

STATE OF INDIANA
Board of Tax Review

KOVA AG PRODUCTS, INC.)	On Appeal from the Pulaski County Property
)	Tax Assessment Board of Appeals
)	
Petitioner,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition No. 66-010-97-1-4-00005
)	Parcel No. 0100154800
)	
PULASKI COUNTY PROPERTY TAX)	
ASSESSMENT BOARD OF APPEALS)	
And MONROE TOWNSHIP ASSESSOR))	
)	
Respondents.)	

AMENDED

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 (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 of Building A (8,160 square feet (SF)) is excessive.
2. Whether the grade of Building B (2,560 SF) is excessive.
3. Whether a 16-foot x 40-foot section of Building B should be priced as a lean-to.

4. Whether one side of Building B is open.
5. Whether the grade of Building C (5,164 SF) is excessive.
6. Whether Building C should be priced from the GCK schedule.
7. Whether the wall heights of Building C are correct.
8. Whether a 14-foot x 78-foot section and a 16-foot x 40-foot section of Building C should be priced as a lean-to.
9. Whether Building D (3,840 SF) should be priced from the GCK schedule.

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 be considered a finding of fact.
2. Pursuant to Ind. Code § 6-1.1-15-3, Milo E. Smith of Tax Consultants on behalf of Kova AG Products, Inc. (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 was filed on August 6, 1997. The Pulaski County Board of Review's (County Board) Assessment Determination on the underlying Form 130 petition is dated July 10, 1997.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on February 24, 2000, before Hearing Officer Dalene McMillen. Testimony and exhibits were received into evidence. Mr. Smith represented the Petitioner. Lorena Van Der Aa and Edward J. Bisch, Jr. represented Pulaski County. Betty Stinemetz represented Monroe Township.

4. At the hearing, the subject Form 131 petition was made part of the record and labeled Board Exhibit A. Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following exhibits were submitted as evidence:

Board Exhibit C – Stipulation Agreement on Building C wall heights

Board Exhibit D – Letter to Pulaski County Board requesting parties to meet and submit photographs of Buildings C and D

Board Exhibit E – Letter to Tax Consultants, Inc requesting parties to meet and submit photographs of Buildings C and D

Petitioner Exhibit 1 – A photocopied picture of the subject area

Petitioner Exhibit 2 – An affidavit from Dale Tyler, FBi Buildings, Inc., dated February 23, 2000

Petitioner Exhibit 3 – A copy of 50 IAC 2.2-10-3, Grade

Petitioner Exhibit 4 – A sketch of the buildings layout on the subject property

Petitioner Exhibit 5 – A copy of 50 IAC 2.2-11-6, GCK Base Rates schedule

Petitioner Exhibit 6 – A chart on theoretical gage thickness

Petitioner Exhibit 7 – A summary of the issues on Buildings A, B, and C

Respondent Exhibit 1 – Pulaski County Board's response to the issues on the Form 131 petition

Respondent Exhibit 2 – A copy of the Petitioner's 1995 property record card (PRC)

Respondent Exhibit 3 – A copy of the County Board's response to Petitioner's claim (Form 115), dated July 10, 1997

Respondent Exhibit 4 – A copy of a letter from Milo Smith to Lorena Van Der Aa, dated August 4, 1997

Respondent Exhibit 5 – A copy of a letter from Lorena Van Der Aa to Milo Smith, dated August 13, 1997

Respondent Exhibit 6 – A copy of the certification of qualification for property tax deduction from the Indiana State Chemist and Seed Commissioner dated May 18, 1995

