STATE OF INDIANA
Board of Tax Review

IRWIN UNION BANK AND TRUST	)	On Appeal from the Bartholomew County
	)	Property Tax Assessment Board of Appeals
	)	
Petitioner,	)	
	)	Petition for Review of Assessment, Form 131
v.	)	Petition No. 03-017-97-1-4-00001
	)	Parcel No. 170720127400
BARTHOLOMEW COUNTY	)	
PROPERTY TAX ASSESSMENT	)	
BOARD OF APPEALS And	)	
HAWCREEK 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 assessment is in violation of the Indiana Constitution.
2. Whether the square foot price is developed correctly.
3. Whether the grade of the subject structure is excessive.

4. Whether a negative adjustment for the lack of partitioning should be made to the base price.

5. Whether a negative adjustment for interior finish should be made to the base price.

6. Whether a negative adjustment should be made to the base rate due to the subject's heating, ventilating, and air conditioning (HVAC) system.

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, Milo E. Smith of Tax Consultants, Inc. filed a Form 131 petition on behalf of Irwin Union Bank and Trust (Petitioner) requesting a review by the State. The Bartholomew County Board of Review's (County Board) Notice of Assessment of Real Property on the underlying Form 130 is dated February 23, 1998. The Form 131 petition was filed on March 20, 1998.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on July 27, 1999, before Hearing Officer Paul Stultz. Testimony and exhibits were received into evidence. Mr. Smith represented the Petitioner. Ms. Clara Claycamp, Bartholomew County Assessor, and Mr. Robert Blessing, Deputy County Assessor, represented the Bartholomew County Assessor's Office. No one appeared to represent the Hawcreek Township Assessor's Office.

4. At the hearing, the subject Form 131 petition was made a part of the record and labeled as Board's Exhibit A. Notice of Hearing on Petition is labeled as Board's Exhibit B. In addition, the following exhibits were submitted to the State:

Petitioner's Exhibit 1 – Package of documents including the following:

a. Statement of issues and conclusions.
b. Copy of a portion of 50 IAC 2.2-10-3.
c. Copy of a portion of 50 IAC 2.2-10-6.1.
d. Copy of 50 IAC 2.2-11-1(6) and (34).
e. Copy of a portion of 50 IAC 2.2-11-6, Schedule C.
f. Copies of the subject's 1978, 1989, and 1995 property record cards (PRC).

Respondent's Exhibit 1 – Copies of photographs of subject and three other Irwin Union Bank branch buildings.

Respondent's Exhibit 2 – Copy of a portion of 50 IAC 2.2-11-4.1, Graded photographs of various commercial and industrial buildings.

Respondent's Exhibit 3 – Copies of PRCs of three other Irwin Union Bank branch buildings.

5. The subject property is a bank located at Jackson and Harrison Streets, Hope, Hawcreek Township, Bartholomew County.

6. The Hearing Officer did not inspect the subject property.

Issue No. 1 – Whether the assessment is in violation of the Indiana Constitution.

7. At the hearing, neither party presented testimony nor submitted evidence regarding this issue.

Issue No. 2 – Whether the square foot price is developed correctly.

8. A review of the Form 131 petition filed with the State indicates that Mr. Smith withdrew this issue on October 19, 1998. (Board's Exhibit A).

Issue No. 3 – Whether the grade of the subject structure is excessive.

9. The Petitioner contends that the grade factor assigned to the improvement is excessive. Copies of the PRCs for 1978 and 1989 indicate the grade was "B"; however the grade was lowered in 1995 to a "C". When an appeal on the subject property was made to the County Board, the local officials raised the grade even though it was not an issue on the Petition. 50 IAC 2.2-10-3 states, "Grade is used in the cost approach to account for deviations from the norm or "C" Grade". The subject building is priced as a bank, which explains what "norm" is. *Smith testimony.*

10. The Respondent testified that, in the past, the subject building had always been graded a "B". It is not known why the grade was changed in 1995 to a "C". Copies of photographs show the grade of the subject and other Irwin Union Banks to range from "B" to "B+2". A grade of "B" seems to be consistent with the way other branches of Irwin Union Bank have been graded around town and in the County. *Blessing testimony & Respondent's Exhibit 1.*

11. The graded photographs in 50 IAC 2.2-11-4.1 include a bank with a "B-1" grade. The comparable properties and the subject are as good as, if not better than, the bank shown in this portion of the Regulation. *Blessing testimony & Respondent's Exhibit 2.*

Issue No. 4 – Whether a negative adjustment for the lack of partitioning should be made to the base price.

