

**STATE OF INDIANA
Board of Tax Review**

In the matter of the Petition for Review)
of Assessment, Form 131) Petition No. : 29-020-97-1-5-00023

Parcel No.: 19-15-05-00-04-013.000

Assessment Year: 1997

Petitioner: Thomas A. and Celeste A. Brodnik
10724 Burning Ridge Lane
Fishers, IN 46038

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:

Issues

1. Whether the land base rate is excessive.
2. Whether the assigned grade factor is excessive.

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, the Petitioner filed a Form 131 petition requesting a review by the State. The Form 131 petition was filed on August 3, 1998. The Hamilton County Board of Review (BOR) issued its determination on the underlying Form 130 petition on July 2, 1998.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on December 13, 2000 before Hearing Officer Debra Eads. Testimony and exhibits were received into evidence. The Petitioner, Thomas A. Brodnik, appeared on his own behalf. Lori Harmon represented Hamilton County. No one was present to represent Fall Creek Township.
4. At the hearing, the subject Form 131 was made a part of the record and labeled Board Exhibit A. The Form 117 Notice of Hearing was labeled Board Exhibit B. In addition, the following exhibits were submitted to the State:

Petitioner Exhibit 1 – Affidavit of Thomas A. Brodnik with attachments:

- (a) purchase agreement for the subject lot;
- (b) foundation information from Weber Concrete Construction;
- (c) structural information from blueprints;
- (d) floor covering and cabinetry information from Vinylcraft, inc.;
- (e) electrical specifications;
- (f) plumbing information from Mark Limited Inc;
- (g) heating, ventilating and air conditioning information from Mark Limited Inc;
- (h) one (1) interior and one (1) exterior photo of the subject property

Petitioner Exhibit 2 - property record card (PRC) and photo of parcel 4035841

Respondent Exhibit 1 -PRC of the subject property; aerial photo of subject area with grade factors and land base rates indicated; three (3) exterior photos of the subject property; lot sale listing for Quaker Ridge sub-division.

5. The subject property is located at 10724 Burning Ridge Lane, Fishers, Fall Creek Township, Hamilton County.
6. The Hearing Officer did not conduct an on-site inspection of the property.

Testimony

7. Petitioner testified that the purchase price of the lot was \$55,000 and the true tax value of the lot is \$62,000. Many of the structural components of the dwelling are the builder's standard with no upgrades. The design is not unique, as the same style home exists elsewhere in Marion County as evidenced by the comparable property in Lawrence Township, which is approximately five (5) miles from the subject and has a B grade factor. The construction specifications of the subject dwelling are consistent with the grade classification B as described in the Grade Classification table included in 50 IAC 2.2. *Brodnik Testimony; Petitioner's Exhibits 1 & 2.*
8. Respondent testified that the \$55,000 land sale price was for an unimproved lot and did not include the water and sewer hook-ups, landscaping, driveway or any factors included in an improved lot value. The common practice of Hamilton County is to apply -15% to a lot value when the lot is unimproved. Application of -15% to the current land value of \$62,000 would result in a value below the \$55,000 paid by the Petitioner for the lot. The listing of lot sales indicates an asking price of \$70,000 for the subject lot. The front foot rate of \$570 was applied for lots located on the golf course in the subdivision. *Harmon Testimony.*

9. With regard to the grade issue, a complete field inspection revealed a somewhat basic interior for this level of home; the exterior of the home is a solid A-1 grade. The home has berber carpet throughout, hardwood floors in the kitchen and entryway, fluted doorjambes with some custom work, a “barrel rolled” ceiling in the office and ceramic backsplash in the kitchen. These features are in excess of “average” interior components. The grade classification description in the manual offers no insight into how to determine a final grade if, in the opinion of the assessor, the interior and exterior of the dwelling do not reflect a consistent grade factor. The Petitioner’s evidence of specifications being completed “to code” may mean at a minimum and does not necessarily mean that any of the components weren’t constructed in excess of the existing code. The interior photo of the subject dwelling submitted by the Petitioner shows electrical outlets far in excess of the number required. Components that may be standard to the builder of the subject dwelling, may still be superior to “average” or “C” Grade components described in 50 IAC 2.2. The County would not be opposed to a B+2 Grade for the subject dwelling as that would be consistent with other properties in the neighborhood of the subject. Mr. Brodник indicated he would prefer to let the matter be decided by the Board. *Harmon Testimony; Brodnik Testimony; Respondent’s Exhibit 1.*

Conclusions of Law

1. The Petitioner is 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. 50 IAC 17-5-3. See also the Forms 130 and 131 petitions authorized under Ind. Code §§ 6-1.1-15-1, -2.1, and -4. 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. See 50 IAC 17-6-3. “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.
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. One manner for the taxpayer to meet its burden in the State's administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). 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 merely because 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.

