

**STATE OF INDIANA
Board of Tax Review**

BANK TOWER LLC)	On Appeal from the Tippecanoe County
)	Property Tax Assessment Board of Appeals
Petitioner,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition No. 79-004-01-1-4-00012
)	Parcel No. 356064000303
TIPPECANOE COUNTY PROPERTY)	
TAX ASSESSMENT BOARD OF)	
APPEALS and FAIRFIELD 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:

Issue

1. Whether the grades assigned to the building are correct.

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, Sandra K. Bickel, an attorney with Ice, Miller, Donadio, and Ryan, filed a petition requesting a review by the State on behalf of Bank Tower LLC (Bank Tower). The Tippecanoe County Property Tax Assessment Board of Appeals' (PTABOA) final determination on the underlying Form 130 is dated December 27, 2001. The Form 131 petition was filed on January 28, 2002.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on April 30, 2002, before Administrative Law Judge Joan L. Rennick. Testimony and exhibits were received into evidence. Ms. Bickel represented the Petitioner. Additionally, the following individuals appeared on behalf of Bank Tower:
Thomas R. Walter, engineer;
James L. Shook Jr., owner and real estate broker;
Joseph T. Bumbleburg, attorney and tenant; and
Rose Powell, building manager.

4. The following individuals represented the Respondents:
Bob McKee, Tippecanoe County Assessor;
Jan Payne, Fairfield Township Assessor;
David W. Lohman, Tippecanoe County Attorney;
Gary Smith of Appraisal Research, contractor of commercial assessments for Fairfield Township;
Lawrence J. Lahrman, member of the PTABOA;
Lewis J. Beeler, member of the PTABOA; and
Red Strange, member of the PTABOA.

5. At the hearing, the subject Form 131 petition was made a part of the record and labeled Board's Exhibit A. The Notice of Hearing on Petition was labeled Board's Exhibit B. In addition, the following documents were submitted to the State:
- Petitioner's Exhibits 1a through 1i – Photographs of the interior and exterior of
Columbia Center.
- Petitioner's Exhibit 2 – Property record card (PRC) of Bank Tower LLC.
- Petitioner's Exhibit 3 – PRC of Columbia Center.
- Petitioner's Exhibit 4 – Copy of a build-out package completed by Link
Management for a tenant in the Columbia Center building.
- Petitioner's Exhibit 5 – A chart prepared by Mr. Walter showing the percentage of
increase in union labor rates from 1991 to 2000.
- Petitioner's Exhibit 6 – Photograph of the subject building.
- Petitioner's Exhibits 7a through 7c – Interior photographs of the subject building.
- Petitioner's Exhibit 8 – Interior photograph of conference room at Columbia
Center.
- Petitioner's Exhibit 9 – Copy of a permit for the foundation at Columbia Center.
- Petitioner's Exhibit 10 – Copy of a permit for the office building shell for Columbia
Center.
- Petitioner's Exhibit 11 – Photographs of the Lafayette Bank & Trust building.
- Petitioner's Exhibit 12 - Photographs of the Lafayette Life building.
- Petitioner's Exhibit 13 – PRC of Lafayette Life building.
- Petitioner's Exhibit 14 – PRC of Lafayette Bank & Trust building.
- Petitioner's Exhibit 15 – Sales Disclosure dated January 19, 2000, of the sale of
Bank Tower LLC.
- Petitioner's Exhibit 16 – Comparison of Bank Tower and Columbia Center
buildings.
- Petitioner's Exhibit 17 – Parcel information for comparison chart.
- Petitioner's Exhibit 18 – Hand drawn sketch by Mr. Shook of the encroachment of
Bank Tower on two lots.
- Petitioner's Exhibits 19a and 19b – Comparative Cost Multipliers information from
Marshall Valuation Service.
- Petitioner's Exhibits 20a through 20e – Photographs of parking garage.

Petitioner's Exhibit 21 – Copy of a photograph of a parking garage from
50 IAC 2.2-11.

Respondent's Exhibits 1 and 1a – Photographs of office buildings and assigned
grades, and a copy of the General Commercial
Mercantile (GCM) - General Office models from
50 IAC 2.2-11-1(24), (25), and (26).

Respondent's Exhibit 2 – Photograph of subject office building.

Respondent's Exhibit 3 – Photograph of parking garage.

Respondent's Exhibit 4 – Sales Disclosure of sale of Bank Tower dated January
19, 2000.

