

**STATE OF INDIANA**  
**Board of Tax Review**

In the matter of the Petition for Review )  
of Assessment, Form 131 )      Petition No. : 10-008-95-1-4-00037

Parcel No.: 21000290151

Assessment Year: 1995

Petitioner:    NBD Indiana Properties Inc.  
                  460 Spring Street  
                  Jeffersonville, Indiana

Petitioner's Representative: Uzelac & Associates  
  4155 E. Stop 11 Rd., Suite 22  
  Indianapolis, Indiana 46237

**Findings of Fact and Conclusions of Law**

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

**Issues**

1.    Whether the construction of the basement walls is concrete block and should be classified as Type 1.
2.    Whether the wall heights of the basement and first floor are correct.
3.    Whether interior adjustments should be made for partitions.
4.    Whether interior adjustments should be made for the floor finish.
5.    Whether interior adjustments should be made for the ceiling finish.

6. Whether interior adjustments should be made for the wall finish.
7. Whether the number of plumbing fixtures is correct.
8. Whether the auto-tellers are personal property.
9. Whether the money vault and the record storage vault are the same size.
10. Whether the grade is correct at B+1.
11. Whether the correct depreciation schedule has been used.
12. Whether obsolescence is warranted.

### **Findings of Fact**

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also if appropriate, any conclusion of law made herein shall also be considered a finding of fact.
2. Pursuant to IC § 6-1.1-15-3, Mr. Rex Hume of Uzelac & Associates, on behalf of NBD Indiana Properties Inc. (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 was filed on August 2, 1996. The Clark County Board of Review's (County Board) Assessment Determination on the underlying Form 130 petition is dated July 3, 1996.
3. Pursuant to IC § 6-1.1-15-4, a hearing was scheduled for September 10, 1999 before Hearing Officer Jennifer Bippus. Prior to the hearing Mr. Rex Hume, Uzelac & Associates, faxed his testimony and sent photographs (2) to the Hearing Officer in lieu of appearing at the hearing. No one appeared to represent the Township, County or County Board.
4. A review of the July 3, 1996 County Board Assessment Determination on the underlying Form 130 shows the County Board agreed to the following changes for the subject property:
  - a) The grade is changed from B+1 to a C+2.
  - b) The number of plumbing fixtures is 12, instead of 9.

A review of the County Board property record card indicates the County made the change in the number of plumbing fixtures but failed to make the change in grade (Board Exhibit C). The Hearing Officer verified these changes were to be completed with the Jeffersonville Township Assessor's office on October 26, 1999.

5. On December 13, 1996, the County Assessor's office also made the following changes to the subject property record card via a Correction of Error, Form 133 (Board Exhibit D):

- a) The auto-tellers were determined to be personal property and not real property. The auto-tellers were removed from the real property assessment and assessed as personal property.
- b) The "exterior features" valuation was changed from \$13,200 to \$600.

6. At the administrative hearing held September 10, 1999, the subject Form 131 petition was made a part of the record as Board Exhibit A. Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following exhibits were submitted:

Board Exhibit C – Copy of County Board property record card (PRC)

Board Exhibit D – Copy of County PRC reflecting changes via a  
Form 133 petition

Petitioner Exhibit A - Petitioner's brief prepared by Mr. Hume sent to the Hearing Officer via facsimile dated September 9, 1999.

Petitioner Exhibit B - Copy of brief with issues listed with the following attachments:

- a) Revised calculations, notes, and pricing of a one-story building
- b) Copies of the bank and general office models

Petitioner Exhibit C – Two (2) exterior photographs of bank and auto-tellers

7. The subject property is a bank located on Allison Lane, Jeffersonville, Jeffersonville Township, Clark County.

8. The Hearing Officer did not view the subject property.

**Issue No. 1 – Whether the construction of the basement walls is concrete block and should be classified as Type 1.**

9. Prior to the hearing, the Hearing Officer received from Mr. Hume a facsimile indicating the Petitioner's position on this issue. This facsimile was sent in lieu of Mr. Hume's appearance at the hearing.

