

**STATE OF INDIANA
Board of Tax Review**

In the matter of the Petition for Review)
of Assessment, Form 131) Petition No.: 49-144-99-1-4-00360

Parcel No.: 1082841

Assessment Year: 1999

Petitioner: Arden Landmark, LLC
1035 N. Pennsylvania St
Indianapolis, IN 46204

Petitioner Representative: Baker & Daniels
Stephen Paul
300 N. Meridian St, Suite 2700
Indianapolis, IN 46204

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 Grade Factor should be B instead of B+1.

2. Whether a mathematical error was made on the PTABOA improvement value calculation.
3. Whether the assessment is in accordance with the Indiana Constitution, the Indiana Property Tax Assessment Statutes and the State Board of Tax Commissioners Regulations.

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 IC 6-1.1-15-3, the Petitioner filed a petition requesting a review by the Appeals Division. The Form 131 petition was filed on July 14, 2000. The Final Determination of the Marion County Property Tax Assessment Board of Appeals was issued on June 23, 2000.
3. Pursuant to IC 6-1.1-15-4, a hearing was held on November 15, 2000 before Hearing Officer Debra Eads. Testimony and exhibits were received into evidence. Vickie Norman and Kevin Reiter of Baker & Daniels represented the Petitioner. Frank Corsaro represented Center Township. No one was present to represent Marion County.
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 as Board Exhibit B. In addition, the following items were received into evidence:

Petitioner's Exhibit 1 – Brief including: text with photos of subject property; photos of twelve (12) properties stated as comparables by Petitioner; 1) Property Record Card of subject property; 2) rule 11 Page 19 from 50 IAC 2.2; 3) Affidavit of John M. Blakley; 4) Weighted grade calculation; 5)

Final Determinations or Property Record cards for the twelve (12) Petitioner comparables; 6) Side-by-side comparison of Gateway Plaza, One College Park and 9100-9200 KATC.

The Township submitted no written evidence.

5. The subject property is located at 1099 N Meridian Street, Indianapolis, Center Township, Marion County, Indiana.
6. The Hearing Officer did not conduct an on-site inspection of the property.

Issue No. 1 - Grade Factor

7. Mr. Reiter testified that he had personally inspected the subject property on numerous occasions and had inspected each of the Petitioner's comparable properties.
8. Ms. Norman stated that the subject building is currently assigned a Grade Factor of B+1 and the Petitioner is requesting a reduction of the Grade Factor to B. Ms. Norman reviewed the grade classification descriptions that appear in Regulation 17, Rule 10, Section 3 Page 6 and reviewed the text portion of the Petitioner's Brief submitted as Petitioner's Exhibit 1.
9. Mr. Reiter elaborated on the Petitioner's calculation of a weighted grade factor that is included in the Petitioner's Brief. The Petitioner's contention is that 60% of the improvement base rate is attributable to the interior finish and mechanicals and that 40% of the base rate is attributable to the structural components. Mr. Reiter testified that the interior finish is average quality and the exterior is well above average. He classified the exterior as a B+2 grade and the interior as a C+1.

10. Mr. Reiter further testified that the Township had previously stated concern about the shape of the structure calling for excessive cost in labor and materials. In addressing this concern, Mr. Reiter states that the cuts in the building result in a symmetrical building that did not cause the cost of labor or materials to be excessive.
11. The Petitioner provided interior and exterior photos, property record cards or final determinations, and footprint drawings of twelve (12) buildings purported by the Petitioner to be comparable to the subject property. Additionally, the Petitioner supplied a side-by-side comparison between the subject property and three (3) of the Petitioner comparables (Petitioner's Exhibit 1 – tab 6).
12. Mr. Reiter reviewed the side-by-side comparison and elaborated on the differences and similarities between the subject property and Gateway Plaza, One College Park and 9100-9200 KATC.
13. Upon questioning by the Hearing Officer, the Petitioner responded that no effort had been made to determine what percentage of the building is attributable to each section indicated in the side-by-side comparison. Mr. Reiter further stated that the tenant areas of each building are comparable and therefore the comparison is made between the common areas only.

Issue No. 2 - Mathematical Error

14. This issue had already been resolved and the value corrected by the Township prior to the hearing.
15. At the hearing, the parties agreed that the assessed value on appeal is \$85,830 for land and \$3,847,570 for improvements.

