STATE OF INDIANA
Board of Tax Review

INDIANAPOLIS RACQUET CLUB, INC.	)	On Appeal from the Marion County Property
	)	Tax Assessment Board of Appeals
	)	
Petitioner,	)	
	)	Petition for Correction of Error, Form 133
v.	)	Petition No. 49-800-91-3-4-00001
	)	Parcel No. 8048124
MARION COUNTY PROPERTY TAX	)	
ASSESSMENT BOARD OF APPEALS	)	
And WASHINGTON 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

1. Whether the building received the proper base rate reduction in accordance with STB Instructional Bulletins 91-8 and 92-1.

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 6-1.1-15-12, Indianapolis Racquet Club, Inc. (IRC) filed a Form 133 petition[1] requesting a review by the State. The County Board of Review's Final Determination was issued on March 12, 1999. The Form 133 petition was filed on April 13, 1999. Additional details concerning the procedural history of this petition will be discussed as needed.

3. Pursuant to IC 6-1.1-15-4, a hearing was held on August 16, 2001, before Hearing Officer Ronald Gudgel. Testimony and exhibits were received into evidence. Stephen E. DeVoe and Eliza Houston, both with the law firm of Henderson, Dailey, Withrow & DeVoe, represented IRC.[2] A. Peter Amundson represented the Washington Township and Marion County Assessors' Offices.

4. At the hearing, the Indiana Supreme Court Remand Order (Petition 49-800-89-1-4-00020R) was made part of the record as Board's Exhibit A. Additional Board exhibits include:
   Board's Exhibit B – The Form 133 petition.
   Board's Exhibit C - The Indiana Tax Court Remand Order (Petition 49-800-89-1-4-00020R).
   Board's Exhibit D - The relevant portion of the 1989 Marion County Land Order.
   Board's Exhibit E – Request for additional information from the Petitioner.
   Board's Exhibit F – Letter forwarding the additional evidence to the Respondent.

[1] The appeal was filed on a Form 131 petition, pursuant to instructions from the local officials. Because the underlying petition to the County officials was filed using a Form 133, the State will treat this appeal as a Form 133, rather than Form 131, petition.

[2] Mr. DeVoe testified that he is also the President of IRC. At the request of Mr. DeVoe, appeal petitions 49-800-3-4-00001, 49-800-98-1-4-00004, and 49-800-89-1-4-00020R were consolidated into one administrative hearing.

7. In addition, the following exhibits were submitted:

Petitioner's Exhibit 1 – A copy of photographs from 50 IAC 2.2-11-4.1, Graded photographs of various commercial and industrial buildings.

Petitioner's Exhibit 2 – A copy of the 1995 property record card for the parcel under appeal.

Petitioner's Exhibit 3 – Photographs of the building under appeal.

Petitioner's Exhibit 4 – Written testimony of Stephen E. DeVoe.

Petitioner's Exhibit 5 – Written summary of additional testimony of Mr. DeVoe.

Petitioner's Exhibit 6 – Response to a request for additional evidence.

Petitioner's Exhibit 7 – Transcript of the trial testimony before the Indiana Tax Court on May 2, 1997.

Respondent's Exhibit 1 – Copies of Forms 17T.

5. The tennis facility is located at 8249 Dean Road, Indianapolis, Washington Township, Marion County.

6. The hearing officer did not view the property.

Issue No. 1 - Whether the building received the proper base rate reduction in accordance with STB Instructional Bulletins 91-8 and 92-1.

7. On February 22, 1991, the State Board issued a memorandum authorizing a 50% reduction in the base rate of certain qualifying economically built structures. Additional guidance concerning this reduction was subsequently provided in STB Instructional Bulletin 91-8 (dated October 1, 1991) and STB Instructional Bulletin 92-1 (dated August 28, 1992).

8. STB Instructional Bulletin 91-8 states in relevant part "These changes in assessments [the 50% reduction for qualifying buildings] were then to be effective for March 1, 1991, for taxes due and payable in 1992. It was also explained that there were to be no retroactive refunds for excessive tax

payments for reductions in assessments as a result of these amendments."

9. IRC contended that the building should receive a 50% reduction because it is a lightweight, economical kit type structure. The BOR denied the petition as untimely because it was not filed within three years after issuance of a notice of assessment of the property.

10. Mr. Amundson testified that he concurred with IRC's assertion that the building qualified for the 50% kit building reduction for 1991. Mr. Amundson further testified that the building received the kit adjustment at the time it was reassessed on March 1, 1995.