10. The Petitioner's brief calls for the basement walls to be classified as Type 1 due to concrete block construction.

**Issue No. 2 – Whether the wall heights of the basement and first floors are correct.**

11. Prior to the hearing, the Hearing Officer received from Mr. Hume a facsimile indicating the Petitioner's position on this issue. This facsimile was sent in lieu of Mr. Hume's appearance at the hearing.

12. The Petitioner's brief calls for wall heights to be as follow:

Basement	10 feet, rather than 8 feet
First Floor	12 feet, rather than 10 feet
Second Floor	10 feet, as shown

**Issue No. 3 – Whether interior adjustments should be made for partitions.**

13. Prior to the hearing, the Hearing Officer received from Mr. Hume a facsimile indicating the Petitioner's position on this issue. This facsimile was sent in lieu of Mr. Hume's appearance at the hearing.

14. The Petitioner's brief requests an adjustment for lack of partitions. The Petitioner's brief alleges the building does not meet the standards of the model which specifies finished divided. The Petitioner contends this is partly because the ceilings of the subject property are lower than those specified in the model for the first and second floors, and partly because the partitions are relatively inexpensive.
15. The Petitioner further contends that the following adjustments be made for lack of partitioning in the subject property:
  - a) First floor: change to 80% finished open, removing 80% (\$10.24) of the partition allowance.
  - b) First floor: remove 25% of the remaining partition cost to account for partitions that are 9 feet high instead of 12 feet specified in the bank model.
  - c) Second floor: change to 2/3 finished open, removing 2/3 (\$6.00) of the partition allowance.
  - d) Second floor: remove 20% of the remaining partition cost to account for partitions that are 8 feet high instead of the 10 feet specified in the model.

**Issue No. 4 – Whether interior adjustments should be made for the floor finish.**

16. Prior to the hearing, the Hearing Officer received from Mr. Hume a facsimile indicating the Petitioner's position on this issue. This facsimile was sent in lieu of Mr. Hume's appearance at the hearing.
17. The Petitioner's brief requests an adjustment for floor finish. The Petitioner asserts that the bank model specifies floors that are 25% terrazzo and 75% carpet on pad. The first floor has almost all carpet, and a little vinyl. In his brief, the Petitioner proposes to treat it as all carpet, which requires removing the difference between terrazzo and carpet for 25% of the area. Carpet costs \$2.00 per square foot, and terrazzo costs \$4.70 per square foot. The difference of \$2.70 per square foot for 25% of the floor area is a -\$0.68.

**Issue No. 5 – Whether interior adjustments should be made for the ceiling finish.**

18. Prior to the hearing, the Hearing Officer received from Mr. Hume a facsimile indicating the Petitioner's position on this issue. This facsimile was sent in lieu of Mr. Hume's appearance at the hearing.
19. The Petitioner's brief requests an adjustment for the ceiling finish. The Petitioner contends that the bank model calls for ceilings of plaster on lath, but the first floor of this bank has suspended acoustic tile ceilings. The difference between the two ceilings as shown in Schedule C is a  $-\$0.45$ .

**Issue No. 6 – Whether interior adjustments should be made for the wall finish.**

20. Prior to the hearing, the Hearing Officer received from Mr. Hume a facsimile indicating the Petitioner's position on this issue. This facsimile was sent in lieu of Mr. Hume's appearance at the hearing.
21. The Petitioner's brief requests an adjustment for the wall finish. The Petitioner contends that the ceiling height of the first floor is 3' lower than the bank model, and second floor ceiling height is 2' lower than those specified in the general office model, calling for an adjustment in the interior finish of exterior walls (the base rate includes wall finish to the model ceiling height). The adjustment is 25% of wall finish of the first floor and 20% for the second, yielding an adjustment of  $-\$2.89$ .
22. The Petitioner's brief explains that the above adjustments claimed are calculated using 50 IAC 2.2-11-6, Schedule C.

