

**STATE OF INDIANA  
Board of Tax Review**

In the matter of the re-hearing of the        )  
Petition for Review of Assessment,        )  
Form 131                                                )     Petition No. : 49-144-95-1-4-00022

Parcel No. : 1082841

Assessment Year: 1995

Petitioner: Meridian Interstate Associates  
11711 N. Pennsylvania Street  
Carmel, IN 46038

Petitioner Representative: Baker & Daniels  
300 North Meridian Street, Suite 2700  
Indianapolis, IN 46024

**Findings of Fact and Conclusions of Law**

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**Issues**

1. Whether additional evidence should be considered on rehearing.
2. Whether the Grade Factor should be "B" instead of "B+1".

3. Whether the assessment is not in accordance with the Indiana Constitution, the Indiana Property Tax Assessment Statutes, and the State Board of Tax Commissioners' Regulations.

### **Findings of Fact**

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also if appropriate, any conclusion of law made herein shall also be considered a finding of fact.
2. Pursuant to Ind. Code § 6-1.1-15-3, the Petitioner filed a petition requesting a review by the State. The Marion County Property Tax Assessment Board of Appeals (PTABOA) issued its Final Determination on September 24, 1999. The Form 131 petition was filed on October 20, 1999. The hearing before the State Board was held on January 10, 2000. The State Board issued its Final Determination on March 21, 2000. A rehearing was requested by the Petitioner and granted by the State Board on April 28, 2000.
3. Pursuant to Ind. Code § 6-1.1-15-4, a rehearing was held on June 22, 2000 before Hearing Officer Debra Eads. Ms. Janet Charles and Mr. Kevin Reiter of Baker & Daniels represented the Petitioner. Mr. Frank Corsaro represented Center Township. Mr. Kevin Fasick briefly appeared to submit a brief in representation of Marion County.
4. At the hearing, the subject Form 131 was made part of the record and labeled as Board Exhibit A. The Notice of Hearing was labeled as Board Exhibit B. In addition, the following evidence was submitted:

Petitioner's Exhibit 1 – Petitioner brief containing: Text concerning Grade Factor with photos of the subject property and photos of parcels 1026331, 8058181, 8058182, 6010444, 8001935, 8051334, 1082878, 1005124, 92-3572-4082 and 17-13-11-04-01-17-001.000; 1) Property Record Card of

subject property; 2) Rule 11 Page 19 from 50 IAC 2.2; 3) Petitioner weighted grade calculation; 4) Final Determination and/or Property Record Card of petitioner comparable properties.

Petitioner's Exhibit 2 – Additional Petitioner Brief containing: 1) Final Determination and Findings of Fact and Conclusions of Law for the original 1995 STB Hearing for the subject property; 2) Photos and footprint of the subject property; 3) Affidavit of John M. Blakley; 4) Side-by-Side comparison of the subject property and Gateway Plaza, One College Park and KATC. 5) Photos of six (6) petitioner comparable properties; 6) Photos identifying established grade for three (3) Petitioner comparable properties; 7) Final Determinations for parcels 1010526, 8051951 and 1081264.

Respondent's Exhibit 1 – Respondent brief containing text only.

Respondent's Exhibit 2 – Rule 4 page 58 from Regulation 17 (1989 version).

Respondent's Exhibit 3 – Sales Disclosure of the subject property.

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

#### **Conduct of Rehearing and Submission of Additional Evidence**

7. Ms. Charles stated that the position of the Petitioner is that information was considered in the original Final Determination that was the result of ex-parte communication between the original Hearing Officer and Kevin Fasick of the Marion County Assessor's Office.