Respondent Exhibit 7 – Twelve (12) photographs of the subject property

Respondent Exhibit 8 – A copy of 50 IAC 2.2-10-6.1, Pricing

5. By letters dated November 9, 2000 (Board Exhibits D and E), the State ordered Mr. Smith and the County Board to schedule a time and date to meet and provide the State with interior and exterior photographs of Buildings C (5,164 SF) and D (3,840 SF). December 1, 2000, was established as the deadline for the submission of this information.
6. By a letter dated November 29, 2000, the County Board provided twenty-seven (27) photographs of the interior and exterior of Buildings C and D. This information was received in a timely manner. These photographs are entered into the record and labeled as Respondent Exhibit 9.
7. By letter dated November 30, 2000, Mr. Smith provided twelve (12) photographs of the interior and exterior of Buildings C and D. This information was received in a timely manner. These photographs are entered into the record and labeled as Petitioner Exhibit 8.
8. By letter dated December 1, 2000, the County Board informed the State that they had contacted Mr. Smith in an attempt to schedule a date and time to photograph the interior and exterior of Buildings C and D as requested by the State. The County Board indicated that Mr. Smith informed them it was not necessary for the parties to visit the site together. The County Board contacted Mr. Smith again, only to find that he had already photographed Buildings C and D. This letter from the County Board is entered into the record and labeled as Respondent Exhibit 10.
9. The subject property is located at R.R. #3 Box 278A, Winamac, Monroe Township, Pulaski County.
10. The Hearing Officer did not inspect the subject property

11. At the hearing, Mr. Smith testified the fee arrangement between Tax Consultants, Inc. and the Petitioner is confidential. Mr. Smith further testified that he is paid on a salary basis with Tax Consultants, Inc.
12. At the State hearing, prior to testimony being given, Mr. Bisch stated the County Board contests the evidence being presented by Mr. Smith at this hearing because Mr. Smith failed to appear at the County Board hearing and present any evidence or testimony.

Issue No. 1 – Whether the grade of Building A (8,160 SF) is excessive.

Issue No. 2 – Whether the grade of Building B (2,560 SF) is excessive.

Issue No. 5 – Whether the grade of Building C (5,164 SF) is excessive.

13. The Petitioner contends that a “C” grade factor should be applied to Buildings A, B, and C. The three (3) buildings are FBI typical wood post building constructed with 6” wood post, 29-gauge light steel exterior siding, and metal roof. Each building has different uses causing the interior finish components to vary. Grade is used in the cost approach to account for deviations from the norm or C grade (50 IAC 2.2-10-3). *Smith testimony & Petitioner Exhibit 2.*
14. Building A is a wood post frame building with metal siding and roof. The entire floor area is contained within a 12” high by 12” thick concrete wall, which is reinforced with one half-inch diameter rebar. Therefore, a grade factor of “C+2” was applied. Building B is a wood post frame building with clad metal. The entire building is enclosed with 6” high wall or 6” high ramps, which is integral with the 3’ high north wall of the fertilizer dike. All of the 6” walls are reinforced with one half-inch diameter rebar. Therefore, a grade factor of “C+1” was applied. Building C is a wood post and frame metal clad insulated building. The floor is 6” thick concrete reinforced with 10 gauge welded wire fabric. A reinforced concrete wall surrounds the exterior. The concrete wall is tied into the

floor with one half-inch diameter reinforcing rebar. Therefore, a grade factor of “C+1” was applied. *Bisch testimony.*

Issue No. 3 – Whether a 16-foot x 40-foot section of Building B should be priced as a lean-to.

Issue No. 8 – Whether a 14-foot x 78-foot section and a 16-foot x 40-foot section of Building C should be priced as a lean-to.

15. A 16-foot x 40-foot portion of Building B has no doors and is open and should be priced as a lean-to. A 14-foot x 78-foot and a 16-foot x 40-foot portion of Building C should also be priced as lean-tos. *Smith testimony.*

16. The County Board disagrees with Mr. Smith on the portions of Buildings B and C being lean-to's. Lean-tos are associated with agricultural structures priced from 50 IAC 2.2-9. The subject structures are not agricultural structures and are correctly priced from the GCI pricing schedule in the Regulation. *Bisch testimony.*

Issue No. 4 – Whether one side of Building B is open.

17. Mr. Smith did not address this issue at the hearing. However, in Petitioner's Exhibit 7, it states in part, “one side of this building is open”.

18. The structure has four (4) exterior walls and no open sides exist. *Bisch testimony.*

Issue No. 6 – Whether Building C (5,164 SF) should be priced from the GCK schedule.