Respondent's Exhibits 5a through 5f – Minutes of PTABOA meetings.

6. The subject property is located at 427 Main Street, Lafayette, Fairfield Township in Tippecanoe County. The Administrative Law Judge did not conduct an on site inspection of the property.

Whether the grades assigned to the building are correct.

7. The PTABOA determined that the grade of the building is best described as "B". The Petitioner contended that the grade of the building should be "C+1".
8. The PTABOA further determined that the grade of the parking garage is best described as "C+1". The Petitioner contended that the grade of the adjacent parking garage should be "C".
9. Bank Tower is a ten story building in downtown Lafayette with the first floor assessed as GCM - Bank, two floors assessed as a parking garage, and seven floors assessed as GCM - Office (Petitioner's Exhibit 2).
10. Ms. Bickel contended the Tippecanoe County PTABOA raised the grade of Bank Tower from "C+1" to "B" at an inspection after the PTABOA hearing without

giving a reason for the increase. Ms. Bickel further contended the increase makes the grade higher for the subject building than other comparable office buildings with more architectural detail. Specifically, Ms. Bickel identified the Columbia Center (graded “C+2”), the Lafayette Bank and Trust Building (graded “C+2”), and the Lafayette Life Building (graded “C+1”) as comparable properties located in downtown Lafayette.

11. Mr. Walter is the Petitioner’s expert witness and testified to the following: (a) he is a tenant in the subject building; (b) is an engineer; and (c) has completed several tenant build-outs for Bank Tower, Columbia Center, and Lafayette Life buildings in downtown Lafayette. Mr. Walter explained the differences in construction and features between the Columbia Center and the Bank Tower buildings. Mr. Walter stated that the quality, finish, and complexity of the Columbia Center building far exceed anything in the Bank Tower and presented photographs to show some of the quality of construction in Columbia Center (Petitioner’s Exhibit 1). Mr. Walter also testified a typical build-out cost for a tenant in the Columbia Center building would be \$47.86 per square foot (Petitioner’s Exhibit 4). Mr. Walter further contended the heating and cooling system in Columbia Center allows heating and cooling in the building at the same time; the Bank Tower is harnessed with a boiler and chiller and a one-pipe fan coil system that either heats or cools at one time, much like a furnace in a home.
12. Mr. Bumbleburg testified that he is a long time tenant of Bank Tower and introduced into evidence photographs of the exterior and interior of the building (Petitioner’s Exhibit 6 and Exhibit 7). Mr. Bumbleburg stated the exterior of Bank Tower has only flat surfaces without any architectural appurtenance or architectural design. Mr. Bumbleburg further asserted there is no atrium, high quality interior finish, ornate entryway, insulated glass, or custom heating and cooling system.
13. Mr. Bumbleburg further contended that the parking garage is not of quality construction and does not meet the above average specifications of the present

grade of “C+1”. Mr. Bumbleburg also asserted the floors are uneven and the photographs show the pooling of water that remains after cleaning.

14. To demonstrate the Bank Tower building is over assessed in comparison to the Columbia Center building, the Petitioner added the cost of the foundation, the building, and the build-out allowance of \$40 per square foot (Petitioner’s Exhibit 4, 9, & 10) of the Columbia Center office building. These total costs were discounted to 1991 values using factors from Marshall and Swift Valuation Service (Petitioner’s Exhibit 19a and 19b). This adjusted value was compared to the current assessed value of the property. Using the Sales Disclosure statement, a similar process was used to compare the discounted selling price of Bank Tower to its current assessed value. The Petitioner asserted that these calculations indicated that Bank Tower is assessed at 139% of its adjusted 1991 value,¹ whereas Columbia Center is assessed at only 74% of its adjusted 1991 value. (Petitioner’s Exhibit 16). The Petitioner contended that this disparity established that Bank Tower is over assessed.

15. Mr. McKee and Mr. Smith testified for the Respondents and stated the grade was raised after an inspection because the building is mostly glass and is more representative of a “B” type building according to 50 IAC 2.2-10-3, Grade. The Respondents further stated that “B” grade buildings have a high quality of interior finish with abundant built-in features, very good lighting and plumbing fixtures, and a custom heating and air conditioning system among other features. The Respondents object to comparing the grade of the subject building to any other building and contend the buildings used by the Petitioner for comparison are not comparable. Mr. Smith testified he had not inspected the comparable properties.

