

**STATE OF INDIANA
Board of Tax Review**

GUION DEVELOPMENT PARTNERS LP,)	On Appeal from the Marion County
)	Board of Review
)	
Petitioner,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition No. 49-901-95-1-4-00079
)	Parcel No. 9009638
MARION COUNTY BOARD of)	
REVIEW)	
And WAYNE 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 grade and design factor of the subject building is correct.
2. Whether the land classification is correct.
3. Whether the assessment is contrary to the laws of the State of Indiana and the Regulations of the State.

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. Pursuant to Ind. Code § 6-1.1-15-3, Sandra K. Bickel of Ice, Miller, Donadio, & Ryan, on behalf of Guion Development Partners (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 petition was filed on January 7, 1999. The Marion County Board of Review's (County Board) Assessment Determination on the underlying Form 130 petition is dated December 11, 1998.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on September 5, 2000, before Hearing Officer Jennifer Bippus. Testimony and exhibits were received into evidence. Sandra K. Bickel and Diana Cunningham with Ice, Miller, Donadio & Ryan represented the Petitioner. Gregory Dodds represented Wayne Township. No one appeared to represent Marion County.

4. At the hearing, the subject Form 131 petition was made a part of the record and labeled Board Exhibit A. Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following exhibits were submitted to the State:
 - Petitioner Exhibit A - A brief of the issues prepared by the Petitioner
 - Petitioner Exhibit B - Development dated August 16, 1996 for the 1991 A copy of the GCM - General Office - Model from the Indiana Real Property Manual, 50 IAC 2.2-11-1
 - Petitioner Exhibit C - A copy of the costs associated with the construction of 3760 Guion Road
 - Petitioner Exhibit D - A copy of the State's final determination for Guion assessment year
 - Petitioner Exhibit E - Photographs of the subject property both interior and exterior

Petitioner Exhibit F - Photographs of the parking areas of the subject area
Petitioner Exhibit G - A copy of Rule 4, Land; Residential, Commercial,
Industrial, and Agricultural Homesites, 50 IAC 2.2-4-1

Respondent Exhibit A - A copy of a sketch of the plat of the subject
property

Respondent Exhibit B - A copy of Section 2.10 Off-Street Parking
Regulations

Respondent Exhibit C - A copy of the Zoning Base Map Cover Index

Respondent Exhibit D - A copy of Base Map 16D Zoning – Indianapolis
Marion County – Indiana

Respondent Exhibit E - A copy of Section 2.09 C-S Special Commercial
District Regulations

Respondent Exhibit F - A copy of Section 2.13 Special Regulations on
setbacks of property lines

Respondent Exhibit G - A copy of the comprehensive zoning districts of
Marion County, Indiana, Index Sheet

5. The subject property is located at 3760 Guion Road, Indianapolis, Wayne Township, Marion County.
6. At the hearing, the Petitioner requested an opportunity to submit additional evidence. The Hearing Officer granted this request. The Petitioner submitted the additional evidence dated September 7, 2000 with copies going to the Hearing Officer and the Respondent, Mr. Dodds of Wayne Township. The additional evidence submitted by the Petitioner is labeled as Petitioner Exhibit H.
7. The Hearing Officer did not conduct an on-site inspection of the subject property.

Issue No. 1 - Whether the grade factor of the subject building is correct.

8. It is the Petitioner contention that the subject structure is graded incorrectly and the correct grade should be a "C". The subject structure is presently graded "B-1".
9. Ms. Bickel submitted the following into evidence to support the requested grade change:
 - a. The model specifications for GCM office - 50 IAC 11-1-24, to show the subject varies from the model. Petitioner Exhibit B;
 - b. The actual construction costs of the subject property and the open concept. Petitioner Exhibit C;
 - c. A State Final Determination dated August 16, 1996 for the 1991 assessment year, determining the grade at "C". Petitioner Exhibit D; and
 - d. Interior and exterior photographs of the subject property. Petitioner Exhibit E.
10. Ms. Cunningham testified that the photographs (Petitioner Exhibit E) are representative of the subject building as follows:
 - a. The front entrance of the building has a parapet with steps up and down for decorative purposes;
 - b. The interior has an open concept with cubicles, a few side offices, and conference rooms. Eighty-five percent (85%) to Ninety (90%) of the building is open to allow for flexibility; and
 - c. Some of the interior features include: aluminum metal framed windows with plate glass, standard ceiling tiles, 2' x 4' fluorescent light fixtures, 8 1/2 feet interior wall height, some vinyl tile, some carpet, some ceramic tile in the foyer, raised floor system in computer room made of wood, and ceramic tile in the restrooms.
11. Ms. Bickel testified the subject building does not agree with the GCM -General Office model (50 IAC 11-1(25) (Petitioner Exhibit B) and because of this the

grade will be affected. Ms. Bickel contends the following is a description of the subject building:

