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 Review of Assessment, Form 131
v.	)	Petition No. 49-800-89-1-4-00020R
	)	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:

Issues

1. Whether the use type of the building is correct.
2. Whether the land value 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, Indianapolis Racquet Club, Inc. (IRC) filed a petition requesting a review by the State Board. IRC received the Marion County Board of Review's (BOR) Final Determination on February 8, 1991. The Form 131 petition was filed on March 11, 1991. The State Board issued its final assessment determination on August 7, 1996.

3. IRC then sued the State Board in the Indiana Tax Court. *Indianapolis Racquet Club, Inc. v. State Board of Tax Commissioners*, 722 N.E. 2d 926 (Ind. Tax 2000). On January 31, 2000, the Indiana Tax Court remanded the matter back to the State Board, which appealed the portion of the Tax Court's decision concerning the land value to the Indiana Supreme Court. The portion of the Tax Court decision dealing with the improvement value was not appealed.

4. The Supreme Court concluded that IRC had "demonstrated that the county commission and the State Board failed to follow the State Board's rules in valuing IRC's land by including it among noncomparable properties in its land order." *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.*, 743 N.E. 2d 247, 248 (Ind. 2001). The Supreme Court remanded the matter back to the State Board on March 6, 2001.

5. Pursuant to Ind. Code § 6-1.1-15-4, a remand 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.[1] A. Peter

[1] Mr. DeVoe testified that he is also the President of IRC.

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Amundson represented both the Washington Township and the Marion County Assessors' Offices.

6. At the hearing, the Indiana Supreme Court Remand Order was made part of the record as Board's Exhibit A. Additional Board exhibits include:
   Board's Exhibit B – The Form 131 petition.
   Board's Exhibit C - The Indiana Tax Court Remand Order.
   Board's Exhibit D - The relevant portion of the 1989 Marion County Land Order.
   Board's Exhibit E – Letter requesting additional evidence from IRC.
   Board's Exhibit F – Letter forwarding IRC's evidence to the Respondent.

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.

7. The property is located at 8249 Dean Road, Indianapolis, Washington Township, Marion County.

8. The hearing officer did not inspect the property.

Issue No. 1 - Whether the use type of the building is correct.

9. The BOR determined that the General Commercial Mercantile (GCM) - Health Club model should be used to assess the building. IRC conceded that GCM - Health Club is the correct model for assessing the front portion of the building, containing the lobby, locker rooms, pro-shop, and office area. However, IRC contended that the General Commercial Industrial (GCI) - Light Warehouse model best described the remaining portion of the building, the tennis court area.

10. In support of his position, Mr. DeVoe contended that the Tax Court determined that IRC had carried its burden to demonstrate that the GCI - Light Warehouse model better described the contested portion of the facility than did the GCM - Health Club model. Mr. DeVoe further contended that the GCI - Light Warehouse model, in fact, best described the contested portion of the building.

11. The Respondent contended that the building is not used as a warehouse.

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

12. The BOR determined that the land base rate for the parcel under appeal should be $3.00 per square foot of primary land. IRC contended that the land base rate should be $1.50 per square foot of primary land.

13. In support of IRC's position, Mr. DeVoe contended that the parcel was incorrectly included in a portion of the 1989 Marion County Land Order (Land Order) that the parties referred to as the 82nd Street Corridor.[2] Mr. DeVoe asserted that IRC's parcel was not comparable to other parcels included in this section of the Land Order.

14. Mr. DeVoe contended that the parcel should be included in a portion of the Land Order identified as "Township – other."

15. Mr. Amundson contended that the parcel was priced from the correct section of the Land Order.

16. Additional facts will be presented as necessary.

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 remand situations, however, the decision of the Tax Court controls.

[2] The 1989 Land Order described this area as "Allisonville Rd W. to Keystone on 86th St. fr Dean Rd. Keystone No. to I-465 Interchng fr 86th St".

2. The State is the proper body to hear a remand from the Indiana Tax Court pursuant to Ind. Code § 6-1.1-15-8.

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 V*, 702 N.E. 2d at 1040.

Issue No. 1 - Whether the use type of the building is correct.

18. The BOR determined that the GCM - Health Club model should be used to assess the building. IRC conceded that GCM - Health Club is the correct model for assessing the front portion of the building, containing the lobby, locker rooms, pro-shop, and office area. However, IRC contended that the GCI - Light Warehouse model best described the remaining portion of the building, the tennis court area.

