

REPRESENTATIVE FOR PETITIONER: Brian J. Hurley, Attorney at law.

REPRESENTATIVE FOR RESPONDENT: Gwenn R. Rinckenberger, Attorney at law.

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

	)	
	)	Petition No.: 64-029-01-1-4-00001
BOILERMAKER CENTER LLC,	)	
Petitioner	)	County: Porter
	)	
v.	)	Township: Washington
	)	
	)	Parcel No.: 29000006200
WASHINGTON TOWNSHIP	)	
(PORTER COUNTY) ASSESSOR,	)	Assessment Year: 2001
Respondent	)	
	)	

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Appeal from the Final Determination of  
the Porter County Property Tax Assessment Board of Appeals

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**July 11, 2003**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Issue**

1. The issue presented for consideration by the Board was:

ISSUE – *Whether the Notice of Assessment of Land and Structures (Form 11) issued on June 8, 2001, was reasonably adequate.*

### **Procedural History**

2. Pursuant to Ind. Code § 6-1.1-15-3 Brian J. Hurley, attorney at law, filed a Form 131 petition on behalf of Boilermaker Center LLC (Boilermaker) petitioning the Board to conduct an administrative review of the above petition. The determination of the Porter County Property Tax Assessment Board of Appeals (PTABOA) was issued on May 23, 2002. The Form 131 was filed on June 20, 2002.

### **Hearing Facts and Other Matters of Record**

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on April 17, 2003 at Valparaiso, Indiana before Senior Administrative Law Judge Tim Rider, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

4. The following persons were present at the hearing:

For the Petitioner:

Dennis Hain, General Manager of Boilermaker.

For the Respondent:

Shirley LaFever, Porter County Assessor.

Lindy Wilson, Representative of the Porter County PTABOA.

Janine Chrisman, Representative of the Porter County PTABOA.

Lynn Ross, Washington Township Assessor.

5. The following persons were sworn in as witnesses and presented testimony:<sup>1</sup>

For the Petitioner:

Dennis Hain

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<sup>1</sup> The Board limited evidence to only the issue of the adequacy of the Form 11 notice received by the Petitioner. No evidence was admitted concerning the underlying substantive claims.

For the Respondent:

Lynn Ross

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 – Form 11 dated October 21, 1998.

Petitioner's Exhibit 2 – Form 11 dated October 10, 2000.

Petitioner's Exhibit 3 – Form 11 dated June 8, 2001.

Petitioner's Exhibit 4 – A copy of the property record card for parcel  
29000006200.

Petitioner's Exhibit 5 – A copy of Resolution 6, 1999, a resolution of the  
Common Council of the City of Valparaiso, Indiana,  
granting a personal property tax deduction for Dennis  
Hain, General Manager of Boilermaker.

Petitioner's Exhibit 6 – A copy of the relevant portion of the tax duplicate.

For the Respondent:

Respondent's Exhibit A – A copy of a Cross Motion for Summary Judgment,  
Memorandum in support of Cross Motion for Summary  
Judgment and Exhibits, all filed in the Porter Superior  
Court.

7. The following additional items are officially recognized as part of the record of proceedings:

Board's Exhibit A - Form 131 petition.

Board's Exhibit B - Notice of hearing.

8. During the administrative hearing, the Petitioner introduced two photographs as Petitioner's Exhibits 8 and 9. These photographs, of the Petitioner's one- and two-story buildings, were discussed during the testimony of Mr. Hain. At the close of the administrative hearing, these photographs were not submitted to the Administrative Law Judge for inclusion in the record.

9. The property is located at 2803 Boilermaker, Valparaiso, Washington Township, Porter County. The Administrative Law Judge did not view the property.

### **Jurisdictional Framework**

10. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
11. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

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

12. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
13. Indiana has established a mass assessment system through statutes and regulations designed to assess property according to what is termed "True Tax Value." See Ind. Code § 6-1.1-31 and 50 Ind. Admin. Code 2.2.
14. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
15. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property's market value. See *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998) (*Town of St. John V*).
16. The Indiana Supreme Court has said that the Indiana Constitution "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", nor

does it “mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant”, but that the proper inquiry in tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” See *Town of St. John V*, 702 N.E. 2d at 1039 – 40.

