

**STATE OF INDIANA
Board of Tax Review**

DUKE REALTY LTD.,)	On Appeal from the Hamilton County
)	Board of Review
)	
Petitioner,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition No. 29-018-95-1-4-00270
)	Parcel No. 1609260000017003
HAMILTON COUNTY BOARD OF)	
REVIEW and CLAY TOWNSHIP)	
ASSESSOR,)	
)	
Respondents.)	

Findings of Fact and Conclusions of Law

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

Issues

1. Whether the land base rate is excessive.
2. Whether the land-type classification between secondary and usable undeveloped is correct.
3. Whether the grade of the structure is correct.

4. The assessment is not in accordance with the Indiana Constitution, the Indiana Property Tax Assessment Statutes, and the State Board of Tax Commissioners' 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 be considered a finding of fact.
2. Duke Realty Ltd. (Duke) received the County Board's determination on the underlying Form 130 petition on January 7, 1997. Pursuant to Ind. Code § 6-1.1-15-3, Baker & Daniels (B & D) filed a Form 131 petition on behalf of the Petitioner. The Form 131 was filed on January 28, 1997.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on July 30, 1998, before Hearing Officer Carl Edwards. Testimony and exhibits were received into evidence. Ms. Janet M. Charles, B & D, and Mr. Matthew Peters represented the Petitioner. Mr. Brian Thomas represented Hamilton County. Mr. Tony Meeks represented Clay Township.
4. Hearing Officer Carl Edwards viewed the property on July 31, 1998. Ms. Charles, Mr. Thomas, and Mr. Meeks were present at the property viewing.
5. A rehearing was held on July 10, 2001, before Hearing Officer Dalene McMillen. Testimony and exhibits were received into evidence. Ms. Vickie Norman, Messrs. Kevin Reiter and Brent Auberry, B & D, represented the Petitioner. Ms. Lori Harmon and Ms. Kim Powell represented Hamilton County. Mr. Kevin Poore represented Clay Township.

6. At the rehearing, the following documents were made part of the record and labeled as Board's Exhibits:
 - a. Board's Ex. A – A copy of the 131 petition filed by B & D.
 - b. Board's Ex. B – Form 117, Notice of Hearing on Petition.
 - c. Board's Ex. C – Request for additional evidence from Hamilton County and Baker & Daniels, dated July 10, 2001.
 - d. Board Ex. D – Withdrawal of Issue Agreement on the land allocation between secondary and usable undeveloped classification, dated July 10, 2001.

7. At the rehearing, the following documents were submitted by the Petitioner to the State Board:

Petitioner's Ex. 1 – A "brief" containing the following: a six page summary of the issues; (1) Duke's property record cards for parcels #1609260000017003 and #1609260000017000; (2) zoning ordinance for Clay Township; (3) Land Valuation Order for Clay Township, page 11 of 30; (4) land pricing and property record cards for various properties located between 96th Street and 136th Street; (5) State Board Final Determination for Bankers National Life Insurance Company, dated January 17, 2001; (6) copy of a commercial land sale from Estridge Development Co. to Bethlehem Lutheran Church of Carmel, dated December 22, 1994; (7) a copy of the real estate purchase agreement between Duke and Hills Communities, Inc., dated May 8, 1997; and (8) a copy of an analysis of typical on-site development costs, conducted by Michael C. Lady Appraisal Company, Inc., dated July 23, 1996.

Petitioner's Ex. 2 – A map showing the City of Carmel zoning.

Petitioner's Ex. 3 – Four maps showing land prices on and off the U.S. 31 corridor from 96th to 136th Streets.

Petitioner's Ex. 4 – A photograph of the entrance of the subject property.

Petitioner's Ex. 5 – A photograph of a residential property (comparable).

Petitioner's Ex. 6 – A photograph of a land sale located north of the subject property.

Petitioner's Ex. 7 – Six photographs, one page information sheet, and the property record card of Meijer Inc.

Petitioner's Ex. 8 – A letter designating Vickie Norman, B & D, to represent Duke Realty, signed by Stephen H. Paul, B & D, dated July 10, 2001.

8. At the rehearing, the following documents were entered into the record and labeled as Respondent's Exhibit 1; (a) Hamilton County Board of Review's response to the 131 petition; (b) Duke Realty's 1995 property record card; (c) Duke Realty's 1999 property record card; (d) an aerial photograph of the subject property; (e) a map of the City of Carmel zoning; (f) two pages from the County Land Order Summary Report (pages 246 & 242 of 725); and (g) a copy of the land sale of Meijer, Inc.
9. The assessed value of the property as determined by the County Board for March 1, 1995 is:
Land: \$171,930 Improvements: \$525,570 Total: \$697,500
10. The Petitioner's property is located at 12722-12870 Hamilton Crossing Blvd., Carmel, Indiana 46032, in Clay Township, Hamilton County.
11. Hearing Officer Dalene McMillen did not conduct an on-site inspection of the subject property.
12. At the rehearing, Mr. Kevin Reiter, Ms. Lori Harmon, and Mr. Kevin Poore testified that they are certified Level II Indiana Assessor/Appraisers.