- a. The foundation consists of 12" reinforced concrete perimeter grade walls to 2'6" high on 12" x 18" strip footings including trench excavation and back-fill;
 - b. The wall type is brick and limestone veneer on light gauge metal strip back-up walls;
 - c. Openings are one-half percent (1/2%) 1 3/4" hollow metal service doors, five percent (5%) aluminum frames 1/4" plate glass doors, and twenty percent (20%) vented steel sash glass windows;
 - d. The ceiling interior height is 8 1/2';
 - e. The walls are taped and painted drywall on metal furring. There is some wallpaper in the executive offices and foyer area;
 - f. There is very little ceramic tile. Most of the building has vinyl tile and carpeting;
 - g. There are very few partitions in the building, some 2' x 4' fluorescent lighting, with some executive offices having parabolic lenses; and
 - h. There is zoned air conditioning and gas fired forced air.
12. Ms. Cunningham further testified that the only variances from the model in the construction of this building, is the foundation, the ceiling height, and the wall construction. The foundation varies due to the soil composition of the subject area. On the interior core of the building, 36" diameter case-ons were poured 10' deep to support the interior of the building. *Petitioner Exhibit B.*
13. Ms. Cunningham went on to say, that Petitioner Exhibit C is an as-built drawing that shows the primary area of the building as open space with a few executive offices, conference room, and rest rooms built around the perimeter with 10 - 20% of the total square foot area being partitioned.
14. Ms. Bickel asserts the actual construction cost of the subject building (Petitioner Exhibit C) including four (4) change orders is \$1,698,142. Included in this price

are the additional case-on footers. Ms. Bickel added that the Indiana Real Property Manual for 1995 calls for a 15% adjustment, and she calculated the cost as follows:

1991 construction cost	\$1,698,142
Less 15%	<u>254,721</u>
	\$1,443,421

15. Ms. Bickel contends that the cost on the property record card prior to the application of the grade and design factor and depreciation is \$1,419,010. Ms. Bickel further testified that if a "C+1" grade is used and the 105% is applied to the \$1,419,010, it is higher than the above listed construction cost less the 15% (\$1,443,421).
16. Mr. Dodds testified to the following:
- The PRC shows the net true tax value at \$1,395,240, after the grade and design factor, physical depreciation and obsolescence were applied;
 - That to place the value at \$1,443,421 as Ms. Bickel states is the construction cost, the County would have to raise the grade to a higher level;
 - The tinted vision windows incorporated into the design of the subject building, are added costs;
 - If the unit-in-place tables from the Indiana Real Property Manual are used, the price of the windows starts out at \$20.85 verses the real model window of \$10.75;
 - That this is almost double the price of the model and the additional cost should be absorbed in the grade; and
 - The "B-1" grade is accurate.
17. Ms. Bickel contends the costs should not include any depreciation and at this point the actual construction costs should stand. Ms. Bickel submitted a copy of the State Board's Final Determination dated August 16, 1996, for the 1991 assessment year. Ms. Bickel asserts the final determination lists a "C" grade as

the appropriate grade for the building. Petitioner Exhibit D.

Issue No. 2 - Whether the land classification is correct.

