

REPRESENTATIVES FOR PETITIONER: Christopher D. Oakes, Attorney, Cox, Oakes & Associates, Ltd.; Kevin Morse, Equity Property Manager

REPRESENTATIVES FOR RESPONDENT: Joseph A. DiMauro, Office Manager, Ross Township Assessor's office; Melissa B. Strickhorn-Walker, Field Deputy, Ross Township

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

MAPLE LEAF APARTMENTS, LP,	)	Petition Nos.: 45-030-01-1-4-00037
	)	45-030-01-1-4-00038
Petitioner	)	45-030-01-1-4-00039
	)	45-030-01-1-4-00040
v.	)	Parcel Nos.: 08-15-590-0001
	)	08-15-590-0002
ROSS TOWNSHIP ASSESSOR,	)	08-15-590-0003
	)	08-15-590-0004
Respondent	)	County: Lake
	)	Township: Ross
	)	Assessment Year: 2001

Appeal from the Final Determination of
Lake County Property Tax Assessment Board of Appeals

August 25, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review ("Board") having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Findings of Fact and Conclusions of Law

1. Pursuant to Ind. Code § 6-1.1-15-3, Cox, Oakes & Associates, Ltd. filed a Form 131 petition on behalf of Maple Leaf Apartments, LP for 2001 petitioning the Board to

conduct an administrative review of the above petition. The Form 131 petition was filed with the Board on October 23, 2002.¹

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on March 5, 2003 in Crown Point, Indiana before Ellen Yuhan, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

4. The following persons were present at the hearing:

For the Petitioner: Christopher D. Oakes, Attorney, Cox, Oakes & Associates, Ltd.
Kevin Morse, Equity Property Manager

For the Respondent: Joseph A. DiMauro, Office Manager, Ross Township
Melissa B. Strickhorn-Walker, Field Deputy, Ross Township

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner: Christopher D. Oakes, Attorney, Cox, Oakes & Associates, Ltd.
Kevin Morse, Equity Property Manager

For the Respondent: No one.

6. The following documents were submitted at the administrative hearing:

For the Petitioner:

Petitioner's Exhibit 1 - A copy of a Form 11 for the subject property dated April 27, 2002.

Petitioner's Exhibit 2 - A copy of a Form 113 for the subject property dated June 8, 2001.

Petitioner's Exhibit 3 - A chart comparing the 2001 assessed value established by the local assessing official, the assessed value proposed by the Petitioner

¹ The Form 131 petition was initially filed with the Board on August 19, 2002. However, the petition was returned to the Petitioner as a defective petition because the petition did not include a copy of the Lake County Property Tax Assessment Board of Appeals determination, Form 115. Upon receiving the Form 115, which was issued October 17, 2002, the Petitioner then filed a corrected Form 131 petition with the Board on October 23, 2002.

with a C grade and the application of physical depreciation, and the assessed value proposed by the Petitioner with a C-1 grade without the application of physical depreciation.

Petitioner's Exhibit 4 - A chart showing the properties offered as comparables by the Petitioner.

Petitioner's Exhibit 5 - A photograph of one of the Maple Leaf Apartment buildings and the property record cards (PRC) for each parcel under appeal.

Petitioner's Exhibit 6 - A photograph of Chapelle de Grande and its property record card.

Petitioner's Exhibit 7 - The property record card for Merrillville Terrace Apartments.

Petitioner's Exhibit 8 - A photograph of Cloisters Apartments and its property record card.

Petitioner's Exhibit 9 - A photograph of Meadowlane Apartments and its property record card.

Petitioner's Exhibit 10 - Copies of the pages from 50 IAC 2.2 displaying graded photographs for apartment buildings.

Petitioner's Exhibit 11 - A list of the Petitioner's witnesses and exhibits dated February 19, 2003.

Petitioner's Exhibit 12 - A summary of the Petitioner's exhibits and witness testimony dated February 27, 2003 with letters to Ms. Sherry Feurerborn and the Lake County Property Tax Assessment Board of Appeals attached.

For the Respondent: No evidence or testimony was submitted.

7. Mr. Oakes filed a Motion to Bar Testimony and Evidence on March 3, 2003 requesting the IBTR bar the respondent from offering any documentary evidence or testimony.
8. The following additional items are officially recognized as part of the record of proceedings:

Board Exhibit A - The subject Form 131 petition with attachments.

Board Exhibit B - The Notice of hearing.