17. Although the Supreme Court in the *St. John* case did declare the cost tables and certain subjective elements of the State’s regulations constitutionally infirm, it went on to make clear that assessment and appeals must continue to be determined under the existing rules until new regulations are in effect.
18. New assessment regulations have been promulgated, but are not effective for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

#### **State Review and Petitioner’s Burden**

19. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
20. The petitioner must submit ‘probative evidence’ that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm’rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]
21. The petitioner has a burden to present more than just ‘de minimis’ evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm’rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]

22. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
23. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind. 2001), and *Blackbird Farms Apartments, LP v. Department of Local Government Finance*, 765 N.E.2d 711 (Ind. Tax 2002).
24. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case' and, by a 'preponderance of the evidence' proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

## Discussion of Issues

ISSUE – Whether the Notice of Assessment of Land and Structures (Form 11) issued on June 8, 2001, was reasonably adequate.

25. The Petitioner contended, “When a Form 11 contains inaccurate information the deadline for the appeal does not begin to run as the assessment does not provide sufficient notice to the taxpayer and the denial of an appeal when insufficient notice is given is a denial of due process.” *Board’s Exhibit A, attachment (Supplement to Section II Tax Appeal on behalf of Boilermaker Center LLC)*. The Petitioner asserted that it did not receive a legally sufficient notice of assessment until receipt of its tax bill on April 2, 2002.
26. The Respondent contended the Petitioner “had 45 days from the date of the Form 11 [June 8, 2001] to file a petition to appeal the assessment and no petition was filed [within that 45 day period].” *Respondent’s Exhibit A, attachment (Defendant’s Exhibit 16)*. The Respondent asserted that the Petition to the Property Tax Assessment Board of Appeals for Review of Assessment (Form 130) filed April 22, 2002, was therefore untimely.
27. The applicable rules governing this Issue are:
- IC 6-1.1-4-22(a)**
- “If any assessing official or any county property tax assessment board of appeals assesses or reassesses any real property under the provisions of this article, the official or county property tax assessment board of appeals shall give notice to the taxpayer and the county assessor, by mail, of the amount of the assessment or reassessment.”
- IC 6-1.1-15-1(a)**
- “A taxpayer may obtain a review by the county property tax assessment board of appeals of a county or township official’s action with respect to the assessment of the taxpayer’s tangible property if the official’s action requires the giving of notice to the taxpayer...At the time the notice is given to the party, the taxpayer shall also be informed in writing of:

- (1) the opportunity for review under this section; and
- (2) the procedures the taxpayer must follow in order to obtain review under this section.”

**IC 6-1.1-15-1(b)**

“In order to appeal a current assessment and have a change in the assessment effective for the most recent assessment date, the taxpayer must file a petition with the assessor of the county in which the action is taken:

- (1) within forty-five (45) days after notice of a change in the assessment is given to the taxpayer; or
  - (2) May 10 of that year;
- whichever is later.”

**IC 6-1.1-15-13**

“If notice of the action of a board or official is not otherwise given in accordance with the general assessment provisions of the article, the receipt by the taxpayer of the tax bill resulting from that action is the taxpayer’s notice for the purpose of determining the taxpayer’s right to obtain a review or initiate an appeal under this chapter.”

28. The relevant facts in this appeal are undisputed:

The Petitioner owns two neighboring business properties. The property located at 2803 Boilermaker is a two-story structure, a portion of which was still under construction on the assessment date. The property located at 2804 Boilermaker is a completed one-story structure.

The Petitioner received the contested Form 11 for the two-story building under appeal on or about June 11, 2001. This Form 11 described the building as a one-story structure and indicated a completion date of 1999. The Petitioner contended that this description caused it to believe the notice referred to the neighboring one-story structure owned by



the Petitioner. Upon receipt of tax bills for both structures, the Petitioner realized the contested Form 11 referred to the two-story structure that is the subject of this appeal.