Procedural History

11. Because the parties agree that the building qualified for the kit adjustment, the State must determine whether the petition was timely filed. Testimony and documents presented at the hearing established the following sequence of events concerning this appeal:

March 11, 1991	IRC filed a Form 131 petition contesting the land value and building use type for parcel 8048124.
August 7, 1996	The State Final Determination was issued. The Final Determination concluded the assessed value of the land was $134,730 and the assessed improvement value was $424,200 (a total assessed value of $558,930). (This determination was subsequently appealed to the Tax Court. The issue of the 50% reduction was not raised on this petition).

November 12, 1996	IRC filed a Form 133 petition appealing the assessment for the year 1991 (the underlying petition for State petition 49-800-91-3-4-00001).
September 25, 1997	The Washington Township Assessor's Office sent a letter to IRC approving the Form 133 petition and enclosing Forms 17T, Claim for Refund, for the years 1989 through 1994.
October 27, 1997	IRC filed a Form 130 petition (the underlying petition for State petition 49-800-98-1-4-00004), appealing multiple years.
December 8, 1997	The Form 130 petition was returned to IRC as defective because it identified multiple years and was not timely filed.
December 10, 1997	IRC returned the Form 130 to the Marion County officials, asserting the petition was timely filed.
July 9, 1998	IRC received a letter from the Marion County Auditor's Office (after a telephone conversation) advising IRC that it "will be hearing" from the Marion County Assessor's Office.
March 12, 1999	The Marion County Board of Review (BOR) denied the Form 133 petition for 1991 because it was not timely filed. This denial included instructions to file a Form 131 petition if IRC appealed the BOR decision. (IRC filed the Form 131 petition, which is now State petition 49-800-91-3-4-00001). The BOR Final Determination included an assessed value of the land

	in the amount of $134,730 and an assessed improvement value in the amount of $424,200 (a total assessed value of $558,930). The BOR denied the Form 130 petition (now State petition 49-800-98-1-4-00004) because it identified multiple years and was not timely filed.
April 13, 1999	IRC filed Form 131 petitions for both BOR decisions.
September 7, 1999	In response to a defect notice from the State regarding petition 49-800-91-3-4-00001, Mr. DeVoe replied, "The assessment year being appealed here is only 1991."
November 1, 1999	In response to a second defect notice from the State regarding petition 49-800-91-3-4-00001, IRC contended that that Form 131 had been filed to appeal the BOR denial of the Form 133 petition because: (a) the BOR denial instructed the Petitioner to file a Form 131, and (b) the assessed values on the BOR constituted a new assessment that could be appealed by use of a Form 131 petition.

Conclusions of Law

1. The Petitioner is statutorily limited to the issues raised on the Form 133 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 Form 133 petition. 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 133 process, the levels of review are clearly outlined by statute. First, the Form 133 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 133, then the Form 133 petition may be filed with the State. Ind. Code § 6-1.1-15-12. Form 133 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 133 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 133 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 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 V*, 702 N.E. 2d at 1040.

The timeliness of the filing of the Form 133 petition.

18. As discussed, the BOR denied the Form 133 petition for the 1991 assessment

year, claiming that the petition was not timely filed. Before addressing the merits of IRC's argument concerning the correct base rate, the State must therefore first determine if the Form 133 petition was timely filed.

19. To obtain a refund of taxes paid, a claim must be filed within three years after the taxes were first due. See IC 6-1.1-26-1. The Form 133 petition in this appeal was filed by IRC on November 12, 1996.

20. IRC asserted that the Form 133 was timely filed in response to a notice of a new assessment determination for March 1, 1991.

21. IRC summarized its argument as follows:
"Petitioner is appealing the new assessment of $424,200 [improvement value], not the original assessment of $540,900. In this case, the three year period would run from the first notice of this new assessment, which would be the ruling by the State Board on 8/7/96 but only if this ruling also applies to 1991. If this ruling did not apply to 1991, then the earliest ruling would be the letter from the Washington Township Assessor dated 9/25/97. If this notice did not cover the new 1991 assessment, then the earliest notice would in fact be the 3/12/99 Section IV response because at the same time it denied the petition, the County Board notified Petitioner that 'The County Board of Review has determined the assessed value of the property appealed under this petition to be: Land: $134,730 Improvements: $424,200.'" (Petitioner's Exhibit 5).

22. For convenience of analysis, the State will address each of these purported notices of assessment separately.

<u>The ruling by the State on August 7, 1996.</u>

23. IRC filed a Form 131 petition on March 11, 1991, appealing its 1989 assessment. The State issued its Final Determination in response to this appeal on August 7, 1996. The State determined the value of the land to be $134,730 and the value

of the improvements to be $424,200 (for a total assessed value for the parcel of $558,930). IRC appealed this Final Determination to the Tax Court. *Indianapolis Racquet Club, Inc. v. State Board of Tax Commissioners*, 722 N.E. 2d 926 (Ind. Tax 2000). This State Final Determination is currently the subject of remand proceedings.