9. The subject property is an apartment building located at 7106-7108 Broadway Road in Merrillville, IN, commonly known as Maple Leaf Apartments. The assessment year under appeal is 2001. The assessed value established by the Lake County Property Tax Assessment Board of Appeals (PTABOA) is \$22,000 for the land and \$657,400 for the improvements.
10. The issues presented to the Board were:
 - Issue 1 - Whether the grade applied is excessive, resulting in an unjust and inequitable assessment.
 - Issue 2 - Whether depreciation was taken into account in calculating the true tax value.
 - Issue 3 - Whether the assessor was without legal authority to reassess the subject parcels in June 2001.
 - Issue 4 - Whether the assessor failed to follow the procedural requirements of the Indiana Code concerning assessment appeals.

Jurisdictional Framework

11. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
12. The Board is authorized to issue this final determination of corrected assessment pursuant to Indiana Code § 6-1.1-15-8.

Indiana's Property Tax System

13. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.

State Review and Petitioner's Burden

14. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
15. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax. 1998), and *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
16. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Board of Tax Commissioners*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
17. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
18. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.* 743 N.E. 2d 247, 253

(Ind. Tax 2001), and *Blackbird Farms Apartments, LP v. Department of Local Government Finance* 765 N.E. 2d 711 (Ind. Tax, 2002).

19. The Board will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a ‘prima facie case’ and, by a ‘preponderance of the evidence’ proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765 (Ind. Tax 1997). [A ‘prima facie case’ is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the Board (as the fact-finder) to conclude that the petitioner’s position is correct. The petitioner has proven his position by a ‘preponderance of the evidence’ when the petitioner’s evidence is sufficiently persuasive to convince the Board that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]

Discussion of the Issues

Issue 1: Whether the grade applied is excessive, resulting in an unjust and inequitable assessment.

20. The Petitioner contends that the C grade applied to the subject buildings in 2001 is excessive and inequitable when compared to the assessments of comparable properties.
21. The applicable rules governing this issue are:
- 50 IAC 2.2- 1-30**
Grade means the classification of an improvement based on certain construction specifications and quality of materials and workmanship.

50 IAC 2.2-1-31

Grade factor means a factor or multiplier applied to a base grade level for the purpose of interpolating between grades or establishing an intermediate grade.

50 IAC 2.2-10-3

Grade is used in the cost approach to account for deviations from the norm or “C” grade. The quality and design of a building are the most significant variables in establishing grade.

50 IAC 2.1-10-3(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 with the base specifications used to develop the pricing schedules. They have an average quality interior finish with adequate built-ins, standard quality features, and mechanical features.

Mahan v. State Board of Tax Commissioners, 622 N.E. 2d 1058, 1064 (Ind. Tax 1993)

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.

50 IAC 2.2-11-4.1

Graded photographs

Ronald D. Clark d/b/a The Arches v. Department of Local Government Finance, 779 N.E.2d 1277 (Ind. Tax 2002)

Requirement to prove the current grade is incorrect and what the proper grade should be.

22. Evidence and testimony considered particularly relevant to this determination include the following:
- (a) The subject buildings were originally graded C-1. In 2001, the Ross Township Assessor increased the grade to C.
 - (b) The buildings are identical in architectural design and construction. The construction materials are standard, there is minimal architectural design, and the construction is frame with a brick façade and shingle roof.
 - (c) No changes in the condition or the construction of the property occurred from the time of acquisition until the time of the grade change.
 - (d) The Petitioner submitted a chart that compared the assessed values, the assessed value per rentable square feet, and the annual gross rent as a percentage of assessed value.

- (e) The Petitioner submitted photographs of the subject and the comparable properties and the property record cards for all the properties. All the comparable properties are graded C-2.
- (f) The Petitioner included the graded photographs from the Indiana Real Property Assessment Manual to show that there are no photographs of a below C apartment complex and to show that the graded photographs of the C apartment buildings clearly are of superior quality and have a true tax value greater than the subject property.
- (g) The Petitioner proposed that the grade be changed back to the original C-1 grade, or remain a C grade but with a depreciation factor applied.

Analysis of Issue 1: Whether the grade applied is excessive, resulting in an unjust and inequitable assessment.

- 23. The Petitioner's chart of market comparables (Petitioner's Exhibit 4) shows the assessed value for the properties, the rentable square feet, and the assessed value per rentable square feet. The subject property has a considerably higher assessed value per rentable square foot than the comparables, \$26.97 compared to an average of \$14.58.
- 24. The Petitioner believes the inequities shown in comparing the assessment of the subject and the comparable properties are due in part to the change in grade and the lack of depreciation.
- 25. Grade is not the only factor in determining the assessed value of a property. In this case, the comparables all have less square footage, only one property, Chapelle de Grande has more units, but the units are much smaller than the subject's, 708-864 square feet compared to 1,127-1,151 square feet. The comparables are much older, 22 to 31 years older. The subject has, for all four buildings, 288 extra plumbing fixtures, while Chapelle le Grand has 79 extra; the others show no extra fixtures on the property record cards. The properties also have different values for exterior features, balconies and patios.

