STATE OF INDIANA
Board of Tax Review

BENDIX CORPORATION C/o ALLIED SIGNAL Petitioner, v. ST. JOSEPH COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS And PORTAGE TOWNSHIP ASSESSOR Respondents.	) On Appeal from the County Property) Tax Assessment Board of Appeals))) Petition for Review of Assessment,) Form 131) Petition No. 71-026-99-1-3-00041) Parcel No. 1821937255))))))

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 partitioning in the office areas is correctly assessed.
2. Whether areas valued as GCI - Heavy Manufacturing should be valued as GCI - Light Manufacturing.

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, Rex D. Hume with Uzelac & Associates, Inc. on behalf of the Bendix Corp. (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 petition was filed on December 31, 1999. The St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) Notification of Final Assessment Determination on the underlying Form 130 petition is dated December 1,1999.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on January 24, 2002 before Hearing Officer, Joan L. Rennick. Testimony and exhibits were received into evidence. Mr. Hume, Mr. Tim A. Pettigrew, and Mr. James Schmidt, employees of Honeywell International, Inc., represented the Petitioner. Mr. John Voorde, Portage Township Assessor represented Portage Township. No one appeared to represent St. Joseph County.

4. At the hearing, the subject Form 131 petition was made a part of the record and labeled as Board Exhibit A. The Notice of Hearing on Petition was labeled Board Exhibit B. In addition, the following exhibits were submitted to the State:

   Petitioner's Exhibit 1 - Issues, Discussion of issues, Proposed Conclusions
   Petitioner's Exhibit 2 - Spreadsheet of description and pricing of actual partitions
   Petitioner's Exhibit 3 - Disclosure Statement
   Petitioner's Exhibit 4 & 5 – Copies of 50 IAC 2.2-11(12) and (16) models for GCI - Industrial Office and GCI - Research and Development
   Petitioner's Exhibit 6 – Copy of 50 IAC 2.2-10-6(4) through (9)
   Petitioner's Exhibit 7 & 8 – Copy of 50 IAC 2.2- 11(3), (4), (5), (6), (7) and (8) models for GCI – Light Manufacturing and GCI - Heavy Manufacturing

Petitioner's Exhibit 9 – Cover letter dated January 28, 2002

Petitioner's Exhibit 9a – Corrected Spreadsheet to replace Petitioner's Exhibit 2

5. The subject property is located at 717 N. Bendix Drive, South Bend, Portage Township, St. Joseph County.

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

<u>Issue No. 1 - Whether the partitioning in office areas is correctly assessed.</u>

7. The Petitioner contends that due to the way the property record cards (PRC) are structured and the fact there are no sketches of the subject buildings, it is impossible to determine which individual sections of the buildings should receive partitioning adjustments. *Hume testimony.*

8. The Petitioner concedes that the total square footage of finished divided areas shown on the PRCs appear to correspond with those amounts that actually exist for the industrial office and research and development areas. This would also hold true for the amount of square footage attributed to the manufacturing areas. *Hume testimony*.

9. Though this information (square footages) may be correct, trying to tie this data back to a specific page of the PRCs is impossible. It is for this reason the issue of a partitioning adjustment is viewed in terms of total area (pooling everything together) in the two (2) major buildings of the facility. *Hume testimony*.

10. The vast majority of office space in the two (2) major buildings consist of 10% finished divided and 90% finished open. A sample measuring of office space was taken and based on this sampling and observations, the Petitioner requests a negative adjustment for partitioning of 80% be applied. *Hume testimony & Petitioner Exhibit 1.*

11. The Petitioner testified that employees of the company measured and identified the materials used to construct the partitions. *Hume testimony*.

12. A facility technician took the physical measurements of all the walls in the office area and compared them to an auto-cad drawing. Even though these measurements were taken just 12 to 16 months ago they are still representative of what was there in 1999. *Pettigrew testimony.*

13. The Petitioner added that a local designing firm, who designed moveable partition layouts for the office, took measurements and verified the measurements taken with the auto-cad drawings. *Schmidt testimony*.

14. Once the materials were identified and the measurements of the existing partitions taken by staff members, the reproduction cost of the existing partitioning were then calculated by the Petitioner using costs from the Unit Cost Tables. The reproduction cost of the existing partitions were then compared to the base rate components in Schedule C, and based on this comparison the partitioning adjustment was determined. *Hume testimony*.

