alleged, the State is "under no obligation to support its final determination with substantial evidence." *Bishop v. State Board of Tax Commissioners*, 743 N.E. 2d 810, 817 (Ind. Tax 2001).
26. For all the reasons set forth above, the Petitioner's claim that his property should receive a reduction in value based on the new versus old home theory is denied and there is no change in the assessment.

Obsolescence

27. Depreciation is the loss of value from all causes. 50 IAC 2.2-1-20 recognizes two types of depreciation: physical depreciation and obsolescence. *Simmons v. State Board of Tax Commissioners*, 642 N.E. 2d 5559, 561 (Ind. Tax 1994).
28. Physical depreciation refers to the loss of value cause by physical deterioration. 50 IAC 2.2-1-20 (I). Obsolescence is composed of functional and economic obsolescence. Functional obsolescence is a form of depreciation resulting in

loss of value due to the lack of utility or desirability inherent in the design of the property. *Western Select Properties v. State Board of Tax Commissioners*, 639 N.E. 2d 1068, 1071 (Ind. Tax 1994). Economic obsolescence is a form of depreciation that results from deficiencies external to the property. *GTE North*, 634 N.E. 2d at 887.

29. Obsolescence is seldom applied to residential dwellings. 50 IAC 2.2-7-9(d). “There must be an extremely abnormal circumstance involved with a residential dwelling before obsolescence depreciation applies.” *Id.* See also *Kemp v. State Board of Tax Commissioners*, 726 N.E. 2d 395, 402; *Bernacchi v. State Board of Tax Commissioners*, 727 N.E. 2d 1133, 1137; *Bishop v. State Board of Tax Commissioners*, 743 N.E. 2d 810, 817.
30. “To obtain an obsolescence adjustment, [the Petitioner has] a burden to produce evidence showing that their home suffered from an extremely abnormal circumstance.” *Kemp*, 726 N.E. 2d at 402.
31. The State did not include the obsolescence adjustment in the Regulation as a “catch-all” for taxpayer representatives who want a reduction in assessed value. This is exactly the manner in which the Petitioner’s representative in this case is using the adjustment in this appeal.
32. The Petitioner did not present facts that demonstrated the existence of obsolescence in the contested home.
33. The basis for the obsolescence claim is the market value comparison. For reasons set forth elsewhere in these conclusions, the comparison does not credibly identify properties that are similarly situated to the property under appeal and does not credibly establish disparate tax treatment between the subject property and others similarly situated.
34. The Petitioner’s representative did not present facts that demonstrated that the

system prescribed by statute and regulations was not properly applied to the assessment against the subject property. See *Town of St. John V*, 702 N.E. 2d 1034.

35. For all of the reasons set forth above, the claim for obsolescence is denied and no change in the assessment is made.

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

Chairman, Indiana Board of Tax Review