8. She further testified that in two (2) other situations where ex-parte communications had occurred, the finding of the Tax Court was in favor of the Petitioner due to the procedural flaw.
9. Ms. Charles also stated that a rehearing does not cure the defect under the Indiana State Constitution. She testified that the only evidence to be considered should be that which was submitted during the original hearing.
10. Ms. Charles then proceeded to introduce additional evidence that she indicated might have been previously submitted by the Petitioner if they had been privy to the communication between the Representative for Marion County and the original Hearing Officer.
11. When questioned by the Hearing Officer if specifics in the Findings of Fact from the original hearing made it clear that the information submitted by Marion County's Representative was considered in the original findings, Ms. Charles pointed to paragraph number 39 of the findings where the information is referenced.
12. When Mr. Fasick arrived for the hearing, he presented a duplicate of the brief that he submitted to the original Hearing Officer. A copy was given to Ms. Charles, who stated that she had not previously received a copy.
13. Ms. Charles stated that the inability of Mr. Fasick to remain and be cross-examined about his exhibit was unfair to the Petitioner.
14. Mr. Corsaro replied that Ms. Charles could question him with regard to the brief submitted by Mr. Fasick.

### **Grade and Design Factor**

15. Mr. Reiter testified that following the County Board Hearing he had gone on a field inspection of the subject building with representatives of the Marion County Board and Center Township. He stated that each of these three (3) individuals indicated to him that the Grade and Design Factor should be established as a “B”. When questioned by the Hearing Officer, Mr. Reiter stated that he had no documentation concerning his understanding of their Grade recommendation; it was a verbal discussion only.
16. Mr. Reiter testified that the lobby of the subject building has a marble floor and a marble wall on the elevator wall. Walls other than the elevator wall are paint and vinyl, the ceiling is standard height and the lighting is average.
17. Mr. Reiter reviewed the Petitioner’s weighted grade calculation (Petitioner’s Exhibit 1; tab 3) of the subject building.
18. Ms. Charles testified about the affidavit of John M. Blakley (Petitioner’s Exhibit 2; tab 3) which states that the granite used on the subject building is comparable to gray granite (\$23.15 per square foot of surface area) and that the labor costs were unaffected by the building shape.
19. She further testified that the information included in the Blakley affidavit might have been included with the Petitioner’s original exhibit if the Petitioner had been aware of the brief submitted by Marion County’s Representative.
20. The Petitioner’s original and supplemental briefs both include numerous photos of properties purported by the Petitioner to be comparable to the subject property.
21. Mr. Reiter testified concerning the side-by-side comparison (Petitioners Exhibit 2, tab 4) of the subject property with properties identified as Gateway Plaza (parcel

1026331), One College Park (parcel 6010444) and 9100 & 9200 Keystone at the Crossing (parcels 8001935 and 8051334).

22. Mr. Reiter further testified as to the attributes of properties 111 Monument Circle (parcel 1010526), Castle Creek (parcel 8051951) and 225 New Jersey (1081264) as compared to the subject. These three (3) properties are graded at “B-2”. Mr. Reiter testified that the interiors of these buildings are very comparable but the exterior of these three (3) buildings is inferior to the subject building.
23. Mr. Corsaro testified the State issued a determination in 1996 that determined the Grade of the subject building to be “B+2” for the 1989 assessment date.
24. Ms. Charles stated that it is her understanding that a Determination made by the Marion County Board of Review indicated a Grade of “B+2” and that the determination was not appealed to the State Tax Board.
25. Mr. Corsaro testified that the comparable properties submitted by the Petitioner have predominantly glass exteriors while the subject property has a granite exterior.
26. Mr. Corsaro submitted a copy of Rule 4 Page 58 from the 1989 Assessment Manual. He stated that the subject building was clearly comparable to the “A” Grade buildings depicted on this page.
27. Mr. Corsaro submitted a sales disclosure for the subject property (Respondent’s Exhibit 3) dated February 3, 1999. He questioned the Petitioner as to whether an appraisal was done in conjunction with this sale. Ms. Charles stated that they were not a party to the sale and had no information concerning it.

## Constitutionality

28. The issue of Constitutionality of the Assessment was not separately addressed, but rather incorporated in the issue of grade.

## Conclusions of Law

1. The Petitioner is statutorily limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 130 petition. Ind. Code §§ 6-1.1-15-1, -2.1, and -4. See also the Forms 130 and 131 petitions. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, a new issue with respect to rehearing and evidence is addressed.
2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

### **A. Indiana's Property Tax System**

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.
4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State's decision.

### **B. Burden**

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax*



*Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).

