STATE OF INDIANA
Board of Tax Review

In the Matter of the Petition for Review)
of Assessment, Form 131) Petition No.: 03-006-98-1-4-00001

Parcel No.: 0695300020000

Assessment Year: 1998

Petitioner: Harrison Lake Country Club, Inc.
P.O. Box 145
Columbus, Indiana 47202

Petitioner Representative: Milo Smith
Tax Consultants, Inc.
331 Franklin Street
Columbus, Indiana 47201

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 perimeter-to-area (PAR) for the basement area of the clubhouse should be “5” rather than “9”.
2. Whether the use type selected to value the clubhouse should be General Retail rather than Dining Lounge.
3. Whether the “B” grade factor applied to the golf course is correct.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-3, Mr. Milo Smith of Tax Consultants, Inc. on behalf of Harrison Lake Country Club, Inc. (Petitioner) filed a Form 131 petition requesting a review by the State. The Form 131 was filed on May 7, 1999. The Bartholomew County Board of Review’s (County Board) Notice of Assessment, on the underlying Form 130 petition, was received by the Petitioner on April 9, 1999.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on January 6, 2000 before Hearing Officers Jennifer Bippus. Testimony and exhibits were received into evidence. Mr. Smith represented the Petitioner. Ms. Clara Claycamp, Harrison County Assessor, and Mr. Robert Blessing represented the County Board.

4. At the hearing, the subject Form 131 petitions were 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 summary of the issues

Petitioner Exhibit B – Copy of property record card (PRC) with the perimeter of the basement area highlighted

Petitioner Exhibit C – Copy of the presentation of issues made to the County Board

Petitioner Exhibit D – Copy of a portion of 50 IAC 2.2-10-6.1 narrative regarding base rates

Petitioner Exhibit E – Copy of a portion of 50 IAC 2.2-11-5, Selection of Schedules guide

Petitioner Exhibit F – Copy of pages 1 and 21 of a Tax Court opinion with an excerpt of testimony highlighted

Petitioner Exhibit G - Copy of 50 IAC 2.2-11-1, the model description for General Retail

Petitioner Exhibit H – Copy of 50 IAC 2.2-11-1, the model description for Hotel/Motel Service

Petitioner Exhibit I – Copy of a glossary page from Marshall & Swift Valuation, Section 90, page 7, December 1996 with the word “pilaster” highlighted

Petitioner Exhibit J – Copy of glossary page from Marshall & Swift Valuation, Section 90, page 2, December 1996, with the word “bond beam” highlighted

Petitioner Exhibit K – Copy of 50 IAC 2.2-11-6, GCM Base Prices, Schedule A.1, with the base rates of General Retail and Hotel/Motel Service highlighted

Petitioner Exhibit L - Copy of 50 IAC 2.2–11-6, Base Price Components and Adjustments, Schedule C, with the lines for General Retail and Hotel/Motel Service highlighted

Petitioner Exhibit M – Copy of 50 IAC 2.2-12-5, Golf Courses with portions highlighted

Petitioner Exhibit N – Copy of 50 IAC 2.2-12-3, the narrative discussing the pricing of yard improvements

Respondent Exhibit A – Copy of the subject property’s 1989 PRC

Respondent Exhibit B – Copy of Bartholomew County Property Tax Assessment Board of Appeals (PTABOA) minutes dated September 23, 1999

Respondent Exhibit C – Copy of PRCs for the following properties:

a. Otter Creek Golf Course (Otter Creek)
b. Clifty Creek Golf Course (Clifty Creek)
c. Quarry Ridge Golf Course (Quarry Ridge)

Respondent Exhibit D – Copy of 50 IAC 2.2-12-5, Golf Courses with sections underlined

5. As a result of the testimony and evidence presented at the hearing, the Hearing Officer requested that the parties meet after the hearing to discuss the terms of a possible agreement regarding the issue of model selection. The parties were asked to submit documentation of any agreement they reached on or before January 16, 2000. The Request for Additional Evidence was entered into the record and labeled as Board Exhibit C.

6. On January 18, 2000, the Hearing Officer received, via facsimile, a memorandum from the County Board with a PRC attached reflecting the 1999 assessment for the subject property established by the PTABOA. The response from the County Board was entered into the record and labeled as Respondent Exhibit E.