19. The Indiana Tax Court found that "Considered in its entirety, the evidence shows that the tennis facility's features clearly better match those of the light warehouse model than those of the health club model. Therefore the Court concludes that IRC has carried its burden to show that the State Board abused its discretion by applying the wrong model in assessing the tennis facility." *Indianapolis Racquet*

Club, Inc., 722 N.E. 2d at 939.

20. The Tax Court further concluded that, upon remand, "IRC must come forward with probative evidence concerning the appropriate model to use in calculating the base rate for the 90% of its indoor tennis facility at issue, including but not limited to evidence regarding the proper grade to be assigned the subject improvement." *Id* at 941 (footnote omitted).

21. As discussed, the Tax Court determined that IRC had carried its burden to demonstrate that the GCI - Light Warehouse model better described the contested portion of the facility than did the GCM - Health Club model. Mr. DeVoe contended that the GCI - Light Warehouse model, in fact, best described the contested portion of the building.

22. Repeating, in the event a taxpayer sustains its burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify their decision with substantial evidence.

23. The Respondent contended that the building is not used as a warehouse. As discussed, however, the use is not the determining factor in the selection of the correct model. No additional evidence was presented on behalf of the local taxing officials to rebut IRC's contention that the GCI Light - Warehouse model best describes the contested portion of the building.

24. The local taxing officials have therefore failed to rebut the taxpayer's evidence and justify their decision with substantial evidence.

25. In view of the above, the State Board determines that the contested tennis court area of the building most closely resembles the GCI - Light Warehouse model.

26. As discussed, IRC was instructed upon remand to provide evidence concerning the proper grade to be assigned to the building. *Indianapolis Racquet Club, Inc.*,

722 N.E. 2d at 941. IRC, however, presented no evidence or discussion concerning the grade of the tennis facility.

27. The tennis court section constitutes the largest portion of the facility, the grade of which was determined by the BOR to be C-1. In the absence of any additional evidence, the State determines that the grade will remain C-1.

28. There is a change in the assessment as a result of this issue.

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

29. The Marion County Land Valuation Commission was required to collect sales data and land value estimates to create a Land Order. This Land Order identified a range of land values that the assessor used as a base rate for determining the True Tax Value of property.

30. For the tax year 1989, the relevant portion of the Land Order contained a chart that identified certain areas of concentrated commercial activity in Washington Township and prescribed a range of values within which land in those areas must be assessed. All but one of the areas identified by the Land Order were identified by location, e.g., "Graham Rd. & 71st (Rt. 37) & So. on 37 to 61st." The remaining area was simply identified as "Township - other."

31. The BOR determined that the parcel is located in an area of the Land Order that both parties referred to as the 82nd Street Corridor, a category that has base rates ranging from $3.00 to $4.00 per square foot of primary land. The BOR further determined that the land base rate for the parcel under appeal should be $3.00 per square foot of primary land.

32. Mr. DeVoe contended that the parcel should be classified in the Land Order category of "Township – other." Mr. DeVoe further contended that the land base rate should be $1.50 per square foot of primary land.

33. The Indiana Supreme Court determined that factors such as zoning and accessibility to 82nd Street were not considered by the BOR at the time the parcel under appeal was included in the 82nd Street Corridor category of the Land Order. The Supreme Court further determined that the failure to consider these factors was sufficient to establish that the classification of IRC's parcel within the Land Order was not determined in accordance with the State Board's rules. *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.*, 743 N.E. 2d 247 (Ind. 2001). The Supreme Court concluded that, upon remand, IRC "'bears the burden of going forward with probative evidence concerning the proper classification of [its property] within the Order and the appropriate base rate to be assigned the [parcel].'" *Id* at 253.

34. IRC contended that its parcel is not comparable to the other properties included in the 82nd Street Corridor. In support of this position, Mr. DeVoe referred to testimony presented at proceedings before the Tax Court concerning zoning differences and a lack of direct accessibility to 82nd Street. Mr. DeVoe further testified that IRC's parcel has a low intensity, special commercial usage in contrast to the usages of other parcels located in the 82nd Street Corridor.

35. The testimony of Mr. DeVoe and the findings of the Indiana Supreme Court are sufficient to sustain IRC's burden of proof regarding the alleged error in assessment.

36. As discussed, in the event a taxpayer sustains its burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify their decision with substantial evidence.