12. The Petitioner opines that the Assessor failed to provide an adequate adjustment for the subject's lack of partitioning. The Petitioner submitted its calculations that concluded the amount of partitioning for which the Petitioner is being taxed is 1,316 linear feet (LF). *Smith testimony & Petitioner's Exhibit 1*.

13. The Petitioner claimed that the subject bank does have some divided offices with partitioning, equating to a maximum of 124 LF. The Petitioner submitted its calculations computing the partitioning adjustment to be a negative $11.45. *Smith testimony & Petitioner's Exhibit 1.*

14. The Respondent agreed that there should be some type of adjustment made for the lack of partitioning and recommended a negative partition adjustment of 50%. *Blessing testimony*.

15. Mr. Blessing stated that upon inspection of the subject structure, he determined that a portion of the building did not have any partitions and one side of the building had a conference room and offices. This equated to about 50% of the building not having any partitions.

Issue No. 5 – Whether a negative adjustment for Interior finish should be made to the base price.

16. The Petitioner contends the Bank model has eleven doors. The Petitioner based this contention on 50 IAC 2.2-11-1(6), the General Commercial Mercantile (GCM)-Bank model. The relevant portion of the model describes Walls – Openings, as "15% aluminum framed ¼" plate glass doors 20% aluminum sliding glass windows." *Smith testimony*.

17. The Petitioner submitted its calculations supporting the claim that the GCM-Bank model contains eleven doors. *Petitioner's Exhibit 1*.

18. Mr. Blessing did not testify or present any evidence concerning the number of openings contained in the GCM-Bank model or subject bank.

Issue No. 6 – Whether a negative adjustment should be made to the base rate due to the subject's HVAC system.

19. The Petitioner opines that no one is putting, in these smaller buildings, an HVAC system that is described in the GCM-Bank model. The HVAC system in the subject bank can be found in the GCM-General Retail model, 50 IAC 2.2-11.1(34). The GCM-General Retail model has evaporative coolers, not zoned air conditioning with warm and chilled water. The difference in cost can be corrected by applying a negative $2.80 adjustment. *Smith testimony & Petitioner's Exhibit 1*.

20. The Petitioner concluded that, instead of making all of the above adjustments requested, the structure should be assessed from the GCM-General Retail model.

21. The Respondent testified that the subject bank has an HVAC system that is consistent with other banks. The subject might not have the exact system the model described, but under a mass appraisal system this type of exactitude would be impossible. *Blessing testimony.*

Conclusions of Law

1. The Petitioner is 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. 50 IAC 17-5-3. See also the Forms 130 and 131 petitions authorized under Ind. Code §§ 6-1.1-15-1, -2.1, and –4. 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. See 50 IAC 17-6-3. "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. One manner for the taxpayer to meet its burden in the State's administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners,* 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). 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 merely because the taxpayer demonstrates flaws in it).

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

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

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

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

Issue No. 1 – Whether the assessment is in violation of the Indiana Constitution.

18. At the hearing, neither party presented testimony nor submitted evidence regarding this issue. There is no change in the assessment as a result of this issue.

Issue No. 2 – Whether the square foot price is developed correctly.

19. Mr. Smith withdrew this issue October 19, 1998, prior to the State's administrative hearing (Board's Exhibit A). No change in the assessment is made as a result of this issue.

Issue No. 3 – Whether the grade of the subject structure is excessive.

20. The County Board determined that the building should receive a grade of "B". The Petitioner contended that the building should receive a grade of "C".

21. "Grade" means the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.