7. The subject property is a private country club with a golf course and a clubhouse situated on 151.63 acres of land. The subject property is located at 588 South Country Club Road, Columbus, Columbus Township, Bartholomew County.

8. The 1998 Assessed Value established by the County Board is $476,270 for the improvements and $42,030 for the land.

9. The Hearing Officer did not conduct an on-site inspection of the subject property.

10. At the hearing, Mr. Smith pointed to that portion of 50 IAC 2.2-12-5, Schedule G – Golf Courses which dealt with the procedure (formula) to determine the true tax value of a golf course. Mr. Smith opines that this procedure was not followed. This issue was not an issue raised on the Form 131 petition, however, Mr. Smith testified that this issue was discussed at the local hearing.

Evidence and Testimony Regarding the Calculation of PAR for the Basement Area of the Clubhouse.

11. The 1989 and 1995 PRCs for the clubhouse show that the basement perimeter measurements had not changed between reassessment years. The assessing software might have picked up dotted lines shown on the 1995 PRC, thus resulting in an incorrect PAR calculation. *Smith testimony* & Petitioner Exhibit A.

12. The issue of PAR was discussed at the local hearing but it is not known why the County Board did not address the issue. *Smith testimony*.

13. Petitioner Exhibit A shows a calculation used to determine the PAR of the basement as follows:
75+12+41+80+41+8+22+21+15+60+31+2+32+28+12+30+30 = 540 linear feet
540 linear feet divided by 10,731 square feet = PAR 5

14. The Respondents agreed the PAR of the basement area appeared to be incorrect. *Respondent testimony*.

Evidence and Testimony Regarding Model Selection/Use Type for the Clubhouse.

15. The model is a conceptual tool used to replicate reproduction cost of a given structure using typical construction materials. Petitioner argues that the subject property can either be assessed from the General Retail or the Hotel/Motel Service. *Smith testimony*.

16. The Selection of Schedules, while specific, is used only as a guide. Selection of Schedules shows a private course clubhouse is to be valued from the GCM – Hotel Service and a public course is to be valued from GCM – General Retail. *Smith testimony & Petitioner Exhibit E*.

17. It is not the actual use of a property that determines the appropriate model to use to value a property, rather the appropriate model is the model that is most representative of the subject's physical features regardless of the model name. *Smith testimony & Petitioner Exhibit F.*

18. The main difference between the model descriptions for General Retail and Hotel/Motel Service is in the wall construction. For Hotel/Motel Service it describes a Type 1 wall constructed with pilasters and bond beams. Heavier construction is needed for the Hotel/Motel Service to support multi-level structures. The base rate for General Retail is $25.85 and the base rate for Hotel/Motel Service is $41.15. *Smith testimony & Petitioner Exhibits G & H.*

19. A comparison of the base price components found in Schedule C shows that the interior cost for Hotel/Motel Service is greater than the interior cost for General Retail. *Smith testimony & Petitioner Exhibit A*.

20. The more finished divided a building is, the more expensive it is to build. The subject building has a large open dining room, an open lounge, an open banquet room, an open lobby, and a wide center hall. The subject structure should be valued using the General Retail model rather than the Hotel/Motel Service model. The hotel service area of a building is the portion of a hotel with more than one-story possibly built with pilasters and bond beams. This type of construction is more expensive to reproduce than a wood joist structure with a single level. *Smith testimony*.

21. Respondent testified that a comparison of the subject structure and other clubhouses in the area revealed that the other clubhouses were valued in the

following manner:

a. General Retail model for the area used as a pro shop;
b. Utility Storage model for the areas used for cart storage and locker rooms; and
c. Dining Lounge model used for areas used for dining.

Respondent testimony.

22. Respondent testified that the subject structure should be valued in the same manner as other clubhouses in the area. The Property Tax Assessment Board Of Appeals (PTABOA) changed the model selection for the subject structure as a result of a Form 130 petition filed for the 1999 assessment. The PTABOA hearing minutes indicated a change in models to: General Retail for the pro shop, Utility Storage for the cart storage and locker rooms, and Dining Lounge for the dining areas. *Respondent testimony & Respondent Exhibit C*.

Evidence and Testimony Regarding the Grade of the Golf Course.

23. Petitioner testified that, generally, 120 acres are needed to construct an 18 hole golf course. The subject course is constructed on 101 acres, which have been maximized to create an 18 hole course, 6,485 yards long. *Smith testimony*.

