STATE OF INDIANA
Board of Tax Review

AMERICAN UNITED LIFE INSURANCE COMPANY,	)	On Appeal from the Marion County Property Tax Assessment Board of Appeals
Petitioner	)	
v.	)	Petition for Review of Assessment, Form 131
	)	Petition No. 49-140-95-1-4-00002
MARION COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS And CENTER TOWNSHIP ASSESSOR,	)	Parcel No. 1071388
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 assigned grade factor of "A-1" is excessive.
2. Whether a partitioning adjustment is warranted for portions of the subject improvement.
3. Whether the assigned land base rate is excessive.
4. Whether the land assessment should receive a negative influence factor.

5. Whether the assessment is in accordance with the Indiana Constitution, State statutes, and 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, Baker & Daniels, on behalf of American United Life Insurance Company (AUL), filed a petition requesting a review by the Appeals Division. The Marion County Property Tax Assessment Board of Appeals (PTABOA) issued its final determination on May 21, 1999. The Form 131 petition was filed on June 17, 1999.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on October 25, 2000, before Hearing Officer Debra Eads. Testimony was given and exhibits were submitted. The Petitioner was represented by Stephen Paul, Marta Haza and Robert Stanley of Baker & Daniels; Michael Lady and Leslie Weisenbach of Michael Lady Advisors; Gary Taylor of AUL; and Tom Scheele of Shiel Sexton. Frank Corsaro and Ernest Clark represented the Center Township Assessor's Office. Thomas Bedsole of Locke Reynolds appeared as counsel for the Center Township Assessor's Office. No one was present to represent the Marion County Assessor's Office.

4. Dianne Lockhart, a stenographic reporter employed by John E. Connor & Associates, Inc., was also present at the administrative hearing and provided a certified transcript of the proceedings (Transcript).

5. At the hearing, the Form 131 petition was made a part of the record and labeled Board's Exhibit A. The Form 117 Notice of Hearing was labeled Board's Exhibit

B. The stipulation agreement signed by the parties concerning Issue 2 was labeled Board's Exhibit C. In addition, the following exhibits were submitted into evidence:

Brief summarizing the Petitioner's contentions and:

Petitioner's Exhibit 1 – Property record card for subject property.

Petitioner's Exhibit 2 – Photographs and interior description of each floor of subject.

Petitioner's Exhibit 3 – Professional information concerning Tom Scheele.

Petitioner's Exhibit 4 – Photographs and property record cards (PRC) for Petitioner's purported comparable properties: parcels 1067282, 1096474, 1090349, and 1004960 in Marion County and parcel 9135724109 in Allen County.

Petitioner's Exhibit 5 – "Side-by-Side" comparison of subject property and Market Tower (parcel 1067282), First Indiana Plaza (parcel 1096474) and One Indiana Square (parcel 1090349).

Petitioner's Exhibit 6 – Stipulated Agreement Exhibit.

Petitioner's Exhibit 7 – Appraisal of subject by Integra Realty Resources for the Retrospective date of January 1, 1991.

Petitioner's Exhibit 8 – Marion County Land Commission documents.

Petitioner's Exhibit 9 – A copy of page 25 from the Marion County Land Order.

Petitioner's Exhibit 10 – Letters to Marion County Township Assessors requesting documents supporting land order values.

Petitioner's Exhibit 11 – Letter to Marion County Assessor requesting documents supporting land order values.

Petitioner's Exhibit 12 – Response from Marion County Township Assessors to Petitioner's Exhibit 10.

Petitioner's Exhibit 13 – Response from Marion County Assessor to Petitioner's Exhibit 11.

Petitioner's Exhibit 14 – Letter to State Board of Tax Commissioners requesting documents supporting land order values.

Petitioner's Exhibit 15 – File Memo from Marta Haza relating to Exhibit 14.
Petitioner's Exhibit 16 – PRC land page of parcel 1092415.
Petitioner's Exhibit 17 – PRC for parcel 1017865.
Petitioner's Exhibit 18 – PRC land page of parcel 1067282.
Petitioner's Exhibit 19 – Site photographs of subject property.
Petitioner's Exhibit 20 – Land to Building Analysis of subject and 300 North Meridian, Market Tower, Bank One Tower, One North Capitol, First Indiana Plaza and 101 West Ohio.
Petitioner's Exhibit 21 – Zoning information regarding subject property.

Respondent's Exhibit 1 – State Final Determination for subject property for the March 1, 1989 assessment.
Respondent's Exhibit 2 – A copy of the Marion County Amended Land Order Page 32.
Respondent's Exhibit 3 – PRC for parcel 1090349.
Respondent's Exhibit 4 – PRC for parcel 1047401.
Respondent's Exhibit 5 – PRC for parcel 1045409.
Respondent's Exhibit 6 – Photographs of the subject property.

6. The subject property is located at One American Square, Indianapolis, Center Township, Marion County. The Hearing Officer did not conduct an on-site inspection of the property.

Issue 1 – Whether the assigned grade factor of "A-1" is excessive.

7. The PTABOA determined that the building should be assessed with a grade of "A-1". The Petitioner contended the building should receive a grade of "A-2".

8. In support of this position, Ms. Haza described the preparation of the weighted grade analysis (Petitioner's Brief, page 9).

9. Ms. Haza testified that a comparison of the grade factors assigned to five properties presented as comparables show the subject is assessed at a higher level. She opined that a side-by-side comparison of the subject's interior components with the three properties deemed to be the most comparable indicated that the subject's grade is excessive.

10. Ms. Haza further asserted that if the Base Price Adjustment (BPA) of 117% is applied to the subject building and the three properties used in the Petitioner's side-by-side comparison, the subject's cost multiplier is 176%; cost multipliers for the purported comparable properties range from 157% to 162%.

11. In further support of the Petitioner's position, Mr. Scheele testified that the vinyl baseboards, which are virtually throughout the entire building, are the cheapest of any baseboard available. The lay-in acoustical ceiling, in approximately 34% of the building, is the lowest grade of ceiling that can be installed and the walls are of average quality.

12. On behalf of the Respondent, Mr. Clark testified that the building has outstanding architectural style and design. He contended that this is not a square building and the geometric design adds cost as does the sloping rooflines, the full-length windows, the sloping windows on the wings and the curved walls in certain areas; there are increased costs because of less standardization.