13. At the rehearing, Ms. Harmon requested the opportunity to submit to the State Board comparable properties dealing with the issue of land base rates. July 15, 2001 was established as the deadline for the submission of this information.
14. By letter dated July 13, 2001, Ms. Harmon provided an aerial photograph and twenty-two (22) property record cards indicating the primary land base rates. Ms. Harmon's letter, the aerial photograph and twenty-two (22) property record cards have been entered into the record and labeled Respondent's Exhibit 2.
15. The Petitioner's representative did not respond to Ms. Harmon's additional evidence.
16. At the rehearing, Ms. Norman requested the opportunity to submit to the State Board a side by side comparable building on the issue of grade. July 15, 2001 was established as the deadline for the submission of this information.
17. By letter dated July 16, 2001, Ms. Norman provided four photographs of the subject, Duke's property record card, Hamilton Crossing I grade history, State Board Final Determination for Dukemill Ltd. Partnership, spreadsheet of Hamilton Crossing I and comparable property features, property record card on comparable property (Duke Realty – Hamilton Crossing II), and three photographs of Hamilton Crossing II (comparable). Ms. Norman's letter and the above stated information have been entered into the record and labeled Petitioner's Exhibit 9.
18. The County representative and Township representative did not respond to Ms. Norman's additional evidence.

19. On September 6, 2001, the Appeals Division issued an Order to Duke Realty stating “the parties agree that land values decrease as you travel north on U.S. 31 corridor and that land values are less if they are not directly fronting the corridor. Given these points of agreement, the Appeals Division finds it appropriate for the parties to meet ...and attempt to resolve their differences of opinion regarding land value.” The Order has been entered into the record and labeled as Board’s Ex. E.
20. On September 11, 2001, Duke Realty stated in a letter to the Hamilton County Assessor that, in accordance with the State Board’s Order, Duke Realty was willing to meet and discuss the issues of the appeal. The letter has been entered into the record and labeled as Petitioner’s Ex. 10.
21. On October 1, 2001, the Appeals Division received Duke Realty’s response to the Order, advising that no agreement was reached at that time. Duke Realty’s response to the Order has been entered into the record and labeled as Petitioner’s Ex. 11.

Issue No. 1 – Land Base Rate

22. Subsequent to the administrative hearing, on January 11, 2002, the parties submitted a stipulation agreement. This agreement indicated that the base rate for primary land should be \$100,000 per acre. The parties further agreed that this amount would be reduced by the application of a ten percent negative influence factor.

Issue No. 2 – Land-type Allocation

23. The Petitioner’s representative withdrew this issue at the rehearing.

24. Ms. Harmon objected to the withdrawal of the land allocation issue, citing that the amount of primary land is understated and that the remaining land should be classified as usable undeveloped.

Issue No. 3 – Grade

25. The Petitioner is requesting the grade of the structure be reduced from “C+2” to “C+1”.
26. Subsequent to the rehearing, the Hamilton County Property Tax Assessment Board of Appeals (PTABOA) reduced the grade of the subject structure for the assessment date of March 1, 1997 to a “C+1”. (Norman & Harmon testimony) The grade history of the subject structure shows that the building has been “C+1” since 1992, except for the years of 1995 and 1996. (Petitioner’s Ex. 9)
27. Duke submitted a side by side comparison of the structural components and photographs of the subject structure and a comparable property. Both properties were constructed for Duke. The comparable property is graded “C+1”. (Petitioner’s Ex. 9 & Reiter testimony)
28. The County did consider objective items not contained in the “model” when the grade of “C+2” was established, a process described in 50 IAC 2.2-10-6.1. Further, the Petitioner did not find fault with the 1999 reproduction cost of \$2,068,290. To determine if the 1995 reproduction cost is accurate, the County calculated the amount of remodeling for 1999 and subtracted it from 1999 reproduction cost. The calculation is as follows:

1999 reproduction cost (uncontested by the Petitioner)	\$2,068,290
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minus unfinished areas	- 35,200
minus remaining 70% partitioning	- 50,400
minus plumbing	- <u>11,000</u>
Total (estimated 1995 reproduction cost)	\$1,971,690