22. 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.

23. The determination of the proper grade requires assessors to make a variety of subjective judgments regarding variations in the quality of materials and workmanship and the quality of style and design. *Mahan v. State Board of Tax Commissioners,* 622 N.E. 2d 1058, 1064 (Ind. Tax 1993). 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), models and graded photographs (50 IAC 2.2-11-4), assist assessors in the selection of the proper

grade factor.

24. 50 IAC 2.2-10-3(a) states in relevant part that:

"B" grade buildings "are architecturally attractive and constructed with good quality materials and workmanship. These buildings have a high quality interior finish with abundant built-in features, very good lighting and plumbing fixtures, and a custom heating and air conditioning system."

"C" grade buildings are described as "moderately attractive and constructed with average quality materials and workmanship. These buildings have minimal to moderate architectural treatment and conform with the base specifications used to develop the pricing schedules. They have an average quality interior finish with adequate built-ins, standard quality fixtures, and mechanical features."

25. The bank received a grade of "B" for both the 1978 and 1989 assessment years. The grade was changed to "C" at the time of the 1995 reassessment (Petitioner's Exhibit 1). However, when the Petitioner appealed the 1995 assessment to the County Board on other issues, the County Board changed the grade back to a "B".

26. The Petitioner contended that, because grade was not an issue on the Form 130 petition, the County Board had no right to address grade in its review.

27. The County Board, however, has the discretion to address any issue once a taxpayer has filed a Form 130 petition with the County Board. Ind. Code § 6-1.1-15-2.1; *Joyce Sportswear Co.,* 684 N.E. 2d at 1192.

28. The Petitioner did not present probative evidence in support of its contention that the grade should be reduced. The Petitioner did not identify similarly situated properties and establish disparate treatment between the subject property and the similarly situated properties as it pertained to the issue of grade. Similarly,

the Petitioner presented no cost data or other evidence in support of its position. The Petitioner's unsubstantiated conclusions concerning the grade of the property do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.

29. The Respondent, however, did submit into evidence photographs and PRCs of other Irwin Union Bank branch buildings located within the same county as the subject. All of these bank branches were graded between a "B" and "B+2". The subject bank's grade falls at the low end of the grades assigned to other Irwin Union Bank branches.

30. The Petitioner has failed to present any evidence to show that the grade of "B" assigned by the County Board was incorrect or that a grade of "C" was more representative of the subject bank.

31. For all the reasons set forth above, the Petitioner failed to meet its burden on the issue of grade. No change in the assessment is made as a result of this issue.

Issue No. 4 – Whether a negative adjustment for the lack of partitioning should be made to the base price.

32. The Petitioner claims that a negative adjustment should be made to the subject bank for the lack of partitioning. The Petitioner claims that the subject bank has a maximum of 124 LF of partitioning, and the model would require 1,316 LF of partitioning (Petitioner's Exhibit 1).

33. The relevant portion of 50 IAC 2.2-11-1(6), GCM–Bank model, states "Frame partitions average cost construction typical of finished divided areas found in banks."

34. To prevail in this appeal, the Petitioner is required to present probative evidence that the partitioning in the property under appeal is atypical of finished divided areas found in banks. To establish a prima facie case, the Petitioner may

present any probative evidence of real-world improvements or average costs for partitioning found in banks. *Deer Creek Developers, Ltd. v. Department of Local Government Finance*, 769 N.E. 2d 259 (Ind. Tax 2002).

35. No such evidence was presented. In support of its position, the Petitioner presented only a calculation purporting to compare the linear feet of partitioning actually present in the building with the linear feet of partitioning for which the building is being assessed. The Petitioner contended that this calculation supported a negative adjustment of $11.35. (Petitioner's Exhibit 1).

36. However, the Petitioner failed to cite any authority to support its claim that this calculation identifies a typical amount of partitioning found in finished divided areas in banks. As noted, the Regulation does not specify the density of partitioning for the commercial bank model. (50 IAC 2.2-11-1(6)).