13. Also on behalf of the Respondent, Mr. Corsaro contended that there are other comparable buildings in the downtown area such 101 West Ohio, 300 North Meridian, and Capital Center that are graded "A"; they are currently under appeal. He observed that the State determined the grade that was applied to the subject for the 1989 assessment.

Issue 2 – Whether a partitioning adjustment is warranted for portions of the subject improvement.

14. The Petitioner and Respondent stipulated that floors 9, 10, and 11 should receive a 70% negative adjustment for lack of permanent partitioning and that floor 12 should receive a 80% negative adjustment for lack of permanent partitioning (Board's Exhibit C).

Issue 3 - Whether the assigned land base rate is excessive.

15. The PTABOA determined that the land should be valued at $75 per square foot of primary land. The Petitioner contended that the land base rate should be $35 per square foot of primary land. (Petitioner's Brief, pages 14 - 15).

16. Mr. Lady testified that, during the time the Marion County Land Valuation Commission was to analyze land values, the downtown real estate market was severely depressed. To arrive at the market value of the subject, Mr. Lady analyzed sixteen sales in the Central Business District that occurred during that time and used generally accepted appraisal practices to adjust the sale prices of the purported comparables to the subject. Of the five sales Mr. Lady believed to be most comparable, the adjustments range from 0% to 90%. The sale with an adjustment of 0% was a capitalization of the net rent into a value indication and was indicated by Mr. Lady to be the most comparable to the subject property. Mr. Lady concluded that, on the assessment date, the appropriate land value for the subject property was $35 per square foot.

17. Mr. Paul observed that the subject property is located in Square 34 of the Land Order; however, there are three entries in the Land Order for Square 34. Two entries show a range of $70 to $100 per square foot of primary land; the other has a range of $10 to $20 for primary land. Mr. Paul argued that the appraisal shows that the current land value is arbitrary, capricious, and unsubstantiated by

any sales data. Mr. Paul further contended that, even assuming the Land Order is valid, the 1995 land assessments for parcels that surround the AUL building have lower values, thereby violating Article X of the Indiana Constitution.

18. In support of the Respondent's position, Mr. Bedsole introduced property record cards for purported comparable downtown properties showing the land value to be $75 per square foot.

Issue 4 – Whether the land assessment should receive a negative influence factor.

19. The PTABOA did not apply any negative influence factor to the parcel. The Petitioner contended that the courtyard and building insert areas of the property should receive a 25% negative influence factor as a result of misimprovement.

20. Mr. Paul contended that the utilization of this space is less than half of the total square footage of the square; the building footprint sits on only 49% of the entire block. Comparing this parcel to six other major office towers downtown, the utilization of the land is much more intensive in the other properties. Base rate land values may be adjusted for influence factors, including misimprovements of the land. A misimprovement is a decrease applied when the parcel does not have the same use as surrounding parcels. Mr. Paul contended that a 25% negative influence factor should be applied due to the underutilization of the space for the courtyard and the building inserts.

21. Mr. Bedsole argued that misimprovement does not apply. This is an office building; the courtyard and setbacks make this an excellent building, not a misimprovement.

Issue 5- Whether the assessment is in accordance with the Indiana Constitution, State statutes, and regulations.

22. No specific evidence or testimony was presented regarding this issue.

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. 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 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. See 50 IAC 17-6-3. "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. One manner for the taxpayer to meet its burden in the State's administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners,* 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). 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.

Issue 1- Whether the assigned grade factor of "A-1" is excessive.

18. The PTABOA determined that the building should be assessed with a grade of "A-1". The Petitioner contended the building should receive a grade of "A-2".

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 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. The characteristics of a "A" grade are described in 50 IAC 2.2-10-3(a)(1) which states:

> "A" grade buildings have an outstanding architectural style and design and are constructed with the finest quality materials and workmanship. These buildings have a superior quality interior finish with extensive built-in features, high grade lighting and plumbing fixtures, and a deluxe heating system and air conditioning system.

23. "The pricing schedules contained in 50 IAC 2.2-11-6 reflect the 'C' grade standards of quality and design unless otherwise stated…'A' grade indicates a multiplier of one hundred sixty percent (160%)." 50 IAC 2.2-10-3(b).

24. Because the classification of an improvement may fall between major grade classifications, a method of interpolation is contained in the regulation. This method is described in 50 IAC 2.2-10-3(c)(1) & (2) which state:

> Plus or minus two (+/- 2) indicates that the grade falls halfway between the assigned grade classification and the grade immediately above or below it. For example, a grade of "C+2" indicates that the quality and design grade classification is estimated to fall halfway between "C" and "B" or average

to good construction. The applicable percent is one hundred ten percent (110%).

Plus or minus one (+/- 1) indicates that the grade falls slightly above or below the assigned grade classification, or at a point approximately twenty-five percent (25%) of the interval between the assigned grade classification and the grade immediately above or below it. For example, a grade of "C+1" indicates that the quality and design grade classification is estimated to be slightly better than average or approximately halfway between a "C" grade and a "C+2" grade. The applicable percentage is one hundred five percent (105%).

25. An "A-1" grade indicates a multiplier of one hundred fifty percent. An "A-2" grade indicates a multiplier of one hundred forty percent. 50 IAC 2.2-11-6, Schedule F (GC Quality Grade – Design Factor).

26. To prevail in its appeal, the Petitioner must identify the model used to assess the improvement and demonstrate that features contained in the model vary from those in the property under appeal. The Petitioner must also demonstrate that the current grade does not already account for lower construction costs due to these features. *Miller Structures, Inc. 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.

27. 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.

28. "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).

29. 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.

30. The Petitioner offered no comparison of the cost of components in the model with the costs of features present in the building under appeal, as described in the preferred method.

31. Instead, AUL's determination of the appropriate grade factor for the subject property relied heavily on an interior finish weighted grade calculation (Petitioner's brief, page 9).

32. In this analysis, the Petitioner assigned grades on a floor by floor basis. The Petitioner then multiplied the grade factor percentage by the percentage of the total square footage of the building contained on that floor. For example, the first floor was determined by the Petitioner to be of "A" grade quality materials and workmanship. The Petitioner further determined that the first floor represented 10.58% of the total floor space in the building. The Petitioner multiplied 10.58% by 160% (the grade multiplier for "A" properties) and concluded the weighted grade of the first floor is 16.928%. A similar procedure was followed for each floor. The various weighted grade percentages were then totaled to determine a weighted interior finish grade factor for the structure, 124.741%.

