

REPRESENTATIVE FOR PETITIONER:

Randall R. Backs, Property Owner

REPRESENTATIVES FOR RESPONDENT:

Thomas M. Thomas, Deputy Assessor Washington Township

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

RANDALL R. BACKS,	)	
	)	
Petitioner	)	
	)	
v.	)	Petition for Review of Assessment,
	)	Form 131
	)	Petition No. 29-014-01-1-5-00008
WASHINGTON TOWNSHIP	)	County: Hamilton
ASSESSOR,	)	Township: Washington
	)	
Respondent	)	Parcel No. 0810080001015000
	)	
	)	Assessment Year: 2001

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**

### **Issues**

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

ISSUE 1 – *Whether the grade classification of the subject dwelling is overstated.*

ISSUE 2 – *Whether the subject dwelling is 1½ - story.*

ISSUE 3 – *Whether the plumbing fixture count is overstated by one (1) fixture.*

### **Procedural History**

2. Pursuant to Ind. Code § 6-1.1-15-3 Randall R. Backs (Petitioner) filed a Form 131 petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on April 22, 2002. The Hamilton County Property Tax Assessment Board of Appeals (PTABOA) Notification of Final Assessment Determination on the underlying Form 130 was issued on March 25, 2002.

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

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was conducted on March 12, 2003 in Noblesville, Indiana before Dalene McMillen, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-5-2.

4. The following persons were present at the hearing:

For the Petitioner:

Randall R. Backs, property owner

For the Respondent:

Debbie Folkert, Hamilton County Assessor

Thomas M. Thomas, Washington Township, Deputy Assessor

5. The following persons were sworn in as witness and presented testimony:

For the Petitioner:

Randall R. Backs

For the Respondent:

Debbie Folkerts

Thomas M. Thomas

6. The following exhibits were presented:

For the Petitioner:

**Petitioner's Exhibit 1** – Flooring price breakdown and price estimates

**Petitioner's Exhibit 2** – Photograph of kitchen floor tile

**Petitioner's Exhibit 3** – A piece of MDF trim

**Petitioner's Exhibit 4** – Information, estimates and advertisement on interior trim

**Petitioner's Exhibit 5** – Information on garage doors

**Petitioner's Exhibit 6** – Information, estimates and advertisements on windows

**Petitioner's Exhibit 7** – Photograph of interior door

**Petitioner's Exhibit 8** – Information and advertisement on interior doors

**Petitioner's Exhibit 9** – Information on front door trim

**Petitioner's Exhibit 10** – Information and estimates on brick

**Petitioner's Exhibit 11** – Photographs of interior door

- Petitioner's Exhibit 12** – A door hinge
- Petitioner's Exhibit 13** – A doorstop
- Petitioner's Exhibit 14** – A staircase rail
- Petitioner's Exhibit 15** – Information and estimates on counter tops
- Petitioner's Exhibit 16** – Information on ceiling joist cost
- Petitioner's Exhibit 17** – Photograph and information on basement wall
- Petitioner's Exhibit 18** – Information and advertisement on electrical amp service
- Petitioner's Exhibit 19** – Information and affidavit from Rick Angirck that the subject home has no steel beams
- Petitioner's Exhibit 20** – Information and advertisement on exterior doors
- Petitioner's Exhibit 21** – Photograph of the rear exterior of the subject dwelling
- Petitioner's Exhibit 22** – Photographs, information and property record cards (PRC) on 16 comparable properties
- Petitioner's Exhibit 23** – Information on the interior and exterior on 12 homes listed for sale from the Internet
- Petitioner's Exhibit 24** – 25 interior and exterior photographs of 12427 Pebble Knoll Way (comparable property)
- Petitioner's Exhibit 25** – Four (4) photographs of the Petitioner's previous home located in Plainfield, fifty (50) interior and exterior photographs of the subject dwelling and Back's PRC
- Petitioner's Exhibit 26** – Floor plans for the subject property and Petitioner's old home located in Plainfield
- Petitioner's Exhibit 27** – Blueprints for the subject dwelling
- Petitioner's Exhibit 28** – Per square foot cost analysis on the subject dwelling and comparables
- Petitioner's Exhibit 29** – Per square foot cost analysis on the subject dwelling and comparables with a five percent (5%) inflation factor added to the subject
- Petitioner's Exhibit 30** – Grade and materials comparison between the subject

dwelling and Petitioner's previous home located in Plainfield

**Petitioner's Exhibit 31** – Copy of 50 IAC 2.2-7, page 13

**Petitioner's Exhibit 32** – Copy of 50 IAC 2.2-7, page 75, information and photograph of plumbing fixtures in subject dwelling

