

**STATE OF INDIANA
Board of Tax Review**

In the matter of the Petition for Review)

of Assessment, Form 131

)

Petition No. : 45-033-98-1-4-00001

Parcel No. : 395100550012

Assessment Year: 1998

Petitioner: Hank Adams, St. John Township Assessor
9157 Wicker Avenue
St. John, IN 46373

Taxpayer: SDD CO LLC
201 Colfax Avenue
Griffith, IN 46319

Taxpayer Representative: Uzelac & Associates, Inc.
1551 E. 85th St.
Merrillville, IN 46410

Findings of Fact and Conclusions of Law

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

Issue

1. Whether the Lake County Property Tax Assessment Board Of Appeals (PTABOA) grade change from "C" to "D" was correct.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also if appropriate, any conclusion of law made herein shall also be considered a finding of fact.
2. Pursuant to Ind. Code § 6-1.1-15-3, Hank Adams, St. John Township Assessor, filed a Form 131 petition requesting a review by the State. The Form 131 was filed on December 5, 2000. The PTABOA's Final Determination on the underlying Form 130 petition is dated October 31, 2000.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on September 7, 2001, before Hearing Officer Joan L. Rennick. Testimony and exhibits were received into evidence. Hank Adams, Alberta Massey, and Jacqueline Rokosz represented St. John Township (Petitioner). Paula E. Neff, attorney, Rex Hume of Uzelac & Associates, Inc., and William W. Moore of SDD Co. LLC represented the SDD Co. LLC, (Taxpayer). No one appeared to represent the PTABOA.
4. At the hearing, the subject Form 131 was made a part of the record and is labeled Board Exhibit A. Notice of Hearing on Petition is labeled Board Exhibit B. The Hearing Sign In Sheet is labeled Board Exhibit C. In addition, the following exhibits were submitted to the State:
Petitioner's Exhibit 1 – 50 IAC 2.2, Rule 11, Page 74 of photographs of C+1 Light Industrial Facility highlighted;
Petitioner's Exhibit 2 – 50 IAC 2.2, Rule 11, Page 33 of GCI Model: Light Manufacturing with written notes;
Petitioner's Exhibit 3 – Building Permit for subject property dated April 26, 1995;

Petitioner's Exhibits 4 thru 9 - Photographs of subject property;

Respondent's Exhibit 1 – Brief containing the following: Introduction, Detailed Comparison Charts, photographs, comparison studies, Model for GCI Light Manufacturing and Model for GCM General Office, subject property record card (PRC) prior to the PTABOA hearing, and two (2) State Final Determinations for GCK buildings in the area;

Respondent's Exhibit 2 – Cost Schedules from the 2002 Manual; and

Respondent's Exhibit 3 – Updated Power of Attorney.

5. The property is located at 201 S. Colfax St., Griffith, St. John Township, Lake County.
6. The Hearing Officer did not view the subject property.
7. At the hearing, all parties agreed the year under appeal was 1998. The Assessed Values as determined by the PTABOA are as follows: Land: \$9,230 and Improvements: \$132,600 for a Total of: \$141,830.
8. The Hearing Officer requested a PRC from both the Township and the County reflecting the changes made by the PTABOA, equating to the assessed values the parties had agreed to. The Township representatives informed the Hearing Officer, that such a card does not exist and that upon receiving the State's determination on this hearing, a new PRC would be created. The Hearing Officer's request for the same information from the Lake County Assessor went unanswered.
9. Using the assessed values the PTABOA reviewed totaling \$191,110 and applying the changes made by the PTABOA (grade), the Hearing Officer was not able to determine the values agreed to by the parties at this hearing.

Whether the PTABOA grade change from "C" to "D" was correct.