33. The Petitioner concluded that the exterior of the building was best described as "A" grade. (Petitioner's Brief, page 10).

34. The Petitioner next determined that interior finish represented 60% and the exterior structure of the building represented 40% of the total base square foot rate of the building. The Petitioner determined these percentages by adding cost elements of interior components, as contained in 50 IAC 2.2-11-6, Schedule C (GC Base Price Components and Adjustments), and comparing this total to the base square foot rate. (Petitioner's Brief, pages 6 - 7).[1]

35. As the final steps in its calculation, the Petitioner multiplied the purported weighted interior finish grade factor of 124.741% by 60% (the claimed percentage of the total base rate represented by interior features) and 160% ("A" grade multiplier of the exterior) by 40% (the claimed percentage of the total base rate represented by the exterior). The two resulting totals were added for a rounded overall grade factor of 140%, or "A-2".

36. The Petitioner's weighted grade calculation is flawed and does not constitute probative evidence of error.

37. The heart of the Petitioner's argument is its classification of grade to the individual floors and the exterior of the building. Such classifications, however, are merely conclusory opinions.

38. For instance, concerning the exterior, the Petitioner's brief contends, "…that even assuming that the exterior building structure is an "A" grade structure…" (Petitioner's Brief, page 10). No further explanation is offered to explain why the State should assume that the exterior is an "A" rather than some other grade.

[1] Because the conclusion reached concerning this issue makes an analysis of this calculation moot, the State makes no findings concerning the validity of this calculation.

39. Similar flaws exist with the Petitioner's analysis of the interior. Again using the first floor as an example, the Petitioner described the area:

Common Area: The common area is characterized by granite flooring with marble accents; floor-to-ceiling marble wall panels around building's core area; Indiana limestone on the interior perimeter walls; a combination of 2' x 2' suspended acoustical tile and painted gypsum board ceiling with recessed can lighting.

Tenant space: The first floor tenant finish is typical of what one would expect of tenant areas that are visible to a high rise office building's common area. The tenant area includes a florist, lobby shop, bank, title insurance company, fitness center, dentist, building management offices, and the AUL cafeteria. As would be expected, the portion of the tenant finish that is visible to the building's common lobby area is of higher quality than the non-visible areas, which could be characterized as standard office finish. (Petitioner's Exhibit 2; the Petitioner also included four photographs of first floor areas).

40. However, this description does nothing to 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 (Ind. Tax 2001).

41. In the absence of such explanation, the Petitioner's determinations of grade are merely conclusory statements. *CDI, Inc. v. State Board of Tax Commissioners*, 725 N.E. 2d 1015, 1019 (Ind. Tax 2000). Similarly, without sufficient explanation, the photographs do not adequately develop a case for the Petitioner and remain only conclusory statements. *Bernacchi v. State Board of Tax Commissioners*, 727 N.E. 2d 1133, 1136 (Ind. Tax 2000).

42. Minimum testimony was given as explanation or what the photographs were purporting to show as deviations from the model or how the deviations justify a change in grade. A few isolated selective photographs do not allow the Board to conclude that the suggested floor grade, exterior grade or the structure grade are justified.

43. The Petitioner further argued that the application of the Base Price Adjustment to the subject building resulted in an excessive assessment. The Petitioner contended:

"It is important to note that because the AUL Building is a 38-floor structure, the base price, the framing adjustment and the wall height adjustment have already been subjected to a 117% Base Price Adjustment ("BPA"). Because 60% of the base price relates to interior and mechanical features rather than structural components of a building, the BPA also adjusts the costs of the interior and mechanical features. When the BPA and the current grade factor are applied to these costs, the effective cost multiplier becomes 176% (117% BPA x 150% Grade). As already demonstrated, many of the physical attributes that comprise the base rate are average to good quality (a grade percentage of 100% to 120%), yet an effective cost multiplier of 176% is being applied to these features. To remedy this inequity, the grade factor must be reduced to no more than "A-2" or 140%, which still produces an effective cost multiplier of 165% (117% x 140%)." (Petitioner's Brief, page 10).

44. The Schedule B Base Price Adjustment (BPA) "is used to adjust the total base unit rate obtained from Schedule A [commercial and industrial cost schedules] for story height variations. The adjustment is required to account for the added construction costs of supports and material handling in multiple story construction. The BPA factor is given as a percentage. Select the proper factor for the corresponding story height and apply it to the total base unit rate. When

calculating the actual story height, the basement is not counted as a story, but the basement base rate is included in the total unit rate. The table provided [50 IAC 2.2-11-6, Schedule B] accommodates buildings up to thirty-four (34) stories. Add one-half of one percent (1/2%) for each floor over thirty-four stories." 50 IAC 10-6.1(b).

45. As discussed, the quality and design of a building are the most significant variables in establishing grade. 50 IAC 2.2-10-3. The BPA, however, "is required to account for the added construction costs of supports and material handling in multiple story construction." 50 IAC 10-6.1(b). The Petitioner is therefore attempting to compare two completely diverse concepts: quality and design in one instance, and added costs of supports and material handling in the other.

46. Neither the descriptive material in 50 IAC 10-6.1(b) nor the table contained in 50 IAC 2.2-11-6, Schedule B, provide any instructions to adjust the grade depending upon the BPA of the building. Clearly, the BPA of the structure is irrelevant when determining the grade to be used in pricing the building.

47. This concept is reinforced by reviewing the format of the property record card itself (50 IAC 2.2-10-6.1(h)). Again, the BPA and grade are independent items on the property record card, and neither affects the value of the other.

48. Significantly, the Petitioner failed to cite any authority for its contention that grade is affected by the BPA.

49. The Petitioner failed to show that there is a correlation between grade and BPA. The State therefore does not find this argument persuasive.

50. In further support of its position, the Petitioner identified properties that it claimed were similarly situated to the property under appeal, offering into evidence

photographs of five other office buildings. (Petitioner's Exhibit 4). However, as discussed, without further explanation the photographs are only conclusory statements. *Bernacchi*, 727 N.E. 2d at 1136.