**Issue No. 7 – Whether the number of plumbing fixtures is correct.**

23. Prior to the hearing, the Hearing Officer received from Mr. Hume a facsimile indicating the Petitioner's position on this issue. This facsimile was sent in lieu of Mr. Hume's appearance at the hearing.
24. The Petitioner's brief requests the number of plumbing fixtures should be 12 and not 9.

**Issue No. 8 – Whether the auto-tellers are personal property.**

25. Prior to the hearing, the Hearing Officer received from Mr. Hume a facsimile indicating the Petitioner's position on this issue. This facsimile was sent in lieu of Mr. Hume's appearance at the hearing.
26. The Petitioner contends that the bank has no real property auto-tellers. In his brief the Petitioner points out that, in order to be assessed as real property, an auto-teller must have a pneumatic tube system that is "...in-ground permanent type construction." The machines in use have overhead transport systems, and are personal property. (50 IAC 2.2-11-6, Rule 11, page 116)

**Issue No. 9 – Whether the money vault and the record storage vault are the same size.**

27. Prior to the hearing, the Hearing Officer received from Mr. Hume a facsimile indicating the Petitioner's position on this issue. This facsimile was sent in lieu of Mr. Hume's appearance at the hearing.
28. The Petitioner's brief asserts that the money vault and the record storage vault are the same size, (one sits on top of the other), measuring 14 feet x 17 feet, with an area of 98 square feet.

**Issue No. 10 – Whether the grade is correct at B+1.**

29. Prior to the hearing, the Hearing Officer received from Mr. Hume a facsimile indicating the Petitioner's position on this issue. This facsimile was sent in lieu of Mr. Hume's appearance at the hearing.
30. The Petitioner's brief requests a C-1 grade for the following reasons:
- a) The bank fits the description of the "C" grade building, moderately attractive and constructed with average quality materials and workmanship.
  - b) The HVAC model calls for zoned air conditioning with chilled and warm water. This building has forced air, which is less expensive to install than the model version.
  - c) The overall finish is made up of inexpensive materials, described as "economy materials and workmanship," a phrase used in the grade D definition.
  - d) There is significantly less space devoted to window openings than the models provide.

**Issue No. 11 – Whether the correct depreciation schedule has been used.**

31. Prior to the hearing, the Hearing Officer received from Mr. Hume a facsimile indicating the Petitioner's position on this issue. This facsimile was sent in lieu of Mr. Hume's appearance at the hearing.
32. The Petitioner's brief calls for the depreciation to be taken from the 40-year life depreciation table. This change would place the depreciation at 35% instead of the 30%.



## **Issue No. 12 – Whether obsolescence is warranted.**

33. Prior to the hearing, the Hearing Officer received from Mr. Hume a facsimile indicating the Petitioner's position on this issue. This facsimile was sent in lieu of Mr. Hume's appearance at the hearing.
  
34. The Petitioner's brief requests 45% obsolescence depreciation for the following reasons:
  - a) The building suffers from a substantial super-abundance of space.
  - b) The second floor is totally unused.
  - c) The basement use is confined to rest rooms (there are none on the first floor); an employee break room; and a small storage area.
  - d) The bank is a neighborhood branch instead of a main bank, and the first floor is not fully utilized.
  - e) The request of 45% obsolescence is equal to the proportion of total reproduction cost that is attributable to the basement and the second floor.

The Petitioner provided the calculations of the first floor alone, and shows percentage of the total that is allocable to those floors. Also attached were revised calculations, notes, and pricing of a one-story building.

### **Conclusions of Law**

1. The Petitioner is statutorily limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 130 petition. Ind. Code §§ 6-1.1-15-1, -2.1, and -4. See also the Forms 130 and 131 petitions. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz*

(1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.

2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

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

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.
4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity

and equality of each *individual* assessment. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.

6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State’s decision.

### **B. Burden**

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr.,

*Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).

10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
11. The taxpayer's burden in the State's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V*, 702 N.E. 2d at 1040.
12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer

must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not “triggered” if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State’s final determination even though 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.