Issue No. 9 – Whether Building D (3,840 SF) should be priced from the GCK schedule.

19. Dale Tyler, of FBI Buildings, Inc., indicated by affidavit that four (4) wood post buildings were constructed for Kova AG Products, Inc. The affidavit further indicates that the buildings were constructed with 6” wood post, metal roofs, and 29-gauge light steel exterior siding. However, the four (4) buildings have different uses, therefore the interior finish components vary, but not the quality and design of the buildings. Building C should be priced from the GCK schedule and, if necessary, add the concrete wall as an exterior feature and the interior liner at \$1.50 per square foot rather than the \$3.30 per square foot listed currently on the PRC as a wood liner. Building D is a pole frame office building with finished divided interior. The schedule for GCK buildings indicates the metal siding is 20 to 24-gauge steel. The subject structures are 29-gauge steel, which is 1/3 lighter than the typical GCK building. *Smith testimony & Petitioner Exhibit 2.*

20. Building C is a wood post and frame with metal exterior walls; however, the building is a special purpose design structure. The photograph of Building C shows a fertilizer auger through the roof of this special design structure. The Indiana State Chemist and Seed Commissioner’s certification, dated May 18, 1995, indicates Building C is a Dry Blend Fertilizer Plant. The building is 58 feet x 78 feet with 6” thick concrete floor with reinforced 10-gauge welded wire fabric. A reinforced concrete wall surrounds the exterior and is tied into the floor of the structure with one half-inch diameter reinforcing rebar. 50 IAC 2.2-10-6 specifies special purpose design structures are not valued using the GCK schedule. Building D is used as a light constructed office and general retail building. The Petitioner did not submit any evidence at the County Board hearing that would indicate the GCK pricing schedule should be used. The County Board

would recommend that if the State determines the GCK schedule be used, that the grade factor of the building be increased to “C+2” to account for the structure’s extra windows, interior components and roof overhang. *Bisch testimony & Respondent Exhibit 7.*

21. In the Indiana State Chemist description a special use building is defined as a building that would withstand an earthquake and that there are not any GCK buildings in Pulaski County that are built to that type classification. *Stinemetz testimony.*

Issue No. 7 – Whether the wall heights of Building C are correct.

22. After some discussion at the hearing, the parties came to an agreement that Building C has the following wall heights:
 - a. A 44 foot x 78 foot section is 16 feet high
 - b. A 14 foot x 78 foot section is 12 feet high
 - c. A 16 foot x 40 foot section is 8 feet high

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

Witness Compensation

18. The State's position is that it has the right to make general inquiry regarding, and to consider, the method by which a witness is compensated. Information about the witness's fee can be relevant and necessary in order to evaluate the potential

partiality of the witness. A contingent fee arrangement may be considered to inherently affect the objectivity of a witness. The State believes it appropriate to consider the potential of such an arrangement to improperly motivate the witness and adversely affect the reliability of the testimony. It is for these reasons that the State will consider the method of witness compensation in the process of determining the credibility and weight to be given to testimony of a witness whose fee is contingent on the outcome of the issues that he or she is testifying about. This position is supported by the discussion in the case of *Wirth v. State Board of Tax Commissioners*, 613 N.E. 2d 874 (Ind. Tax 1993).

19. The State has difficulty accepting those representing the Petitioner as credible in this appeal. When asked about compensation – a question that is routinely asked given case law on the subject – Mr. Smith responded that the fee agreement between Tax Consultants, Inc. and Kova AG Products, Inc. is confidential. This suggests a lack of forthrightness and openness.
20. In addition, Mr. Smith’s refusal to meet with the County Board to comply with the request from the State to obtain additional information also reflects a lack of forthrightness and openness.

Issue No. 1 – Whether the grade of Building A (8,160 SF) is excessive.

Issue No. 2 – Whether the grade of Building B (2,560 SF) is excessive.

Issue No. 5 – Whether the grade of Building C (5,164 SF) is excessive.