51. The Petitioner also provided a side-by-side comparison of certain features of three of the properties, notably the elevator lobbies, common restrooms, corridors, elevator cabs, and main lobbies. (Petitioner's Exhibit 5). The Petitioner contended that this comparison established disparate treatment between similarly situated properties.

52. However, the areas of comparison presented by the Petitioner actually represent only a small portion of the overall structure. Further, the Petitioner failed to explain the manner in which the perceived differences equate to a reduction in grade from "A-1" to "A-2".

53. Again, the Petitioner's description does nothing to 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.,* 747 N.E. 2d at 88.

54. Once again, the State does not find this evidence persuasive of error.

55. For all the reasons above, the Petitioner failed to meet its burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

Issue 2 – Whether a partitioning adjustment is warranted for portions of the subject improvement.

56. The parties stipulated to a reduction of 70% of the partitioning base price for lack of permanent partitioning on floors 9, 10 and 11, and a reduction of 80% of the partitioning base price for lack of permanent partitioning on floor 12.

57. The agreement between the Respondent and the Petitioner is a decision between the parties. The State accepts the parties' stipulation and agreement. In doing so, the State does not decide the propriety of this agreement, either explicitly or implicitly.

Issue 3 - Whether the assigned land base rate is excessive.

58. The PTABOA determined that the land should be valued at $75 per square foot of primary land. The Petitioner contended that the land base rate should be $35 per square foot of primary land. (Petitioner's Brief, pages 14 - 15).

Conclusions Regarding Land Value

59. For the reasons set forth below, the State determines that the Petitioner cannot challenge the Land Order values by way of the Form130/131 appeal process. Alternatively, the State determines that the Petitioner's evidence failed to demonstrate that the value assigned to the property by way of the Land Order is incorrect.

General principles of land valuation in Indiana.

60. Indiana's approximately 3 million land properties are valued on a mass appraisal basis.

61. The General Assembly has recognized that assessing officials cannot provide a commercial-grade/fee appraisal for every parcel in the State, but must instead rely on mass appraisal techniques commonly used by tax assessors throughout the United States. Ind. Code § 6-1.1-31-3(4) permits the use of "generally accepted practices of appraisers, including generally accepted property

assessment valuation and mass appraisal principles and practices."

62. The Tax Court has similarly recognized the necessity of mass appraisal practices (and some of their flaws). *See King Industrial Corp. v. State Board of Tax Commissioners*, 699 N.E. 2d 338, 343, n. 4 (Ind. Tax 1998)(The use of land classifications are commonly used to save time and money when assessing property).

63. Land valuation – through land order – is the one part of Indiana's assessment system that actually approximates fair market valuation through the use of sales data.

64. Ind. Code § 6-1.1-31-6(a)(1) states that land values shall be classified for assessment purposes based on acreage, lots, size, location, use, productivity or earning capacity, applicable zoning provisions, accessibility, and any other factor that the State determines by rule is just and proper.

65. For the 1995 reassessment, the county land valuation commission determined the value of non-agricultural land (i.e. commercial, industrial, and residential land) by using the rules, appraisal manuals and the like adopted by the State. 50 IAC 2.2-2-1. *See also* Ind. Code §§ 6-1.1-4-13.6 (West 1989) and –31-5 (West 1989). By rule, the State decided the principal that sales data could serve as a proxy for the statutory factors in Ind. Code § 6-1.1-31-6. Accordingly, each county land valuation commission collected sales data and land value estimates and, on the basis of that information, determined the value of land within the County. 50 IAC 2.2-4-4 and –5. The county land valuation committee then held a public hearing on the land order values. Ind. Code § 6-1.1-4-13.6(e)(West 1989); *See Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d 1058, 1061 (Ind. Tax 1993).

66. The State reviewed the land orders established by the county land valuation

committee, and could make any modifications deemed necessary for uniformity and equality purposes. Ind. Code § 6-1.1-4-13.6(f)(West 1989); *Mahan*, 622 N.E. 2d at 1061. After the State completed its review of the county land order, the State was required to give notice to the affected assessors. In turn, only county and township assessors could appeal the State's determination of values. *Id* at 4-13.6(g); *Poracky v. State Board of Tax Commissioners*, 635 N.E. 2d 235, 239 (Ind. Tax 1994)("An appeal of a land order, just as an appeal of a judgment or order, must follow the prescribed procedural mandates."). The final stage in the process provided for dissemination of the State's final decision on the land order: "[t]he county assessor shall notify all township assessors in the county of the values as determined by the commission and as modified by the [State] on review or appeal. Township assessors shall use the values as determined by the commission and modified by the State Board in making assessments." Ind. Code § 6-1.1-4-13.6(h).

67. Agricultural land was valued at $495 per acre with adjustments permitted for such things as soil productivity and influence factors. 50 IAC 2.2-5-6 and –7.

Taxpayers must challenge Land Order values in a timely and appropriate manner; Namely: They must challenge the values at the local level before the State adopts the County Land Order.

68. The Tax Court has consistently held that taxpayers must follow the required appeals procedures when challenging property tax assessments. *The Kent Company v. State Board of Tax Commissioners*, 685 N.E. 2d 1156, 1158 (Ind. Tax 1997)("The law is well-settled that a taxpayer challenging a property tax assessment must use the appropriate means of doing so."); *Williams Industries v. State Board of Tax Commissioners*, 648 N.E. 2d 713, 718 (Ind. Tax 1995)(The legislature has created specific appeal procedures by which to challenge assessments, and taxpayers must comply with the statutory requirements by filing the proper petitions in a timely manner).

69. As previously stated, Ind. Code § 6-1.1-4-13.6(e)(West 1989) provided for a public hearing held by the local officials regarding values contained within the county land order. Once the public hearing was held, the only statutory means for requesting a change or challenging a land order was an administrative appeal to the State Board *by the county and township assessors*. Ind. Code § 6-1.1-4-13.6(g)(West 1989); *Poracky*, 635 N.E. 2d at 238 & 39.

70. Taxpayers did not have the right to challenge the values established by the county land orders after the county land commission made a determination on them.

71. The State is aware of Tax Court decisions that go against limiting taxpayers' rights to challenge land order values at the State administrative level. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365 (Ind. Tax 1998).