For the Respondent:

**Respondent's Exhibit 1** – A copy of the construction cost on the subject property

**Respondent's Exhibit 2** – Four (4) PRCs on comparable properties built by Zaring Homes

**Respondent's Exhibit 3** – Two (2) PRCs on comparable properties built by Burkhard Construction and Homecraft

**Respondent's Exhibit 4** – A copy of the Washington Township's memo to the PTABOA, five (5) photographs of the subject dwelling, a copy of the Backs' building permit, and a copy 1991 to 2002 Bureau of Labor Statistics (Consumer Price Index)

For the Board:

**Board's Exhibit A** – Form 131 petition with the following attachments:

- a. Petitioner's PRC
- b. Construction cost on the subject property
- c. Grade comparison between Petitioner's old and new homes
- d. Location map of comparables
- e. A copy of the grade specification table
- f. Ten (10) comparable properties with photographs and PRCs
- g. Survey of property description
- h. Board's Final Determination on Jeffrey Troyer

- i. Two (2) comparable properties
- j. A copy 50 IAC 2.2-7, page 75
- k. Land prices for Woodshire subdivision
- l. The sales disclosure on Lot 6 in Woodshire
- m. Four (4) photographs of the subject property
- n. A copy of 50 IAC 2.2-7, pages 7, 30, and 42
- o. Drawing of subject property
- p. A copy of the Westfield and Washington Township building permit

**Board’s Exhibit B – Notice of Hearing on Petition (Form 117)**

- 7. At the hearing, the parties agreed the assessment under appeal is as of the March 1, 2001 assessment date and that the assessed values under appeal are:

Land: \$27,100	Improvements: \$196,300	Total: \$223,400
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- 8. The subject property is a residence located at 16417 Haddam Lane, Noblesville, Washington Township, Hamilton County.
- 9. The ALJ did not conduct an on-site inspection of the subject property.

**Jurisdictional Framework**

- 10. 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 assessment or matters of administrative law and process.
- 11. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

## Indiana's Property Tax System

12. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, § 1.
13. 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.
14. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6 (C).
15. 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*).
16. 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.
17. 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.

18. 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.

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

19. 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).
20. 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.]
21. 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.]
22. 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.]
23. 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).

24. 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 classification of the subject dwelling is overstated*

25. At the hearing, Mr. Backs, Ms. Folkerts and Mr. Thomas agreed to change the grade factor on the subject dwelling from “B+2” to a “B”. The parties signed a Stipulation Agreement to this fact. The Stipulation Agreement is entered into the record and labeled as Board’s Exhibit C. A change in the assessment is made as a result of this agreement.

26. The agreement between the Township, the County and the Petitioner is a decision among the parties and the Board will accept the agreement. The Board's acceptance of the agreement should not be construed as a determination regarding the propriety of the grade factor agreed to by the parties for the residence.

ISSUE 2: *Whether the subject dwelling is 1 ½ - story.*

27. At the hearing, Mr. Backs withdrew this issue from review by the Board. The Township and County representatives did not object to the withdrawal of this issue.
28. Mr. Backs signed a Withdrawal of Issue Agreement that is entered into the record and labeled as Board's Exhibit D. No change in the assessment is made as a result of this issue.

ISSUE 3: *Whether the plumbing fixture count is overstated by one (1) fixture.*

29. The Petitioner contends that the shower in the master bathroom has two (2) showerheads with one (1) drain and therefore the showerheads should only be counted as one (1) extra plumbing fixture and not two (2).
30. The Respondents contend the plumbing fixtures were counted separately because the two (2) shower heads have separate controls on opposite sides of the shower therefore requiring extra/separate plumbing (piping) to each fixture.
31. The applicable rule(s) governing Issue 3 are:  
**50 IAC 2.2-7-7.1(c)(8) Data Collection**  
States to record the number of "Full Baths", "Half Baths", "Kitchen Sinks", "Water Heaters", and "Extra Fixtures". In calculating the number of individual plumbing

fixtures, a full bath represents three (3) plumbing fixtures and a half-bath (½) represents two (2) plumbing fixtures. A total of more or less than five (5) fixtures requires an adjustment in the pricing ladder. The five (5) plumbing fixtures included in the base price in Schedule A are as follows:

- (A) Kitchen sink.
- (B) Water heater.
- (C) Bathroom sink.
- (D) Bathroom stool.
- (E) Bathtub or shower unit

#### **50 IAC 2.2-7-8.1(d) Pricing – Schedule D Plumbing and Built-ins**

The base prices in Schedule A apply to one (1) living unit and include the cost of a kitchen unit, one (1) three (3) fixture bathroom, one (1) water heater, and accessories all of which are of quality that is commensurate with the grade for the living unit.

