

STATE OF INDIANA
Board of Tax Review

In the Matter of the Petition for Review)
of Assessment, Form 131) Petition No. : 49-600-95-1-4-00079

Parcel No.: 6010392

Assessment Year: 1995

Petitioner: Hunters Run Associates, LP
 1030 N. College Ave.
 Indianapolis, IN 46202

Petitioner Representative: Landman & Beatty
 1150 Market Square Center
 151 N. Delaware
 Indianapolis, IN 46204

Findings of Fact and Conclusions of Law

The Indiana Board of Tax Review (State Board), having reviewed the facts and evidence, and having considered the issues, now makes the following findings of fact and conclusions of law.

Issues

1. Whether the land base rate and the land classification is correct.
2. Whether the true tax value of the land is excessive.
3. Whether the true tax value placed on the land is supported by sales of comparable apartment land.
4. Whether the grade should be C rather than C+1.
5. Whether the plumbing fixtures in the clubhouse should be valued at \$500 per fixture.
6. Whether the assessment is constitutional.
7. Whether the Petitioner can modify the petition and introduce new information.

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, James Beatty of Landman & Beatty, on behalf of Hunters Run Associates the Petitioner), filed a petition requesting a review by the State Board. The Form 131 was filed on February 12, 1998. The County Board of Review's Final Determination on the underlying Form 130 petition was issued on January 30, 1998.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on August 23, 1999 before Hearing Officer Mark Bisch. Testimony and exhibits were received into evidence. James Beatty and Sheila Murray represented the Petitioner. Janis Wilson represented Pike Township. No one represented the Board of Review (BOR).

4. At the hearing, the subject Form 131 petition was made part of the record and labeled Board Exhibit A. The following are also Board exhibits:
Board Exhibit B-Form 117 dated August 3, 1999
Board Exhibit C-Hearing Sign in Sheet
Board Exhibit D-Withdrawal Agreement
Board Exhibit E-Request for additional information.

In addition, the following exhibits were submitted to the State Board:

Petitioner's Exhibit 1-Photos of C grade apartments in Marion County

Petitioner's Exhibit 2-Interior and exterior photos of the subject structure

Petitioner's Exhibit 3-Copy of the 1995 STB Determination and PRC for Oakbrook Village

Petitioner's Exhibit 4-Copy of the 1995 STB Determination and PRC for Oakbrook Village 3 & 4 Apartments

Petitioner's Exhibit 5-Copy of the 1995 PRC for Woodbrook Associates Apartments

Respondent's Exhibit 1-Copy of the subject 1995 BOR PRC

Respondent's Exhibit 2-Plat map with the subject highlighted

Respondent's Exhibit 3-Aerial map of the subject.

5. At the hearing, the hearing officer requested additional evidence from the Petitioner. The Petitioner failed to submit, as requested: (1) a detailed explanation of the materials and components used in the construction of the subject; (2) photos of Oakbrook Village Apartments; and (3) photos of Woodbrook Apartments.
6. The subject property is an apartment complex located at 5002 W. 52nd Street, Indianapolis, Pike Township, Marion County.

Issues 1, 2 and 3- Land base rate, classification, excessive value

7. These issues were withdrawn. A signed withdrawal agreement is included in the documentation.

Issue 4- Grade

8. The quality of construction and interior finish of the subject does not warrant a grade of C+1. The wood cabinets in the kitchen are standard quality, the interior doors are hollow and the medicine cabinets are metal. Woodbrook Apartments, located across the street from the subject, is the same quality of construction with a grade of C. The subject structures do not exceed the model and the grade should be reduced from C+1 to C. *Murray Testimony*. Petitioner's Exhibits 1-5.

9. Some of the subject structures have peaks in the front. The structures have been completely rehabbed into a different style; when that happened the grade was increased to C+1. She cannot defend or deny the grade because she has not been to the property. *Wilson Testimony*.

Issue 5-Plumbing Fixtures

10. The plumbing fixtures in the clubhouse are more typical of residential fixtures. The 15 plumbing fixtures in the clubhouse should be priced at \$500 each rather than \$1,000 each. *Murray Testimony*.
11. The State Tax Board has taken a stand that these fixtures be priced as commercial. The base rate of commercial plumbing includes the piping for the plumbing. *Wilson Testimony*.

Issues 6 and 7-Constitutionality and introduction of new information

10. These issues were withdrawn. A signed withdrawal agreement is included in the documentation.

Conclusions of Law

1. The Petitioner is limited to the issues raised in the Form 131 petition filed with the State Board. Ind. Code § 6-1.1-15-1(e) and –3(d). See *also* Form 131 petition requiring the Petitioner to identify the specific grounds for appeal. The State Board has the discretion to address any issue once an appeal has been filed by the taxpayer. *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 in the Form 131 petition filed with the State Board.