72. Moreover, the Tax Court implicitly found that Ind. Code § 6-1.1-4-13.6 (West 1989) violated the requirements of due course of law (due process) because the statute did not provide for taxpayer hearings prior to the State's "final say" on land values. *Town of St. John III*, 690 N.E. 2d at 373, n. 2, & 384, n. 31. (It is believed that the Tax Court also found that the amended version of Ind. Code § 6-1.1-4-13.6, effective 1998 for the next general reassessment, remedied the Court's due process concerns. *Town of St. John III,* 690 N.E. 2d at 384, n. 31).

73. The State respectfully concludes that *Town of St. John V* changed the landscape regarding the issue of taxpayers' entitlement to challenge land order values.

74. Article X, § 1, of the Indiana Constitution was the basis of the Tax Court's ruling that a taxpayer may challenge his land order valuation in an individual appeal. *Zakutansky*, 691 N.E. 2d at 1368.

75. The Tax Court's basis for its finding was reversed by the Supreme Court in *Town of St. John V.* The Property Taxation Clause (Article X, § 1, of the Indiana Constitution) "[R]equires . . . a system of assessment and taxation characterized by uniformity, equality, and just valuation, but the Clause does not require absolute and precise exactitude as to the uniformity and equality of each individual assessment. *The tax system must also assure that individual taxpayers have a reasonable opportunity to challenge whether the system prescribed by the statute and regulations was properly applied to individual assessments, but the Clause does not create a personal, substantive right of uniformity and equality.*" *Town of St. John V*, 702 N.E. 2d at 1040. (Emphasis added).

76. Further, the Tax Court's finding that the assessment system violated the Due Course of Law Clause in *Town of St. John III* was expressly nullified by the Supreme Court in *Town of St. John V,* 702 N.E. 2d at 1040, n. 8.

77. Accordingly, a taxpayer is not constitutionally entitled to file an appeal to the State challenging the values established by a promulgated land order on an individual appeal basis. Taxpayers may, however, administratively appeal the application of the land order to his assessment (i.e., the taxpayer's property should have been valued from one section of the land order rather than another).

78. Furthermore, the statutes do not give taxpayers the right to challenge land order valuation.

79. Indiana courts have consistently held that a statute does not require interpretation unless a statute is unclear and ambiguous. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189 (Ind. Tax 1997). Unambiguous language within a statute cannot be construed in a manner that expands or limits its function. *Cooper Industries, Inc. v. Indiana Department of*

State Revenue, 673 N.E. 2d 1209 (Ind. Tax 1996). Words, unless statutorily defined, are to be given their plain, ordinary, and usual meaning given in the dictionary. *Knauf Fiber Glass, GmbH v. State Board of Tax Commissioners*, 629 N.E. 2d 959 (Ind. Tax 1994).

80. It is just as important to recognize what a statute does not say as it is to recognize what a statute does say. *Peele v. Gillespie*, 658 N.E. 2d 954 (Ind. App. 1995); *Million v. State*, 646 N.E. 2d 998 (Ind. App. 1995). Concerning land orders, the statute clearly said that county and township assessors could appeal to the State. The statute does not give taxpayers the right to challenge land order values after the public hearing at the county level.

81. Although statutory construction is a judicial task, it is also the task of the administrative agency charged with administering the statute. *Riley at Jackson Remonstrance Group v. State Board of Tax Commissioners*, 663 N.E. 2d 802 (Ind. Tax 1996); *Auburn Foundry, Inc. v. State Board of Tax Commissioners*, 628 N.E. 2d 1260 (Ind. Tax 1994).

82. Time after time, the General Assembly has shown that it knows how to enact legislation that gives taxpayers the right to review by the State. For example: (1) the State reviews applications for Enterprise Zone Inventory Credits and issues a determination regarding eligibility under Ind. Code § 6-1.1-20.8-3, (2) the State reviews the denial of property tax exemptions under Ind. Code § 6-1.1-11-8, (3) the State reviews the denial of a deduction for rehabilitated residential property under Ind. Code § 6-1.1-12-25.5, (4) the State reviews the denial of a deduction for resource recovery systems under Ind. Code § 6-1.1-12-28.5, and the State reviews the denial of a deduction for coal conversion systems, hydroelectric power devices, and geothermal energy heating/cooling devices under Ind. Code § 6-1.1-12-35.

83. For matters concerning Enterprise Zone Inventory Credits, rehabilitated

residential property, coal conversion systems, and the like, the General Assembly quite explicitly provided for an administrative review by the State. The General Assembly did not, however, provide for State review by taxpayers challenging land order valuations. Such silence is meaningful. To repeat, in construing a statute, it is just as important to recognize what the statute does not say as it is to recognize what the statute does say. The statutes regarding land orders do not provide for a taxpayer appeal to the State regarding land order values. If the General Assembly meant for such an appeal to be available to taxpayers, it could easily have said so in clear terms.

84. Further, it is absurd to conclude that the General Assembly somehow forgot to provide for a taxpayer's right to appeal land order values when it explicitly provided for such an appeal to the State by county and township assessors. It is just as absurd to conclude that the General Assembly chose to implicitly and obliquely provide for a taxpayer's appeal to the State regarding land order valuation, when the General Assembly explicitly and clearly provided for such an appeal by the local assessors. Statutes are not construed in a manner that requires absurd results. *Matonovich v. State Board of Tax Commissioners*, 705 N.E. 2d 1093 (Ind. Tax 1999). Again, if the General Assembly meant for such an appeal to be available to taxpayers, it could have easily said so in clear terms. It did not.

85. The absence of explicit or plausible implicit appeal rights is easily explained. Once a land order is promulgated, every parcel of property in the county is assessed according to it. Such "across the board" application results in uniform land value. If individual taxpayers are able to question valuation on an individual appeal basis, uniformity ceases to exist. The State has an obligation to ensure uniform assessments on a *mass appraisal* basis.

86. The State recognizes the Form 130/131 petition process provided for by Ind. Code §§ 6-1.1-15-1 through –4, which is "triggered" by a local assessment.

Though the General Assembly has provided for individual assessment appeals, neither the Constitution nor the statutes creates entitlement to make every challenge desired.