Issue No. 3 – Constitutionality

16. The issue of Constitutionality of the Assessment was not separately addressed, but rather presented in conjunction with the Grade Factor issue.

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. 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 No. 1 - Grade Factor

18. "Grade" means the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.
19. 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.
20. 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.

21. 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	120%
“C” grade	100%
“D” grade	80%
“E” grade	40%

22. Intermediate grade levels ranging from A+10 through E-1 are also provided for in the Manual to adequately account for quality and design factors between major grade classifications. 50 IAC 2.2-10-3(c).

23. The Petitioner’s determination of the appropriate Grade Factor for the subject property relies heavily on their “Weighted Grade Analysis” calculation included in the Petitioner’s Exhibit 1, tab 4.

24. The first part of the Petitioner’s calculation is a “Weighted Interior Finish Grade Factor”. The Petitioner “assigned” a grade factor to each floor. The grade factor is multiplied by the floor percentage of the building to determine the weighted grade. The total weighted grade is then multiplied by 60% to determine the “Grade Factor Attributable to Interior Finish”. The Petitioner presented sixteen (16) interior photographs to support the grade factor the Petitioner assigned to each floor. The photographs included two of the basement, one of each floor except the seventh floor, and one photograph each of a typical elevator lobby, restroom and office finish (showing carpet and base molding).

25. Some of the photographs presented are dark and it is difficult to make out the features. One photograph per floor, when floors contain 18,513 to 23,958 square feet is not sufficient to support the Petitioner's determination of grade for each floor.
26. The second part of the Petitioner's calculation is the "Grade Factor Attributable to Exterior Finish". The Petitioner determined the "Grade Factor Attributable to the Building Structure" as a B+2 or 140%. The Petitioner then multiplied the 140% by 40% to reach the "Grade Factor Attributable to Exterior Finish" of 56%. To support the exterior grade factor, the Petitioner presented only one photograph of the exterior of the subject.
27. The Petitioner's determination of grade for the interior and exterior are conclusory and not supported by evidence. The conclusions of the Petitioner's Representative do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
28. The Petitioner attempts to support the weighting of the grade with a calculation included on Page 18 of the Petitioner's Brief (Petitioner's Exhibit 1). The Petitioner indicates that 60% of the base square foot rate for office space is attributable to the interior finish and mechanical components of the structure. If that calculation had been made in the reverse and the unit-in-place cost of the concrete block back-up and standard face brick (as called for in the manual) had been calculated as a percentage of the base rate, the percentages would be 45% for the exterior and 55% for the interior components. ($17.10 \div 38.23 = 44.72\%$ for the exterior percentage)
29. The disparity of these two (2) calculations illustrates that the component costs are not clearly disassociated from one another. For instance, the interior walls are attached to the exterior framing, as are other components of the interior

finish. In other words, manipulation of the mathematics alone is insufficient to support a change in assessment.

30. The Petitioner's calculation of Grade is not an acceptable calculation method for determining Grade and does not constitute probative evidence.
31. The Petitioner did present properties that the Petitioner claimed were similarly situated (Petitioner's Exhibit 1, tab 6). The Petitioner provided a side by side comparison of certain features of the properties. The Petitioner compared the elevator lobbies, common restrooms, corridors, elevator cabs and main lobbies, which actually represent only a small portion of the overall structure. The Petitioner also compared a few of the exterior features. Simply stating that the properties are comparable is inadequate. The Petitioner is required to present probative evidence that the comparable properties are in fact, comparable to the subject.
32. Grade is the composite of both interior and exterior features, quality of materials and workmanship, and quality of style and design. Very limited information is given with regard to the actual material used in the construction of the structure. Construction materials are mentioned in the comparisons made with three (3) other downtown structures. While some building features were indicated by the Petitioner to be more costly in the comparable buildings than in the subject structure; no comprehensive effort was made to quantify how much difference these features would make to the overall cost of the structure. The Petitioner's side by side comparison with highlighting is merely conclusory. The Petitioner's conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
33. For all the reasons above, the Petitioner failed to meet their burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

Issue No. 2 - Mathematical Error

34. This issue had already been resolved and the value corrected by the Township prior to the hearing. No change is made to the assessment as a result of this issue.

Issue No. 3 - Constitutionality

35. The issue of Constitutionality of the Assessment was not separately addressed. No change is made to the assessment 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.

Chairman, Indiana Board of Tax Review