Within forty-five days of the receipt of the tax bill, the Petitioner filed a Petition to the Property Tax Assessment Board of Appeals for Review of Assessment (Form 130) with the County Assessor to challenge the assessment of the two-story structure. Ultimately this appeal was denied by the PTABOA as being untimely, having been filed more than forty-five days after the date of the Form 11. *Respondent's Exhibit A, attachment (Affidavit [of Dennis Hain] in Support of Motion for Summary Judgment); Petitioner's Exhibit 3.*

#### Analysis of the ISSUE

29. In Indiana, the Township Assessor assesses property and issues a Notice of Assessment of Land and Structures (Form 11) to the taxpayer. If the taxpayer disagrees with the assessment, the taxpayer appeals the assessment to the County Property Tax Assessment Board of Appeals by way of a Petition to the Property Tax Assessment Board of Appeals for Review of Assessment (Form 130) filed with the County Assessor. The Form 130 must be filed within 45 days of the dated Form 11 or by May 10<sup>th</sup> of that year, whichever is later. If a Form 11 is not issued, the receipt by the taxpayer of the tax bill constitutes the taxpayer's notice for the purpose of obtaining a review or initiating an appeal. *See generally* IC 6-1.1-15 (Procedures for Review and Appeal of Assessment and Correction of Errors).
30. In determining the sufficiency of the contested Form 11, the Board will follow the standard set forth in *F.W. Woolworth Company v. State Board of Tax Commissioners*, 369 N.E. 2d 958 (Ind. App. 1977): "the manner in which the notice is actually given must be reasonably adequate under the circumstances." *Id* at 962.
31. The Petitioner did not identify any statutory provision with which the contested Form 11 failed to comply. For example, the Petitioner did not contend that the Form 11 notice

failed to include an explanation of the procedures the taxpayer must follow in order to obtain review of the assessment, as required by IC 6-1.1-15-1(a).

32. Instead, the Petitioner contended that the Form 11's descriptive information caused Boilermaker to believe the notice referred to a neighboring one-story structure also owned by the Petitioner and, therefore, the notice was not reasonably adequate under the circumstances.
33. The Petitioner did not allege any error in the sections of the Form 11 identifying the property owner's name and address, legal description, parcel or ID number, property address, or key number.
34. Rather, the Petitioner contended that it was misled by entries in the Description of Structures portion of the notice incorrectly describing the two-story building as a completed one-story structure.
35. A review of the Form 11 notice correctly prepared for the neighboring one-story property indicated the following: (a) the building was constructed in 1997; (b) the building received a grade of "C"; (c) the lot size was 1.41 acres; and (d) the parcel contained 8,200 square feet of paving. *Petitioner's Exhibit 2.*
36. In contrast, the contested Form 11 notice prepared for the two-story property under appeal indicated the following: (a) the building was constructed in 1999; (b) the building received a grade of "B-2"; (c) the lot size was 2.20 acres; and (d) the parcel contained 24,304 square feet of paving. *Petitioner's Exhibit 3.*
37. Therefore, the building identified on the contested Form 11 varied significantly in several obvious features from the one-story building: (a) it was constructed two years later than the one-story building; (b) it received a higher grade than the one-story building had previously received; (c) it was constructed on a lot size approximately 1½ times larger than the one-story building; and (d) it had approximately three times as much paving as the one-story building.

38. The Petitioner may not successfully contend that it was misled by similarities between the properties while ignoring these clear differences between the structures.
39. Even if errors occurred in the Descriptions of Structures portion of the Form 11, the Petitioner has failed to demonstrate that errors in this portion of the notice invalidate the Form 11. Indeed, one of the fundamental purposes of the real estate appeals process is to correct any errors contained in the Description of Structures portion of the Form 11.
40. In the event errors are discovered in the notice, the Form 11 instructs: “If you disagree with any of the information listed, contact your Township Assessor for clarification.” Additionally, the Form 11 advises: “For more detailed information, you may obtain copies of...property record card from your local assessor.” *Petitioner’s Exhibit 3*.
41. The Form 11 further informs the Petitioner of its appeal rights: “You have the right to appeal this assessment by filing a Petition For Review Of Assessment (Form 130) with the County Assessor within forty-five (45) days of the date this notice was mailed. You may obtain a copy of Form 130 at the County Assessor’s office.” *Id.*
42. The Form 11 therefore explains in writing both the opportunity for review and the procedures the taxpayer must follow in order to obtain a review of the assessment, as required by IC 6-1.1-15-1(a). Despite receiving these instructions, the record indicated that Boilermaker made no attempt to contact the local officials to obtain additional information concerning the assessment or to clarify which property was involved.
43. In further support of its position, the Petitioner argued that the Form 11 notice it received raised a similar due process issue as the facts in *Woolworth*.<sup>2</sup>
44. However, the Petitioner’s reliance upon *Woolworth* is misplaced. The notice furnished to Woolworth omitted individual assessed values for 13 stores. When this error was