## **Petitioner's Presentation of the Evidence.**

18. It should be noted that prior to the State administrative hearing held on September 10, 1999 the Hearing Officer received from Mr. Hume a facsimile (Petitioner Exhibit A) stating that he would not be able to attend the hearing. At the same time Mr. Hume faxed the Petitioner's position and proposed property record card (Petitioner Exhibit B) on all of the issues for review by the State. Under a separate cover Mr. Hume also submitted two (2) exterior photographs of the bank and auto-tellers (Petitioner Exhibit C). This information was the extent of the evidence presented by Mr. Hume on behalf of the Petitioner.

## **Issue No. 1 – Whether the construction of the basement walls is concrete block and should be classified as Type 1.**

19. The Petitioner claims that the basement wall type should be classified as Wall Type 1 because the walls are constructed of concrete block.
20. 50 IAC 2.2-11-1 (24) Model: GCM - General Office – Basement, allows for either Type 1 and Type 2 walls. Per the model the wall types are listed as follows:
- Type 1: Reinforced concrete block with 1 coat of waterproofing for a 10' wall height.
  - Type 2: Reinforced concrete with 2 coats of waterproofing for a 10' wall height.
21. Though the Petitioner claims the basement walls are constructed of concrete block, the Petitioner does not present any documentation, other than its brief (Petitioner's Exhibit B), that would tend to support this claim.
22. 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).

23. Taxpayers are required “to do something more than simply allege that an error exists in the assessment . . . “ *Whitley*, 704 N.E. 2d at 1119.
24. Taxpayers are expected to make detailed factual presentations to the State 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)).
25. 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).
26. The State concludes that an unsworn, written statement of evidence, unaccompanied by any other verification or support, is insufficient to contradict a facially valid assessment.
27. For all the reasons set forth above, the Petitioner failed to meet his burden on this issue. No change in the assessment is made as a result of this issue.

**Issue No. 2 – Whether the wall heights of the basement and first floor are correct.**

28. The Petitioner claims the wall height of the basement and first floors are incorrect. The Petitioner claims the wall heights should be:
  - Basement – 10 feet rather than 8 feet
  - First floor – 12 feet rather than 10 feet

29. Though the Petitioner claims the wall heights are incorrect, the Petitioner does not present any documentation, other than their brief (Petitioner's Exhibit B), that would tend to support this claim.
30. As stated in ¶¶ 22 – 25 Mr. Hume alleges an error exists but fails to make a detailed factual presentation as well as failing to submit probative evidence of the alleged error.
31. The State concludes that an unsworn, written statement of evidence, unaccompanied by any other verification or support, is insufficient to contradict a facially valid assessment.
32. For all of the reasons set forth above, the petitioner failed to meet his burden on this issue. No change in the assessment is made as a result of this issue.

**Issue No. 3 – Whether interior adjustments should be made for partitions.**

**Issue No. 4 – Whether interior adjustments should be made for the floor finish.**

**Issue No. 5 – Whether interior adjustments should be made for the ceiling finish.**

33. The Regulation provides for a number of use -type models, e.g., GCR –Motel Unit. See 50 IAC 2.2-11 describing features for each use-type model. The use-type models were never intended to describe with exactitude the features of the building being assessed. In fact, it would be impossible for any regulation to accomplish such a task.
34. 50 IAC 2.2-11-6, Schedule A, provides for adjustments from the square foot base rate. The same rule, Schedule C, also provides for adjustments that may be made to the base rate. Schedule C adjustments fall in to three (3) categories: (1) base price components and adjustments, (2) unit cost adjustments, and (3) unit finish adjustments. 50 IAC 2.2-11-6.1.