The 1995 reproduction cost on the property record card is \$1,946,510, therefore the above calculation supports the “C+2” grade. (Harmon testimony & Respondent’s Ex. 1)

Issue No. 4 – Constitutionality of the Assessment

29. Duke did not address this issue at the hearing or include it in its “brief”, Petitioner’s Ex. 1.

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 No. 1 – Land base rate

18. As discussed, subsequent to the administrative hearing, the parties entered into a stipulation agreement reflecting that the base rate of the primary land should be \$100,000 per acre. The parties further agreed that a ten percent negative influence factor should be applied to the primary land.
19. The State Board accepts the parties' stipulation and agreement identified immediately above. In doing so, the State Board does not decide the propriety of this agreement, either explicitly or implicitly.
20. There is a change in the assessment as a result of this issue.

Issue No. 2 – Land-type allocation

21. The Petitioner withdrew this issue.
22. At the State Board hearing, the Hamilton County officials attempted to address the issue of the land-type allocation.
23. Ind. Code § 6-1.1-15-3 requires the State Board to review the actions of the County Board of Review. The County Board's Final Determination (Form 115) indicates that the County Board did not address the land-type allocation at the Form 130 hearing.

24. The Petitioner initiated the original 130/131 appeal on the subject property. The Petitioner did not address or develop this issue. The State Board 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)).
25. For all reasons set forth above, the State Board will accept the withdrawal of the land-type allocation issue. No change is made in the assessment as a result of this issue.

Issue No. 3 – Grade

26. “Grade” means the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30
27. 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.
28. 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 (50 IAC 2.2-11-1,

-2, and -3), and graded photographs (50 IAC 2.2-11-4.1), assist assessors in the selection of the proper grade factor.

29. The major grade classifications are A through E. 50 IAC 2.2-10-3. The cost schedules (base prices) in the Manual reflect the C grade standards of quality and design. The following factors (or multipliers) are assigned to each major grade classification:

“A” grade	160%
“B” grade	120%
“C” grade	100%
“D” grade	80%
“E” grade	40%

30. Intermediate grade levels ranging from A+10 through E-4 are also provided for in the Manual to adequately account for quality and design features between major grade classifications. 50 IAC 2.2-10-3 (c).
31. The Petitioner asserts that the appropriate grade and design factor for the subject property is “C+1”. This conclusion is based upon the grade and design factor of “C+1” being applied to a comparable building located on an adjoining parcel constructed for the Petitioner, along with photographs and an analysis of characteristics of the subject and comparable property.
32. Respondent’s Ex. 1 and Petitioner’s Ex. 1 & Ex. 9 (County’s response to issues, B & D’s “brief”, and Ms. Norman’s letter) reflect that the PTABOA reduced the grade of the structure under appeal to a “C+1” grade for tax year 1997. A grade history of the structure indicates it has been graded at a “C+1” from 1992 through 2001 with the exception of 1995 and 1996. (Petitioner’s Ex. 9, tab 2)

33. The County Board of Review substantially agreed with the Petitioner by reducing the grade of the structure for 1997, contradicting the County's position at the State Board hearing.
34. The taxpayer's burden in the State Board'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.
35. The Petitioner identified a similarly situated property, has established disparate treatment, and shown that the property has not been graded consistently throughout various assessment years. In doing so, the burden then shifted to the County Board to present evidence to contradict the Petitioner's evidence and justify its decision with substantial evidence.
36. The County Board did not present any evidence or testimony that contradicts the set of facts established by the Petitioner. The testimony on record is simply a conclusory statement that the grade factor selected for the subject is correct. A conclusory statement alone is not enough to contradict the evidence presented by the Petitioner. *Whitley*, 704 N.E. 2d at 1119.
37. Similarly, the calculation (Finding #31) submitted by the County Board is based on the County's opinion that, because the Petitioner did not challenge the 1999 reproduction cost of the building, if the additions made to the building in 1999 are removed this would be an indication of the reproduction cost for 1995.
38. In Indiana, each tax year is separate and distinct. *Williams Industries v. State Board of Tax Commissioners*, 648 N.E. 2d 713 (Ind. Tax 1995). A Final

Determination of a 1999 assessment does not constitute probative evidence in this appeal.

39. The State Board will not leave the 1995 grade unchanged when the County Board recently found that a “C+1” grade best describes the structure under appeal. For all reasons set forth above, the County Board failed to meet its burden in this matter. Therefore, the State Board will make the change in grade factor sought by the Petitioner, from “C+2” to “C+1”. A change is made in the assessment as a result of this issue.

Issue No. 4 – Constitutionality of the assessment

40. The Petitioner did not address or develop this issue. No change is made in 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