24. Petitioner testified that :

The specifications for a “B” grade course include:

a. 18 holes (7.22acres)
b. 130 acres
c. 6,400 to 6,500 yards long
d. Par of 70

The specifications for a “C” grade course include:

a. 18 holes (6.11 acres)
b. 110 acres
c. 6,000 yards long

d. Par 67 to 70 *Smith testimony & Petitioner Exhibit M.*

25. Petitioner identified the following features of the subject course:
    a. It has 20% less area per hole than a "B" course;
    b. There are 4 – par 3's, 4 – par 5's, 10 – par 4's, 6 elevated greens,
        1. and 12 flat greens;
    c. It has nine (9) less acres than a "C" grade course; and
    d. The subject course contains 5.60 acres per hole.

    Smith testimony.

26. Petitioner testified that the fairways of the subject course are not as wide as other courses. Comparing the per hole acreage of a "B" grade course (7.22 acres) to the per hole acreage of a "C" grade course (6.11 acres) shows that less acreage per hole means narrower fairways. *Smith testimony.*

27. Petitioner argued that the grade of the subject golf course should be between a "B" and a "C" due primarily to the narrow fairways. The subject course is 85% smaller than a "B" course. *Smith testimony.*

28. Petitioner argued that, based on the "interpolation" of the base rate per hole, it would calculate to $35,365.
    $49,000 x 77.77% = $37,730 + $33,000 = $70,320/2 = $35,365. *Smith testimony & Petitioner Exhibit N.*

29. Respondent identified the following features of the subject golf course::
    a. Acreage that falls within the "C" category;
    b. Good quality course;
    c. Private course;
    d. 6,485 yards long;
    e. A par 72;
    f. Complete automatic sprinkler system serving the greens;
    g. Two (2) tee locations per hole;

h. An average of two (2) bunkers per hole; and

i. Good quality asphalt paved roadways.

Respondent testimony.

Additional Issues:
Evidence and Testimony Regarding the Procedure to Determine the True Tax Value of a Golf Course.

30. Petitioner argued that the procedure outlined in 50 IAC 2.2-12-5 Schedule G – Golf Courses describes the six (6) step formula for determining the True Tax Value of a golf course. The procedure was not used in the assessment of the subject course. *Smith testimony.*

Conclusions of Law

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

Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners,* 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, State was not asked to exercise such discretion .

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

A. Indiana's Property Tax System

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

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

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

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

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners,* 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners,* 689 N.E. 2d 765, 769 (Ind. Tax 1997)).

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

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

10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." *Id* (citing *Herb v. State Board of Tax Commissioners,* 656 N.E. 2d.

890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley,* 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners,* 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).

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

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

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

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

the error raised. Accordingly, the Tax Court will not reverse the State's final determination even though the taxpayer demonstrates flaws in it).

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

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

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

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

Issue No. 1 – Whether the perimeter-to-area ratio (PAR) for the basement area of the clubhouse should be "5" rather than "9".

18. PAR is defined as the total linear feet in the perimeter of the building divided by the corresponding square foot area, multiplied by one hundred (100), and rounded to the nearest whole number. 50 IAC 2.2-10-2(d).

19. The Petitioner contends that the PAR of the basement area of the clubhouse was calculated incorrectly. The Petitioner presented a PRC with the basement perimeter highlighted as well as the calculation determining the basement PAR to be "5".

20. At the hearing, the Respondent agreed the PAR of the basement area seemed to be in error. The Respondent did not offer any calculation of what they determined the correct PAR to be nor did they rebut the Petitioner's highlighted perimeter measurements or the calculation used to determine the PAR for this area.

21. A review of Respondent Exhibit E shows the County Board (PTABOA), for an appeal filed for 1999, used a PAR of "5" for the basement area.

22. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 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." 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. Conclusions of Law ¶9, 13, and 14.

23. The Petitioner presented evidence that the calculation of PAR for the basement area of the clubhouse was in error. The Respondent agreed in principal that there seemed to be an error. The Respondent did not present their own calculation for the PAR nor did they argue that the Petitioner's evidence was incorrect. The Respondent did submit a PRC for a 1999 appeal on the same property showing the PAR for the basement to be "5".