¹ The 2001 assessment is based on cost schedules effective for the 1995 general reassessment, 50 IAC 2.2-11-6. These schedules reflect 1991 reproduction costs (based on market information derived from *Marshall Valuation Service* price tables) that were then reduced across the board by 15%. 50 IAC 2.2, Forward [sic] [Foreword] at i.

16. The Respondents contend the Bank Tower should be graded from the state real estate manual and the photographs in the manual are a good indication of grade. Mr. McKee stated the grade “A” office buildings in the photographs have a lot of glass and windows present much like the subject building, which increases construction costs. Mr. Smith agreed the manual does not give specific guidance on grade and contended the subject building is a better quality building than the “C” grade model specifications in the real estate manual. Mr. Smith opined the fixtures present in Bank Tower are above average grade.
17. Mr. Strange contended the buildings used in comparison are not comparable because the Columbia Center building is newer and has fewer floors. Mr. Lahrman stated that both the Lafayette Life Building and the Lafayette Bank and Trust Building are older and have window air conditioners. Mr. Smith contended the Bank Tower is unique among high-rise structures in Lafayette; the buildings used in comparison are older or newer than Bank Tower.
18. Mr. McKee reported the Sales Disclosure form indicates the Bank Tower sold in 2000 for \$4,000,000. Mr. McKee asserted this sales price supports the current assessment of \$3.7 million.

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.

D. Whether the grades assigned to the building are correct.

18. The PTABOA determined that the grade of the building is best described as "B". The Petitioner contended that the grade of the building should be "C+1".
19. The PTABOA further determined that the grade of the adjacent parking garage is

best described as “C+1”. The Petitioner contended that the grade of the parking garage should be “C”.

20. Grade is defined as “the classification of an improvement based on certain construction specifications and quality of materials and workmanship.” 50 IAC 2.2-1-30.
21. The approach to valuing commercial and industrial structures is primarily found in the State's Manual, 50 IAC 2.2-10. The approach to valuing commercial and industrial structures is the application and selection of various models to represent typical types of construction that best represents the structure being assessed. "The model is a conceptual tool used to replicate reproduction costs of a given structure using typical construction materials." 50 IAC 2.2-10-6-1. The construction components for each use type model are included in 50 IAC 2.2-11. When necessary, adjustments to the base price are made from Schedule C. A guide for selecting the correct model is included in 50 IAC 2.2-11. The model assumes that there are certain elements of construction defined as specifications. These specifications create an average or "C" grade structure.
22. Characteristics of “B” grade buildings are described in 50 IAC 2.2-10-3(a)(2):
“B” grade buildings are architecturally attractive and constructed with good quality materials and workmanship. These buildings have a high quality interior finish with abundant built-in features, very good lighting and plumbing fixtures, and a custom heating and air conditioning system.
23. Characteristics of “C” grade buildings are described in 50 IAC 2.2-10-3(a)(3):
“C” grade buildings are moderately attractive and constructed with average quality materials and workmanship. These buildings have minimal to moderate architectural treatment and conform to the base specifications used to develop the pricing schedules. They have an average quality interior finish with adequate built-ins, standard quality fixtures, and mechanical features.

24. A grade factor or multiplier is “applied to a base grade level for the purpose of interpolating between grades or establishing an intermediate grade. 50 IAC 2.2-1-31.
25. Because the classification of an improvement may fall between major grade classifications, a method of interpolation is contained in the regulation. The method for prescribing a plus or minus factor is described in 50 IAC 2.2-10-3(c) (1) and (2) which state:
- “Plus or minus two (+/- 2) indicates that the grade falls halfway between the assigned grade classification and the grade immediately above or below it. For example, a grade of ‘C+2’ indicates that the quality and design grade classification is estimated to fall halfway between ‘C’ and ‘B’ or average to good condition. The applicable percent is one hundred ten percent (110%).
- Plus or minus one (+/- 1) indicates that the grade falls slightly above or below the assigned grade classification, or at a point approximately twenty-five percent (25%) of the interval between the assigned grade classification and the grade immediately above or below it. For example, a grade of ‘C+1’ indicates that the quality and design grade classification is estimated to be slightly better than average or approximately halfway between a ‘C’ grade and a ‘C+2’ grade. The applicable percentage is one hundred five percent (105%).”
26. The determination of the proper grade factor requires assessors to make a variety of subjective judgments regarding variations in the quality of materials and workmanship as well as the quality of style and design. *Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d 1058, 1064 (Ind. Tax 1993). The selected grade represents a composite judgment of the overall quality and design. *Mahan*, 622 N.E. 2d at 1064; 50 IAC 2.2-10-3(d).

