

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

SUPERVALU/SV VENTURES	) On Appeal from the Marion County
	) Property Tax Assessment Board of
	) Appeals
	)
Petitioner,	)
	) Petition for Review of Assessment,
	) Form 131
v.	) Petition No. 49-600-95-1-4-00317
	) Parcel No. 6020019
MARION COUNTY PROPERTY TAX	)
ASSESSMENT BOARD OF APPEALS	)
And PIKE TOWNSHIP ASSESSOR	)
	)
Respondents.	)

**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 land classification is correct.
2. Whether the grade is correct.

3. Whether the perimeter to area ratio (PAR) for the subject structure was calculated correctly.
4. Whether the adjustments for lack of interior finish in the structure are 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 IC 6-1.1-15-3, Michael F. Caron of Ducharme, McMillen & Associates, Inc., on behalf of SuperValu/SV Ventures (the Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 was filed on May 15, 1998. The Marion County Board of Review's (BOR) Final Assessment Determination on the underlying Form 130 is dated April 17, 1998.
3. Pursuant to IC 6-1.1-15-4, a hearing was held on August 26, 1999 before Hearing Officer Helen Wagener. Testimony and exhibits were received into evidence. Michael Caron represented the Petitioner. Janis Wilson represented Pike Township. No one appeared to represent Marion County.
4. At the hearing, the subject Form 131 was made a part of the record and labeled Board's Exhibit A. Notice of Hearing on Petition is labeled Board's Exhibit B. In addition, the following exhibits were submitted:  
Board's Exhibit C – Withdrawal Agreement dated August 26, 1999  
Board's Exhibit D – Stipulation Agreement dated August 26, 1999  
Board's Exhibit E – Copy of the subject's property record card (PRC) that

reflects the values determined by the BOR

Petitioner's Exhibit 1 – Documents regarding proposed amended pricing

Petitioner's Exhibit 2 - Exterior photographs of the subject structure

Petitioner's Exhibit 3 – Document regarding grade and design factor  
comparison

Petitioner's Exhibit 4 – Copy of the PRC for parcel #2-008430 with interior  
and exterior photographs

Petitioner's Exhibit 5 – Copy of the PRC for parcel #8-043345 with interior  
and exterior photographs

Petitioner's Exhibit 6 – Copy of 5O IAC 2.2-11-1(43), GCM - Supermarket  
Model

Respondent's Exhibit 1 – Copy of subject's PRC

Respondent's Exhibit 2 – Plat map showing the subject property

Respondent's Exhibit 3 – Sketch showing the footprint of the subject  
structure

5. The structure is a supermarket located at 8359 North Michigan Road, Indianapolis, Pike Township, Marion County.
6. The Hearing Officer did not view the subject property.

### **Issue 1- Land Classification**

7. At the hearing, the Petitioner withdrew this issue from review by the State. Mr. Caron signed a Withdrawal Agreement (Board Exhibit C) withdrawing this issue.

### **Issue 2 - Grade.**

8. The Petitioner contends the appropriate grade for the subject structure is “C” or 100%. The current PRC shows that the local officials have applied a grade of “C+1” or 105%.
9. The Petitioner contends that the structure under appeal, a “Cub Foods” store, is a newer design that is constructed with fewer features compared to standard supermarkets. The subject structure has interior features that resemble a warehouse rather than the supermarket. The subject is essentially a concrete block shell and lacks the basic features reflected in the supermarket model such as ceiling finish, wall finish, floor finish, lighting and limited partitions. The subject structure also lacks the normal amenities found in modern supermarkets such as a pharmacy, deli, and eating area. *Caron testimony.*
10. The Petitioner testified that the exterior photographs depict concrete block construction. The current cost for plain block is \$1.22 each; the split face (decorative) block costs around \$1.87 each. The cost of the decorative block would be an additional \$20,000 for the subject; this represents less than 2% when compared to the model, which calls for 8-inch plain concrete block construction. Weighing the additional value of the decorative block exterior against the substandard interior features indicates the grade of the structure does not exceed “C” (100%). *Caron testimony & Petitioner’s Exhibit 2.*
11. The Petitioner contended that the grade and design study compares the subject with the model and two (2) other competitive supermarkets. Construction features of the two (2) competitive supermarkets exceed the quality of the subject and the “comparable” properties are graded “C+1”. The subject structure has substandard lighting, built-ins, floor, ceiling and wall finish. *Caron testimony & Petitioner’s Exhibits 2 - 5.*

12. The Respondent testified that the township followed County guidelines when they applied a “C+1” grade factor in the assessment of the subject supermarket. In an effort to be consistent, the County established the grade for all “Cub Foods” stores throughout Marion County. “Cub Foods” has several different styles of construction with the subject property reflecting the newest form of construction. *Wilson testimony.*

### **Issue 3- Perimeter to Area Ratio (PAR)**

13. At the hearing, the Petitioner withdrew this issue from review by the State. Mr. Caron signed a Withdrawal Agreement (Board Exhibit C) withdrawing this issue.