24. In the case at bar, the Petitioner has presented probative evidence that an error existed. The County did not rebut the evidence. Based on this evidence the State will make the changes, sought by the Petitioner. The PAR for the basement area is determined to be "5." Accordingly, a change is made in the assessment as a result of this issue.

Issue No.2 – Whether the use type selected to value the clubhouse should be General Retail rather than Dining Lounge.

25. The guidelines for selecting the appropriate pricing schedule for a building are discussed in 50 IAC 2.2-10-6.1. There are four (4) "association groupings" for commercial buildings, and each grouping has a separate schedule to facilitate selection. The four (4) groupings are General Commercial Mercantile (GCM). General Commercial Industrial (GCI), General Commercial Residential (GCR) and General Commercial Kit (GCK).

26. To determine the base rate one initially selects the model the *best resembles the physical characteristics* of the building being assessed. *Barth, Inc. v. State Board of Tax Commissioners*, 699 N.E. 2d 800 (Ind. Tax Ct. 1998). The Regulation also provides for a number of use-type models, e.g., GCI – Light Manufacturing. *See* 50 IAC 2.2-11-1, -2 and –3 describing features for each use-type model. The use-type models were never intended to describe with exactitude the features of the building being assessed. In fact, it would be impossible for any regulation to accomplish such a task. Because the features of the building being assessed will not conform exactly to the use-type models, adjustments *may* be made to the base rates provided for in 50 IAC 2.2-11-6.

27. The base prices provided in the Regulation consists of base square foot unit rates for the various "Use" types and "Finish" types. The rates are given for a range of perimeter-to-area ratios for specified construction types. Adjustments are provided to account for variations in the wall height or structural framing. 50 IAC 2.2-10-6.1

28. "The model is a conceptual tool used to replicate reproduction cost of a given structure using typical construction materials. The model assumes that there are certain elements of construction for a given use type." 50 IAC 2.2-10-6.1(a)(1).

29. It is the Petitioner's position that the model selected by the local assessing officials to value the subject structure was in error. The Petitioner claims the subject building should be valued using the model for General Retail verses the model for Hotel/Motel Service. The Petitioner argues that the General Retail model is more appropriate because the subject structure is finished-open rather than finished-divided. In support of this position the Petitioner submitted Exhibits A, and C through L.

30. Petitioner Exhibit A is a comparison chart of interior finish adjustments for the General Retail and Hotel/Motel Service models. This chart is based on 50 IAC 2.2-11-6, Schedule C – GC Base Price Components and Adjustments. The chart simply shows that the interior finish adjustments are different for each of the models shown, as one would expect when comparing one model to another. This type of comparison does little to show or support which model best represents the subject structure.

31. Petitioner Exhibit C is a copy of the Petitioner's ground for appeal presented at the County Board hearing. It shows that the issues presented to the State in this hearing, were the same issues presented to the County Board. The Petitioner's conclusions on the issue of model selection, focused on the argument of finished-open verses finished-divided.

32. Petitioner Exhibits D, E, G, H, K and L are copies of pages from the Regulation used as references by Mr. Smith during his testimony. Petitioner Exhibit F is an excerpt of testimony taken from an opinion of the Tax Court referencing model selection. Petitioner Exhibits I and J are copies of "glossary" pages from Marshall Valuation Services defining pilaster and bond beam.

33. In all cases, the Petitioner is attempting to show the wrong model had been selected for the valuation of the subject structure. To repeat, the model selected to value a building is the model that *best resembles the physical characteristics* of that structure.

34. The Petitioner has the burden of making a case before the State by presenting factual evidence probative of the alleged error. In doing so, the Petitioner establishes a prima facie case regarding the alleged error causing the burden of proof to shift to the local assessing officials to justify their decision with substantial evidence.

35. Although the Petitioner presented evidence to the State in this hearing, the evidence does not show that the wrong model was used in valuing the subject structure. A majority of the Petitioner's evidence consisted of copies of pages with sections highlighted from the Regulation. The fact the pages came from the Regulation is not enough to show that the subject building is best represented by the General Retail model. Furthermore, definitions of "pilaster" or "bond beam" do not serve as factual evidence regarding the model change.

