

**STATE OF INDIANA  
Board of Tax Review**

CLYDE R. MONTGOMERY	)	On Appeal from the Hamilton County
	)	Board of Review
	)	
Petitioner,	)	
	)	Petition for Review of Assessment,
	)	Form 131
v.	)	Petition No. 29-007-95-1-5-00108
	)	Parcel No. 13-15-10-00-04-038-000
HAMILTON COUNTY BOARD OF	)	
REVIEW and FALL 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:

**Issues**

1. Whether the square footage of the dwelling is incorrect.
2. Whether the basement has been correctly assessed.
3. Whether the land value is excessive.

4. Whether newer homes are over-assessed under Indiana's real estate property tax system when compared to older homes, thereby creating disparity of treatment and violating Article X, Section I of the Indiana Constitution.

### **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 M. Hay of Landmark Appraisals, Inc., on behalf of Clyde R. Montgomery (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 Petition was filed on May 25, 1999. The Hamilton County Board of Review's (County Board) Assessment Determination on the underlying Form 130 is dated November 25, 1996.
3. Pursuant to IC 6-1.1-15-4, a hearing was held on July 12, 2000 before Hearing Officer Debra Eads. Mr. Stephen M. Hay of Landmark Appraisals represented the Petitioner. Ms. Lori Harmon represented Hamilton County. No one appeared to represent Fall Creek Township.
4. At the hearing, the subject Form 131 petition was made a part of the record and labeled as State Exhibit A. Notice of Hearing on Petition was labeled State Exhibit B. In addition, the following exhibits were submitted to the State:

Petitioner's Exhibit 1 – Brief containing: (a) Petitioner's contentions; (b) Notice of Hearing; (c) Sales Ratio Study of Newer Homes; (d) Sales Ratio Study of Older Homes; (e) page 13 of Report of the Indiana Fair Market Value Study; (f) pages 116-119 of Joseph Beres deposition in *Town of St. John v. State Board of Tax Commissioners* on June 15, 1995; (g) Memo from Joseph Beres to James

Hemming of the State Tax Board dated 2-5-92; (h) and one page (unidentified) of a December 22, 1997 Indiana Tax Court Finding for *Town of St. John*

Respondent's Exhibit 1 – Containing: (a) Respondent's response to the Form 131 petition; (b) subject property record card (PRC); and (c) aerial photo of subject area with grade factors and land base rates indicated

5. The subject property is a residence located at 10139 Summerlin Way, Fishers, Fall Creek Township, Hamilton County.
6. The Hearing Officer did not conduct an on-site inspection of the property.

### **Procedural History**

7. Mr. Hay filed a Form 130 petition with the Hamilton County Auditor on February 16, 1996. The County Board's Assessment Determination on the underlying Form 130 is dated November 25, 1996. Mr. Hay filed the subject Form 131 petition, on behalf of the Petitioner, with the State on May 25, 1999. Mr. Hay contends the late filing with the State was due to the Petitioner not having received the County Board's determination until May 20, 1999.

**Issue No. 1 - Whether the square footage of the dwelling is incorrect.**

**Issue No. 2 - Whether the basement has been correctly assessed.**

**Issue No. 3 - Whether the land value is excessive.**

8. At the hearing, Mr. Hay did not present any evidence or testimony regarding the square footage of the dwelling, the assessment of the basement or the land value issues. Mr. Hay instead focused his attention on the assessment of newer homes verses older homes and the constitutionality of the assessment.

9. Ms. Harmon submitted into evidence an aerial photograph of properties surrounding the subject parcel with the land base rates indicated.
10. It is the County's understanding that even with the finding of partial unconstitutionality of the present assessment, we are to operate under its present guidelines until the next assessment system is in place. *Harmon testimony.*

**Issue No. 4 - Whether newer homes are over-assessed under Indiana's real estate property tax system when compared to older homes, thereby creating disparity of treatment and violating Article X, Section I of the Indiana Constitution.**

11. A significant (41.4%) reduction in the value of the subject home is sought based upon the market value comparison between new and old homes. A reduction of 41.4% is necessary to correct the disparity between older homes and newer homes. The reduction could be reflected in the grade, physical depreciation, functional depreciation or obsolescence. Page 13 of the Report of the Indiana Fair Market Value Study and pages from Joseph Beres' deposition to the Indiana Tax Court in the *Town of St. John vs. State Board of Tax Commissioners* case support this claim of disparity between newer and older homes. *Hay testimony and Petitioner's Exhibit 1.*
12. When asked by the Hearing Officer if he was going to address the subject property specifically, Mr. Hay responded that there are no ascertainable assessment standards with which he can address the subject assessment.

## Conclusions of Law

1. The Petitioner is limited to the issues raised on the Form 130 petition filed with the County Board or issues that are raised as a result of the County Board'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 County Board. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the County Board disagree with the County Board'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 County Board 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.

## 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.

## Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the County Board, 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 County Board, 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).