8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).
10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. “Allegations, unsupported by factual evidence, remain mere allegations.” *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
11. The taxpayer’s burden in the State’s administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested

property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. In this way, the taxpayer properly frames the inquiry as to “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Town of St. John V*, 702 N.E. 2d at 1040.

12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer’s case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not “triggered” if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State’s final determination merely because the taxpayer demonstrates flaws in it).

### **C. Review of Assessments After *Town of St. John V***

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed

value assigned to the property does not equal the property's market value will fail.

16. Although the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.
17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

#### **Conduct of Rehearing and Submission of Additional Evidence**

18. The Petitioner argues that their due process rights have been violated due to the receipt of additional evidence after the original hearing held on January 10, 2000. The Petitioner continues by stating "allowing such evidence to be submitted as part of this rehearing is also unconstitutional because it is highly unlikely that the State Tax Board can be objective given the fact that it already issued its final order." *Petitioner Exhibit 2, page 1*.
19. The Petitioner argues the "cure to this due process violation is to exclude the evidence presented by the County after the proceedings were closed." *Petitioner Exhibit 2, page 3*.
20. The State decided to conduct a rehearing in this matter, and at the rehearing the brief was presented by the County, and the Petitioner presented the new evidence as well.
21. This is an appropriate remedy for this type of situation. In *Lantern Hills Conservancy v. State Board of Tax Commissioners*, 516 N.E. 2d 119 (Ind. Tax

1987), the Tax Court held “All parties should have an opportunity to review and rebut any evidence obtained by the State Board outside of hearing pursuant to Ind. Code § 6-1.1-30-12.”

22. The Tax Court, in *Lantern Hills*, remanded the case to the State for further proceedings. Thus, in *Lantern Hills* a rehearing was conducted, new evidence could have been introduced. Therefore, in this case, the granting of a rehearing, before a new Hearing Officer and allowing both parties to submit new evidence is a proper remedy.
23. In *Indiana Dept. of Public Welfare v. DeVoux*, 314 N.E. 2d 79 at 87 (Ind. App. Ct. 1974), the court stated: “The administrative agency here improperly considered certain materials. The impropriety was not inherent in the nature of the evidence itself, but rather in the fact that DeVoux, the claimant, had not had an opportunity to rebut it.”
24. The Court in *DeVoux* continued by holding “that the matter be resubmitted to the Welfare Department at the ‘fair hearing’ level for rehearing.” *Id.*
25. In *Adkins v. City of Tell City*, 625 N.E. 2d 1298 (Ind. App. Ct. 1993), the court stated: “A court may not review an administrative action *de novo*. If a court finds error in administrative proceedings, it may only vacate the decision and remand to the agency for further consideration.” *Id.* at 1303.
26. The Petitioner presented a Supplemental Brief at the rehearing (Petitioner’s Exhibit 2). This brief contains the following new evidence:
  - a. additional photographs of the subject building;
  - b. sketch of the subject building;
  - c. an affidavit of John M. Blakely;
  - d. spreadsheet comparing other office structures to the subject;
  - e. photographs of other office structures with a grade of B, with sketches
  - f. photographs of other office structures with a grade of B-2; and

g. PRCs related to office structures.

27. Accordingly, the State held this rehearing. At this rehearing the parties were allowed to present any evidence they deemed appropriate for this appeal.

### **Grade and Design Factor**

28. “Grade” means the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.

29. Grade is used in the cost approach to account for variations from the norm or “C” grade. The quality and design of a building are the most significant variables in establishing grade. 5- IAC 2.2-10-3.

30. 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.