18. Ms. Cunningham testified that the subject building is currently vacant and has been since June 30, 2000. Ms. Cunningham further testified that Anthem Insurance occupied the building from March 1, 1995 through June 30, 2000 and only used 50% of the parking lot. Ms. Cunningham added that the western portion of the lot was not occupied.
19. Ms. Cunningham submitted photographs of the parking area in question (Petitioner Exhibit F) as evidence and testified to the following:
 - a. The first photographs showed handicap parking and the front portion of the parking used for visitors. This front portion of the parking is used the most and looks a little empty in the photograph because it is for visitors; and
 - b. The photographs on the last two pages of the exhibit show the western portion of the lot and that it is not fully utilized.
20. Ms. Bickel contends the photographs were taken in October 1996, but that on any given day the parking lot would be occupied in the same manner, with the western side of the parking area occupied very little.
21. Ms. Cunningham used the County's sketch (Respondent Exhibit A) to provide a visual view of the parking area. Ms. Cunningham testified that the division line between the primary and secondary parking should be drawn in the middle of the parking area and not as it is shown by the Respondent. Ms. Cunningham further testified the eastern 50% of the parking lot was occupied most of the time and the western 50% of the parking lot was occupied very little.
22. Ms. Bickel contends that the Indiana Real Property Manual regulations do not

specify that set backs have to be assessed as “necessary support land” and as a result deemed primary land.

23. Ms. Bickel submitted as Petitioner Exhibit G, a copy of 50 IAC 2.2-4-1 Primary definitions of primary and secondary land. Ms. Bickel contends that primary land refers to land regularly used – such as parking areas and secondary land refers to parking areas that are not used regularly.

24. Ms. Bickel submitted the State Board’s Final Determination (Petitioner Exhibit D) dated August 16, 1996 for the 1991 assessment, whereby the land was assessed as follows:

73,580 SF primary lands

13,181 SF secondary lands

1.645 acre undeveloped land

25. Mr. Dodd testified the land use was determined by zoning requirements. Mr. Dodd presented the following exhibits as evidence on the zoning:

- Respondent Exhibit B - A copy of 2.10 Off-Street Parking Regulations (page 8 highlighted)
- Respondent Exhibit C - A copy of the Zoning Base Map Cover Index
- Respondent Exhibit D - A copy of Base Map 16D Zoning - Indianapolis - Marion County - Indiana
- Respondent Exhibit E - A copy of Section 2.09 C-S Special Commercial District Regulations
- Respondent Exhibit F - A copy of Section 2.13 Special Regulations (referring to setback lines)
- Respondent Exhibit G - A copy of the Comprehensive Zoning Districts of Marion County, Indiana.

26. Based on the zoning requirements for an office building, 3.5 parking spaces per each 1,000 square feet (SF) of gross floor area (Respondent Exhibit B), Mr.

Dodds calculated the following for the subject property:

36,793 divided by 1000 = 36.793 x 3.5 = 128.776 or 129 parking spaces not including the handicap spaces, of which there are 5 handicap spaces

- a. The average parking space is 10 feet x 18 feet or 180 SF.
 - b. The Township has assessed 119,230 SF as primary land, 35,712 SF as secondary land, and .080 acre as undeveloped (lake).
 - c. The primary land also included the 10' setbacks as set by zoning. The setback is a necessary support. A building cannot be built without following the zoning and the setbacks.
 - d. There are 169 parking spaces, but only 130 are required. Part of the parking has been included as secondary as shown by the dotted line on Respondent Exhibit A.
27. Ms. Bickel contends she does not believe the setbacks have to be included in primary land.
28. Ms. Bickel submitted as additional evidence a letter dated September 7, 2000 addressed to the Hearing Officer with the following information (Petitioner Exhibit H):
- a. The Petitioner used the site map placed into evidence by the Respondent to determine that 16,875 SF should be assessed as secondary land.
 - b. The Petitioner further verified the 16,875 SF on a site map of the property with a scale of 1" to 30'. The site map is four times the size of the site map offered by the Respondent as evidence.
 - c. The Petitioner multiplied the length (1.875") and the width (.625") of the disputed area on the site map submitted into evidence by four to put the measurements on the same scale as the 1" to 30' site map. These adjusted measurements were multiplied by 30 in order to convert them to the actual measurements of the disputed area.
 - d. The Petitioner arrived at the following break down for land use:
102,355 SF for primary land

52,587 SF for secondary land
.080 acre undeveloped (lake)

**Issue No. 3 - Whether the assessment is contrary to the laws of the State
of Indiana and the regulations of the State.**

29. Ms. Bickel provided no testimony or evidence as it related to this issue.

Other Findings

30. Ms. Bickel contends that the wall height of the subject property is 12 feet high and it is contrary to the regulations of the State Board of Tax Commissioners to assess the wall height at 16 feet high.
31. Mr. Dodds testified that the wall height was not listed as an issue on the Form 115 at the County Board hearing. Mr. Dodds further testified that the issue of wall height should not be considered at the 131 hearing.