### **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. The equality and uniformity provisions of the Indiana Constitution do not mandate the consideration of independent property wealth evidence in the evaluation of individual assessments or tax appeals. *Town of St. John*, 702 N.E. 2d at 1040.

#### **Procedural Issue**

18. Ind. Code § 6-1.1-15-3(c) states, "In order to obtain a review by the State Board of Tax Commissioners under this action, the party must file a petition for review with the appropriate county auditor within thirty (30) days after notice of the County Board of Review's action is given to the taxpayer."
19. The County Board's assessment determination on the subject property was issued November 25, 1996. The Petitioner claims he was not notified of the change in the assessment until May 20, 1999. However, the Petitioner failed to submit any evidence to substantiate his claim.
20. In addition, one must question why the Petitioner did not seek relief upon receiving tax bills for the subject property between 1996 and 1999. Ind. Code § 6-1,1-15-13 states, "If notice of action of a board or official is not otherwise given in accordance with the general assessment provisions of this article, the receipt by the taxpayer of the tax bill resulting from the action is the taxpayer's notice for

the purpose of determining the taxpayer's right to obtain a review or initiate an appeal under this chapter.”

21. The Petitioner filed the Form 131 petition with the State on May 25, 1999, clearly beyond the thirty (30) day deadline established by statute; therefore, the State determines that the filing of the subject Form 131 petition was untimely and therefore does fall within the review of the State.

### **Dwelling Square Footage, Basement Assessment and Land Value**

22. Assuming *arguendo* that the filing of the subject petition was determined to be timely, the Petitioner did not specifically address the issues of square footage, the basement assessment, or the land value and failed to present any evidence regarding these issues.
23. As stated in Conclusions of Law ¶¶9 and 10, it is the fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. That taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. These presentations should outline the alleged errors and support the allegations with evidence. Allegations, unsupported by factual evidence, remain mere allegations.
24. For the reasons set forth above, had the petition been timely filed there would have been no change made in the assessment as a result of these issues.

### **Newer Homes Verses Older Homes**

#### **Disparity of Treatment and Violation of Indiana Constitution**

25. Again, assuming that the petition was timely filed, the Petitioner's claim concerning this issue would fail.

26. The Petitioner seeks a reduction in the assessed value of the subject property claiming that newer homes are over-assessed under Indiana's real estate property tax system when compared to older homes. This comparison is based on a market value analysis.
27. In support of the issue, the Petitioner submitted page 13 of the Report of the Indiana Fair Market Value Study. The State did not consider this evidence for purposes of the 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 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.
28. The Petitioner's sales ratio and comparable sales information is seriously flawed and does not warrant a reduction in the assessed value in this appeal.
29. 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.
30. Though 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.
31. True tax value does not attempt to determine the fair market value of property. The statute governing true tax values states explicitly that it is not the same as 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 (Ind. 1998). Thus, the evidence submitted by the Petitioner demonstrates, at best, that assessments of new and old 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.

32. In addition, the Petitioner's market value comparison is only based on the sales price and the age of the home. This limitation destroys the credibility and the validity of the comparison. Nothing in the comparison indicates what is included in the sale prices listed. For example, one sale could include a house, detached garage, utility shed, and an above ground swimming pool. Another sale could include a house, an 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 to 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 created a market comparison without taking such information into consideration, and then concluded that differences in value are the result of a flawed tax system.
33. Had the subject petition been timely filed the Petitioner would have failed in his burden to identify properties that are similarly situated to the property under appeal. Having failed to identify properties that were similarly situated to that of the subject property, the Petitioner's comparison did not demonstrate that the subject home was being treated any differently than those similarly situated properties.
34. The Petitioner's comparison wholly failed to address the inquiry as to whether the true tax value system that as 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 (Ind. Tax 1998).
35. For all the reasons set forth above, the Petitioner's claim that the subject property should receive a reduction in value based upon the Petitioner's newer homes versus older home theory, would have been denied and no change would have been made in the assessment.

## **SUMMARY OF STATE DETERMINATIONS**

It should first be noted, that the appeal under review was not timely filed within either procedure prescribed in Ind. Code § 6-1.1-15-3(c) or Ind. Code § 6-1.1-15-13.

However, if the petition had been timely filed the State's determinations would have been as follows:

**Issue No. 1 - Whether the square footage of the dwelling is incorrect.**

**Issue No. 2 - Whether the basement has been correctly assessed.**

**Issue No. 3 - Whether the land value is excessive.**

36. On Issues 1, 2, and 3 the Petitioner failed to present any evidence or testimony relating to these issues, consequently there are no changes to the assessment as a result.

**Issue No. 4 - Whether newer homes are over-assessed under Indiana's real estate property tax system when compared to older homes, thereby creating disparity of treatment and violating Article X, Section I of the Indiana Constitution.**

37. The Petitioner's comparison failed to address the inquiry as to whether the true tax value system that as prescribed by statute and regulations, was properly applied to the assessment to the subject property. Therefore, 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.

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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.**