10. Uzelac & Associates, Inc. on behalf of SDD CO LLC filed a Form 130 petition to the PTABOA requesting a wall height correction and adjustment in grade. The PTABOA held a hearing, and subsequently granted the Uzelac & Associates, Inc. their requested changes.
11. The light manufacturing section of the subject building is a pre-engineered "Nucor" brand metal building on a five-foot poured concrete base that is valued using the GCI Light Manufacturing model. The office section is a two-story concrete block building with wood framed floors and roof and is valued using the GCM General Office model. The subject building was constructed in 1995, is in average condition and receives no depreciation (physical or obsolescence). Both sections had been assigned a grade of "C" by the Township Assessor, Mr. Adams, prior to the PTABOA changes.
12. Mr. Adams disagreed with the PTABOA's determination lowering the grade from a "C" to a "D" to account for variations from the model. Mr. Adams pointed out that a crane that supports 25 ton is in the light manufacturing section and the building has a five-foot concrete foundation. Ms. Massey referred to the concrete block used to construct the office section as decorator blocks that required no painting. Mr. Adams and Ms. Massey opined the subject building is well constructed and met or exceeded the model in some areas such as openings and lighting.
13. In addition, Mr. Adams submitted a building permit (Petitioner's Exhibit 3) dated April 26, 1995 with an estimated cost for the building as \$350,000. Mr. Adams stated the estimated cost listed on a building permit is usually less than the actual cost of construction.

14. Mr. Hume quantified the differences between the subject building and the model using two approaches (Respondent Exhibit 1) and verified the crane in the light manufacturing section is self-supporting.

Conclusions of Law

1. The Petitioner is limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 130 petition. 50 IAC 17-5-3; 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.
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.

Whether the PTABOA grade change from "C" to "D" was correct.

18. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. For the appeal under review, the Petitioner is the Township Assessor. Therefore, the burden is placed on Mr. Adams to prove that the "D" grade assigned by the PTABOA is incorrect.
19. "Grade" means the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.
20. Grade is used in the cost approach to account for variations from the norm or "C" grade. The quality and design of a building are the most significant variables in establishing grade. 50 IAC 2.2-10-3.
21. The approach to valuing commercial and industrial structures is primarily found in the State's Manual, 50 IAC 2.2-10. The approach to valuing commercial and industrial structures is the application and selection of various models to represent typical types of construction that best represents the structure being assessed. "The model is a conceptual tool used to replicate reproduction costs of a given structure using typical construction materials." 50 IAC 2.2-10-6-1. The construction components for each use type model are included in 50 IAC 2.2-11.

When necessary, adjustments to the base price are made from Schedule C. A guide for selecting the correct model is included in 50 IAC 2.2-11. The model assumes that there are certain elements of construction defined as specifications. These specifications create and average or "C" grade structure.

22. Mr. Adams presented into evidence a building permit with an estimated cost for construction of the subject property at \$350,000 and stated that usually the estimated cost of construction is less than the actual cost. Mr. Adams compared the total assessed value of \$141, 000 of the subject property to the estimated cost of construction.
23. Mr. Adams did not present any evidence of any analysis between an estimated cost on a building permit, an actual cost of the same structure and the assessed value. Mr. Adams also stated the concrete foundation, a 28-foot wall height, crane supports, openings, lighting, and solid construction disqualified the subject building from a grade reduction. Mr. Adams did not support any of these statements with any evidence. Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
24. In addition, as the Petitioner, Mr. Adams did not identify similar situated properties to the subject in order to show disparate treatment of the subject.
25. On the other hand, Mr. Hume and Mr. Moore through testimony and photographs showed the crane is self-supporting and not dependent on the main structure.
26. Mr. Hume also gave a detailed comparison of the subject building to the GCI Light Manufacturing model and the GCM General Office model. Mr. Hume then quantified the components and their relative adjustments to arrive at the grade assigned by the PTABOA.

27. The Indiana Tax Court demands quantification techniques for grade application. The written notes and oral testimony made by the Petitioner are not sufficient to make a prima facie case.
28. For the reasons set forth above, Mr. Adams failed to show that the subject building was incorrectly graded a "D" by the PTABOA. There is no change in the assessment as a result of this issue.

Other Conclusions

28. As stated previously in Findings of Fact ¶7, the assessed value under appeal agreed to by the parties is \$9,230 for land and \$132,600 for improvements. Neither the County nor the Township provided a property record card reflecting the PTABOA determined values. Therefore, the State will not issue a property record card that reflects its determination.

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