A. Regulatory and Case Law

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. 50 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 grade selected represents a composite judgment of overall quality and design. Generally, the quality of materials and workmanship is fairly consistent throughout the construction of a structure. However, this may not always be the case, and it is sometimes necessary to weigh the quality of the individual major components in order to arrive at the proper composite quality rating. 50 IAC 2.2-10-3(d)

25. 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%

26. Intermediate grade levels 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).

B. Administration of the Existing System and Cost Information Analysis.

27. The Tax Court invalidated subjective elements of the Regulation, e.g., grade, holding that the Regulation did not contain ascertainable standards. *Town of St. John III* at 388. Nevertheless, the Indiana Supreme Court and the Tax Court did not throw out the whole system immediately. *Town of St. John V*, 702 N.E. 2d at 1043; *Town of St. John III*, at 398-399; *Whitley*, 704 N.E. 2d at 1121. Instead, the property tax system is now administered in accordance with the current, true tax value system and existing law. *Id.*
28. True tax value does not equal market value. Ind. Code § 6-1.1-31-6. True tax value does not attempt to determine the actual market value for which a property would sell if it were offered on the open market. Nevertheless, true tax value's *method* for valuing structures is the same as one of the well-accepted methods for determining fair market value – reproduction cost. IAAO Property Assessment Valuation 127 (2nd edition 1996). Common appraisal techniques are permissible in assessing property under the current property tax system even when such techniques are rooted in the market value. *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801 (Ind. Tax 1998).
29. The cost tables in the Regulation are at the heart of the true tax value's method for determining value. The cost schedules effective for the 1995 general reassessment reflect 1991 reproduction costs based on market information derived from *Marshall Valuation Service* price tables. 50 IAC 2.2, Forward at I; *Town of St. John III* at 373, n. 5.
30. The State uses cost information provided by taxpayers as a tool for quantifying grade level by comparing adjusted cost to the cost schedules in the Regulation. See *State Board of Tax Commissioners v. Garcia*, 766 N.E. 2d 341 (Ind. Tax 2002). In general terms, the taxpayer's cost information is trended up or down to

arrive at a comparison between the adjusted construction cost of the structures under appeal and construction cost in the Regulation.

31. In the case at bar, the Petitioner did not present any cost information. Had the construction cost information been provided, the State would have used an adjusted cost calculation in this appeal just like it has done in other appeals.
32. Using an adjusted cost calculation for the structures under appeal may or may not have supported Petitioner's challenge in this appeal. Notions as to what such a calculation would have revealed constitute mere speculation and do not, in any way, shape the decision made in these Findings and Conclusions.

C. Discussion of Petitioner's Evidence

33. 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*.
34. The Petitioner testified that the grade and design factor for Buildings A, B, and C should be "C". The Petitioner's basis for this position relies solely on an affidavit from a Mr. Tyler of FBi Buildings, Inc. In the affidavit Mr. Tyler states that all four (4) of the subject buildings were constructed with the same quality and design including wood post construction with 6" wood post, metal roof and 29-gauge light steel exterior siding. Mr. Tyler further stated that due to the structures being put to different usages the interior finish components would vary but not the quality and design.
35. The County has assigned a "C+2" grade and design factor to Building A and "C+1" grade and design factors to Buildings B and C.

36. It should be noted the Petitioner submitted interior and exterior photographs of Buildings C and D only, but for different issues (See Issues Nos. 6 and 9).
37. 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.
38. 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.
39. It is not enough for the Petitioner to submit an affidavit and then conclude that this proves the structures are a “C” grade. The Petitioner fails to provide any additional evidence or documentation to substantiate that the County incorrectly graded the subject structures. Mere references to photographs or regulations, without explanation, do not qualify as probative evidence. *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329, 333 (Ind. Tax Ct. 1999).
40. The Petitioner refers to the subject structures as “FBI typical wood post buildings” in Petitioner’s Exhibit 7. However, Mr. Tyler does not say anything as to the structures being “typical wood post buildings” built by FBI Buildings, Inc. in Petitioner’s Exhibit 2.
41. The Petitioner did not make any analysis between the subject structures and that of the GCK pricing schedule as it relates to grade nor did the Petitioner rebut any testimony given by the Respondent regarding the use of reinforced rebar in certain portions of the walls or the 6” reinforced concrete floor within the subject buildings and how this might affect grade.
42. The taxpayer’s burden in the State’s 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.