Issue 1-Land Value

18. The subject neighborhood was not included in the Hamilton County Land Order because it was not developed at the time the land order was established. The burden of the Petitioner is to show the current assessment is incorrect, and then to show what the correct assessment of the subject property should be.

19. The only evidence presented by the Petitioner to support their contention that the land is over-assessed was the purchase agreement for the subject lot. The purchase agreement indicated the lot was purchased for \$55,000 cash. The Respondent testified that 15% is added to the value of unimproved lots to arrive at a True Tax Value. According to 50 IAC 2.2-4-7, "platted lots are valued on the basis of being improved. Improvements to the land include, but are not limited to, the following: (1) The cost of a water well. (2) A septic system. (3) The cost of connecting a structure into a public water and sewage utility system." The Respondent testified that the True Tax Value of the subject is \$62,000 as an improved lot.

20. The Respondent also submitted a listing of asking prices for lots in the subject's subdivision. The listing indicates an asking price for the subject lot of \$70,000. The subject has a golf course view, and the asking price for the four other properties with golf course views are: \$69,000, \$69,000, \$69,000, and \$64,000. This indicates that the subject property's True Tax Value is similar to other properties in the area with a golf course view.

21. The Petitioner did present evidence of the purchase price of the subject. However, a single sale is not sufficient evidence, even if it is the subject property, to determine whether or not the subject is over-assessed. The Petitioner did not provide any indication what other properties in the subdivision, similar to theirs, had sold for or what the assessed values of similar properties are. For all the

reasons above, the Petitioner did not meet their burden in this appeal. Accordingly, there is no change in the assessment as a result of this issue.

Issue 2-Grade Factor

20. The subject property is currently graded an A-1 by the local officials. The County stated at the hearing that they would be willing to place a grade of B+2 on the subject property. However, the Petitioner indicated his desire to have the State decide the issue.
21. “Grade” means the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.
22. Grade is used in the cost approach to account for variations from the norm or “C” grade. The quality and design of a building are the most significant variables in establishing grade. 5- IAC 2.2-10-3.
23. The determination of the proper grade requires assessors to make a variety of subjective judgments regarding variations in the quality of materials and workmanship and the quality of style and design. *Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d 1058, 1064 (Ind. Tax 1993). For assessing officials and taxpayers alike, however, the Manual provides indicators for establishing grade. The text of the Manual (see 50 IAC 2.2-10-3), models and graded photographs (50 IAC 2.2-11-4), assist assessors in the selection of the proper grade factor.
24. The major grade classifications are A through E. 50 IAC 2.2-10-3. The cost schedules (base prices) in the Manual reflect the C grade standards of quality and design. The following factors (or multipliers) are assigned to each major grade classification:

“A” grade	160%
“B” grade	140%
“C” grade	100%
“D” grade	80%
“E” grade	40%

25. Intermediate grade levels ranging from A+10 through E-1 are also provided for in the Manual to adequately account for quality and design features between major grade classifications. 50 IAC 2.2-10-3(c).
26. The Petitioner attempted to support his contention that the grade factor of the dwelling is excessive by two (2) means. The use of specific construction factors was his primary method with the use of a comparable property as a secondary method.
27. The Petitioner relied on information provided from the builder to indicate that various specifications of the dwelling were constructed to the builder standard with no upgrades. The Respondent accurately pointed out that without specific knowledge of the “standard” of this particular builder, there is no way to classify the dwelling by use of the grade classifications described in 50 IAC 2.2.
28. The Petitioner illustrated that some structural components (roof rafters, floor joists etc) did not meet the “A” classification standards, however, the Respondent also detailed aspects of the structure that far exceed “standard” components (ceramic backsplash, berber carpet, hardwood floors, excessive electrical outlets).
29. The second method used by the Petitioner was to use a comparable property located in Lawrence Township. No clear evidence was presented to substantiate the comparability of the subject with the Lawrence Township property. Even if these two (2) properties are comparable, one comparable is not enough to meet

the burden of proof. When two (2) identical properties have two (2) different grades, without quantification, either one could be graded incorrectly.

30. For all the reasons above, the Petitioner failed to meet his burden of proof concerning the grade issue. Accordingly, no change is made to the assessment.

Summary of Final Determination

Issue No. 1: Land Value – No change in the assessment.

Issue No. 2: Grade – No change in the assessment.

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