37. No evidence was presented on behalf of the local taxing officials to rebut Mr. DeVoe's contention that the parcel should be included in the "Township – other" category. Mr. Amundson presented no evidence that, after consideration of the zoning and lack of access to 82nd Street, the parcel is best described as part of the 82nd Street Corridor. Further, Mr. Amundson presented no evidence of any

comparable properties located in some other category of the Land Order to indicate that the category of "Township – other" does not best describe the parcel under appeal.

38. IRC has therefore established that the parcel was incorrectly included in the 82nd Street Corridor portion of the Land Order. IRC has further established that parcels not included elsewhere in the Land Order must be included in the "Township – other" category.

39. Having determined that the parcel is best included in the "Township – other" category, an appropriate value must be applied to the parcel. As discussed, the "Township – other" category includes values ranging from $1.50 to $3.00 per square foot for primary land.

40. Mr. DeVoe testified that he had been unable to locate any property in the "Township – other" category that had been assessed at the $3.00 level. IRC therefore contended that the correct value of the parcel should be $1.50 per square foot of primary land.

41. The local officials failed to produce land sales or other evidence to establish that the value of IRC's parcel should be greater than $1.50 per square foot of primary land. The local officials further failed to present evidence of any property in the "Township – other" category that has been valued at more than $1.50 per square foot of primary land.

42. The local taxing officials have failed to present substantial evidence to rebut IRC's contention that the land should be valued at $1.50 per square foot of primary land.

43. In view of the above, the State determines that IRC's parcel should be included in the "Township – other" category of the 1989 Land Order. The State further determines that the parcel should be valued at $1.50 per square foot of primary

land.[3]

44. There is a change in the assessment as a result of this issue.

Other Findings

45. As discussed, the use type of 90% of the building is changed from the GCM - Health Club model to the GCI - Light Warehouse model.

46. Because the portion of the building containing the tennis court area is now being priced from a different schedule, any adjustment made to the base rate of the tennis court portion of the building must be made in consideration of the features contained in the GCI - Light Warehouse model.

47. "To be entitled to a base rate adjustment, [the Petitioner] must submit probative evidence that its buildings do not contain components listed in the models or that its buildings contain components that are not listed in the models (citations omitted). [The Petitioner] then has the burden of proof to ascertain the cost of each component based on the regulations…" *Barth, Inc. v. State Board of Tax Commissioners*, 756 N.E.2d 1124, 1129 (Ind. Tax 2001).

48. The GCI - Light Warehouse model is found at 50 IAC 2.1-4-7. Features identified in the model include:

Foundation

12" reinforced concrete perimeter grade walls to 2'6" high on 12" x 18" strip footings including trench excavation and back-fill

Walls

Type 1: Reinforced concrete block with two coats masonry paint for a wall

[3] At the original administrative hearing, the State determined that the correct land classification consists of 110,891 square feet of primary land and 79,509 square feet of usable undeveloped land. Neither party contested this portion of the original State Final Determination. This determination of the land classification therefore remains unchanged.

height of 18’

Type 2: Common brick on concrete block backup for a wall height of 18’

Openings: 1% 1 ¾ “ hollow metal service doors, 4% overhead doors

Mechanical and Interior Components

Type: Unfinished, 18” floor height

Interior Finish

Partitions: 8” hollow concrete block painted one side with a density of 100 S.F./L.F. partition to a floor height of 18’

Lighting: 200 Ampere service with panel board and feeders. Fixtures are fluorescent and include switches and receptacles

Htg. Only: Gas fired, hot water boiler with unit heaters

AC Add: Single zone electric cooling

49. IRC contended that variations from the model required adjustments for the following: lack of a concrete floor; the absence of loading docks; the lack of overhead loading doors; and lighting. (Petitioner’s Exhibit 5, page 6).

50. IRC contended, “There is no floor in this portion of the building. The tennis courts are built directly on the ground. Petitioner is not aware of a cost factor specified by the 1979 [sic] Manual to be used for this concrete floor. While a concrete floor is common in this type of building, asphalt can sometimes be used as a cheaper substitute. Accordingly petitioner believes that a reasonable approach would be to use the cost figure for asphalt parking, namely $.90 per square foot.” (Petitioner’s Exhibit 6, paragraph 2(b)(i)). At the remand hearing, Mr. DeVoe testified that the flooring is asphalt on a gravel base.