26. The difference in assessed value is not only determined by grade but by numerous other considerations.
27. The Petitioner also included photographs of the properties and property record cards. Photographs alone do not tell the entire story, but may be indicative of grade. The subject does have more wall cuts than the comparables and a different roof style, hip rather than mansard or flat. The Petitioner did not submit any information as to differences or similarities in interior finish, built-ins, or mechanical features.
28. Testimony offered by the Petitioner indicates the buildings have standard materials and architectural design. The minimal architectural design, frame construction, and standard materials are all qualities of a “C” grade structure.
29. It is unclear exactly what significance should be attached to the graded photographs as the Petitioner submitted testimony stating there was nothing shown below a C grade apartment building. There is also no basis for the Petitioner’s belief that the true tax value of the complexes in the graded photographs would have a lower true tax value.
30. The Petitioner also enclosed the closing statement (attached to the Form 131 petition), which shows the purchase price of the property in 1999. The market value at that time was several million dollars higher than the assessed value today. While market value does not necessarily equal true tax value, it is indicative of the value of the property in terms of materials, construction, and income.
31. The Petitioner failed to show that the grade assigned to the property is incorrect or that the requested grade of C-1 is proper. The determination of the Lake County PTABOA is upheld.

Issue 2: Whether depreciation was taken into account in calculating the true tax value.

32. The Petitioner contends that the delay in the general reassessment has increased the inequities between the subject property and the comparable properties because no depreciation has been applied to the subject, while the other properties had a depreciation factor applied.
33. The applicable rule governing this issue is:

50 IAC 2.2-1-21

“Depreciation allowance” means a loss in value expressed in terms of a percentage of replacement or reproduction cost new. The depreciation allowance applies to all real property improvements constructed before March 2, 1995. Real property improvements constructed after March 2, 1995 shall not receive a physical depreciation allowance.

34. Evidence and testimony considered particularly relevant to this determination include the following:
- (a) The subject buildings were built in 1997-1999.
 - (b) The property was reassessed in 2001 by the Ross Township assessor during the period the general reassessment was to take place. If the township assessor can reassess the property as to grade then depreciation should also be applied.
 - (c) The proposed assessed values for the subject buildings were calculated at the current grade of C with depreciation applied and at a C-1 grade with no depreciation.
(Petitioner’s Exhibit 3.)

Analysis of Issue 2: Whether depreciation was taken into account in calculating the true tax value.

35. The Petitioner contends that the delay of the general reassessment and the change in grade has increased the inequities between the subject and the comparable properties because the subject has had no depreciation factor applied to the improvements.

36. The Petitioner is incorrect in alleging that the delay in assessment has increased the inequities between the subject and the comparables. The delay in the general reassessment has also affected the comparable properties in that their depreciation would have increased and the gap between the subject and the comparables would still exist and will always exist because of the difference in construction dates. (The comparable properties were all constructed between 1966 and 1975 and all have had depreciation applied in accordance with the statutes.)
37. The statute is clear. No depreciation is to be applied to improvements constructed after March 2, 1995. The subject improvements were constructed in 1997-1999; therefore, no depreciation is to be applied until the general reassessment of real estate, which is to be completed for the March 1, 2002 assessment date. No change is made in the assessment as a result.

Issue 3: Whether the assessor was without legal authority to reassess the subject parcels in June 2001.

38. The Petitioner contends that the Ross Township Assessor improperly changed the grade during a general reassessment, which, in Lake County, is to be conducted by an independent contractor.
39. The rules governing this issue are:

IC 6-1.1-9-1

If a township assessor believes that any taxable property has been omitted from or undervalued on the assessment rolls or tax duplicate for any year or years, the official shall give written notice under IC 6-1.1-3-20 or IC 6-1.1-4-22 of the assessment or increase in assessment.

IC 6-1.1-9-4

Real property may be assessed, or its assessed value increased, for a prior year under this chapter only if the notice required by section 1 of this chapter is given within three (3) years after the assessment date for that prior year.

IC 6-1.1-36-3(a)

A township assessor's assessment or a county assessor's assessment of property is valid even if:

- (1) he does not complete, or notify the county auditor of, the assessment by the time prescribed under IC 6-1.1-3 or IC 6-1.1-4;
- (2) there is an irregularity or informality in the manner in which he makes the assessment; or
- (3) there is an irregularity or informality in the tax list.