15. The Petitioner testified that the spreadsheet submitted is a total of all the partitioning in all of the finished divided areas. However, the building numbers are internal numbers for the facility and do not correspond to the building numbers on the PRCs. *Hume testimony & Petitioner's Exhibit 9a.*

16. The Respondent did not refute the Petitioner's testimony and agreed to the difficulty in reconciling the PRCs with what actually exists. *Voorde testimony*.

Issue No. 2 - Whether areas valued as GCI - Heavy Manufacturing should be valued as GCI - Light Manufacturing.

17. The Petitioner contends that due to the way the PRCs are structured and the fact

there are no sketches of the subject buildings, it is impossible to reconstruct the individual sections of the buildings. *Hume testimony*.

18. The Petitioner concedes that the total square footage of manufacturing areas shown on the PRCs, appear to correspond with those amounts that actually exist. *Hume testimony*.

19. The Petitioner contends there is 390,537 square feet of manufacturing space that has been priced from the GCI - Heavy Manufacturing model, however this amount of space should be valued using the GCI - Light Manufacturing model. *Hume testimony*.

20. The Petitioner opines that the only difference between the two (2) models for the first floor (the only floor under review in this appeal) is under the Stress category of the models. GCI – Light Manufacturing states, "Normal floor capacity. Normal vertical column tolerance." GCI – Heavy Manufacturing states, "Heavy floor capacity. Heavy vertical column tolerances." The Petitioner does add that normal and heavy are not defined in the Regulation. *Hume testimony & Petitioner's Exhibits 7 and 8.*

21. The Petitioner states that as a matter of custom and practice the Heavy and Light Manufacturing classifications have been decided on the floor capacity and thickness of concrete. The other consideration is the load the vertical structure of the building has to support other than the building itself. *Hume testimony*.

22. The Petitioner goes on to say that everyone would agree that the vertical stresses are not "heavy" if all they support is the roof of the building. If the concrete in the floor is approaching the minimum that anyone pours for any type of industrial application, then it is not heavy. A 6-inch thick floor is minimal for any industrial facility even light duty mini-warehouses. *Hume testimony*.

23. The Petitioner contends that an area of 49,770 square feet has 12-inch concrete

floors and two (2) ten-ton cranes supported by the building. Heavy machines in that particular area have their own foundations. The concrete floors in the remaining areas are 6-inch or 8-inch thick. *Hume testimony*.

24. Definitions of light and heavy that turn up in training classes indicate 6-inch and 8-inch floors are considered "light", a question mark is at 10-inch, and 12-inch is called "heavy". The instructors in these classes are more vague about vertical column stresses. Most industrial facilities have cranes that are either supported by the building or have their own separate supports. In this particular case, the heaviest cranes supported by the building are the two (2) ten-ton cranes in the area with the 12-inch floor. In all other areas, the heaviest crane is 5-ton with additional 1-ton cranes scattered about. We are talking about conventional light duty manufacturing operations and not heavy manufacturing. *Hume testimony.*

25. The Petitioner indicated most of the 300 Rich cranes at the facility pick up lighter weights. Wheels and brakes are manufactured at the facility they are built from scratch with the largest forging being approximately 800 to 900 lbs. A complete brake assembly after all the machining is complete weighs approximately 390 pounds. The ten-ton crane is the heaviest crane and it is used to pick up the larger pieces of equipment that might weight 50 to 60,000 pounds. *Pettigrew testimony*.

26. The Petitioner again stated that most of the floors are 6-inch and 8-inch thick with 12-inch thickness being in the 49,770 square foot section only. For identification purposes this is the last addition to the plant located on the far west end of the facility. *Pettigrew testimony.*

27. In summation, the Petitioner reiterated their request that 340,767 square feet be classified from the Light Manufacturing schedule based on the grounds that it is clearly not Heavy Manufacturing as currently assessed. The floors are mainly 6-inch to 8-inch thick and the crane capacities are actually light and only carry loads of a few hundred pounds at a time. The vertical supports of the building

primarily support the building itself, but there is less certainty of the 49,770 square feet section that has 12-inch concrete floors.

Conclusions of Law

1. Under the law applicable to these proceedings, the Petitioner is statutorily limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 130 petition. Ind. Code §§ 6-1.1-15-1, 2.1, and 4 (Statutes were amended in 2001 but amendments do not apply). See also the Forms 130 and 131 petitions. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles,* 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and 2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners,* 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.