36. The Petitioner has wholly failed to present any factual evidence to support the allegation of an error in the model selection. In most instances, the State would end its analysis of the evidence at this juncture and would deny the Petitioner's claim. However, based on a comparison made to other clubhouses as well as a decision by the PTABOA for the 1999 assessment, the Respondent indicated an error was made in the selection of the models used to value the subject structure. See Findings of Fact ¶ 21 & 22. Because of the indication of error, the State continues its analysis.

37. The Respondent testified that a comparison was made between the subject and other clubhouses in the area. Other clubhouses were valued as follows:
    a. The General Retail model was used for the pro shop;
    b. Utility Storage model was used for the cart storage and locker room areas; and
    c. Dining Lounge model was used for the dining areas.

38. The Respondent testifed the PTABOA changed the model selection in the valuing of the subject clubhouse for the 1999 assessment as a result of the filing of the Form 130 petition. The PTABOA made the following changes:

a. The General Retail model was used for the pro shop;
b. Utility Storage model was used for the cart storage and locker room areas; and
c. Dining Lounge model was used for the dining areas.

39. In conclusion, the Respondent contends the subject structure should be valued in the same manner as other clubhouses in the area. In support of the contention, the Respondent submitted three (3) PRCs of other golf courses in Bartholomew County (Respondent Exhibit C).

40. In this instance, the Respondent's burden consisted of identifying similarly situated properties and establishing disparate treatment between the subject property and the similarly situated properties. The Respondent met their burden and showed the subject structure was indeed being treated differently then similar structures. Accordingly, a change(a reduction) in the assessment is made as a result of this issue.

41. The subject clubhouse is to be valued in the following manner:

Basement - Utility Storage – 10,731 SF
First Floor – Dining Lounge – 9,947 SF
General Retail – 1,594 SF
Utility Storage – 450 SF
Hotel Service – 1,823 SF

Issue No. 3 – Whether the "B" grade factor applied to the golf course is correct.

43. 50 IAC 2.2-12-5 provides for five (5) quality grade factors ("A" through "D") for regulation play golf courses. A base price per hole is then assigned based upon the quality grade factor used. The Petitioner seeks a grade factor somewhere

between a “B” and a “C” rather than the “B” grade assigned by the local assessing officials.

44. A “C” quality grade factor is defined in the Regulation as follows:

> Average quality public and municipal type courses, 18 holes on 110 acres of primary flat terrain, 6,000 yards long, rated par 67 to 70, and featuring a semi-automatic sprinkler system, small tees and greens with few bunkers and average quality asphalt or gravel roadways.

45. A “B” quality grade factor is defined in the Regulation as follows:

> Good quality private club type courses, 18 holes on 130 acres of rolling terrain, 6,400 to 6,500 yards long, rated par 70, and featuring an automatic sprinkler system serving the greens and tees and an manual system on fairways, 5,000 S.F. tiled greens, 1,800 S.F. tees with two tee locations, an average of 2 bunkers per hole and good quality asphalt paved roadways.

46. The Petitioner opines the subject course is constructed on 101 acres rather than the 130 acres provided under the “B” grade course. It is based on the difference in acreage that the Petitioner submits testimony and calculations determining the grade of the golf course should be between a “C” and “B”.

47. The Petitioner contends:

a. The subject course’s acreage per hole calculates to 5.61 verses 7.22 for the “B” grade course;
b. The subject course at 101 acres is nine (9) acres less than a “C” course at 110 acres;
c. The grade of the subject course is between a “C” and a “B” because the fairways are narrow thus making the subject 85% smaller per hole than the “B” grade course; and
d. When the base rate is “interpolated” the base cost per hole is $35,365.

48. Petitioner errs by relying exclusively on the difference in acreage as the deciding factor (feature) in the determination of the proper quality grade of the subject golf course.

49. As stated earlier there are five (5) quality grades for regulation play golf courses. Each quality grade factor describes the features that would determine those grades, only one of which is the acreage. The Petitioner does not discuss or make any analysis of any of the other features listed.

50. A review of undisputed testimony of the Respondent and evidence presented by both parties showed the subject course to have the following features:

a. 101 acres ("C" to "D" grade)
b. Par 72 ("A" grade) 4 – par 3's, 4 – par 5's, 10 – par 4's = 72
c. Good quality course ("B" grade)
d. Complete automatic sprinkler system serving the greens ("B" grade)
e. Two (2) tee locations per hole ("A" and "B" grade)
f. Average of two (2) bunkers per hole ("B" grade)
g. Private course ("B" grade)
h. 6,485 yards long ("B" grade)
i. Good quality asphalt paved roadways ("A" and "B" grade)

51. The Petitioner concluded that due to the narrow fairways (acreage) causing a lesser acreage per hole making the course 85% smaller per hole than the "B" grade course, the grade should be between a "C" and "B". The Petitioner contends that the base rate should be "interpolated" thus creating a base cost per hole of $35,365.