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. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr.,

Administrative Law and Practice, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.

10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
11. The taxpayer's burden in the State's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V*, 702 N.E. 2d at 1040.
12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence. 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.

D. Issue No. 1 – Whether the grade factor of the subject building is correct.

18. "Grade" means the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC

2.2-1-30.

19. 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.
20. The determination of the proper grade requires assessors to make a variety of subjective judgments regarding variations in the quality of materials and workmanship and the quality of style and design. *Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d 1058, 1064 (Ind. Tax 1993). For assessing officials and taxpayers alike, however, the Manual provides indicators for establishing grade. The text of the Manual (see 50 IAC 2.2-10-3), models and graded photographs (50 IAC 2.2-11-4), assist assessors in the selection of the proper grade factor.
21. The Petitioner asserts that the appropriate Grade and Design Factor for the subject structure is "C". The Petitioner's conclusion is based on what they consider differences between features of the subject structure and those of the GCM - General Office (50 IAC 2.2-11-1(25) model such as in the foundation, ceiling height, and the wall construction. The GCM – General Office model is what is presently used by the County to value the subject structure.
22. In addition the Petitioner submitted 1991 construction costs (Petitioner Exhibit C) of \$1,698,142 (less 15% or \$1,443,421). The Petitioner then compared the construction costs against the total base of \$1,419,010 prior to the application of the grade factor, physical depreciation and obsolescence. In making this comparison the Petitioner indicated that if a grade of "C+1" were to be applied, it would make the assessment still higher than the construction costs (\$1,489,961 v. \$1,443,421).
23. The Respondent contends that the current net true tax value of \$1,395,240, which included a "B-1" grade, physical depreciation and obsolescence

depreciation, is below the construction cost of \$1,443,421 provided by the Petitioner. The Respondent opines the grade would have to be raised to a higher level above the current grade of "B-1" if the Petitioner's construction cost were used.

24. The Petitioner argues depreciation and obsolescence should not be included and the construction cost of the subject building should only be considered.
25. The Petitioner also submitted a State Final Determination dated August 16, 1996, for tax year 1991 for the same property, which determined that a "C" grade should be applied to the subject structure (Petitioner Exhibit D).
26. Before applying 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.
27. First, the Petitioner opines that the subject building should be graded "C" since it does not fit the model regarding foundation, interior features (floor and ceilings), openings and air-conditioning. Interior and exterior photographs were submitted in support of this issue (Petitioner Exhibit E).
28. There are two methods to adjust an improvement 's assessment for deviations from the model. The first is to adjust the grade of the subject. "Where possible, this type of an adjustment should be avoided because it requires an assessing official's subjective judgment." *Clark v. State Board of Tax Commissioners*, 742 N.E. 2d 46, 49 (Ind. Tax 2001)(*Clark II*). See also *Whitley*, 704 N.E. 2d 1113.
29. "Under some circumstances, an improvement's deviations from the model used to assess it may be accounted for via a grade adjustment." However, the evidence presented must explain how and to what extent the subject deviates from the model, why those deviations deserve an adjustment, and why a subjective (as opposed to objective) adjustment is appropriate. *Quality Farm and*

Fleet, Inc. v. State Board of Tax Commissioners, 747 N.E. 2d 88, 94 (Ind. Tax 2001).

30. The second, and preferred method “is to use separate schedules that show the cost of certain components and features present in the model. This method allows an assessing official to make an objective adjustment to the improvement’s base rate.” *Clark II*, 742 N.E. 2d at 49. See also *Whitley*, 704 N.E. 2d 1113.
31. The Petitioner must identify the model used to assess the improvement. The Petitioner must also demonstrate whether the current grade does not already account for lower construction costs due to these features. *Miller Structures v. State Board of Tax Commissioners*, 748 N.E. 2d 943, 953 (Ind. Tax 2001). Accordingly, the Petitioner must show how the subject deviates from the model, and quantify how the alleged deviations affect the subject’s assessment.
32. The Petitioner failed to present any comparison of the cost differences between the subject’s existing features and those shown in the model. The Petitioner relies heavily on photographs dated September 2000 for an appeal with an assessment date of March 1, 1995, as well as their interpretation of those photographs. The Petitioner presents no evidence that would lend support to their interpretations of those photographs.
33. Secondly, the Petitioner presented a Final Determination by the State (Petitioner Exhibit D) for an appeal filed on the same property for the assessment date of March 1, 1991. It is the Petitioner’s contention that the appeal under review for 1995 should receive the same grade as was determined in the 1991 appeal.
34. The State will not reduce the grade of the subject structure under appeal on the basis of its Final Determination for the tax year 1991. That Final determination did not specifically state the basis for the grade assigned, and did not reflect or meaningfully deal with the evidence considered in determining the “C” grade