87. Prohibiting taxpayers from challenging certain aspects of the assessment system is not peculiar, and the Tax Court recognizes that taxpayers cannot challenge every aspect of the assessment system in individual appeals, i.e., taxpayers can not challenge base rates provided by the cost schedules in the Regulation. *Town of St. John III,* 690 N. E. 2d at 374; *Dawkins v. State Board of Tax Commissioners,* 659 N.E. 2d 706, 709 (Ind. Tax 1995).

88. Instead, the challenges that can be made by way of the statutory Form 130/131 administrative appeal process are limited or qualified by Ind. Code § 6-1.1-4-13.6(g)(West 1989). Only by reading the statutes in such a way – taxpayers can challenge the application of the land order to individual assessments, but cannot challenge the underlying values of the same – is a harmonious statutory scheme preserved.

The Petitioner failed to demonstrate that the value assigned to the property by way of the Land Order is incorrect.

89. Assuming *arguendo* that taxpayers are entitled to challenge land order values in individual appeals, they must present probative evidence to make a prima facie case that the assessment is incorrect. "The party claiming that the land valuation order is invalid bears the burden to show the order is not in accordance with law." *Indianapolis Racquet Club, Inc. v. State Board of Tax Commissioners*, 722 N.E. 2d 926, 931 (Ind. Tax 2000).

90. AUL contended the land base rate is arbitrary and capricious because the base rates established in the Land Valuation Order are not reflective of the land values in the real estate market on January 1, 1991. AUL further contended that the

value of its land is inconsistent with the value of purported comparable properties. (Petitioner's Brief, page 14).

91. The Marion County Land Valuation Commission was required to collect sales data and land value estimates to create a Land Order. This Land Order identified a range of land values that the assessor used as a base rate for determining the True Tax Value of property.

92. The parcel under appeal is included in a portion of the Marion County Land Order identified as Square 34. This area is defined by Illinois Street on the east, Capitol Avenue on the west, Ohio Street on the south, and New York Street on the north.

93. The values for primary land in Square 34 range from $70 to $100.00 per square foot.[2] As discussed, the land under appeal was assessed at $75.00 per square foot of primary land, in accordance with the range identified in the Land Order. The Petitioner contended that the land value should be $35.00 per square foot of primary land.

94. In support of its claim, the Petitioner introduced an appraisal report prepared by Integra Michael C. Lady Advisors, Inc. (the Lady Appraisal). The Lady Appraisal determined that the Sales Comparison approach was the best means to determine the value of the land. (Petitioner's Exhibit 7, page 24).

95. The Lady Appraisal initially identified 19 purported comparable land sales that occurred between May 1994 and January 1986.[3] These sales indicated a range of values from $7.39 per square foot to $50.38 per square foot of primary land.

[2] The Land Order actually contains three lines for Square 34. Two lines indicate identical values ranging from $70 - $100 per square foot of primary land. The third line of values ranges from $10 - $20 per square foot of primary land. (Petitioner's Exhibit 7, Addendum E). Neither party, however, presented evidence to explain the wide variance of values or the number of square feet of Square 34 to which this line might pertain; indeed, even the Petitioner does not contend the land value falls within this range.
[3] The appraisal asserted that 19 land sales were reviewed (Petitioner's Exhibit 7, pages 25 & 34). However, only 17 land sales are included in the Land Sale Summary (Id, page 26).

The purported comparable properties ranged in size from 6,750 square feet to 135,211 square feet. (Petitioner's Exhibit 7, pages 25 –26).

96. In determining whether properties are truly comparable, "Factors and trends that affect value, as well as the influences of supply and demand, should be considered. The greatest comparability is obtained when the properties being compared are influenced by the same economic trends and environmental (physical), economic, governmental, and social factors. There may not be any comparability when one property is heavily influenced by one set of factors and another property is significantly affected by dissimilar factors." International Association of Assessing Officers (IAAO) Property Assessment Valuation, 103 (2nd ed. 1996).

97. Merely characterizing properties as comparable is insufficient for appeal purposes. The Petitioner is required to present probative evidence that the purported comparable properties it offers are, in fact, comparable to the subject property. No such foundation was presented in either the appraisal report or during testimony offered at the hearing. For example, the Lady Appraisal presented no explanation as to the manner in which properties with such diverse parcel sizes as 6,750 to 135,211 square feet are comparable to the subject property. Additionally, the Lady Appraisal offered no comparison of common features or amenities among the properties, and no discussion of whether the purported comparable properties are all "influenced by the same economic trends and environmental (physical), economic, governmental, and social factors." *Id*.

98. Mere conclusory statements regarding the comparability of the parcels do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119; *Blackbird Farms Apartments, LP, v. Department of Local Government Finance*, 765 N.E. 2d 711 (Ind. Tax 2002).

99. The Lady Appraisal then selected the five "most comparable" sales from this list of 17 purported comparable sales. Again, however, the Lady Appraisal offered only minimal explanation as to the reason the five selected sales were deemed to be "most comparable." (Petitioner's Exhibit 7, page 27).

100. The Lady Appraisal contended that "After an adjustment process, which compensates for significant differences between these sales and the Property, these sales provide an indication of the Property's land value." Id.

101. "Adjustments are usually made for market conditions (time of sale), location, and physical characteristics." IAAO Property Assessment Valuation, 105 (2nd ed. 1996).

102. However, there are several flaws in the adjustment process employed by the Lady Appraisal.

103. For example, the Lady Appraisal uses a so-called "blended adjustment" technique purporting to combine both qualitative and quantitative analysis. The following chart illustrates the blended adjustment technique presented at the administrative hearing:

Relative Comparisons	Pre-assigned quantitative adjustment
Slight Adjustment	5%
Moderate Adjustment	10%
Fair Adjustment	15%
Significant Adjustment	20%
Large Adjustment	25% plus

(Petitioner's Exhibit 7, page 29).

104. “It cannot be overemphasized that the amount of any adjustment is to be derived from the real estate market.” IAAO Property Assessment Valuation, 106 (2nd ed. 1996).

105. The Lady Appraisal provides no explanation for its choice of pre-assigned quantitative adjustments ranging from 5% to 25%, rather than (for example) 1% to 5% or 80% to 100%. The arbitrary selection of a percentage adjustment, without presenting any foundation for the selected percentages, fails to establish any correlation between the percentages selected and the market response to the differences in the properties.