51. The GCI – Light Warehouse model does not identify any type of characteristic flooring.

52. IRC did not establish the cost of flooring included in the base price of the GCI –

Light Warehouse model that would need to be subtracted from the base price. IRC further failed to identify the manner in which asphalt parking is the cost equivalent of the asphalt used in the tennis courts. Finally, IRC provided no cost figures for the gravel base.

53. "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.

54. Indeed, even Mr. DeVoe acknowledged, "I do not find a specific element, for instance, to subtract for the fact that we don't have a floor in our warehouse. I presume that the individual assessor would have to use judgment on that, do whatever needed to be done." Transcript, page 42, lines 1-5.

55. IRC has failed to demonstrate that the model does not accurately reflect the cost of the flooring in IRC's building. IRC has further failed to quantify the amount of any proposed adjustment as required by *Barth*. The State therefore makes no flooring adjustment for IRC's building.

56. IRC similarly contended that an adjustment should be made because the facility does not have any loading docks.

57. The GCI – Light Warehouse model does not include any mention of loading docks as a characteristic of this use type. Instead, loading dock facilities are identified in a separate schedule of special features that are added to the total base price only when they are present in a structure. 50 IAC 2.1-4-5, Schedule E.

58. Because the GCI – Light Warehouse model does not include any costs for

loading docks, there can be no reduction to the base price for the absence of loading docks in IRC's building.

59. IRC also contended that an adjustment should be made because the facility does not have any overhead loading doors.

60. The GCI - Light Warehouse model includes 4% overhead doors. The Unit–In–Place (UIP) Tables, however, identify no fewer than eight different sizes of doors, ranging from $645 to $2425. Additional features, such as heavy duty wood or motor operations, increase the cost. 50 IAC 2.1-4-10.

61. "Petitioner is not aware of any specific cost figures for these doors in the Appraisal Manual. Further, Petitioner believes that the replacement cost of such doors would only be about $2000 each and 2-4 such doors would be usual for a building of this size." (Petitioner's Exhibit 6, paragraph 2 (b)(iii)).

62. The record is void of any data on which to quantify an adjustment for lack of overhead doors. IRC provided no information concerning size, features, or even the number of doors in the facility. Rather, IRC merely asserted that an adjustment should be made, offering no quantification of any proposed adjustment.

63. Repeating, IRC "has the burden of proof to ascertain the cost of each component based on the regulations…" *Barth*, 756 N.E.2d 1124 at 1129. IRC has not quantified its requested adjustment; the State therefore will make no adjustment for the lack of overhead doors.

64. IRC further contended, "the cost of standard lighting should be subtracted from the base cost and instead added to the cost of the 16 tennis courts." (Petitioner's Exhibit 5, page 6).

65. "Guidelines for adjusting for lighting are predicated on intensity of illumination

and fixture quality. An adjustment upward or downward is necessary when either or both of these variables are not normal for a particular use and quality grade.

Scant illumination
AND Sub-quality fixtures
DEDUCT upper range limit

Scant illumination
OR Sub-quality fixtures
Deduct lower range limit

More abundant illumination
OR Higher quality fixtures
ADD lower range limit

More abundant illumination
AND Higher quality fixtures
ADD upper range limit" 50 IAC 2.1-4-3(c)(6).

66. The Base Price Components and Adjustments for lighting in a GCI - Light Warehouse range between \$0.05 and \$0.15. See 50 IAC 2.1-4-5, Schedule C.

67. The cost schedules for commercial tennis courts are located in 50 IAC 2.1-4-5, Schedule G. These schedules include both Standard and Deluxe values based on the surface material of the court: clay, asphalt, or sod. There is no distinction between lighted and unlighted courts.

68. Additionally, the UIP Tables contained in 50 IAC 2.1-4-10 do not list a cost for tennis court lighting.

69. IRC asserted that "the 1995 Manual figures are about 25% too high based on 1989 replacement costs so the cost recommended by petitioner for these lights is

$3,825 for the first court and $3,600 for the other 15 courts, for a total of $57,825 (this is 75% of the 1995 Manual figures).” (Petitioner’s Exhibit 6, paragraph 1).