An irregularity or informality in the assessment or in the tax list may be corrected at any time.

IC 6-1.1-4-32b

A township assessor in a qualifying county may not appraise property, or have property appraised, for the general reassessment of real property to be completed for the March 1, 2002 assessment date.

Glass Wholesalers, Inc. v. State Board of Tax Commissioners, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)

Each tax year stands alone, and evidence of a prior assessment will not be considered probative evidence of the property tax assessment for later years.

40. Evidence and testimony considered particularly relevant to this determination include the following:
 - (a) The Ross Township Assessor notified the Petitioner of the change in grade via a Form 11 dated April 27, 2001.
 - (b) The Ross Township Assessor sent the Petitioner a Form 113 for each property on June 8, 2001.
 - (c) The change in assessment is for the March 1, 2001 assessment date.
 - (d) The PTABOA information document included with the Form 115 states that the Form 130 filed on June 5, 2000 opened the parcel to review by the township.

Analysis of Issue 3: *Whether the assessor was without legal authority to reassess the subject parcels in June 2001.*

41. The Ross Township Assessor had the authority to change the assessment of the subject parcels for 2001. The General Reassessment is to be done effective tax year 2002.

42. The Ross Township Assessor would have the authority to change the assessment of the subject parcels for tax year 2001.
43. The Ross Township Assessor notified the Petitioner of the change in assessment within the statutory time frame. No change in the assessment is made.

Issue 4: Whether the assessor failed to follow the procedural requirements of the Indiana Code concerning assessment appeals.

42. The Petitioner contends he was denied his procedural due process.
43. The applicable rules governing this issue are:

IC 6-1.1-15

The township assessor shall within thirty days after the receipt of the petition attempt to hold a preliminary conference with the petitioner and resolve as many issues as possible. Within ten days after the conference the township assessor shall forward to the county auditor and county assessor a completed response to the petition.

In a county having a population of more than 300,000 and in the case of a petition filed after December 31, 2000, the PTABOA shall hold its hearing within 180 days and have a written record of the hearing and prepare written statement of findings and a decision on each item within 120 days after the hearing.

44. Evidence and testimony considered particularly relevant to this determination include the following:
 - (a) The Ross Township Assessor failed to respond to the completed Form 130 petition within the statutory time frame, that is within ten (10) days of the pre-hearing conference.
 - (b) The Form 130 submitted was not date stamped by the County Assessor.
 - (c) The Ross Township Assessor did not enter a written response on the Form 130 petition.
 - (d) The PTABOA did not conduct the hearing within 180 days of the filing of the petition.
 - (e) The PTABOA's hearing officer refused to allow the Petitioner to provide additional information to rebut any supplemental evidence provided by the inspection.

- (f) The PTABOA information document included with the Form 115 indicates that the procedural requirements were not met due to not only the township and the county but due to Petitioner's failure to act.

Analysis of Issue 4: Whether the assessor failed to follow the procedural requirements of the Indiana Code concerning assessment appeals.

45. The Petitioner should have been allowed to rebut any new evidence provided by the inspection at the PTABOA level but it is not clear that any additional evidence was produced due to the inspection. Furthermore, the hearing before this Board is de novo. The Petitioner could have responded to any new evidence presented at the PTABOA level, thus curing any due process problem.
46. While the administrative process may have been delayed, the Petitioner was not denied procedural due process. No change is made as a result.

Summary of Final Determination

Determination of Issue 1: Whether the grade applied is excessive, resulting in an unjust and inequitable assessment.

47. The Petitioner failed to show that the grade assigned to the property is incorrect or that the requested grade of C-1 is proper. No change is made.

Determination of Issue 2: Whether depreciation was taken into account in calculating the true tax value.

48. The subject improvements were constructed in 1997-1999; therefore, no depreciation is to be applied until the general reassessment of real estate, which is to be completed for the March 1, 2002 assessment date. No change is made in the assessment as a result.

Determination of Issue 3: Whether the assessor was without legal authority to reassess the subject parcels in June 2001.

49. The Petitioner failed to establish that the assessor lacked the legal authority to reassess the subject parcel. No change in the assessment is made.

Determination of Issue 4: Whether the assessor failed to follow the procedural requirements of the Indiana Code concerning assessment appeals.

50. The Petitioner failed to show by a preponderance of the evidence that due process was denied as a result of irregularities in the procedural requirements for assessment appeals.

The above stated findings of fact and conclusions of law 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 _____, 2003.

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.