106. Additionally, the Lady Appraisal failed to explain the criteria used to determine when it is appropriate to make a “slight adjustment” rather than a “moderate adjustment” or “large adjustment.”

107. As discussed, the appraisal acknowledged that there are “significant differences” between the purported comparable parcels and the property under appeal (Petitioner’s Exhibit 7, page 27). Given the wide discrepancy in values identified by the Lady Appraisal, the correct application of proper adjustments to the sales prices of purported comparable properties has a major impact in the determination of value.

108. The Lady Appraisal’s proposed adjustment technique, however, is nothing more than a subjective judgment multiplied by an arbitrarily assigned percentage. The result of this calculation is not a verifiable quantification of value, but simply an unsubstantiated conclusory statement.

109. Even by using such flexible criteria in the adjustment process, the Petitioner still was compelled to make net adjustments of 30% to 90% on four of the purported comparable properties. (Petitioner’s Exhibit 7, page 32). Such large adjustments further call into question the true comparability of these properties.

110. The Petitioner further contended that the fifth sale was “given the greatest emphasis in final correlation.” (Petitioner’s Exhibit 7, page 33).

111. The Petitioner described this purported comparable property:

“The comparable consists of a sale wherein the purchase price was based on the appraised value of the remaining portion of a long-term land lease between the City of Indianapolis as Lessor and Merchants National Bank & Trust Company of Indianapolis as Lessee. The original lease term was for 60 years commencing in 1974, with two options to extend for 15-years per term. The annual rent as of the date of transfer and throughout the balance of the lease term was, [sic] $360,000 on an absolute net basis. The purchase price was estimated via two appraisals, by discounting the annual rent for the remaining 35 years. The sellers [sic] representative indicated that the appraisals indicated a narraow [sic] range in value. The land lease was purchased by owner of leasehold improvements.” (Petitioner’s Exhibit 7, Addendum D, Comparable Land Sale #5).

112. Testimony provided by Mr. Lady elaborated on this description:

“This property did not change hands. There was no transfer of ownership rights in this property at all. This is an indicator of value. If you don’t have adequate sales, you can look at a piece of property that’s on a net long-term land lease, capitalize the net income into a value, and that was what was done.” (Transcript, page 175).

113. Several discrepancies are noted concerning this transaction.

114. The Petitioner initially described the lease term as “60 years beginning April 1974. Further, there are two options to extend the land lease for a total of 30 additional years…the total lease term [is] 90 years.” (Petitioner’s Exhibit 7,

page 27). The concept of a 90-year lease is supported by the description of the property (Petitioner's Exhibit 7, Addendum D, Comparable Land Sale #5) and testimony (Transcript, page 173).

115. However, the Petitioner also described the term of the lease as 100 years (Petitioner's Exhibit 7, page 32). This lease term was also supported by testimony (Transcript, page 175).

116. The Petitioner initially contended that the "sale" price was $4,500,000 for 126,704 square feet; the Petitioner determined that this resulted in a value of $35.52 per square foot (Petitioner's Exhibit 7, page 27).

117. Contradicting this contention, however, the Petitioner also asserted that the "sale" price was $3,470,000 for 126,716 square feet, resulting in a value of $27.38 per square foot. (Petitioner's Exhibit 7, Addendum D, Comparable Land Sale #5).

118. A possible reason for these inconsistencies is readily apparent: the Petitioner acknowledged, "The purchase price was estimated via two appraisals…The sellers [sic] representative indicated that the appraisals indicated a narraow [sic] range in value. The land lease was purchased by owner of leasehold improvements." (Petitioner's Exhibit 7, Addendum D, Comparable Land Sale #5).

119. The estimate of value contained in purported comparable sale #5 is therefore based on two appraisals, neither of which were prepared, or apparently even reviewed, by the Petitioner's representatives.

120. Further, "…the comparative sales data method 'requires ample sales data of truly comparable properties.'" *Canal Realty-Indy Castor v. State Board of Tax Commissioners*, 744 N.E.2d 597, 603, n. 9 (Ind. Tax 2001). However, even the Petitioner acknowledged that adequate sales were not available to perform a comparative sales analysis (Transcript, page 175).

121. Summarizing, the Petitioner failed to establish that any of its purported comparable properties are, in fact, comparable to the property under appeal. The property given the greatest weight in its analysis is described in contradictory terms regarding size, sale price, and value per square foot. The data concerning this transaction was obtained from third party appraisals, rather than an analysis prepared by the Petitioner's representative. Finally, the Petitioner acknowledged that adequate sales were not available to perform a sales comparison study; despite this fact, the Petitioner selected the sales comparison approach as its basis of proof.

122. For the reasons above, the State does not find the Petitioner's analysis of comparable properties to be persuasive.

123. The Petitioner also contended that the Marion County Land Order is arbitrary and capricious because supporting documentation for the Land Order was not located. (Petitioner's Brief, page 17).

124. The Petitioner contacted local assessing officials in an attempt to obtain copies of records prepared by the Marion County Land Valuation Commission. These local officials were unable to locate the records sought by the Petitioner.

125. The Petitioner, however, failed to establish that any of the officials contacted were meaningfully involved in the preparation of the Land Order. Moreover, an inability to locate records in 2000 is not probative evidence that such records did

not exist between November 1, 1991, and January 1, 1993, the period during which the base rates were determined. 50 IAC 2.2-4-2(b).

126. Additionally, statements of local assessing officials are not evidence of the activities of the Land Commission. "The Court…notes that it is well settled law in Indiana that 'boards and commissions speak or act officially only through the minutes and records made at duly organized meetings.'" *Indianapolis Racquet Club, Inc.*, 722 N.E. 2d at 934, n. 10 (citing *Scott v. City of Seymour*, 659 N.E. 2d 585, 590 (Ind. Ct. App. 1995)).

127. Summarizing, the Petitioner failed to introduce into evidence any notes or minutes made at duly organized meetings of the Marion County Land Valuation Commission. The statements of local assessors proffered by the Petitioner are of no probative value in determining the actions taken, or not taken, by the Marion County Land Valuation Commission. The Petitioner has therefore failed to produce any evidence that the Marion County Land Order is arbitrary and capricious.