27. Subjectivity is used in the grading process. For assessing officials and taxpayers alike, however, the Regulation provides indicators for establishing grade. The text of the Regulation (50 IAC 2.2-10-3) and graded photographs (50 IAC 2.2-11-4) provide assistance in the selection of the proper grade.
28. The taxpayer has the responsibility to provide probative and meaningful evidence to support a claim that the assigned grade factor is incorrect. *Bernacchi v. State Board of Tax Commissioners*, 727 N.E. 2d 1133 (Ind. Tax 2000); *Hoogenboom-Nofziger v. State Board of Tax Commissioners*, 715 N.E. 2d 1018 (Ind. Tax 1999); *Whitley*, supra.
29. In support of its position, the Petitioner presented evidence of three buildings it claimed are comparable to the property under appeal.
30. In determining whether properties are truly comparable, “Factors and trends that affect value, as well as the influences of supply and demand, should be considered. The greatest comparability is obtained when the properties being compared are influenced by the same economic trends and environmental (physical), economic, governmental, and social factors. There may not be any comparability when one property is heavily influenced by one set of factors and another property is significantly affected by dissimilar factors.” IAAO Property Assessment Valuation, 103 (2nd ed. 1996).
31. “In comparing one rental property with another, the following factors are considered: (1) effective date of lease, (2) location of property, (3) physical characteristics of property, and (4) terms of the lease. By analyzing these factors thoroughly, the comparability of the rental properties can be determined.” *Id* at 206-207.
32. The Petitioner has not demonstrated that the three purported comparable properties are, in fact, comparable either to each other or to the property under appeal.

33. The three buildings differ in several obvious features. For example, Bank Tower was constructed in 1970, has 10 floors, and the area of each floor is 9,356 square feet (Petitioner's Exhibit 2). The Columbia Center was constructed in 1999, has three floors, and the area of each floor is approximately 15,000 square feet. This building was graded "C+2". (Petitioner's Exhibit 3). The Lafayette Life Building was constructed in 1907, has 10 floors, and the area of each floor is 6,038 square feet. The building was graded "C+1". (Petitioner's Exhibit 13). The Lafayette Bank & Trust Building was constructed in 1914 (the building was remodeled in 1958; the effective year of construction was changed to 1927), has seven floors, and the area of each floor is approximately 4,100 – 4,400 square feet. This structure was graded "C+2". (Petitioner's Exhibit 14).
34. The Petitioner failed to explain the manner in which buildings constructed in 1907 and 1914 are comparable to the property under appeal, which was constructed in 1970. The Petitioner further failed to explain the manner in which a three-story building with an area per floor of 15,000 square feet (Columbia Center) is comparable to a 10-story building with an area per floor of 4,100 square feet (Lafayette Bank & Trust Building).
35. Indeed, the bulk of the testimony provided by the Petitioner's witnesses emphasized the differences, rather than similarities, between the purported comparable properties and Bank Tower. For example, Mr. Walter's testimony identified differences between the buildings in heating and cooling systems, window glass, elevator features, plumbing fixtures, coping, wall fabric, and doors.
36. Further, the Petitioner provided no comparison of lease terms among the properties, except to again emphasize differences among the properties. For example, Mr. Shook testified that the difference in rent charged at Bank Tower and Columbia Center is approximately \$4.00 per square foot.
37. As noted, the Petitioner presented only one other building that was assessed

with a grade of “C+1”, the grade sought for Bank Tower. The Petitioner failed to explain the manner in which properties graded “C+2” support the proposed grade of “C+1” for the property under appeal.