factor. Instead, the Final Determination only said, “Upon visual inspection and in consideration of 50 IAC 2.1-4-3(f), it is determined the grade is best described as “C”. The building is moderately attractive and is constructed with average quality workmanship and materials.” Consequently, the 1991 Final Determination is insufficient to support the application of a “C” grade factor.

35. 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).
36. Thirdly, the Petitioner presents, what is purported to be, the 1991 construction costs for the subject structure (Petitioner Exhibit C).
37. True tax value does not equal market value. Ind. Code § 6-1.1-31-6(e). True tax value does not attempt to determine the actual market value for which a property would sell if it were offered on the open market. Nevertheless, true tax value’s *method* for valuing structures is the same as one of the well-accepted methods for determining fair market value – reproduction cost less depreciation.
38. The cost schedules in the Manual, 50 IAC 2.2-10-3, are at the heart of true tax value’s method for determining value. The cost schedules effective for the 1995 general reassessment reflect 1991 reproduction costs (based on market information derived from Marshall Valuation Services price tables) that were then reduced across the board by 15%. The overall purpose of these cost schedules was to approximate prevailing construction costs in 1991 less 15%.
39. According to the Petitioner the subject structure was built in 1991. The information submitted to the State Board in this appeal reflects that the Petitioner determined the contested structure had a construction cost of \$1,698,142.
40. The State will compare the actual construction cost information to the Manual’s cost schedules for purposes of the grade issue in this appeal. The Petitioner used their determined 1991 construction cost minus the 15% Manual adjustment

to calculate a value of \$1,443,421. However, the construction cost figures used by the Petitioner are not correct.

41. Cost consists of all direct labor and materials and indirect expenditures required to complete the construction of an improvement. A builder or developer includes all expenses incurred in the development of an improvement, as well as overhead and a sufficient amount of profit to cover the risk associated with constructing the improvement. Thus, if cost is to represent value, it is necessary that all appropriate costs be included in the estimate. The goal of the assessor is not cost but market value. Cost is merely the avenue to market value in this approach. *IAAO Property Assessment Valuation*, Second Edition, page 132.
42. Cost may be divided into three kinds: direct, indirect and entrepreneurial profit. All three kinds of cost are necessary to produce reliable cost estimates. Examples of direct costs include labor, materials, supervision, electrical and water service, other utilities, equipment rental, and installation of components. Indirect costs include (but are not limited to) architectural and engineering, building permits, title and legal expenses, insurance, real estate and other taxes during construction, construction loan fees and interest payments during construction, overhead, profit, advertising, and sales expense. Entrepreneurial profit is a market-derived number that reflects the amount developers or entrepreneurs expect to receive for their contribution to the improvement. *IAAO Property Assessment Valuation*, Second Edition, page 132 & 133.
43. A review of the Petitioner's purported construction costs shows the Petitioner failed to include any indirect costs (soft costs) into the total construction cost. For example, the Petitioner did not include architecture and engineering costs of \$56,257 or legal, insurance, and permit costs of \$42,953.
44. When the soft costs are added to the Petitioner's construction cost the construction cost increases from \$1,698,140 to \$2,564,000. If this number is then reduced by the 15% Manual adjustment, one would arrive at \$2,179,400.

The Petitioner determined the value to be \$1,443,421.