### **Issue 4- Interior Finish**

14. The Petitioner contends a negative adjustment of \$2.51 should be made to the base rate for the lack of interior finish. In addition, the Petitioner contends a positive adjustment should be made in the Special Features section for: (1) ceiling paint, \$21,950; (2) floor hardener, \$22,930; and (3) floor finish, \$8,600. *Caron testimony.*
15. The PRC shows the local officials applied a negative adjustment of \$2.08 for interior finish. In addition the PRC shows the local officials added \$22,400 for a ceiling adjustment and \$24,600 for a flooring adjustment in the Special Features section of the PRC.

16. After Mr. Caron's testimony, Ms. Wilson agreed to the adjustments for interior finish requested by the Petitioner. Mr. Caron and Ms. Wilson signed a Stipulation Agreement (Board Exhibit D) to this fact.

### **Conclusions of Law**

1. The Petitioner is limited to the issues raised on the Form 130 petition filed with the Board of Review or issues that are raised as a result of the local Board's action on the Form 130 petition. 50 IAC 17-5-3. See also the Forms 130 and 131 petitions authorized under Ind. Code §§ 6-1.1-15-1, -2.1, and -4. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the Board of Review. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the Board of Review disagree with the local Board'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 Board of Review 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 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.<sup>2</sup> 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 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 Board’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.

**Issue No. 1 – Whether the land classification is correct.**

**Issue No. 3 – Whether the Perimeter to Area Ratio (PAR) for the subject structure was calculated correctly.**

18. At the hearing, the Petitioner withdrew these issues from review by the State. Mr. Caron signed a Withdrawal Agreement (Board Exhibit C) to this

fact. Accordingly, there are no changes in the assessment as a result of these issues.

**Issue No. 2 – Whether the grade is correct.**

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 determination of the proper grade factor 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.
22. Characteristics of “C” grade buildings are described in 50 IAC 2.2-10-3(a)(3) and states: “C” grade buildings are moderately attractive and constructed with average quality materials and workmanship. These buildings have a minimal to moderate architectural treatment and conform with the base specifications used to develop the pricing schedules. They have average quality interior finish with adequate built-ins, standard quality fixtures and mechanical features.

23. The Petitioner contends that the below average interior finish of the subject structure off sets the excess cost of the decorative brick on the exterior making a “C” grade factor appropriate. In support of this contention the Petitioner submitted testimony, exterior photographs of the subject, a comparison of the subject with two (2) “comparable” properties, and a comparison of the subject to the GCM - Supermarket model found in 50 IAC 2.2-11-1(43).
24. Before applying the evidence to reduce the contested assessment, the State must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.
25. Other than Mr. Caron’s testimony and his written comparison, there is no probative evidence submitted to support the contention that the interior of the subject structure is inferior to the model.
26. Identifying comparable properties and demonstrating that the property under appeal has been treated differently for property tax purposes can show an error in assessment. The Petitioner attempts to make such a case by arguing that the comparables’ interior finishes are “superior” to that of the subject, and therefore the subject structure should receive a grade reduction.
27. Labeling the interior of the subject as “inferior” does not establish that it is inferior. Mr. Caron’s conclusory statements are unsupported by factual evidence. Conclusory statements do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119. Mr. Caron presented both exterior and interior photographs of the two (2) structures used for comparison, however only exterior photographs of the subject structure were submitted.

28. The testimony of Mr. Caron falls short of establishing true comparability of the subject structure to the properties identified in Petitioner's Exhibits 4 and 5. Furthermore, while other "Cub Foods" stores are referenced in the testimony of Mr. Caron, Mr. Caron did not submit any evidence regarding other "Cub Foods" stores comparability to the subject structure. The comparables presented by the Petitioner were for two (2) "Marsh Supermarkets" located in Decatur Township and Lawrence Township while the subject is a "Cub Foods" store located in Pike Township.
29. As stated in Conclusions of Law ¶11, 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.
30. The Petitioner identified properties claiming they are similarly situated to the subject structure but failed to establish true comparability. In addition, the Petitioner has failed to establish disparate treatment of the structure under appeal.
31. The local officials applied a grade factor of "C+1" to the subject structure. The Petitioner failed to meet its burden of proof in its attempt to prove the grade applied by the local officials is overstated. Accordingly, the State denies the request for a grade reduction. No change in the assessment is made as a result of this issue.

**Issue 4 – Whether the adjustments for lack of interior finish in the structure are correct.**

32. At the hearing, a Stipulation Agreement (Board Exhibit D) was signed by Mr. Caron (Petitioner’s Representative) and Ms. Wilson (Township Representative) and submitted to the State. In the agreement, the parties stipulated to the following:

Negative base rate adjustments for interior finish:

(a)	Ceiling finish 98% or	(-) \$1.62
(b)	Wall finish	(-) \$ .44
(c)	Floor finish	(-) <u>\$ .45</u>
	Total	(-) \$ 2.51

Positive adjustments corrected in the Exterior/Special Features section of the PRC:

(a)	Ceiling paint	\$21,920
(b)	Floor hardener	\$22,930
(c)	Floor finish	<u>\$ 8,600</u>
	Total	\$53,450

33. The agreement between the Petitioner and the Township is a decision between the parties, and the State will accept the agreement. The State’s acceptance of the agreement should not be construed as a determination regarding the propriety of the adjustments agreed to by the parties.

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

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