43. Identifying comparable properties and demonstrating that the property under appeal has been treated differently for property tax purposes can show error in assessment. However, the Petitioner did not identify properties that are similarly situated to the property under appeal and in turn did not establish disparate tax treatment between the subject and other similarly situated properties.
44. When a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State can properly refuse to consider the evidence. *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)).
45. For all the reasons set forth above, the Petitioner did not meet his burden in this appeal. Accordingly, no change is made in the assessment as a result of issues Nos. 1, 2, and 5.

Issue No. 3 – Whether a 16-foot x 40-foot section of Building B should be priced as a lean-to.

Issue No. 8 – Whether a 14-foot x 78-foot section and a 16-foot x 40-foot section of Building C should be priced as lean-tos.

46. The Petitioner contends that portions of Buildings B and C should be valued as lean-tos. The Petitioner contends that Building B has a 16-foot x 40-foot portion with no doors and is open and that Building C has a 14-foot x 78-foot portion and a 16-foot x 40-foot portion that should also be valued as lean-tos.
47. Other than the Petitioner’s conclusory and non-specific testimony, no other

evidence or documentation is submitted by the Petitioner to support their position.

48. As stated in Conclusions of Law ¶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.” Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
49. The Petitioner failed to identify similar properties in which such a structure, as that under review in this appeal, was determined to be a lean-to. In failing to do such, the Petitioner also fails to show that the subject may have been treated differently when compared to similar properties.
50. Taxpayers are expected to make detailed factual presentations to the State Board regarding alleged errors in assessment. *Id.* “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)).
51. For the reasons set forth above, the Petitioner did not meet his burden in this appeal. Accordingly, no change is made in the assessment as a result of issues Nos. 3 and 8.

Issue No. 4 – Whether one side of Building B is open.

52. At the hearing, the Petitioner did not present any evidence or testimony regarding this issue. The only evidence submitted regarding this issue is found in Petitioner’s Exhibit 7 that states in part, “one side of this building is open.”

53. For the reason stated above, the Petitioner failed to meet his burden on this issue. Accordingly, no change is made in the assessment as a result of this issue.

Issue No. 6 – Whether Building C (5,164 SF) should be priced from the GCK schedule.

Issue No. 9 – Whether Building D (3,840 SF) should be priced from the GCK schedule.

54. In assessing the subject buildings, the County used the GCI pricing schedule, which includes those use types associated with industrial related operations. The Petitioner maintains that the subject structures were incorrectly valued when the wrong pricing schedule was used. The Petitioner contends the structures should be valued using the GCK schedule.
55. The State’s Regulation, 50 IAC 2.2-10-6.1, provides an explanation of how to determine a base rate. Specifically, base rates are given for a range of perimeter to area ratios for specific construction types for various use and finish types. Models are provided as conceptual tools to use to replicate reproduction cost of a structure using typical construction materials assumed to exist for a given use type. Use type represents the model that best describes the structure.
56. Because of the numerous models provided, the base rates are divided into four “association groupings”, namely: (1) General Commercial Mercantile (GCM); (2) General Commercial Industrial (GCI); (3) General Commercial Residential (GCR); and (4) General Commercial Kit (GCK). Three of the four groupings contain use type descriptions in order to aid in selection. The GCK schedule is the exception.
57. “[G]CK does not include use type descriptions. This schedule is utilized for valuing pre-engineered and pre-designed pole buildings that are used for

commercial and industrial purposes. A format has been developed to value the base building on a perimeter to area ratio basis and to adjust the value based on various individual components of the building. Buildings classified as a special purpose design are not valued using the GCK pricing schedule.” 50 IAC 2.2-10-6.1(a)(1)(D).