45. Once the construction cost is determined, it is divided by the reproduction cost established by the Manual (prior to the grade, physical depreciation or obsolescence depreciation being applied) to review the grade that is challenged in this appeal.
46. The subject structure's property record card reflects that the building's reproduction cost (prior to adjustments for grade, physical depreciation and obsolescence depreciation) is \$1,419,010. If the corrected construction cost less 15% ($\$2,564,000 \times 85\% = \$2,179,400$) is divided by the determined reproduction cost \$1,419,010, it would equal 1.5358 or 1.54.
47. Comparing the Petitioner's construction cost to the Manuals cost schedules establishes a grade factor of 150% or "A-1". 50 IAC 2.2-7-6(g) and -11, Schedule F. Again, the Petitioner is seeking a grade reduction to a "C" or 100%.
48. The State acknowledges that the Manual does not explicitly identify the mathematical calculation detailed above, but this does not prohibit the State from using such a calculation for purposes of: (1) meaningfully dealing with the evidence presented, (2) reviewing the propriety of a grade factor that is challenged in this appeal, and (3) determining value according to the common law developed by the Tax Court.
49. The Tax Court demands quantification techniques for grade application and the State has concluded that using actual construction cost information in the way in which such information was used herein is appropriate when grade issues are raised in property tax appeals. *Garcia v. State Board of Tax Commissioners*, 694 N.E. 2d 794 (Ind. Tax 1998).
50. It bears repeating that 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 no 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).

51. In the case at bar, the Petitioner failed to present probative evidence to establish that the grade and design factor for the subject structure should be reduced to a "C".
52. For all of the reasons set forth above, there is no change in the assessment as a result of this issue.

E. Issue No. 2 - Whether the classification of primary, secondary, and undeveloped land is correct.

53. There are four (4) categories of commercial and industrial land. Those categories are primary, secondary, usable undeveloped, and unusable undeveloped.
54. 50 IAC 2.2-4-1(18) "Primary commercial or industrial land" refers to land utilized for purposes that are secondary to the primary use of the land. The following are examples of primary land:
 - (A) Land located under buildings.
 - (B) Regularly used parking areas.
 - (C) Roadways.
 - (D) Regularly used yard storage.
 - (E) Necessary support land.
55. 50 IAC 2.2-4-1(19) "Secondary commercial or industrial land" refers to land utilized for purposes that are secondary to the primary use of the land. The following are examples of secondary land:

(A) Parking areas that are not used regularly.

(B) Yard storage that is not used regularly.

56. It is the Petitioner's position that the land classification is incorrect. In support of their position the Petitioner presented photographs (Petitioner Exhibit F), the County's sketch (Respondent Exhibit A), a 1991 State Final Determination for the same property (Petitioner Exhibit D) and a letter dated September 7, 2000 addressed to the Hearing Officer with additional calculations of land classification (Petitioner Exhibit H).
57. The Petitioner contends that 50% of the parking area, the western portion, is not used on a regular basis and the other 50% of the parking area to the east is used very little.
58. The Petitioner seeks a change in the land classification to:
- Primary land - 102,355 SF
 - Secondary land - 52,587 SF
 - Undeveloped land (lake) - .080 acre
59. The County property record card shows the land being valued in the following manner:
- Primary land – 119,230 square feet (SF)
 - Secondary land – 35,712 SF
 - Undeveloped land (lake) - .080 acres
60. Before applying 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.
61. The Petitioner presents photographs (Petitioner Exhibit F) of the parking areas in question. However, unlike other photographs presented by the Petitioner in this appeal for another issue (Petitioner Exhibit E), these photographs do not have a

date showing when they were taken. Ms. Bickel contends that the photographs were taken in October 1996 and adds that they are representative of how the parking lot was occupied on any given day. No explanation was given as to why the photographs of the parking areas did not have a date as the other exhibit did.

62. Without knowing the specific time frame (date and time of day) that these photographs were taken makes it difficult to lend any weight to this evidence.
63. Ms. Cunningham, in conjunction with the photographs, uses a County sketch (Respondent Exhibit A) and redraws the County's line as to what she thinks is or should be secondary land. Ms. Cunningham's line would separate the parking area into 50% primary and 50% secondary. However, the fact that a line may be redrawn in order to support a position does not make this probative evidence.
64. Ms. Bickel in her letter stated she used the same sketch (County's) and a *site map* (not submitted as evidence by the Petitioner) to determine that an additional 16,875 SF should be assessed as secondary land and should be deducted from the primary land amount.
65. In both cases the Petitioner used either the County sketch or an in-house *site map* and made conclusory statements as to what the land classification should be. Other than the sketch and the *site map* the Petitioner did not present any additional evidence such as site plans, survey or aerial map that would have specifically assisted in determining the land types. Nor did the Petitioner submit any calculations in relationship to those maps, to show what portion of the subject property was considered in each classification and how the amount of land attributed to each classification was calculated.
66. The Petitioner submitted into evidence a Final Determination by the State (Petitioner Exhibit D) for an appeal filed on the same property for the assessment date of March 1, 1991. According to the Form 131 petition under review in this appeal, the Petitioner's position is the "classification of primary, secondary and

