

**STATE OF INDIANA
Board of Tax Review**

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| HOOSIER SPRING CO., INC. |) | On Appeal from the St. Joseph County |
| |) | Property Tax Assessment Board |
| Petitioner, |) | of Appeals |
| |) | |
| v. |) | Petition for Review of Assessment, Form 131 |
| |) | Petition No. 71-002-00-1-4-00132 |
| ST. JOSEPH COUNTY PROPERTY |) | Parcel No. 23-1043-3007 |
| TAX ASSESSMENT BOARD OF |) | |
| APPEALS And CENTRE 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:

Issue

Whether the grade of the subject building should be lowered to "C-2."

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 IC 6-1.1-15-3, Accurate Tax Management Corporation, on behalf of Hoosier Spring Co., Inc. (the Petitioner), filed a petition requesting a review by the State. The Form 131 was filed on July 27, 2000. The Property Tax Assessment Board of Appeals' (PTABOA) Final Determination was mailed on July 17, 2000.

3. Pursuant to IC 6-1.1-15-4, a hearing was originally scheduled for February 14, 2001. The Petitioner requested a continuance. In so doing, the Petitioner agreed to waive the six month deadline within which the State must conduct a hearing, and the forty-five day deadline within which the State must issue a determination, both deadline dates established by Ind. Code 6-1.1-15-4 (State Exhibit C). The hearing was rescheduled to April 19, 2001, and held on that date before Hearing Officer Joseph Stanford. Testimony and exhibits were received into evidence. Denise Praul of Accurate Tax Management Corporation represented Hoosier Spring. Kevin J. Klaybor represented the PTABOA. Ralph J. Wolfe represented Centre Township.

4. At the hearing, the subject Form 131 petition was made part of the record and labeled State Exhibit A. The Notice of Hearing on Petition is labeled State Exhibit B; the Continuance/Waiver is labeled State Exhibit C. An Order sent to the Petitioner prior to the hearing, concerning the issue of grade, is labeled State Exhibit D. In addition, the following items were submitted into evidence:
Petitioner's Exhibit 1 – Copy of General Commercial Industrial (GCI) Light Manufacturing model
Petitioner's Exhibit 2 – Photographs of subject property

Petitioner's Exhibit 3 – Grade analysis

Petitioner's Exhibit 4 – Tax Representative Disclosure Statement.

5. The subject property is located at 4604 South Burnett Drive, South Bend, Centre Township, St. Joseph County. The hearing officer did not view the property. The parties agreed that the assessed value under appeal is \$18,370 for land and \$147,200 for improvements.

Whether the grade of the subject building should be lowered to “C-2”

6. The grade of the subject building should be changed from “C” to “C-2.” The building is priced as General Commercial Industrial (GCI) Light Manufacturing. This model lists the wall type as reinforced concrete block for 14-foot walls. The subject building has 16 feet of total wall height. Eleven feet of wall consists of metal, the other five feet consists of concrete block, or 69% metal and 31% concrete block. Photographs submitted verify this description. *Praul Testimony. Petitioner's Exhibit 2.*
7. Two calculations show how she arrived at the requested grade. In the first calculation, she used the unit-in-place tables from the Regulation and computed a “model cost” of the exterior wall of \$33,989. Using the same tables, she computed an actual cost of the exterior wall of \$22,274. The difference between the model cost and actual cost is 34%. In the second calculation, she used RSMMeans manual, another publication used for determining building costs. Using this manual, she computed a 21% difference between the model cost and the actual cost of the exterior wall. Hoosier Spring is asking for a 10% grade reduction to “C-2.” This is a reasonable request, since it is less than either 21% or 34%. *Praul Testimony. Petitioner's Exhibit 3.*

8. Two comparable properties, located in Marion County, have exterior walls of part concrete block and part metal. The Bunzl property is graded “D+1”, and the Crown Technologies property is graded “C-2.” The exterior wall is the only difference between the subject and the model. *Praul Testimony. State Exhibit A.*

9. The subject is in an area called Burnett Park, which contains about 15 buildings similar to the facility under appeal. Grading is consistent in this park; most are graded “C.” There are a couple of buildings graded higher than “C”, but none are lower. Assessors do not have the RSMeans manual, and do not have to go by what it says. The comparable properties submitted by Ms. Praul are located in Marion County, not St. Joseph County. *Wolfe 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, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.

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

A. Indiana's Property Tax System

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.
4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual

assessments.” *Id* at 1040. Only evidence relevant to this inquiry is pertinent to the State’s decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See *also* Ind. Code § 4-21.5-2-4(a)(10) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).

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

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

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

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property's market value will fail.
16. Although the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.
17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

D. Whether the grade of the subject building should be lowered to "C-2"

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 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% |
21. Intermediate grade levels ranging from “A+10” through “E-4” are also provided in the Manual to adequately account for quality and design features between major grade classifications. 50 IAC 2.2-10-3(c).
22. The Indiana Tax Court recently declared that the use of the unit-in-place tables is the most preferable and objective technique to account for deviations from the model for purposes of base rate pricing. *Clark v. State Board of Tax Commissioners*, 742 N.E. 2d 46, at 49 (Ind. Tax 2001)(“Use of objective adjustments is preferable and must be done where the base rate adjustment and/or unit-in-place tables permit the deviations’ values to be reasonably calculated.”)(*Clark II*). An Order was sent from the State to the Petitioner, prior to the hearing, ordering the Petitioner to be prepared to explain how the subject building differs from the model in a way that requires an adjustment in its base rate value (State Exhibit D).

23. The evidence and testimony submitted by the Petitioner supports the conclusion that the exterior wall of the subject differs from the model. The Petitioner's calculation, showing a difference of \$11,715 between the "model cost" and the subject cost of the exterior wall is accurate. Beyond this, however, the Petitioner's theory concerning the correct grade of the subject becomes flawed.
24. The Petitioner contends that the difference between the model and the subject's cost of the exterior wall is 34%, and therefore requests a "reasonable" grade adjustment of only 10%, to "C-2." One must remember, however, that this cost difference concerns *only* the exterior wall. As Ms. Praul testified, the rest of the building is identical to the model. The property record card shows a reproduction cost new of \$565,350. The cost difference for the exterior wall is \$11,715. Since this cost difference represents the only difference between the subject and the model, the difference in cost between the subject and the model is only 2.07%. According to the Regulation itself, this is not enough of a cost difference to warrant a reduction in grade, as a 5% difference is required for a grade reduction to "C-1."
25. Pursuant to *Clark II*, however, the Petitioner is entitled to an adjustment to its base rate value. To simplify the calculation, this can be shown as a negative adjustment of \$11,720 (after rounding) to the total base. The result, after rounding, is a reproduction cost new of \$553,630.
26. The Petitioner also submitted comparable properties in an attempt to show that the grade is overstated. Again, however, the Petitioner's analysis is limited to the exterior wall. There is no testimony or evidence on the record concerning the interiors of the submitted properties. As a result, the Petitioner failed to establish that the properties are truly comparable.
27. For the reasons set forth, there is no change to the grade of the subject building. The only change to the assessment is an \$11,720 negative adjustment to the

total base, due to the fact that the exterior wall of the subject differs from the model.

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