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

A. Indiana's Property Tax System

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.

4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John,* 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V)*.

5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V,* 702 N.E. 2d at 1039 – 40.

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

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake

reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners,* 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners,* 689 N.E. 2d 765, 769 (Ind. Tax 1997)).

8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. "Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies." *Bell v. State Board of Tax Commissioners,* 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.

9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice,* § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. *See also* Ind. Code § 4-21.5-2-4(a)(10) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).

10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." *Id* (citing *Herb v. State Board of Tax Commissioners,* 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley,* 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners,* 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).

11. The taxpayer's burden in the State's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V,* 702 N.E. 2d at 1040.

12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.

13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark,* 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners,* 634 N.E. 2d 882, 887 (Ind. Tax 1994).

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

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

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property's market value will fail.

16. Although the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V,* 702 N.E. 2d at 1043; *Whitley,* 704 N.E. 2d at 1121.

17. Town of St. John V does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

Issue No. 1 - Whether the partitioning in office area is correctly assessed.

18. The Petitioner contends that a negative partitioning adjustment should be made to the industrial office and research and development areas.

19. 50 IAC 2.2-11-2(12) Model: GCI - Industrial Office – First and Upper Floors under Interior Finish for Partitions states, "Frame interior partitions typical of finished divided office buildings for a ceiling height of 10'." 50 IAC 2.2-11-2(16) Model: GCI - Research and Development – First and Upper Floors under Interior Finish for Partitions states, "Partitions constructed of taped and painted drywall on metal furring with a density of 10 S.F. floor per L.F. of partitioning including single lead fire doors."

20. It is the Petitioner's position that due to the way the PRCs are structured and the fact there are no sketches of the subject buildings, it is impossible to determine which individual sections of the buildings should receive partitioning adjustments. Thus the Petitioner "pooled" the square footages of the individual usages in order to determine the necessary adjustments.

21. The Respondent agreed with the Petitioner regarding the difficulty of matching the PRCs to what is actually at the facility.

22. At the hearing, the Petitioner testified the square footage attributed to finished divided areas, such as industrial office and research and development, shown on the PRCs correspond with the square footages that actually exist for those areas. The Petitioner also agreed that this would hold true for the amount of square feet attributed to the manufacturing areas shown on the PRCs.

23. The Hearing Officer reviewed the subject's PRCs to identify the use classifications, the square footages attributed to those usages, and any adjustments made to the usages for partitioning. The areas of particular focus in this appeal are the Industrial Office, Research and Development, Light Manufacturing, and Heavy Manufacturing areas. A summary of the subject's PRCs is as follows:

    a. REF: 002-002 – consists of Small Shop and Light Warehouse;
    b. REF: 003-003 – consists of Light Manufacturing (45,401 square feet), Light Warehouse and Light Utility Storage;
    c. REF: 004-004 – consists of three (3) floors of Research and Development (5,512 square feet per floor) with partitioning adjustments of $13.55 to the two (2) upper floors;
    d. REF: 005-005 – consists of Heavy Manufacturing (63,169 square feet) and Heavy Utility Storage;
    e. REF: 006-006 – consists of Industrial Office (2,950 square feet) and Small Shop;

f. REF: 007-007 – consists of Industrial Office (2,000 square feet) and Small Shop;
g. REF: 008-008 – consists of Heavy Manufacturing (33,681 square feet), Industrial Office (second floor – 23,314 square feet) and Light Utility Storage;
h. REF: 009-009 – consists of Industrial Office (4,060 square feet);
i. REF: 010-010 – First Floor - consists of Research and Development (14,382 square feet on the first floor), Light Manufacturing (11,778 square feet first floor), Small Shop and Light Utility Storage; Second Floor – Industrial Office (2,430 square feet), Research and Development (11,422 square feet) and Small Shop;
j. REF: 011-011– consists of Light Utility Storage;
k. REF: 012-012 – consists of Light Utility Storage;
l. REF: 013-013 – consists of Light Utility Storage;
m. REF: 014-014 – consists of Light Utility Storage;
n. REF: 015-015 – First Floor - consists of Industrial Office (38,228 square feet), Heavy Manufacturing (390,537 square feet), Light Warehouse, Small Shop, and Light Utility Storage; Second Floor – Industrial Office (66,848 square feet);
o. REF: 016-016 – consists of Industrial Office (2,277 square feet), Heavy Manufacturing (22,451 square feet) and Small Shop with Light Utility Storage on the second floor;
p. REF: 017-017 – consists of Light Utility Storage;
q. REF: 018-018 – consists of Light Utility Storage; and
r. Ref: 031-027 – consists of Industrial Office (206,031 square feet) space with a negative partitioning adjustment of $2.28 being applied and Light Utility Storage in the basement and on the first floor.