undeveloped land should be the same as that determined by the State Board of Tax Commissioners on August 16, 1996.” The 1991 State determination read:

Primary land – 73,586 SF

Secondary land – 13,181 SF

Undeveloped land – 1.645 acres

67. However, at the hearing the Petitioner sought a very different classification of the land. The Petitioner seeks the following:

Primary land – 102,355 SF

Secondary land – 52,587 SF

Undeveloped land - .08 acres (lake)

68. The State will not change the land classification of the subject property under appeal on the basis of its Final Determination for the tax year 1991. That Final determination did not specifically state the basis for not changing the land classification, and did not reflect or meaningfully deal with the evidence considered in determining the land classification was correct. Consequently, the 1991 Final Determination is insufficient to support a change in the land classification.

69. 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).

70. On the land classification issue the Respondent testified the land breakdown was determined by zoning requirements. In support of this position Mr. Dodds submitted into evidence (Respondent Exhibits B – G) various zoning regulations and zoning maps.

71. Included in Mr. Dodds breakdown is a calculation pertaining to the required number of parking spaces based on the zoning. Mr. Dodds calculated this to be 130 spaces (Findings of Fact ¶26) and determined these to be part of the primary land classification. Mr. Dodds also determined that the remaining spaces (39)

are to be considered secondary land.

72. In addition, zoning required a 10-foot setback line. Mr. Dodds also considered this setback line into the primary land determination as “necessary support land”.
73. As stated in Conclusions of Law ¶54, primary land includes “necessary support land”. The Petitioner contends the Manual does not specify that setbacks have to be assessed as “necessary support land” and thus primary land.
74. In previous Tax Court decisions where statute has not clearly defined certain terminology, the Tax Court has resorted to the “plain, ordinary and usual meaning” of those words. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667N.E. 2d 810 (Ind. Tax 1996).
75. In the case at bar, The American Heritage Dictionary, Third Edition defines the following:
necessary – absolutely essential; needed to achieve a certain result or effect; requisite; unavoidably determined by prior conditions or circumstances; logically inevitable
support – to furnish corroborating evidence for; to aid the cause, policy, or interests of
76. The fact that the Petitioner failed to consider “necessary support land” (Findings of Fact ¶22 & 27, Petitioner Exhibit H) within their determination of the land classification puts the Petitioner’s breakdown into question.
77. For all of the reasons set forth above, the Petitioner failed to show the land classifications determined by the County were incorrect. Accordingly, there is no change in the assessment as a result of this issue.

F. Issue No. 3 - Whether the assessment is contrary to the laws of the State of Indiana and the regulations of the State.

78. The Petitioner did not provide any testimony or evidence in support of the assessment being contrary to the laws of the State of Indiana and the regulations of the State.
79. No change in the assessment is made as a result of this issue.

G. Other Conclusions

80. The Petitioner contends the wall height is 12 feet and it is contrary to the regulations of the State to assess the wall height at 16 feet.
81. The Respondent opined the wall height was not listed as an issue on the Form 115. The Respondent further opined the wall height was not addressed at the County Board hearing, and therefore, should not be addressed at the 131 hearing.
82. A review of the Form 130 and 131 petitions indicates that the issue of wall height was not listed as an issue for review on either document. Board Exhibit A.
83. It bears repeating that the Petitioner is limited to the issues raised in the Form 131 petition filed with the State that requires the Petitioner to identify the specific grounds for appeal. The State has the discretion to address any issue once an appeal has been filed by the taxpayer. In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised in the Form 131 petition filed with the State. Conclusions of Law ¶1.
84. No change in the assessment is made 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