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<sup>2</sup> The Petitioner also alleges errors in story height, percentage of completion, completion date, and assessment date. These contentions address the accuracy of the assessment, not the adequacy of the notice.

corrected by issuing a second notice adding the 13 stores, only eight days of the appeal period remained. Because the Petitioner did not have the entire statutory time period to appeal the assessment of the additional stores, the Court found that Woolworth's due process rights had been violated.

45. No such errors of omission have been demonstrated in the Form 11 notice received by Boilermaker. If any errors occurred in the Descriptions of Structures portion of the Form 11 sent to Boilermaker, these errors did not reduce the statutory appeal period available to the Petitioner.
46. Summarizing, the Form 11 notice received by the Petitioner clearly and accurately identifies the parcel that is being assessed. The Petitioner has failed to identify any specific statutory requirement with which the Form 11 does not comply. Although errors may exist in the Description of Structures portion of the notice, several physical characteristics unique to the two-story building are also included in this section. Any errors present in the Description of Structures portion of the notice are the type of error intended to be addressed by the appeals process. Further, the Form 11 notice explains in writing both the opportunity for review and the procedures the taxpayer must follow in order to obtain a review of the assessment. The Petitioner, however, failed to avail itself of these opportunities to clarify the assessment notice. Finally, any errors present in the Form 11 notice did not reduce the time allowed for an appeal or otherwise abridge the due process rights of the Petitioner to a further review of the assessment.
47. The Petitioner has not established that the Form 11 notice was inadequate when the notice correctly identified the parcel and advised the Petitioner of the necessary steps to be taken in the event that errors in the assessment were discovered.
48. The Petitioner was therefore required to file the Form 130 within 45 days of the date of the Form 11. Accordingly, the Petitioner's appeal to the PTABOA was untimely filed.

49. “While a taxpayer has the right to challenge [its] property's value, [it] must also bear the responsibilities that are attached to that right. Indeed, because the legislature has created specific appeal procedures by which to challenge assessments, a taxpayer must comply with the statutory requirements of filing the proper petitions within a timely manner.” *Williams Industries v. State Board of Tax Commissioners*, 648 N.E. 2d 713, 718 (Ind. Tax 1995).
50. For all the reasons above, the Petitioner failed to meet its burden in this appeal of demonstrating that the Form 11 was not reasonably adequate under the circumstances. Accordingly, the Board concludes that the Petitioner did not timely file its Form 130 petition.<sup>3</sup>

### **Summary of Final Determination**

Determination of ISSUE: – Whether the Notice of Assessment of Land and Structures (Form 11) issued on June 8, 2001, was reasonably adequate.

51. The Petitioner failed to meet its burden of proof to establish that the Form 11 was not reasonably adequate under the circumstances.

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<sup>3</sup> A taxpayer may file a Form 133, Petition for Correction of Error, when it discovers an error that “can be corrected without resort to subjective judgment and according to objective standards[.]” *Hatcher v. State Bd. of Tax Comm’rs*, 561 N.E.2d 852, 857 (Ind. Tax 1990). This appeal procedure allows the taxpayer to claim a refund within three years after the taxes were first due. *See* Ind. Code §§ 6-1.1-26-1(2) and 6-1.1-15-12. Without so finding, the Board observes that at least some of the Petitioner’s substantive claims may involve objective error (if error occurred). Nothing in the Board’s Final Determination issued today precludes the Petitioner from seeking the correction of any objective error through the use of a Form 133 petition.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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Chairman, Indiana Board of Tax Review

**IMPORTANT NOTICE**

**- APPEAL RIGHTS -**

**You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.**