24. Using the square footages determined from the subject's PRCs (and agreed to by the Petitioner), a summary of the total square footages for the areas under review is as follows:

a. Industrial Office - 348,138 square feet (255,546 square feet on the First

Floor and 92,592 square feet on the Second Floor);

b. Research and Development – 42,340 square feet (19,894 square feet on the First Floor, 16,934 on the Second Floor and 5,512 square feet on the Third Floor);
c. Light Manufacturing - 57,179 square feet; and
d. Heavy Manufacturing - 509,838 square feet

25. The square footages taken from the subject's PRCs were then compared to those of the Petitioner's. It should again be noted the Petitioner testified that he was in agreement with the square footages shown on the subject's PRCs and that the square footages were "pooled" together. However, when a comparison is made to Petitioner's Exhibit 9a, a number of discrepancies are found:

a. Petitioner's Reference 001 - Industrial Office, shows 282,939 square feet but the PRC (REF: 031-027) shows the square footage to be 206,031, for a difference of 76,908 square feet;
b. The PRC shows a negative partitioning adjustment of $2.28 for this same area. This adjustment is then applied to that portion of the structure representing industrial office area or 58% of the building or a negative adjustment to 206,031 square feet of $1.36 per square foot. The Petitioner's adjustment is for $1.36 but to 282,939 square feet;
c. Petitioner's Reference 010-011-027 and 010-012-031, Research and Development shows this area as having 25,804 square feet. However, the subject's PRC (REF: 004-004 and REF: 010-010) shows the square footage for the First Floor Research and Development as 19,894 square feet. Additional square footage for Research and Development are shown in the subject's PRCs under REF: 004-004 as Second and Third Floors of a 3-story Research and Development building of 5,512 square feet each (The two upper floors are each receiving a negative partitioning adjustment of $13.55), and under REF: 010-010 as a Second Floor of 11,422 square feet; and
d. The Petitioner shows a total square footage of Industrial Office and Research and Development areas of 450,850 square feet. The subject's PRCs totals 390,478 square feet.

26. As part of the Petitioner's attempt to determine what negative adjustments should be made for partitioning, the Petitioner determines how much partitioning would be considered "typical" for the industrial office areas. As stated in Conclusions of Law ¶19, the model for GCI - Industrial Office – First and Upper Floors under Interior Finish for Partitions states, "Frame interior partitions *typical of finished divided* office buildings for a ceiling height of 10'." The Regulation does not specify the density of the partitioning for the general commercial industrial office. Instead, the Regulation states only that partitions are "typical" of finished divided office buildings are included in the base pricing.

27. In order for the State to decide whether a partitioning adjustment should be made for the industrial office areas, it would be necessary to decide whether one open finished area, representing some percentage of a structure, would make the building atypical for the model. Any discussion of what is "typical" would be purely speculative and require subjective judgment.

28. The Petitioner requested a reduction of 80% to the base rate for open areas in the industrial office sections (Petitioner's Exhibit 1) even though their "sampling" of spaces indicated 10% was finished divided and the remaining space finished open. It is based on this "sampling" that the Petitioner makes a broad statement that all of the industrial office areas are of the same percentages of finished divided area to finished open area. Such conclusions based on a "sampling" of office area are speculative at best. Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.

29. It is after this "sampling" and observations made by the Petitioner that they conclude that 20% is finished divided, however, in their calculations, the Petitioner computed the total cost per square foot for surface area of existing partitions with no deductions for any finished divided space (Petitioner's 20%). In addition, the Petitioner failed to take into consideration the partitioning requirement as stated in the Research and Development model (density of 10

S.F. floor per L.F. of partitioning including single lead fire doors) and apply it to the existing Research and Development areas of the facility.

30. Though the Petitioner testifies of measurements taken by third parties, the Petitioner fails to submit affidavits from those parties of how those measurements were taken and to what those measurements were compared to. It should be noted that the Petitioner did not take the measurements themselves but only did the calculations for the requested adjustments.