35. The base price components and adjustments found in Schedule C show the cost of the interior and mechanical components included in the base rate to facilitate deduction from the base rate where appropriate. *Id.* Oftentimes, making adjustments from Schedule C- Base Price Components and Adjustments- is a simple task assuming the taxpayer or taxpayer representative provides sufficient and supporting evidence regarding the building's features or the lack of them. Other Schedule C adjustments are more involved.
36. The unit cost adjustments found in Schedule C consist of a table of unit costs for the most typical interior components. Because the base reproduction cost tables for the various models include interior finish and other features, *it is necessary to make cost adjustments only when a significant variation occurs* between the model and the subject building. 50 IAC 2.2-10-6.1(c)(2) (emphasis added).
37. The unit finish adjustments found in Schedule C consist of tables of composite adjustments that are applied to apartments and motel and hotel units. *Id.*
38. There are two methods to adjust an improvement's assessment for deviations from the model. The first is to adjust the grade of the subject. "Where possible, this type of an adjustment should be avoided because it requires an assessing official's subjective judgment." *Clark v. State Board of Tax Commissioners*, 742 N.E. 2d 46, 49 (Ind. Tax 2001)(*Clark II*). See also *Whitley*, 704 N.E. 2d 1113.
39. "Under some circumstances, an improvement's deviation from the model used to assess it may be accounted for via a grade adjustment." However, the evidence presented must explain how and to what extent the subject deviates from the model, why those deviations deserve an adjustment, and why a subjective (as opposed to objective) adjustment is appropriate. *Quality Farm and Fleet, Inc. v. State Board of Tax Commissioners*, 747 N.E. 2d 88, 94 (Ind. Tax 2001).
40. The second, and preferred method, "is to use separate schedules that show the cost of certain components and features present in the model. This method

allows an assessing official to make an objective adjustment to improvement's base rate." *Clark II*, 742 N.E. 2d at 49. See also *Whitley*, 704 N.E. 2d 1113.

41. The Petitioner must identify the model used to assess the improvement. The Petitioner must also demonstrate whether the current grade does not already account for lower construction costs due to these features. *Miller Structures v. State Board of Tax Commissioners*, 748 N.E. 2d 943, 953 (Ind. Tax 2001). Accordingly, the Petitioner must show how the subject deviates from the model, and quantify how the alleged deviations affect the subject's assessment.
  
42. A review of the partitioning issue shows the following:  
50 IAC 2.2-11-1(6) Model: GCM – Bank - states under "Partitions", Frame partitions average cost construction typical of finished divided areas found in banks.  
50 IAC 2.2-11-1(25) Model: GCM – General Office – states under "Partitions", frame interior partitions average cost construction typical of finished divided office buildings for a ceiling height of 10' [feet].  
The Regulation does not specify the density of the partitioning one would expect to find for the bank or general office models. Instead, the Regulation states only that partitions are "typical" of finished divided areas found in banks and general office areas.
  
43. A review of the ceiling and floor finish issues shows the following:  
50 IAC 2.2-11-1(6) Model: GCM – Bank – states under "Ceiling", 70% plaster on lath painted, 30% luminous panels, including ceiling structure and ceiling insulation. Floors to be, 75% carpet and pad, 25% terrazzo or equal.  
50 IAC 2.2-11-1(24)(25) and (26) Model: GCM – General Office – states under "Ceiling", Acoustical tile constructed of mineral fiber including suspension system. Floors to be, 100% vinyl or carpet and pad at 95% coverage, ceramic and quarry tile 5%.

44. Though Mr. Hume has requested adjustments and has calculated what “he” feels those adjustments should be, Mr. Hume has failed to submit any evidence that would support the adjustments requested. Mr. Hume failed to present any photographs with explanation as to what those photographs represented as it related to the issue. Mr. Hume failed to present any blueprints or material lists of the structure as they related to the issues.
45. As stated in ¶ 22 – 25 Mr. Hume alleges an error exists but fails to make a detailed factual presentation as well as failing to submit probative evidence of the alleged error.
46. The State concludes that an unsworn, written statement of evidence, unaccompanied by any other verification or support, is insufficient to contradict a facially valid assessment.
47. For all of the reasons set forth above, the petitioner failed to meet his burden on these issues. No change in the assessment is made as a result of this issue.

**Issue No. 6 – Whether interior adjustments should be made for the wall finish.**

48. As stated in Conclusion of Law ¶ 1, the Petitioner is limited to those issues raised in the Form 131 petition filed with the State. The State also “has the discretion to address any issue once an appeal has been filed by the taxpayer.”
49. In the case at bar, the issue of wall finish was not raised on the Form 131 but was incorporated within the Petitioner’s brief (Petitioner’s Exhibit B) for consideration. However, the State will not exercise its’ discretion and the issue of wall finish will not be reviewed.