2. The State Board 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 appraisal system. It is too time-consuming, too costly, and wholly unrealistic for individual assessments to be made based upon individual evidence.
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*), *aff'g in part and rev'g in part Town of St. John III*.
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. art X, § 1 (a), requires the creation of a uniform, equal, and just system. 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 Tax 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 Board's decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State Board to review the actions of the County Board (or County Property Tax Assessment Board of Appeals (PTABOA)), but does not require the State Board to review the initial assessment or undertake reassessment of the property. The State Board has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
8. In reviewing the actions of the County Board (or PTABOA), the State Board 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 Board 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 detailed factual presentations to the State Board 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 Board is not requires to give weight to evidence that is not probative of the errors the taxpayers allege. *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 Board's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. 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 Board is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State Board 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 is not “triggered” if the taxpayer does not present probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State Board’s final determination even though the taxpayer demonstrates flaws in it).

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

15. Because the true tax value is not necessarily identical to fair 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 Board’s regulations constitutionally infirm, the assessment and appeals process continue under the existing law 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 V*, 702 N.E. 2d at 1040.

D. Issues 1, 2 and 3

18. These issues were withdrawn.

E. Issue 4-Grade

19. “Grade” is defined as the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.

20. “Design factor” means a factor or multiplier applied to a computed reproduction cost as an adjustment to account for cost variations attributable to the particular design of the subject property which were not accounted for in the particular pricing schedule used. 50 IAC 2.2-1-22.
21. “Grade factor” means a factor or multiplier applied to a base grade level for the purpose of interpolating between grades or establishing an intermediate grade. 50 IAC 2.2-1-31.
22. Subjectivity is used in grading property. 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(a)) and 50 IAC 2.2-10(b), and commercial and industrial models (see 50 IAC 2.2-11-1 and 50 IAC 2.2-11-2 and 50 IAC 2.2-11-3) and graded photographs (50 IAC 2.2-11-4.1) all provide guides for establishing grade.
23. The approach to valuing commercial and industrial structures is primarily found in the State Board’s Manual, 50 IAC 2.2-10. The approach to valuing commercial and industrial structures is the application and selection of various models to represent typical types of construction that best represents the structure being assessed. “The model is a conceptual tool used to replicate reproduction costs of given structure using typical construction materials.” 50 IAC 2.2-10-6.1. The construction components for each use type model are included in 50 IAC 2.2-11. When necessary, adjustments to the base price are made from Schedule C. A guide for selecting the correct model is included in 50 IAC 2.2-11. The model assumes that there are certain elements of construction defined as specifications. These specifications create an average or C grade structure. *Id.*

24. The Petitioner concludes the grade of the subject improvements should be C rather than C+1.
25. The Petitioner offered photographs of twenty-three (23) apartment complexes in Marion County (Petitioner's Exhibit 1). These photographs show apartment complexes determined to be C grade.
26. The Petitioner offered photographs of the subject structures (Petitioner's Exhibit 2). These photographs show the exterior has a gable roof, average quality windows and wood siding. The interior walls and ceilings are painted drywall, the flooring is average quality tile and carpeting and the light fixtures are low cost.
27. The Petitioner submitted 1995 State Tax Board Determinations and the property record cards for Oakbrook Village Apartments (Petitioner's Exhibits 3 and 4). These determinations show the grade was determined to be C on these comparable apartment complexes.
28. The Petitioner submitted photographs (Petitioner's Exhibit 1) and the 1995 property record card for Woodbrook Apartments in Pike Township (Petitioner's Exhibit 5). This shows the improvements were determined to be C grade.
29. The Respondent testified she had not inspected the subject structures.
30. The Petitioner bears the responsibility of presenting probative evidence in order to establish a prima facie case. In order to establish a prima facie case, the Petitioner must present evidence sufficient to establish a given fact that if not contradicted will remain fact. When the prima facie case is made, the burden then shifts to the Respondent to rebut that evidence.
31. The Petitioner identified properties similarly situated to the contested property and established disparate treatment between the contested property and other

similarly situated properties. The Petitioner established a prima facie case, which was not rebutted with substantial evidence to contradict it.

32. For the above reasons, the State Board will reduce the grade to C. A change is made in the assessment as a result of this issue.

F. Issue 5-Plumbing fixtures

33. 50 IAC 2.2-10-6.1(d) states, “ “Schedule D Plumbing” consists of whole dollar values in units of one thousand dollars (\$1,000) to be added per plumbing fixture unless otherwise specified.”
34. Schedule D, GC Plumbing states, “Average cost per fixture, including supply, waste and vent lines, materials for rough and finish, labor, and contractors overhead and profit. The difference between the residential and the commercial/industrial prices is primarily attributable to the longer pipe and sewer runs required to accommodate the latter type of construction.”
35. Neither of the above references specifies that plumbing in a clubhouse is valued at the residential rate.
36. The Petitioner contends the plumbing fixtures in the clubhouse are more typical of residential fixtures and should be valued at \$500 per fixture.
37. The Respondent testified the base rate of commercial plumbing is to include the piping for the plumbing.
38. The Petitioner has made only a conclusory statement. The Petitioner offered no evidence other than testimony that the pricing of the plumbing fixtures in the clubhouse are valued incorrectly. The Petitioner failed to establish a prima facie

case.

39. For the above reasons, the State Board denies the request to value the plumbing fixtures at the residential cost. No change is made in the assessment as a result of this issue.

G. Issues 6 and 7

40. These issues were withdrawn.

Issued this ____ day of _____, 2002
by the Indiana Board of Tax Review.