31. The Petitioner throughout their testimony discusses the difficulty in determining which areas of the facility would receive the necessary adjustments due to the lack of availability of a facility sketch or drawing. However, the Petitioner on several occasions refers to an "auto-cad" sketch used by the Petitioner's sources. For example, a facility technician took measurements of walls in the office area and compared them to an "auto-cad" drawing; a local designing firm, who designs moveable partition layouts, took measurements and verified the measurements taken with the "auto-cad" drawing.

32. At no time did the Petitioner present such a drawing into evidence. The Petitioner did not present any sketch or drawing of any type into evidence to identify which sections of the facility that were measured. Nor did the Petitioner in conjunction with this "auto-cad" drawing, blueprints of the facility or a sketch created by the Petitioner present photographs of the various sections of the structure showing the lack of partitioning or what type of partitioning existed. Though a sketch of the facility may not have been available from the Respondent it does not relieve the Petitioner from the ability to present such into evidence.

<u>Base Rate Adjustments and Town of St. John V</u>

33. The State's Regulation, 50 IAC 2.2-10-6.1(a), explains how to determine the base rate. Initially, one selects the model (GCM, GCI, or GCR) that *best resembles the physical characteristics* of the building being assessed. *Id; Barth I*

at 802. The Regulation also provides for a number of use-type models, e.g., GCI – Light Manufacturing. *See* 50 IAC 2.2-11-1, 2 and 3 describing features for each use-type model. The use-type models were never intended to describe with exactitude the features of the building being assessed. In fact, it would be impossible for any regulation to accomplish such a task. Because the features of the building being assessed will not conform exactly to the use-type models, adjustments *may* be made to the base rates provided for in 50 IAC 2.2-11-6.

34. 50 IAC 2.2-11-6, Schedule A provides for adjustments from the square foot base rate. The same rule, Schedule C, also provides for adjustments that *may* be made to the base rate. Schedule C adjustments fall into three categories: (1) base price components and adjustments, (2) unit cost adjustments, and (3) unit finish adjustments. 50 IAC 2.2-10-6.1(c) and 50 IAC 2.2-11-6, Schedule C.

35. The base price components and adjustments found in Schedule C show the cost of the interior and mechanical components included in the base rate to facilitate deduction from the base rate where appropriate. *Id.* Oftentimes, making adjustments from Schedule C – GC Base Price Components and Adjustments – is a simple task assuming that the taxpayer or taxpayer representative provides sufficient and supporting evidence regarding the building's features or the lack of them. Other Schedule C adjustments are more involved.

36. The unit cost adjustments found in Schedule C consist of a table of unit costs for the most typical interior components of buildings. Because the interior finish and other features identified in the model may not "match" those of the building under review, cost adjustments may be made but they may be made *only when there is a significant variation between the model and the subject building.* 50 IAC 2.2-10-6.1(c)(emphasis added).

37. The unit finish adjustments found in Schedule C consist of tables of composite adjustments that are applied to apartments and motel and hotel units. *Id.*

38. The State is mindful of the body of case law established by the Tax Court regarding base rate adjustments, including *Barth I; Wareco Enterprises v. State Board of Tax Commissioners,* 689 N.E. 2d 1299 (Ind. Tax 1997); *Bock Products, Inc. v. State Board of Tax Commissioners,* 683 N.E. 2d 1368 (Ind. Tax 1997); and, *Hatcher, supra.*

39. To the extent that the Tax Court decisions require a base rate adjustment for every item that is described in the model but not present in the building under administrative or judicial review, *Town of St. John V* overrules them. For example, in *Barth I* the Tax Court held that "where an improvement does not contain a component presumed to exist in the model, and a cost for that component is listed in Schedule C, a deduction from the base rate is made pursuant to that schedule." *Barth I* at 802. With due respect to the Court, its holding has been overruled by *Town of St. John V.*

40. Simple teachings of *Town of St. John V* bear repeating. The Indiana Supreme Court recognizes that Indiana's real estate property tax system is a mass appraisal system, and holds that taxpayers can not "expect the full achievement of absolute and precise exactitude" regarding property tax assessments. *Town of St. John V,* 702 N.E. 2d at 1040. For example, individual evidence may not be submitted for the purpose of obtaining an exact or precise assessment. Rather, individual evidence may be submitted to demonstrate that the wrong model has been selected, or an improper application of the Regulation.