**Issue No. 7 – Whether the number of plumbing fixtures is correct.**

50. As stated in Conclusion of Law ¶ 1, the Petitioner is limited to those issues raised in the Form 131 petition filed with the State. In the case at bar, the issue of plumbing fixtures was not raised on the Form 131 but became an issue when the County Board made their review on the underlying Form 130.
51. Based on the County Board's review, they determined the number of plumbing fixtures to be 12. In Mr. Hume's brief (Petitioner's Exhibit B) he agreed the number of plumbing fixtures was 12.
52. It should be noted the County Board corrected the number of plumbing fixtures in their review of the issues on the Form 130 petition on the subject's PRC. Since both parties are in agreement as to the number of plumbing fixtures (12) and this number is shown on the County PRC, the State will take no further action on this issue.

**Issue No. 8 – Whether the auto-tellers are personal property.**

53. With the filing of the Form 130 petition May 8, 1996, the Petitioner requested the review of the auto-tellers as personal property by the County Board. The County Board made no change to this issue. The Petitioner then filed a Form 131 petition with the State that included this issue. However, on December 13, 1996 the County determined the auto-tellers were incorrectly assessed as real property and changed them to personal property via a Form 133 Correction of Error petition. This correction removed them from the real property assessment.
54. Since the County made the change requested by the Petitioner on the Form 131 petition and this change is correctly shown on the County PRC, the State will take no further action on this issue.

**Issue No. 9 – Whether the money vault and the record storage vault are the same size.**

55. As stated in Conclusion of Law ¶ 1, the Petitioner is limited to those issues raised in the Form 131 petition filed with the State. The State also “has the discretion to address any issue once an appeal has been filed by the taxpayer.”
56. In the case at bar, the issue of vault sizes was not raised on the Form 131 but was incorporated within the Petitioner’s brief (Petitioner’s Exhibit B) for consideration. However, the State will not exercise its’ discretion and the issue of vault sizes will not be reviewed.

**Issue No. 10 – Whether the grade is correct at B+1.**

57. “Grade” is the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.
58. 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 2.2-10-3.
59. 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.
60. The Petitioner claims the subject property is made up of inexpensive materials used in "D" grade buildings. The Petitioner further claims the HVAC system is

sub-standard, and the window openings are fewer than the model shows. The Petitioner requests the subject structure be graded C-1.

61. There are two (2) methods to adjust an improvement's assessment for deviations from the model. The first is to adjust the grade of the subject.
62. "Under some circumstances, an improvement's deviation from the model used to assess it may be accounted for via a grade adjustment." However, the evidence presented must explain how and to what extent the subject deviates from the model, why those deviations deserve an adjustment, and why a subjective (as opposed to objective) adjustment is appropriate. *Quality Farm and Fleet, Inc. v. State Board of Tax Commissioners*, 747 N.E. 2d 88, 94 (Ind. Tax 2001).
63. "Where possible, this type of an adjustment should be avoided because it requires an assessing official's subjective judgment." *Clark v. State Board of Tax Commissioners*, 742 N.E. 2d 46, 49 (Ind. Tax 2001)(*Clark II*). See also *Whitley*, 704 N.E. 2d 1113.
64. The second, and preferred method "is to use separate schedules that show the cost of certain components and features present in the model. This method allows an assessing official to make an objective adjustment to the improvement's base rate." *Clark II*, 742 N.E. 2d at 49. See also *Whitley*, 704 N.E. 2d 1113.
65. The Petitioner must identify the model used to assess the improvement. The Petitioner must also demonstrate whether the current grade does not already account for the lower construction costs due to these features. *Miller Structures v. State Board of Tax Commissioners*, 2001 WL 422991 (Ind. Tax 2001). Accordingly, the Petitioner must show how the subject deviates from the model, and quantify how the alleged deviations affect the subject's assessment.