52. The Petitioner's "interpolation" consisted of adding the "B" grade cost per hole and the "C" grade cost per hole and dividing by two (2). $49,000 + $33,000 = $82,000/2 = $41,000. The Petitioner's second calculation takes the "B" grade cost per hole ($49,000) times 77% equaling $37,730. To that number the Petitioner adds the "C" grade cost per hole of $33,000. This equals $70,730

which is then divided by two (2) equaling $35,365 ($49,000 x .77 = $37,730 + $33,000 = $70,730/2 = $35,365).

53. 50 IAC 2.2-12-3(a) states in part, “If there is a size variation from the schedule, the rates may require interpolation.” In the case at bar, there is no *size* variation that *may* lend itself to interpolation.

54. The issue under review is not the size of the subject golf course. The issue under discussion is the base cost per hole based on a determination of the quality grade factor. The Petitioner interprets this to mean that the grade of the golf course is based on its size alone. Again, as stated earlier in these findings, the size of a course is only one factor that determines the quality grade factor to be applied to a golf course.

55. As stated in Conclusions of Law ¶44 and 45, there are a number of other features that affect the quality grade factor to be applied to any golf course. The Petitioner chose to ignore those features or chose to briefly mention one (1) or two (2) in passing (such as length of course being 6,485 yards and a par of 72, both of which are found under the “B” grade).

56. There are other discrepancies within the Petitioner presentation. For instance, the Petitioner claims the subject course is 85% less than a “B” course based on the size per hole. However, in Petitioner Exhibit A the Petitioner claims that the subject course is 20% smaller per hole than the “B” course. Furthermore, the Petitioner stated the subject course par is 70 but when the pars per hole are reviewed (Petitioner Exhibit A) they calculate to 72. Finally, the Petitioner’s “interpolation” calculation uses 77% with no explanation as to where or how this number was determined or what it is meant to represent.

57. In reviewing the actions of the County Board, 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.

58. In the case at bar, the Petitioner has failed to present any similarly situated properties and in doing so failed to show that the contested property was being treated any differently then the similarly situated properties. Pointing to a single feature and concluding that the assessment is wrong is not probative evidence to the issue. Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.

59. For all the reasons set forth above, the Petitioner failed to show that the grade applied by the local officials was in error. Accordingly, no change in the assessment is made as a result of this issue.

Conclusions Regarding the Golf Course Valuation

60. At the hearing, Mr. Smith stated that the subject golf course was being valued incorrectly per 50 IAC 2.2-12-5, Schedule G – Golf Courses, Golf Course Land Values. Mr. Smith opined that this issue was discussed at the local hearing but the "steps" in the formula were not applied to the subject's valuation.

61. The golf course land valuation referred to by Mr. Smith is a six (6)-step process. The formula used to determine the true tax value of a golf course is as follows:
STEP ONE: Determine the number of holes in the golf course.
STEP TWO: Multiply the number determined in STEP ONE by the base cost per hole under 50 IAC 2.2-12-5.
STEP THREE: Determine the amount of acreage in the parcel devoted to the golf course (greens, fairways, roughs, etc.).
STEP FOUR: Multiply the amount determined under STEP THREE by $495.

STEP FIVE: From the amount determined under STEP TWO, subtract the amount determined under STEP FOUR.
STEP SIX: To the amount determined in STEP FIVE, apply the appropriate depreciation percentage.

62. It is Mr. Smith's contention that Steps Four and Five were not followed as they relate to the 101 acres making up the subject golf course. Respondent Exhibit A lends support to the Petitioner's claim that the golf course consists of 101 acres.

63. After reviewing the Petitioner's issue and in consideration of 50 IAC 2.2-12-5, Schedule G – Golf Courses, it is determined that the procedure spelled out in the Regulation used to determine the true tax value of a golf course was not adhered to. It is further determined the subject golf course should be valued in accordance with the formula described in ¶62 above. A 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