Adjustments may be required when the number of plumbing fixtures exceeding the standard five (5) fixtures or is less than the standard number of five (5) fixtures.

#### **50 IAC 2.2-7-11, Schedule D – Plumbing & Built-ins**

“Per fixture prices reflect only the cost of plumbing for the fixture and the cost of the fixture itself. The cost of the structure’s original plumbing system is included in the total per living unit cost.”

32. Evidence and testimony considered particularly relevant to this determination include the following:
  - a. A photograph of the master shower shows two (2) separate showerheads with individual controls on opposite sides of the shower. *Backs and Thomas testimonies & Petitioner’s Exhibit 32.*
  - b. Extra piping would be required to hook-up the showerheads on opposite walls within the shower stall. *Folkerts testimony.*

### Analysis of ISSUE 3

33. The issue under review deals with the number of plumbing fixtures valued by the local assessing officials within the assessment of the subject residence.
34. The Petitioner is of the opinion that since the shower in the master bathroom has two (2) showerheads with one (1) drain it should only be counted as one (1) extra plumbing fixture as opposed to two (2) plumbing fixtures. The Respondents on the other hand, contends the fixtures were counted separately because there are two (2) shower heads with separate controls on opposite sides of the shower therefore requiring extra/separate plumbing (piping) to each fixture.
35. The 15 plumbing fixtures shown on the subject's PRC are currently valued per 50 IAC 2.2-7-11, Schedule D, at \$500 per each additional plumbing fixture (10) above the standard five (5) fixtures.
36. Though the Board's regulations do not specifically define a plumbing fixture/unit, the Tax Court observes that, where specific words or phrases used in the statutes, regulations or documents are not defined, it will strive to give those words or phrases their plain, ordinary and usual meaning. See *Dalton Foundries, Inc. v. State Board of Tax Commissioners*, 653 N.E. 2d 548, 553 (Ind. Tax Ct. 1995); *Raintree Friends Housing Inc. v. Indiana Department of Revenue*, 667 N.E. 2d 810 (Ind. Tax 1996).
37. A myriad of dictionaries and thesauri – both general and specialized – are available to assist the taxpayer in ferreting out a word or phrase's meaning. See *Precedent v. State Board of Tax Commissioners*, 659 N.E. 2d 701, 705 (Ind. Tax Ct. 1995).
38. *Webster's New World Dictionary of the American Language, Concise Edition* defines plumbing, fixture and unit as follows:

Plumbing: in pertinent part; “the pipes and fixtures”.

Fixture: “any of the firmly attached fittings of a house”.

Unit: “a single, distinct part, especially used for a specific purpose”.

39. As stated in ¶19 through ¶24, the Petitioner’s burden is to submit probative evidence that demonstrates the errors in the assessment. The evidence submitted must be more than a minimal amount and must go beyond being mere allegations of an error. The petitioner must explain the connection between the evidence and the petitioner’s claims. In essence, the petitioner must do two (2) things: (1) prove that the assessment is incorrect; and (2) prove that the assessment he seeks is correct.
40. The Petitioner does not identify any similar properties in which a plumbing fixture, similar to that which is presently under review, was assessed as something other than an extra plumbing fixture. In failing to do so, the Petitioner failed to show that the subject property might have been treated differently than other similarly situated properties.
41. Other than the Petitioner’s conclusory statement that showerheads should be counted as one (1) fixture due to a single drain, no other evidence or documentation was submitted by Petitioner to support this position. Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119 (Ind. Tax 1998).
42. For all reasons set forth above, the Petitioner failed to meet his burden on this issue. No change in the assessment is made as a result.

### **Summary of Final Determinations**

Determination of ISSUE 1: *Whether the grade classification of the subject dwelling is overstated*

43. At the hearing, the parties stipulated to change the grade factor on the residence from a “B+2” to a “B”. A change in the assessment is made as a result of the agreement.

Determination of ISSUE 2: Whether the subject dwelling is 1 ½ - story.

44. At the hearing, the Petitioner withdrew this issue from review by the Board. No change in the assessment is made as a result of this issue.

Determination of ISSUE 3: Whether the plumbing fixture count is overstated by one (1) fixture.

45. The Petitioner failed in his burden to show that the assessment of the plumbing fixtures found in the subject residence did not follow the guidelines set forth in 50 IAC 2.2. No change in the assessment is made 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 \_\_\_\_\_, 2003.

\_\_\_\_\_  
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.**