66. In the case at bar, Mr. Hume did not present any evidence that compared the cost differences between the existing features and those of the model. Nor did Mr. Hume provide any photographs of the alleged errors that supported his accusations. The lack of such an analysis makes Mr. Hume's statements conclusory and speculative and is not considered probative evidence.
67. 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.
68. While the Petitioner requests the subject structure be graded C-1, he did not submit any banks as comparables and thus failed to show disparate treatment of the subject bank.
69. As stated in ¶ 22 – 25 Mr. Hume alleges an error exists but fails to make a detailed factual presentation as well as failing to submit probative evidence of the alleged error.
70. The State concludes that an unsworn, written statement of evidence, unaccompanied by any other verification or support, is insufficient to contradict a facially valid assessment.
71. For all of the reasons set forth above, the petitioner failed to meet his burden on this issue. No change in the assessment is made as a result of this issue.

### **Additional Conclusion: Grade**

72. After the County Board hearing on the underlying Form 130, the County Board determined to change the number of plumbing fixtures from 9 to 12 and to change the grade from B+1 to C+2 (see County Board Assessment Determination, Board Exhibit A). The only change reflected on the County PRC is the change in plumbing fixtures. A further review of the County PRC shows a notation under the Memorandum section dated July 3, 1996 to change the grade to C+2 and the plumbing fixtures to 12. The Hearing Officer called the Jeffersonville Township Assessor's Office on October 10, 1999 to verify that a change in grade was to be made. The Jefferson Township Assessor's Office verified the grade was to be changed and had been an oversight on their part.
73. Because it was the County Board's intention to change the grade of the subject structure to C+2, the grade will be corrected to reflect this change.

### **Issue No. 11- Whether the correct depreciation schedule has been used.**

74. Per the Petitioner's brief (Petitioner's Exhibit B) the Petitioner is requesting a change in the physical depreciation to reflect 35% and not 30%. The Petitioner's position is that fire resistant buildings are depreciated from the 40-year life table. For a building that is 23 years old and in average condition the physical depreciation would be 35%.
75. 50 IAC 2.2-11-7 Commercial and Industrial Depreciation Tables, states under the 40-Year Life Expectancy table "wood joist apartments, medical facilities, parking garages, all-fire resistant buildings not listed elsewhere."
76. A review of the County PRC indicates the subject structure is a fire resistant framed building, 23 years old and in average condition. Based on this information the structure should be depreciated from the 40-year life table and receive 35% physical depreciation.



77. The County Board had made the change to the PRC after the County Board hearing. This is shown on the County PRC. There is no notation under the Memorandum section of the County PRC, however, the Hearing Officer verified this change on October 26, 1999 with the Jeffersonville Township Assessor's office.
78. Due to the Petitioner's issue and the change made by the County that reflected the Petitioner's request, no further review is necessary by the State regarding this issue.

**Issue No. 12 – Whether obsolescence is warranted.**

79. Depreciation is a concept in which an estimate must be predicated upon a comprehensive understanding of the nature, components, and theory of depreciation, as well as practical concepts for estimating the extent of it in improvements being valued. 50 IAC 2.2-10-7
80. The elements of functional and economic obsolescence can be documented using recognized appraisal techniques. These standardized techniques enable a knowledgeable person to associate cause and effect to value pertaining to a specific property.
81. It is the Petitioner's contention the subject structure suffers from super-abundant space and could be replaced by a single story structure. The Petitioner contends the second floor is totally unused and the basement, other than the rest rooms, an employee break room and a little storage, is also not used. The Petitioner seeks the application of 45% obsolescence depreciation.
82. The Petitioner does not specifically state the type of obsolescence it seeks – functional or external (economic).