41. Thus, to require a base rate adjustment for every item that is described in the model but not present in the building under administrative or judicial review erroneously mandates absolute and precise exactitude regarding property tax assessments and such mandate contradicts *Town of St. John V.*

42. Clearly, base rate reductions are not required because the building under review lacks features described in the models. Rather, base rate reductions are appropriate *only when the Regulation expressly permits them and makes them*

appropriate. In determining whether a base rate adjustment is appropriate under the Regulation, the State Board will adhere to the well-established case law regarding regulatory construction. The rules of statutory construction apply to the construction of administrative regulations. *State Board of Tax Commissioners v. Two Market Square Associates Limited Partnership,* 679 N.E. 2d 882, 885 (Ind. 1997). The foremost goal in regulatory interpretation is to determine the intent of the State Board. *Id at* 886. Indiana law is clear that interpretation of a regulation is not necessary if the regulation is not ambiguous. *Indianapolis Historic Partners v. State Board of Tax Commissioners,* 694 N.E. 2d 1224, 1227 (Ind. Tax 1998)(case law addressing rules of statutory construction). "A clear and unambiguous statute must be read to 'mean what it plainly expresses, and its plain and obvious meaning may not be enlarged or restricted'." *Id* (quoting *Department of State Revenue v. Horizon Bancorp,* 644 N.E. 2d 870,872 (Ind. 1994)). Words and phrases must be given "their plain, ordinary and usual meaning" . . . and by reading the regulation "within the context of the entire act of which they are a part . . . " Two *Market Square,* 679 N.E. 2d at 886 (citations omitted).

43. As stated in Conclusions of Law ¶9 and 10, the burden of proof is on the person petitioning the agency for relief. That taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. These presentations should outline the alleged errors and support the allegations with evidence. The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges.

44. For all the reasons set forth above, the State will not make an adjustment for partitioning.

<u>Issue No. 2 - Whether areas valued as GCI Heavy Manufacturing should be valued as GCI Light Manufacturing.</u>

45. Again, the Petitioner contends that due to the way the PRCs are structured and the fact there are no sketches of the subject buildings, it is impossible to reconstruct the individual building sections. Thus the Petitioner "pooled" the square footages of the individual sections in order to determine the necessary adjustments.

46. The Petitioner testified they agreed that the total square footage attributed to the manufacturing areas, does correspond with that square footage shown on the PRCs. Although it is difficult to work without sketches, classifications can be identified by square footages.

47. It is the Petitioner's contention that 390,537 square feet of manufacturing space valued from the GCI – Heavy Manufacturing pricing schedule should be valued from the GCI – Light Manufacturing pricing schedule with an additional 49,770 square feet valued as Heavy Manufacturing.

48. The Petitioner opines that the only difference between the GCI – Light Manufacturing and the GCI – Heavy Manufacturing models for the first floor (the only floor under review in this appeal) is under the "Stress" category of the models. GCI – Light Manufacturing states, "Normal floor capacity. Normal vertical column tolerance." GCI – Heavy Manufacturing states, "Heavy floor capacity. Heavy vertical column tolerances." The Petitioner does add that normal and heavy are not defined in the Regulation

49. The Petitioner went on to say that the Heavy and Light Manufacturing classifications are decided based on the floor capacity and thickness of the concrete. The Petitioner stated that 6-inch and 8-inch floor thickness are considered light, 10-inch questionable and 12-inch being heavy. In addition, the

load the vertical structure of a building has to support, other than the building itself, needs to be considered.

50. 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.

51. The Hearing Officer reviewed the subject's PRCs to identify the manufacturing classification and the square footages attributed to that use. The areas of particular focus for this issue are the Light Manufacturing and Heavy Manufacturing areas. A summary of the subject's PRCs is as follows for these areas:

a. REF: 003-003 – consists of Light Manufacturing (45,401 square feet), Light Warehouse and Light Utility Storage;
b. REF: 005-005 – consists of Heavy Manufacturing (63,169 square feet) and Heavy Utility Storage;
c. REF: 008-008 – consists of Heavy Manufacturing (33,681 square feet), Industrial Office (second floor) and Light Utility Storage (second floor);
d. REF: 010-010 – consists of Research and Development (first floor), Light Manufacturing (11,778 square feet first floor), Small Shop and Light Utility Storage; Second Floor – Industrial Office, Research and Development and Small Shop;
e. REF: 015-015 – First Floor - consists of Industrial Office, Heavy Manufacturing (390,537 square feet), Light Warehouse, Small Shop, and Light Utility Storage; Second Floor – Industrial Office;
f. REF: 016-016 – consists of Industrial Office, Heavy Manufacturing (22,451 square feet) and Small Shop with Light Utility Storage on the second floor;