37. In addition, the Petitioner did not offer any evidence or explanation to support its claim that the subject bank had an "absolute maximum" of 124 LF of partitioning actually present. Again, even if accurate, the Petitioner failed to demonstrate the relevance of this figure to the issue of the manner in which the property under appeal varies from the GCM-Bank model.

38. Summarizing, the Petitioner presented no probative evidence of quantity or cost of partitioning typically found in a bank. The Petitioner cited no authority to support its proposed method of determining the amount of partitioning typically found in banks. Instead the Petitioner looked solely to its own property and concluded that it is atypical. The Petitioner's unsubstantiated conclusions, however, do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.

39. The State recognizes that Mr. Blessing, the Deputy County Assessor, opined that a negative partitioning adjustment of 50% should be applied to the assessment (This proposed adjustment would be $6.40; as discussed, the Petitioner seeks an adjustment in the amount of $11.35).

40. The local officials, however, also failed to present any probative evidence of real-world improvements or average costs for partitioning found in banks, as discussed in *Deer Creek Developers, Ltd.* Further, the local officials did not determine what constitutes typical bank partitioning and then perform an analysis to determine the extent to which the property under appeal differs from the model.

41. Although the local officials may agree with the Petitioner that an adjustment for the lack of partitioning should be made to the subject bank, the parties disagree on the amount of that adjustment. In support of their respective positions, both parties presented only conclusory statements. Because neither party presented probative evidence in support of its position, the State may not make any change concerning this issue. *Cf. Canal Realty-Indy Castor v. State Bd. of Tax Commissioners*, 744 N.E.2d 597, 604 (Ind. Tax 2001) ("If Canal does not establish a prima facie case of quantification and the State Board chooses to change the assigned obsolescence adjustment, then it must support its quantification of obsolescence with substantial evidence if Canal is prejudiced by the State Board's action.").

42. For all the reasons set forth above, the Petitioner failed to meet its burden on the issue of a partitioning adjustment. No change in the assessment is made as a result.

Issue No. 5 - Whether a negative adjustment for interior finish should be made to the base price.

43. It is the Petitioner's contention that the features of the subject bank do not fit those features shown in the GCM-Bank model. Specifically, the Petitioner pointed to the number of doors that, it contended, the model requires. In its calculations the Petitioner determined that the model calls for eleven doors.

Additionally, the Petitioner claimed that the subject bank only has plate glass entry doors.

44. The relevant portion of 50 IAC 2.2-11-1(6), GCM–Bank model states: "[Walls-openings] 15% aluminum framed ¼" plate glass doors 20% aluminum sliding glass windows."

45. The Petitioner calculated the number of doors in the following manner:
    a. 182 LF is the amount of LF of the subject bank per PRC;
    b. 10 feet is the wall height of the subject bank per PRC;
    c. Per 50 IAC 2.2-11-1(6), 15% aluminum framed ¼" plate glass doors; and
    d. The doors in the bank under appeal are 8 feet high and 3 feet wide.

    182 LF x 10 feet = 1,820 x 15% = 273 square feet of doors / 8 feet high = 34 feet / 3 feet wide = 11 doors

46. Before applying the evidence to reduce the contested assessment, the State must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.

47. The Petitioner's calculations mix actual and estimated features of the subject structure along with the information found in the GCM-Bank model (50 IAC 2.2-11-1(6)) to determine the proposed number of doors contained in the model.

48. There are two methods to adjust an improvement's assessment for deviations from the model. The first is to adjust the grade of the subject. "Where possible, this type of an adjustment should be avoided because it requires an assessing official's subjective judgment." *Clark v. State Board of Tax Commissioners,* 742 N.E. 2d 46, 49 (Ind. Tax 2001)(*Clark II)*. See also *Whitley,* 704 N.E. 2d 1113.

49. If a grade adjustment is selected as the method to account for deviations from the model, the evidence presented must explain how and to what extent the

subject deviates from the model, why those deviations deserve an adjustment, and why a subjective (as opposed to objective) adjustment is appropriate. *Quality Farm and Fleet, Inc. v. State Board of Tax Commissioners*, 747 N.E. 2d 88, 94 (Ind. Tax 2001).