83. Functional obsolescence is the loss of value in a property improvement due to changes in style, taste, technology, needs, and demands and can take the form of deficiency or super adequacy. *IAAO Property Assessment Valuation* at 154 & 155.
84. External or economic obsolescence is the loss of value resulting from factors external to the property. *IAAO Property Assessment Valuation* at 155.
85. Depreciation, including obsolescence, can be documented by using recognized appraisal techniques. *Canal Square Limited Partnership, v. State Board of Tax Commissioners*, 694 N.E. 2d at 806. There are five (5) recognized methods to measure depreciation, including obsolescence; namely: (1) sales comparison method, (2) the capitalization of income method, (3) the economic age-life method, (4) the modified economic age-life method, and (5) the observed condition (breakdown) method. *IAAO Property Appraisal and Assessment Administration* at 223.
86. Regardless of the approach used to value property, and in the simplest of terms, the principle of substitution underlies all approaches to quantifying obsolescence. *IAAO Property Assessment Valuation*, 24 and Chapter 8, 155 – 186. Using hypothetical numbers, the following is illustrative of the recognized formula for measuring depreciation *from all causes* under the cost approach/sales comparison method:

Sales price of comparable property	\$100,000
<u>Less estimated land value</u>	<u>-40,000</u>
Improvement value	\$ 60,000

Replacement cost new (RCN) of the comparable improvement	110,000
<u>Improvement value</u>	<u>60,000</u>
Accrued depreciation from the market	50,000

Accrued depreciation (50,000 divided by  
RCN – cost new (110,000) =  
Accrued depreciation 45% (rounded)

RCN of subject building	104,000
<u>Accrued depreciation from comparable</u>	<u>X .45</u>
Depreciation <i>from all causes</i>	\$46,800

*IAAO Property Assessment Valuation*, 156 &157. Note that recognized appraisal practices would include more than one comparable.

87. The Petitioner's evidence consists of calculations where the value of the basement and second floors are deducted from the total reproduction cost. As stated earlier the Petitioner believes the basement and second floor are not in use and the values attributed to these floors should be deducted since they would not be contributing to the value of the property.
88. It is Mr. Hume's opinion that the functions of the bank could best be handled with a single story structure of the same size. To this end Mr. Hume submits a Hypothetical Replacement Building for a single story building that is nothing more than the same structure valued from the GCM schedule.
89. It should be noted the Petitioner in requesting the value of the basement be removed, contradicts his earlier statements (§ 81 and Petitioner's Exhibit B) that the rest rooms and break room are in use in the basement, and there is also some storage in the basement.
90. It is incumbent on the taxpayer to establish a link between the evidence and the loss of value due to obsolescence. After all, the taxpayer is the one who best knows his business and it is the taxpayer who seeks to have the assessed value of his property reduced. *Rotation Products Corp. v. Department of State Revenue*, 690 N.E. 2d 795, 798 (Ind. Tax 1998).

91. In obsolescence claims, the taxpayer has a two-prong burden of proof: (1) the taxpayer has to prove that obsolescence exists, and (2) the taxpayer must quantify it. *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1233 (Ind. Tax 1998).
92. In the case at bar, Mr. Hume's makes conclusory statements regarding the unused portions of the subject's basement and second floor. Mr. Hume also concludes the structure would be best suited as if it was to function as a single story building. In turn, Mr. Hume then seeks the application of obsolescence based on the comparison of the existing structure to a single story structure.
93. The fact that Mr. Hume makes conclusory statements about the existence of obsolescence and then submits a calculation that is nothing more than the valuation of a single story bank using the GCM pricing schedule, does not equate to probative evidence for obsolescence. Other than the statements found in Mr. Hume's brief, there is no supporting documentation presented on this issue by Mr. Hume.
94. Mr. Hume does not use any of the recognized methods to measure depreciation, including obsolescence. Mr. Hume does nothing more than subtract the reproduction cost of the basement and second floor from the total reproduction cost of the entire structure and points to that difference as obsolescence. Mr. Hume's characterization of this calculation as obsolescence quantification analysis does not contain a recognized method (§ 85) for measuring obsolescence.
95. The State concludes that an unsworn, written statement of evidence, unaccompanied by any other verification or support, is insufficient to contradict a facially valid assessment.

96. For all the reasons set forth above, no change in the assessment is made 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.

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Chairman, Indiana Board of Tax Review