24. The State Final Determination issued on August 7, 1996, specifically addressed only the March 1, 1989, assessment. An assessment remains in effect until the property is reassessed. *Williams Industries v. State Board of Tax Commissioners*, 648 N.E. 2d 713 (Ind. Tax 1995). However, "The ministerial function of carrying forward the assessment to the following year does not trigger a taxpayer's right to initiate the Form 130/131 process." *Kent Co. v. State Board of Tax Commissioners*, 685 N.E.2d 1156, 1159 (Ind. Tax 1997).

25. This assessment therefore does not constitute notice of a new assessment for 1991.

The letter from the Washington Township Assessor dated September 25, 1997.

26. The letter from the Washington Township Assessor informed IRC that its Form 133 petition had been approved and included Forms 17T, Claims for Refund, for the years 1989 through 1994.

27. The Form 17T prepared by the Washington Township Assessor's Office for the year 1991 indicated that the new assessed value for the parcel was $558,930. As discussed, this is the value contained in the State Final Determination for the March 1, 1989 assessment.

28. A Form 17T is a claim for refund of taxes. It is not a notice of assessment.

29. Contradicting its claim that a Form 17T should be considered as notice of a change in the assessment, IRC acknowledged that it, in fact, received

assessment notices during the years 1989 through 1994. "In 1989 the total assessment for the property started out at $706,170 and the assessment of the improvements started out at $540,900. None of the actual tax bills subsequently received and paid by the Petitioner for any year from 1989 to 1994 reflected an assessed value for the improvements other than $540,900 nor was there a material change in the total assessment." (Petitioner's Exhibit 5, page 10).

30. IRC cannot reasonably contend that the Form 17T constitutes a notice of a change in assessment while at the same time acknowledging that it received "actual tax bills" reflecting no change in the assessment, and that the assessed values contained in these notices (rather than the values contained in the Form 17T) were the basis for the tax payments actually made by IRC.

31. Assuming arguendo that the Form 17T constitutes a notice of assessment actually undermines IRC's contention concerning the correct value of the property. Mr. DeVoe, in his capacity as President of IRC, signed this Form 17T on January 25, 2001, acknowledging that "I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of same has been paid." (Respondent's Exhibit 1).

32. If the Form 17T is, in fact, a notice of assessment, then Mr. DeVoe's certification that the new assessed value identified on the Form 17T ($558,930) is "just and correct" could arguably constitute a stipulation to that value.

33. For all the reasons above, the Forms 17T do not constitute a notice of new assessment.

<u>The March 12, 1999 Section IV response from the BOR.</u>

34. As discussed, the BOR's Final Determination denied the Form 133 petition, contending that it was not timely filed. The BOR Final Determination included an

assessed value of the land in the amount of $134,730 and an assessed improvement value in the amount of $424,200 (a total assessed value of $558,930).

35. IRC cannot reasonably contend that a BOR Final Determination issued on March 12, 1999, constitutes a notice of a change of assessment that forms the basis for a Form 133 petition filed approximately two and one-half years earlier.

36. For the reasons above, the State Board determines that the 1989 State Board Final Determination, the Forms 17T, and the BOR Final Determination are not notices of a change in the assessment on which IRC may base the filing of its Form 133 petition.

37. The State's analysis, however, does not end with this conclusion.

38. IC 6-1.1-26-1 states:

Sec. 1. A person, or his heirs, personal representative, or successors, may file a claim for the refund of all or a portion of a tax installment which he has paid. However, the claim must be:

(1) filed with the auditor of the county in which the taxes were originally paid;
(2) filed within three (3) years after the taxes were first due;
(3) filed on the form prescribed by the state board of accounts and approved by the state board of tax commissioners; and
(4) based upon one (1) of the following grounds:
(i) Taxes on the same property have been assessed and paid more than once for the same year.
(ii) The taxes, as a matter of law, were illegal.
(iii) There was a mathematical error either in the computation of the assessment upon which the taxes were based or in the computation of the taxes.

39. "Prior to January 1, 1994, a taxpayer could challenge a State Board determination in one of three ways: (1) within thirty days of a general reassessment, a taxpayer could file a Form 130/131 Petition for Review of Assessment challenging both subjective and objective errors; (2) by March 31st of years in which a general reassessment was not done, a taxpayer could challenge subjective and objective errors through a Form 134 Petition for Reassessment;[3] or (3) **at any time**, a taxpayer could file a Form 133 Petition for Correction of Errors challenging only objective errors in the assessment." *Bender v. State Board of Tax Commissioners*, 676 N.E. 2d 1113, 1114 (Ind. Tax 1997) (Emphasis added).