31. 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%

32. Intermediate grade levels ranging from A+10 through E-1 are also provided for in the Manual to adequately account for quality and design factors between major grade classifications. 50 IAC 2.2-10-3(c).
33. Mr. Reiter’s purported knowledge of the intended Grade to be established by the Marion County Board of Review cannot carry any weight in this determination due to the fact that the actual Grade Factor established by the Board and included in the 115 Determination is the only Grade to be addressed in this appeal at this point.
34. The Petitioner’s determination of the appropriate Grade Factor for the subject property relies heavily on their “Weighted Grade Analysis” calculation included in the Petitioner’s Exhibit 1, tab 3.
35. The first part of the Petitioner’s calculation is a “Weighted Interior Finish Grade Factor”. The Petitioner “assigned” a grade factor to each floor. The grade factor is multiplied by the floor percentage of the building to determine the weighted grade. The total weighted grade is then multiplied by 60% to determine the “Grade Factor Attributable to Interior Finish”. The Petitioner presented photographs to support the grade factor the Petitioner assigned to each floor. Petitioner’s Exhibit 1 contains twelve (12) photographs of the subject, one (1) exterior and eleven (11) interior. Petitioner’s Exhibit 2, tab 2 contains the original twelve (12) photographs plus five (5) additional interior photographs. The photographs included two of the basement, one of each floor except the seventh floor, and one photograph each of a typical elevator lobby, restroom and office finish (showing carpet and base molding).
36. Some of the photographs presented are dark and it is difficult to make out the features. One photograph per floor, when floors contain 18,513 to 23,958 square

feet is not sufficient to support the Petitioner's determination of grade for each floor.

37. The second part of the Petitioner's calculation is the "Grade Factor Attributable to Exterior Finish". The Petitioner determined the "Grade Factor Attributable to the Building Structure" as a B+2 or 140%. The Petitioner then multiplied the 140% by 40% to reach the "Grade Factor Attributable to Exterior Finish" of 56%. To support the exterior grade factor, the Petitioner presented only one photograph of the exterior of the subject.
38. The Petitioner's determination of grade for the interior and exterior are conclusory and not supported by evidence. The conclusions of the Petitioner's Representative do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
39. The Petitioner attempts to support the weighting of the grade with a calculation included on Page 12 of the Petitioner's Brief (Petitioner's Exhibit 1). The Petitioner indicates that 60% of the base square foot rate for office space is attributable to the interior finish and mechanical components of the structure. If that calculation had been made in the reverse and the unit-in-place cost of the concrete block back-up and standard face brick (as called for in the manual) had been calculated as a percentage of the base rate, the percentages would be 45% for the exterior and 55% for the interior components. ( $17.10 \div 38.23 = 44.72\%$  for the exterior percentage)
40. The disparity of these two (2) calculations illustrates that the component costs are not clearly disassociated from one another. For instance, the interior walls are attached to the exterior framing, as are other components of the interior finish. In other words, manipulation of the mathematics alone is insufficient to support a change in assessment.

41. The Petitioner's calculation of Grade is not an acceptable calculation method for determining Grade and does not constitute probative evidence.
42. The Petitioner did present properties that the Petitioner claimed were similarly situated (Petitioner's Exhibit 2, tab 4). The Petitioner provided a side by side comparison of certain features of the properties. The Petitioner compared the elevator lobbies, common restrooms, corridors, elevator cabs and main lobbies, which actually represent only a small portion of the overall structure. The Petitioner also compared a few of the exterior features. Simply stating that the properties are comparable is inadequate. The Petitioner is required to present probative evidence that the comparable properties are in fact, comparable to the subject.
43. Grade is the composite of both interior and exterior features, quality of materials and workmanship, and quality of style and design. Very limited information is given with regard to the actual material used in the construction of the structure. Construction materials are mentioned in the comparisons made with three (3) other downtown structures. While some building features were indicated by the Petitioner to be more costly in the comparable buildings than in the subject structure; no comprehensive effort was made to quantify how much difference these features would make to the overall cost of the structure. The Petitioner's side-by-side comparison with highlighting is merely conclusory. The Petitioner's conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
44. The three (3) properties identified as 111 Monument Circle, Castle Creek and 225 New Jersey have been submitted as buildings whose Grade Factor should be less than that of the subject building. The Grade Factor of these properties illustrates this fact. The purpose of the inclusion of properties with a Grade Factor not comparable with the subject property, when by the Petitioner's own testimony these properties are in fact not comparable to the subject building is unclear to the Board.



45. For all the reasons above, the Petitioner failed to meet their burden in this appeal. Accordingly, no change is made to the assessment.

**Constitutionality**

46. The issue of Constitutionality of the Assessment was not separately addressed. No change is made to the assessment as a result of this issue.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this \_\_\_\_ day of \_\_\_\_\_, 2002.

---

Chairman, Indiana Board of Tax Review