50. The second, and preferred method, "is to use separate schedules that show the cost of certain components and features present in the model. This method allows an assessing official to make an objective adjustment to the improvement's base rate." *Clark II,* 742 N.E. 2d at 49. See also *Whitley,* 704 N.E. 2d 1113.

51. Using this method, the Petitioner must identify the model used to assess the improvement. The Petitioner must also demonstrate that the current grade does not already account for lower construction costs due to these deviations from the features in the model. *Miller Structures v. State Board of Tax Commissioners*, 748 N.E. 2d 943 (Ind. Tax 2001). Accordingly, the Petitioner must show how the subject deviates from the model, and quantify how the alleged deviations affect the subject's assessment. Such a procedure would require an individual to make use of the Unit-In-Place Cost Schedules, 50 IAC 2.2 –15. The Petitioner, however, failed to offer any calculation based on these cost schedules.

52. Although the calculation offered by the Petitioner purported to have determined the number of doors contained in the bank model, the Petitioner failed to calculate the cost of the doors in the model, failed to describe precisely the features or cost of the existing doors, and then failed to compare the costs of the actual doors to the costs in the model to determine the needed adjustment, if any.

53. In addition, the Petitioner made no attempt to support its position by presenting into evidence any analysis of similarly situated properties in an effort to show disparate treatment of the subject.

54. In the final analysis, the record is devoid of any explanation as to the specific amount of adjustment sought by the Petitioner. The Petitioner is simply asking for something, but does not explain what relief it seeks. The State emphasizes the responsibilities placed upon the taxpayer or representative challenging a property tax assessment – responsibilities that go far beyond simply raising an issue. As case law makes clear, the State does not have the duty to make a case for the taxpayer. *Whitley,* 704 N.E. 2d at 1118; *Clark,* 694 N.E. 2d at 1237, n. 10; and *North Park Cinemas,* 689 N.E. 2d at 769.

55. For all the reasons set forth above, the Petitioner failed to meet its burden on the issue of an interior finish adjustment. Accordingly, there is no change in the assessment as a result of this issue.

Issue No. 6 – Whether a negative adjustment should be made to the base rate due to the subject's HVAC system.

56. The Petitioner's issue is whether the subject building should have the base rate adjusted for an HVAC system that purportedly does not match that which is described in the model. The HVAC system described in the GCM - Bank model is zoned air-conditioning with warm and chilled water. 50 IAC 2.2-11-1(6). The Petitioner testified that this type of system is not found in smaller buildings. The Petitioner opined that the heating system found in the subject bank is described in a completely different model, GCM – General Retail (50 IAC 2.2-11-1(34), as evaporative coolers. The Petitioner contended that the HVAC system found in the subject bank is inferior to the HVAC system described in the GCM - Bank model.

57. The Petitioner requested an adjustment to the base rate based on the difference in the HVAC component costs between the GCM – Bank and GCM – General Retail models, determined from 50 IAV 2.2-11-6, Schedule C, GC Base Price Components and Adjustments.

58. The State is mindful of the body of case law established by the Tax Court regarding base rate adjustments, including *Barth 1; Wareco Enterprises v. State Board of Tax Commissioners,* 689 N.E. 2d 1299 (Ind. Tax 1997); *Brock Products, Inc. v. State Board of Tax Commissioners,* 683 N.E. 2d 1367 (Ind. Tax 1997); and *Hatcher, supra.*

59. To the extent that the Tax Court decisions require a base rate adjustment for every item that is described in the model but not present in the building under administrative or judicial review, *Town of St. John V* overrules them.

60. Simple teachings of *Town of St. John V* bear repeating. The Indiana Supreme Court recognizes that Indiana's real estate property tax system is a mass appraisal system, and holds that taxpayers cannot "expect the full achievement of absolute and precise exactitude" regarding property tax assessments. *Town of St. John V,* 702 N.E. 2d at 1040. For example, individual evidence may not be submitted for the purpose of obtaining an exact or precise assessment. Rather, individual evidence may be submitted to demonstrate that the wrong model has been selected, or an improper application of the Regulation.