58. In a nutshell, when selecting the appropriate pricing schedule, there are only four factors to be considered in determining whether or not the GCK schedule is appropriate for valuing a structure. These factors are: (1) whether the structure is pole framed; (2) whether the structure is pre-engineered; (3) whether the structure is for commercial or industrial purposes; and (4) whether the structure is a special purpose designed building. Therefore, if a building is a pre-engineered pole framed building used for commercial or industrial purposes, and is not a special purpose designed building, the GCK schedule is the appropriate schedule for valuing the building.
59. The Petitioner bears the responsibility of presenting probative evidence in order to establish a prima facie case. In order to establish a prima facie case, the Petitioner must present evidence sufficient to establish a given fact that if not contradicted will remain fact.

Building C

60. Based on the testimony given and photographs submitted it is determined that Building C is a “Dry Blend Fertilizer Plant” that is wood post and frame, metal clad and insulated. The floor is 6” thick concrete with 10-gauge welded wire fabric. A reinforced concrete wall surrounds the exterior and is tied to the floor with one half-inch diameter reinforcing rebar. The building has a fertilizer auger through the roof and the interior contains a division wall made of solid pressure treated lumber that extend from the floor to the ceiling.
61. Again, there are four factors a structure must meet in order to be valued using

the GCK schedule (See Conclusions of Law ¶59). One such factor is whether the structure is of a special purpose design.

62. A “special purpose property” or “special-design property” is “[a] limited market property with a unique physical design, special construction materials, or a layout that restricts its utility to the use for which it was built[.]” Appraisal Institute, *The Appraisal of Real Estate* 25 (12th ed. 2001). *LDI Manufacturing Company v. State Board of Tax Commissioners*, 759 N.E. 2d 685 (Ind. Tax 2001).
63. Though it may be argued that the subject structure may have some features found in the GCK pricing schedule, the fact the subject was built specifically to be a “Dry Blend Fertilizer Plant” disqualifies the structure from being valued from this schedule. Any attempt to put the structure to any other use would require extensive remodeling. The building is clearly of a special purpose design.
64. The Petitioner failed to show that the subject building met the qualifications necessary to be valued from the GCK schedule, or that the GCK schedule best represents the structure under review.
65. For all the reasons set forth above, the structure does not qualify to be valued from the GCK pricing schedule. Accordingly, no change is made in the assessment as a result.

Building D

66. The Petitioner presented testimony and submitted evidence relating to the construction (interior and exterior) of the subject building. The building contains 6” wood post, metal roof, 29-gauge light steel exterior siding, and has a finished divided interior. All of these characteristics fall within the descriptive elements of the GCK schedule.
67. Mr. Bisch testified the subject structure is a light constructed office and general

retail building. The County Board disqualified this building from the GCK schedule due to the extra windows, interior components, and roof overhang.

68. The existence of minimal building features options, such as small amounts of brick or additional windows, does not disqualify a building from being considered a kit building, and being valued from the GCK schedule. See *Susan J. Barker v. State Board of Tax Commissioners*, 712 N.E. 2d 563 (Ind. Tax 1999). Nothing within the GCK schedule or its descriptions preclude a building with these features from being priced from the GCK schedule. Unless these features significantly impact the cost of the building, and adjustment in grade can be used to account for these additional features.
69. The amount of additional windows and roof overhang on the subject building, while slightly impacting its cost, clearly does not disqualify the building from being priced from the GCK schedule.
70. For all the reasons set forth above, it is determined that Building D is best described by the GCK schedule and should be priced accordingly. There is a change in the assessment as a result of this issue.

Issue No. 7 – Whether the wall heights of Building C are correct.

71. At the hearing, Mr. Smith and Ms. Van Der Aa reached an agreement on the wall heights of Building C. Mr. Smith and Ms. Van Der Aa signed a Stipulation Agreement (Board Exhibit C) agreeing to the following wall heights for Building C:
 - a. A 44-foot x 78-foot section is 16 feet high
 - b. A 14-foot x 78-foot section is 12 feet high
 - c. A 16-foot x 40-foot section is 8 feet high
72. The agreement between the County and the Petitioner is a decision between these parties and the State Board will accept the agreement. The Board's acceptance of the agreement should no be construed as a determination

regarding the propriety of the wall heights of Building C agreed to by the parties.