40. The statute, therefore, imposes no time limitations on the filing of a Form 133 petition. Instead, the statute imposes a time limitation for the refund of taxes. A Petitioner must file a claim within three years after the taxes were first due in order to obtain a refund of taxes paid.

41. A Form 133 petition may not be denied on the basis of untimeliness. The petition must be decided on its merits. If the appeal petition is approved, however, the local officials may refund only the six installments (three years) of taxes paid prior to the filing of the Form 133 petition.

42. In Indiana, tax payments are due on May 10 and November 10 of the year following the assessment. For example, taxes due as a result of a March 1, 1991 assessment would be due on May 10 and November 10, 1992.

43. In this appeal, the Form 133 petition was filed on November 12, 1996. Six installments prior to that date would encompass payments made in 1994, 1995, and 1996. The earliest assessment date that would be affected by the Form 133 petition would therefore be March 1, 1993 (payable in 1994).

[3] The Form 143 method of review was repealed effective January 1, 1994. *See* Ind. Code Ann. 6-1.1-4-7, 6-1.1-4-8 (West Supp. 1996); *see also Williams*, 648 N.E. 2d at 717 n. 3.

44. An assessment remains in effect until the property is reassessed. *Williams Industries v. State Board of Tax Commissioners*, 648 N.E. 2d 713 (Ind. Tax 1995). A finding that the building qualified for the 50% kit reduction in 1991 would therefore carry forward until the property was reassessed, in this case, March 1, 1995. (The building, in fact, received the kit adjustment at the time it was reassessed on March 1, 1995).

45. If successful in its appeal petition, IRC could not receive refunds for tax years prior to March 1, 1993. IRC would, however, be eligible to receive refunds for both the 1993 (payable in 1994) and 1994 (payable in 1995) assessment years.

Issue No. 1 - Whether the building received the proper base rate reduction in accordance with STB Instructional Bulletins 91-8 and 92-1.

46. As discussed, Mr. Amundson testified that he concurred with IRC's assertion that the building qualified for the 50% kit building reduction for 1991. Mr. Amundson further testified that the building received the kit adjustment at the time it was reassessed on March 1, 1995.

47. Both parties concur that the building qualifies for the 50% kit adjustment; the State therefore accepts the parties' stipulation and agreement identified immediately above. In doing so, the State does not decide the propriety of this agreement, either explicitly or implicitly.

48. Accordingly, the State determines that the building should receive the 50% kit adjustment for 1991. Because the building was not reassessed until March 1, 1995, this change in the assessment should be carried forward through the March 1,1994 assessment. As discussed, however, only the taxes paid for the assessment years of March 1, 1993 (payable in 1994) and March 1, 1994 (payable in 1995) are eligible to be refunded under the Form 133 petition.

Other Findings

49. Since a portion of the building will now be priced using the kit adjustment, a comparison to GCI models is no longer appropriate. Rather, the grade of this section of the building must be reviewed. "Here, assuming that the failure to grant a kit adjustment to the subject buildings was erroneous, the correction of that objective error will almost certainly cause an error in the grading of the buildings." *Barth, Inc. v. State Bd. of Tax Commissioners*, 699 N.E.2d 800, 807 (Ind. Tax 1998).

50. IRC contended that building varies from the model in the following manner: lack of a concrete floor; the absence of loading docks; the lack of overhead loading doors; and lighting. (Petitioner's Exhibit 5, page 6).

51. However, the Petitioner failed to demonstrate the manner in which the lack of these features relates to a reduction in grade. "The only evidence that [the Petitioner] submits to support its argument is the testimony of [the Petitioner's representative]: 'The assessment on [the Small Shop]…includes costs for features that do not exist in the [ ] building. These features include the following: [ ] costs for floor finish which the [building] does not have.' [citation omitted]. This so-called evidence has no probative value at all." *Barth*, 756 N.E.2d at 1131, n. 10.

52. Neither party, therefore, has presented evidence to establish that, after the 50% kit reduction, the structure varies from an average pre-engineered, pre-designed economy building.

53. For the reasons above, the State determines that the grade of the kit portion of the building is best described as C.

54. The Final Determination from the original State hearing indicates that the hearing officer determined the correct land classification is as follows:

Primary	110,891 square feet
Usable undeveloped	79,509 square feet

(Attachment to the Form 133 petition).

55. Neither party contested this portion of the determination. The assessment is changed to reflect this prior adjustment.

56. In a related appeal concerning land values, petition No. 49-800-89-1-4-00020R, the State determined the land should be priced from the "Township – other" portion of the Land Order. The assessment is also changed to reflect this adjustment.

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