128. Finally, the Petitioner noted other properties in downtown Indianapolis that were assessed at different land base rates (Petitioner's Brief, page 20). Yet again, the Petitioner provided no analysis to establish the comparability of these properties. Further, none of these properties were assessed at the $35 per square foot of primary land value suggested by AUL. Repeating, mere conclusory statements regarding the comparability of the parcels do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119; *Blackbird Farms Apartments, LP,* 765 N.E. 2d at 711.

129. For all the reasons above, the Petitioner failed to meet its burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

Issue 4 - Whether the land assessment should receive a negative influence factor.

130. The PTABOA did not apply any negative influence factor to the parcel. The Petitioner contended that the courtyard and building insert areas of the property should receive a 25% negative influence factor as a result of misimprovement.

131. Land Order values may be adjusted by the application of influence factors. An influence factor is defined in 50 IAC 2.2-4-10(a)(9) as "a condition peculiar to the lot that dictates an adjustment to the extended value to account for variations from the norm." Influence factors may be applied for the following conditions: topography; under improved property; excess frontage; shape or size; a misimprovement to the land; restrictions; and other influences not listed elsewhere.

132. A misimprovement to the land is defined as a "factor…used when the parcel does not have the same use as surrounding parcels." 50 IAC 2.2-4-10(a)(9)(E).

133. To prevail in an appeal for the application of a negative influence factor, the Petitioner must present both "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor at the administrative level." *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099, 1106 (Ind. Tax 1999).

134. The Tax Court has provided additional guidance when the Petitioner claims a negative influence factor resulting from misimprovement: "To establish a prima facie case that the subject parcel was misimproved, Fleet needed to submit probative evidence sufficient to show that (1) its parcel did not have the same use as surrounding parcels and (2) the inconsistent usage negatively impacted the subject parcel's value…Thus, contrary to [the Petitioner's] understanding, the regulations do not require an *automatic* downward adjustment in a parcel's value simply because it is used differently than surrounding parcels. Fleet submitted

no evidence demonstrating how any alleged inconsistent usage negatively impacted the subject parcel's value. Fleet's argument focuses exclusively on the identification of differing land uses and ignores the need to identify a decrease in value. *See* ind.Admin.Code tit. 50, r. 2.2-4-10(a)(9)(E). Assuming, without concluding, that Fleet's land use is different from that of surrounding parcels, Fleet was still obligated to produce probative evidence showing how the inconsistent usage decreased the value of its parcel. It did not do so. Therefore, the Court holds that Fleet did not make a prima facie case that the State Board improperly declined to assign a negative influence factor to the subject parcel." *Quality Farm and Fleet, Inc. v. State Board of Tax Commissioners,* 747 N.E.2d 88, 91-92 (Ind. Tax 2001).

135. More specifically, therefore, when arguing misimprovement the Petitioner's burden is two-fold: the Petitioner must submit probative evidence sufficient to show that (1) its parcel did not have the same use as surrounding parcels and (2) the inconsistent usage negatively impacted the subject parcel's value. *Id*.

136. AUL claimed that portions of its parcel do not have the same use as surrounding parcels: "The AUL land value should be accorded a negative influence factor since unlike most downtown high-rise buildings which utilize virtually all of the parcel for its building footprint, the AUL Building occupies 49% of the entire parcel square footage for its building footprint due to the significant inset of the building from the street and the large courtyard which the building improvements surround. Indeed, of the 176,400 square feet of area, the building footprint itself covers only 85,921 square feet or 48.71% of the entire area." (Petitioner's Brief, page 22).

137. As discussed, the Petitioner's property is a major office tower in downtown Indianapolis. The Petitioner identified six other major office towers in downtown Indianapolis, and acknowledged that all six have some portion of the parcel that is unoccupied by the footprint of the building. (Transcript, page 187-88).

Although the Petitioner contended the amount of green space was greater for its property than for the other properties, it has failed to demonstrate that the use of its parcel differs from the use of surrounding properties.

138. The Petitioner has therefore failed to introduce probative evidence that would support an application of a negative influence factor, as required by the first prong of the two-prong test articulated in both *Phelps Dodge* and *Quality Farm and Fleet, Inc.*

139. A Petitioner seeking the application of a negative factor must also quantify the amount claimed. *Phelps Dodge*, 705 N.E. 2d at 1106; *Quality Farm and Fleet, Inc,* 747 N.E.2d at 91-92. Market data may be used to quantify a loss of value. *Phelps Dodge*, 705 N.E. 2d at 1106.

140. The Petitioner, however, provided no market data to quantify its claim that the alleged deficiencies of the parcel result in the loss of value.

141. Instead, the Petitioner merely asserted, “Thus, in addition to the reduction in the primary land base rate, a negative influence allowance for misimprovement should be accorded in an amount equal to at least 25% which represents only about one-half of the misimproved area.” (Petitioner’s Brief, page 23).

142. The Petitioner’s unsubstantiated conclusions concerning the loss of value do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.

143. The Petitioner has therefore failed to quantify its claim for a negative influence factor, as required by the second prong of the two-prong test articulated in both *Phelps Dodge* and *Quality Farm and Fleet, Inc.*

144. For all the reasons above, the Petitioner failed to meet its burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

Issue 5- Whether the assessment is in accordance with the Indiana Constitution, State statutes, and regulations.

145. No specific evidence or testimony was presented concerning this issue. Accordingly, no change is made to the assessment as a result of this issue.

Summary of Final Determination

Determination of ISSUE 1: *Whether the assigned grade factor of "A-1" is excessive.*

146. The Petitioner failed to meet its burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

Determination of ISSUE 2: *Whether a partitioning adjustment is warranted for portions of the subject improvement.*

147. The parties stipulated to a reduction of 70% of the partitioning base price for lack of permanent partitioning on floors 9, 10 and 11, and a reduction of 80% of the partitioning base price for lack of permanent partitioning on floor 12. There is a change in the assessment as a result of this issue.

Determination of ISSUE 3: *Whether the assigned land base rate is excessive.*

148. The Petitioner failed to meet its burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

Determination of ISSUE 4: *Whether the land assessment should receive a negative influence factor.*

149. The Petitioner failed to meet its burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

Determination of ISSUE 5: *Whether the assessment is in accordance with the Indiana Constitution, State statutes, and regulations.*

150. The Petitioner failed to meet its burden in this appeal. Accordingly, 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