70. IRC continued: “For instance, the light levels on a good indoor tennis court are about twice the levels in good industrial work areas. Further, the type of fixtures and tubes are the same so Petitioner believes a consistent and fair deduction would be 50% of the court lighting used. If this approach is used, the net adjustment to the standard cost of the building for the lack of lighting in the tennis court area would be a decrease of $28,913 (50% of the $57,825 cost for the special tennis court lighting as noted above) or $.30 per square foot.” Id.

71. IRC provided no explanation as to the manner in which it concluded that “the light levels on a good indoor tennis court are about twice the levels in good industrial work areas.” IRC’s unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.

72. IRC also provided no basis for its contention that the 1995 figures “are about 25% too high.” Indeed, IRC offered no support for its contention that an adjustment to a 1989 assessment may be made using a calculation based on values contained in the 1995 Regulation.

73. Further, as discussed, the $.30 per square foot adjustment proposed by the Petitioner exceeds the range permitted by 50 IAC 2.1-4-5, Schedule C.

74. IRC has failed to demonstrate that standard tennis court lighting does not correspond to the lighting identified in the GCI - Light Warehouse model. Even assuming, arguendo, that the lighting does vary from the model, IRC has still failed to quantify the cost difference between the features. *Barth*, 756 N.E.2d at 1129.

75. For all the reasons above, the State will make no adjustments for lack of a concrete floor, loading docks, and overhead loading doors. Similarly, the State

makes no adjustment for the tennis court lighting.

76. Concerning the GCM – Health Club portion of the building, IRC acknowledged that:

"With respect to the remaining 13,147 square feet [sic; the Petitioner earlier correctly identified the area of this portion of the building as 13,127 square feet (Petitioner's Exhibit 6, paragraph 2a)], this is the front lobby, locker rooms and lounge area…petitioner believes it is appropriate to assess this area using the GCM Health Club base rate. However, the adjustments to this base rate should be different than those used in the original property card because those adjustments were intended to apply to the entire area, not just the front area. Specifically, the base rate of $26.25 is based on a 12 foot floor height. In this front portion of the building, the floor height is only 10 feet so a reduction of $.80 should be made, producing a base rate of $25.45. None of the other deductions contained in the original property card are appropriate for this area." (Petitioner's Exhibit 6, paragraph 2c). The State concurs with IRC's analysis of the appropriate adjustment for this portion of the building.

77. IRC correctly identified two mathematical errors in the BOR property record card: "the total reproduction cost for the 2 fireplaces should be $3200, not $1600. Lastly, the reproduction cost for the 16 tennis courts at $9500 each should be $152,000, not $179,500." (Petitioner's Exhibit 6, paragraph 2(d)). The State has corrected these mathematical errors.

78. IRC further contended, "With respect to the tennis court cost, it should also be noted that these courts do not have the usual fencing around them because they are inside the building. The standard cost figures in the 1989 Appraisal Manual include all fencing costs." Id.

79. As discussed, the mere identification of features that are absent from the tennis courts does not constitute probative evidence. *Barth*, 756 N.E.2d at 1131, n. 10.

80. IRC made the following additional contention:

"The issue of the correct use type base rate for the improvements located on parcel 804124 has previously been raised before this Board and is now on appeal. The additional issue now raised in our appeal is the application of the 'kit adjustment' to the improvements." (Petitioner's Exhibit 4).

81. IRC's argument continued:

"This issue is the approximately 50% reduction in the applicable base rate for low cost light warehouse construction which was a common practice among assessments done in 1989 and 1990. Petitioner believes this informal practice should be followed with respect to the reassessment of the Tennis Court Area for 1989 and 1990. This would result in a further reduction of the standard base rate for the GCI light warehouse. Further, this practice was made mandatory beginning in 1991 by the adoption by the State Board of STB Instructional Bulletin 91-8." (Petitioner's Exhibit 5, page 7).

82. As discussed, the State will only address the issues contained in the remand order. The issue of a kit adjustment was not included in the remand instructions.

83. The State therefore also declines to address this "additional issue now raised" in IRC's appeal.[4]

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[4] However, "The kit adjustment was not available for the 1989 and 1990 tax years." *Barth, Inc. v. State Board of Tax Commissioners*, 699 N.E. 2d 800, 801, n. 1 (Ind. Tax 1998). Alternately, IRC argued for a fifty percent reduction in grade. (Petitioner's Exhibit 6, paragraph 2(b)). Grade was not an issue in the remand order (or the original Form 131 petition) and therefore also will not be addressed.

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.

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Chairman, Indiana Board of Tax Review