73. A change in the assessment is made as a result of this agreement.

Other Conclusions

Building D – Grade

74. In the current assessment, the subject Building D is valued from the GCI pricing schedule as an industrial office with a grade factor of “C-1” assigned. The grade is based on a comparison to the GCI schedule models.
75. Since the building will now be priced using the GCK schedule, a comparison to GCI models to determine the grade is no longer appropriate. For the assessment to be correct, the grade of the building must be adjusted, based on the GCK descriptions. See *Barth v. State Board of Tax Commissioners*, 699 N.E. 2d 800 (Ind. Tax 1998).
76. Based on a comparison to the GCK schedule and description of the industrial office, the subject structure should be assigned a grade of “C”.
77. The Respondent opined that if it were to be determined to value the subject structure using the GCK pricing schedule, additional costs for windows, interior components and roof overhang should be taken into account within the grade factor. However, the Respondent failed to provide documentation to show that the extra windows, interior components and the roof overhang would increase the cost significantly above the base model or what those costs may be.
78. For all the reasons set forth above, the grade factor of Building D is determined to be a “C”. A change in the assessment is made as a result.

Respondent's Objections

79. As previously stated in Findings of Fact ¶¶12, Mr. Bisch objected to testimony and evidence being presented at the State's hearing that was not presented at the County Board hearing. On petitions filed before April 1, 2000, the State has accepted this type of evidence at State hearings on a regular basis. 50 IAC 17 established procedural rules to govern administrative proceedings before the Board affecting petitions filed after April 1, 2000.
80. Specifically, 50 IAC 17-7-1 under "Evidence not previously presented", states "Documentary evidence that was not presented at the Property Tax Assessment Board of Appeals (PTABOA) hearing may not be presented by a party at a proceeding before the appeals division unless the evidence directly relates to an issue specifically expressed at the PTABOA hearing of the matter, or in the PTABOA's final determination. Any evidence that was not presented at the PTABOA hearing, which a party intends to introduce at a hearing before the appeals division, must be filed with the appeals division within thirty (30) days following the filing of the original appeal petition. However, in the event a hearing is scheduled within the thirty (30) day period following the filing of the petition, any evidence not presented at the PTABOA hearing must be filed with the approval of the appeals division not less than five (5) days prior to the hearing."
81. Since the Form 131 petition under review, was filed prior to April 2000, the evidence submitted by the Petitioner will be accepted by the State and will be considered within the scope of this review.

Summary of Final Determination

Determination of ISSUES 1, 2, and 5: *Whether the grade of Buildings A, B, and C are excess.*

82. The Petitioner did not prevail by a preponderance of the evidence. There is no change made in the assessment with regard to issues Nos. 1, 2, and 5.

Determination of ISSUES 3 and 8: *Whether a 16-foot x 40-foot section of Building B and a 14-foot x 78-foot section should be priced as lean-tos.*

83. The Petitioner did not prevail by a preponderance of the evidence. There is no change made in the assessment with regard to issues Nos. 3 and 8.

Determination of ISSUE 4: *Whether one side of Building B is open.*

84. The Petitioner did not prevail by a preponderance of the evidence. There is no change made in the assessment with regard to issue 4.

Determination of ISSUE 6: *Whether Building C (5,164 SF) should be priced from the GCK schedule.*

85. The Petitioner did not prevail by a preponderance of the evidence. There is no change made in the assessment with regard to issue 6.

Determination of ISSUE 9: *Whether Building D (3,840 SF) should be priced from the GCK schedule.*

86. The Petitioner prevailed by a preponderance of the evidence. There is a change made in the assessment with regard to issue 9.

87. The State determines that the building should be assessed from the GCK schedule. Because the property is now assessed from a different schedule, all

appropriate adjustments should be made. These adjustments may include, but are not limited to, grade and depreciation.

Determination of ISSUE 7: *Whether the wall heights of Building C are correct*

88. The Petitioner prevailed by a preponderance of the evidence. There is a change made in the assessment with regard to issue 7.

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 8th day of October, 2002.

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.