52. Using the square footages determined from the subject's PRCs (and agreed to by the Petitioner), a summary of the total square footages for the areas under review is as follows:

a. Light Manufacturing – 57,179 square feet
b. Heavy Manufacturing – 509,838 square feet

53. The square footages taken from the subject's PRCs were then compared to those of the Petitioner's. It should again be noted the Petitioner testified that he was in agreement with the square footages shown on the subject's PRCs and that the square footages were "pooled" together. However, when a comparison is made to Petitioner's square footages some discrepancies are found:
a. Total square footage of Light and Heavy Manufacturing from the PRCs is 567,017. Petitioner's total square footage is 390,537;
b. The Petitioner contends that 340,767 square feet should be Light Manufacturing with 49,770 square feet as Heavy Manufacturing. However this amount can only be found under REF: 015-015; and
c. The Petitioner makes no reference as to how the difference in square footages between the PRCs and the Petitioner's (176,480 square feet) should be valued.

54. It should be noted the Petitioner did not identify the specific areas of the facility under appeal in regard to the Light and Heavy Manufacturing issue. 57,179 square feet of Light Manufacturing is identified in two (2) different areas (REF: 003-003 and REF: 010-010) and 509,838 square feet of Heavy Manufacturing is identified in four (4) different areas (REF: 005-005, REF: 008-008, REF: 015-015, and REF: 016-016) on the PRCs. It is difficult to determine where the Petitioner's 340,767 square feet and 49,770 square feet of 12-inch concrete flooring are to be found.

55. The Petitioner's request for the change in the use classification is based on a theory of the thickness of concrete flooring and vertical stresses of the building. The Petitioner agrees that the Regulation does not define "normal floor capacity" (or "normal vertical column tolerance") and "heavy floor capacity" (or "heavy vertical column tolerances"). However, the Petitioner determines as "a matter of

custom and practice” the Heavy and Light Manufacturing classifications have been decided by the floor capacity and thickness of the concrete.

56. The Petitioner then went on to state that concrete floors that are 6-inch and 8-inch thick are “light” with 12-inch being “heavy”. The Petitioner added that 49,770 square feet has 12-inch thick flooring where two (2) ten-ton cranes, supported by the building, can be found and that the remaining areas being either 6-inch or 8-inch thick.

57. Other than making statements of what is “a matter of custom and practice”, the Petitioner does not present any evidence to support their thickness theory. There are no references to industry standards or documents stating what the industry standards might be, as it would relate to the thickness of concrete floors. The Petitioner would agree that based on the type of industry under review, what is deemed “normal” or “heavy” for that industry might be thicknesses greater than or less than 6-inches. Additionally, there is no supporting documentation as to what any of the thicknesses of any of the concrete flooring actually is.

58. In addition, the Petitioner does not submit any similarly situated properties (manufacturing) as comparables to show that floor thickness were deciding factors between light and heavy manufacturing in those assessments, thus showing disparate treatment of the subject.

59. The Petitioner also determines that vertical stresses are not “heavy” if all they support is the roof of the building. Again, the Petitioner agrees that the Regulation does not define “normal vertical column tolerance” and “heavy vertical column tolerances” nor does it state structurally what would characterize such tolerances. The fact that the vertical columns may support only a roof does not by itself define whether something is “normal” or “heavy”.

60. The Petitioner failed to present any documentation that would support any of the statements they made. The Petitioner’s statements were speculative and

conclusory. Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.

61. The Petitioner also pointed to "original drawings" used to identify a section of the facility (49,770 square feet), yet those drawings were not presented into evidence.

62. As stated in Conclusions of Law ¶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."

63. For all the reasons set forth above, the State declines to make the classification change requested by the Petitioner.

<u>Other Findings</u>

64. A review of the subject's PRCs showed the assessed values for the subject property as: Land: $202,270 and Improvements: $4,037,030, for a total assessed value of $4,239,300. A review of the Form 115 shows the assessed values as: Land: $202,270 and Improvements: $4,036,930, for a total assessed value of $4,239,200. The difference in the assessed value totals of $100 could not be explained. Since the Form 115 is the actual determination of the PTABOA it is however determined that the values shown on the Form 115 will be the values of record for these proceedings.

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