38. As discussed, the model specifications create an average or "C" grade structure. The Petitioner, however, further failed to offer any comparison of the features of Bank Tower to the features of either the GCM – General Office model contained in 50 IAC 2.2-11-1(24), (25), and (26) or to the features of the GCM – Bank model contained in 50 IAC 2.2-11-1(6).
39. Summarizing, merely characterizing properties as comparable is insufficient for appeal purposes. The Petitioner is required to present probative evidence that the purported comparable properties it offers are, in fact, comparable to the subject property. No such foundation was presented. The Petitioner presented no explanation as to the manner in which properties of such diverse age and square footage are comparable to the subject properties.
40. Further, the Petitioner has failed to explain the extent that Bank Tower’s features “deviate from the model, why the alleged deviations justify a...downward adjustment in the building’s base value or why a subjective (as opposed to objective) adjustment is appropriate.” *Quality Farm and Fleet, Inc. v. State Board of Tax Commissioners*, 747 N.E. 2d 88, 94 (Ind. Tax 2001).
41. For all the reasons above, the Petitioner has failed to establish that the buildings it claimed are comparable are, in fact, comparable to Bank Tower. The Petitioner’s conclusory statements concerning the comparability of properties do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
42. Bank Tower also attempted to use construction costs to establish that the current grade of the building is incorrect.
43. In its calculation, the Petitioner added the cost of the foundation, the building

shell, and the build-out allowance of \$40 per square foot (Petitioner's Exhibit 4, 9, & 10) of the Columbia Center office building. These total costs were discounted to 1991 values using the figures from Marshall and Swift Valuation Service (Petitioner's Exhibit 19a and 19b). This adjusted value was compared to the current assessed value of the property. Using the Sales Disclosure statement, a similar process was used to compare the discounted selling price of Bank Tower to its current assessed value. The Petitioner asserted that these calculations indicated that Bank Tower is assessed at 139% of its adjusted 1991 value, whereas Columbia Center is assessed at only 74% of its adjusted 1991 value. (Petitioner's Exhibit 16). The Petitioner contended that this disparity established that Bank Tower is over assessed.

44. Before applying the evidence to reduce the contested assessment, the State must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.
45. The correct procedures for using construction cost data to arrive at grade are well defined.
46. "In sum, the Garcias' grade of 'A+6' was arrived at by deflating their dwellings' actual cost of construction to a 1985 cost level, then dividing by the grade 'C' reproduction costs from the State Board's cost schedules, to arrive at a rounded grade multiplier of 280 percent." *State Board of Tax Commissioners v. Garcia*, 766 N.E. 2d 341, 347 (Ind. 2002).²
47. The Petitioner's calculation is severely flawed.
48. For the Columbia Center, the Petitioner provided actual cost information for only the building's shell and foundation. Only an estimate of the remaining cost components (40%), rather than itemized costs, was included to determine the

² *Garcia* concerned a 1989 assessment, in which the base year for the cost schedules was 1985. *Town of St. John III*, 690 N.E. 2d at 373, n. 5.

remaining costs of the structure.

49. Similarly, the Petitioner used the selling price of Bank Tower, rather than actual construction costs, in its calculation for the property under appeal.
50. The Petitioner further failed to reduce the adjusted 1991 cost by fifteen percent to determine the adjusted construction cost of the buildings, as required by *Garcia*.
51. Finally, the Petitioner failed to divide the adjusted 1991 construction costs by the grade “C” reproduction costs from the State’s cost schedules to arrive at a grade multiplier.
52. The Petitioner’s calculation, therefore, does not correctly employ a *Garcia*-type analysis of construction costs to determine grade.
53. Reduced to its essence, the Petitioner’s argument attempts to compare the true tax value of the two properties to the construction costs (the fair market value) of the improvements in an attempt to show disparate treatment. However, when assessing real property, “true tax value does not mean fair market value.” Ind. Code § 6-1.1-31-6(c). The true tax value and the price paid for the property (the construction costs) are “two unrelated numbers.” *Damon Corporation v. State Board of Tax Commissioners*, 738 N.E. 2d 1102, 1109 (Ind. Tax 2000). The Petitioner has therefore failed to demonstrate any disparate treatment in the manner in which the properties are assessed. *Zakutansky*, 691 N.E. 2d at 1370.
54. The Petitioner’s unsubstantiated conclusions concerning grade do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119. The State is under no obligation to give, and does not give, this calculation any weight.
55. Finally, the Petitioner presented photographs of the building. However, having failed to introduce comparable properties, these photographs are conclusory statements of no probative value. *Bernacchi*, 727 N.E. 2d at 1136.

56. For all the reasons above, the Petitioner failed to meet its burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

Summary of Final Determination

Determination of ISSUE 1: Whether the grades assigned to the building are correct.

57. The Petitioner did not make a prima facie case that the grades assigned are in error. There is no change in 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 10th of June, 2002.

Commissioner, Indiana Board of Tax Review