61. Thus, to require a base rate adjustment for every item that is described in the model but not present in the building under administrative or judicial review erroneously mandates absolute and precise exactitude regarding property tax assessments and such mandate contradicts *Town of St. John V.*

62. Assuming for the moment that Schedule C adjustments can be made by picking and choosing component adjustments among models as the Petitioner advocated, the record is devoid of the necessary factual predicate to establish that the HVAC system in the GCM-Bank model (zoned air-conditioning with warm and chilled water) does not exist in the property under appeal or that the HVAC system described in the GCM-General Retail model (evaporative coolers) is present. Adjustments will not be made simply because a taxpayer or his representative asks for them, or opines that they should be made.

63. As previously stated, one manner for the taxpayer to meet its burden is that the taxpayer must identify similarly situated properties to the subject and to establish disparate treatment of the subject. The Petitioner failed to present any such comparisons or analysis.

64. In addition, while 50 IAC 2.2-11-6, Schedule C, facilitates a deduction for the lack of heating from the base rate of a particular use-type model such as GCM – Bank, Schedule C does not provide for base rate adjustments between models. *Barth 1* at 802 ("The base rate for an improvement is calculated by choosing the model that most resembles the physical characteristics of the subject improvement, and *then applying the price schedule associated with the model* to the improvement.")(Emphasis added); 50 IAC 2.2-10-6.1(c). Clearly, once the appropriate use-type model is selected, the base rate adjustments must be made within the selected model.

65. Moreover, picking and choosing base rate adjustments between use-type models in order to obtain what is presented as the best match in heating systems is exactly what is prohibited by *Town of St. John V.*

66. Repeating, the burden of proof is on the person petitioning the agency for relief. The taxpayers are expected to make factual presentations to the State regarding alleged errors. These presentations should outline both the alleged errors and support the allegations with evidence. The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges.

67. For all the reasons set forth above, the Petitioner failed to meet its burden on the issue of an HVAC adjustment. Accordingly, there is no change in the assessment as a result of this issue.

Other Conclusions

68. At the administrative hearing, the Petitioner asserted that "Instead of making all of the above adjustments 50 IAC 2.2-10-6.1 instructs us to locate and use the model that best represents the structure being assessed…this would be General Retail." (Petitioner's Exhibit 1).

69. A review of the Form 131 petition indicates that the selection of the correct use-type model (GCM - General Retail instead of GCM – Bank) was not an issue raised on the appeal petition. As discussed, the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.

70. The State therefore will not address the Petitioner's contention that the structure should be assessed from the GCM - General Retail model instead of the GCM - Bank model.

Summary of Final Determination

Determination of ISSUE 1: *Whether the assessment is in violation of the Indiana Constitution.*

71. The Petitioner did not meet its burden in this appeal. Accordingly, there is no change in the assessment as a result of this issue.

Determination of ISSUE 2 – *Whether the square foot price is developed correctly.*

72. This issue was withdrawn. Accordingly, there is no change in the assessment as a result of this issue.

Determination of ISSUE 3 – *Whether the grade of the subject structure is excessive.*

73. The Petitioner did not meet its burden in this appeal. Accordingly, there is no change in the assessment as a result of this issue.

Determination of ISSUE 4 – *Whether a negative adjustment for the lack of partitioning should be made to the base price.*

74. The Petitioner did not meet its burden in this appeal. Accordingly, there is no change in the assessment as a result of this issue.

Determination of ISSUE 5 - *Whether a negative adjustment for interior finish should be made to the base price.*

75. The Petitioner did not meet its burden in this appeal. Accordingly, there is no change in the assessment as a result of this issue.

Determination of ISSUE 6 - *Whether a negative adjustment should be made to the base price due to the HVAC system.*

76. The Petitioner did not meet its burden in this appeal. Accordingly, there is no change in the assessment as a result of this issue.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of_____, 2002.

_____

Chairman, Indiana Board of Tax Review