

**STATE OF INDIANA
Board of Tax Review**

J Enterprises, Inc.,) On Appeal from the Bartholomew
) County Board of Review
Petitioner,)
)
v.) Petition for Review of Assessment, Form 131
) Petition No. 03-005-96-1-5-00002
Bartholomew County Board of) Parcel No. 05051500209
Review and German 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 grade factor should be "C-2".
2. Whether the pool enclosure should be valued as "GCM – General Retail".

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, Tax Consultants, Inc., on behalf of the Petitioner, filed a petition requesting a review by the State. The Form 131 petition was filed on March 19, 1998. The Bartholomew County Board of Review (County Board) gave the Petitioner notice of the County Board's decision on the underlying Form 130 on February 23, 1998.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on March 15, 1999. Mr. Milo Smith, with Tax Consultants, Inc., was present at the hearing on behalf of the Petitioner. Ms. Clara Claycamp, Bartholomew County Assessor, and Mr. Robert Blessing, Deputy Assessor, were present at the hearing on behalf of the County Board. No one was present on behalf of German Township.

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

Petitioner's Exhibit A – A summary of the issues and contentions prepared by Mr. Smith with the following documents attached:

- a. A copy of 50 IAC 2.2-11, Schedule A.3, GCR Base Prices.
- b. A copy of the model description for GCR – Motel Units from 50 IAC 2.2.
- c. A copy of Section 41, Page 1, February 1996 from Marshall Valuation Service.
- d. A copy of the portion of Schedule C, Base Price Adjustments and Components, from 50 IAC 2.2-11 for GCI and GCR structures.

- e. A copy of a facsimile from Mr. Gary Wirth to Mr. Smith dated January 15, 1998 regarding the installed cost of PTAC units.
- f. A copy of Section 12, Page 25, December 1995 from Marshall Valuation Service.
- g. A copy of Section 85, Page 6, July 1996 from Marshall Valuation Service.
- h. A copy of the portion of Schedule C, Base Price Adjustments and Components, from 50 IAC 2.2-11 for GCM structures.
- i. A copy of 50 IAC 2.2-11-5(a)(103) through (b)(4).
- j. A copy of 50 IAB 2.2-10-3, Grade.
- k. A real property assessment manual reproduction cost summary prepared by Mr. Smith.
- l. A copy of the forward from 50 IAC 2.2.
- m. A copy of the model description for GCR – Motel Units from 50 IAC 2.2-11.
- n. A copy of the GCR Base Prices taken from an unidentified version of the real property assessment manual.
- o. A copy of the GCR Base Prices from 50 IAC 2.2-11.
- p. A copy of Section 1, Page 5, December 1995, Marshall Valuation Service – Class of Construction.
- q. A copy of Section 12, Page 10, December 1995, from Marshall Valuation Service.
- r. A copy of October 1997 Marshall Valuation Service Comparative Cost Multipliers.

5. The subject property is located at 1171 West US Highway 31, Taylorsville, German Township, Bartholomew County. The assessment year under review is 1996. The 1996 assessed values under review are (1) \$38,900 for land and (2) \$435,570 for improvements¹. The assessed values under review are reflected

¹ The State Board notes that a hearing was held regarding a Form 131 petition and a Final Determination was issued for this same property addressing the 1995 assessment year. The values for the 1996 assessment reflect the changes made as a result of the 1995 Final Determination and applied by the local assessing officials.

on the property record card for the subject property that has been made a part of the record and labeled Board Exhibit C. The Hearing Officer did not conduct a site inspection of the subject property.

Grade

6. The grade of the subject structure is currently “C+1”². The Petitioner is seeking a reduction in grade to “C-2”.
7. The subject structure is a two-story motel. The subject structure is frame construction with brick exterior walls. The subject structure is currently valued under the GCR – Motel Service, GCR – Motel Unit, and GCM – General Retail use types.
8. The heating, ventilation, and air conditioning (HVAC) units used in the motel units of the subject structure are through the wall heat pump units. The GCR – Motel Unit model base rate includes the cost for electric through the wall heating and air conditioning units.

Petitioner’s Theory Regarding Grade

9. The Petitioner believes that, due to the difference in the costs of the framing type of the subject structure and the type of HVAC units actually found in the subject and the costs of the framing type and HVAC units described in the GCR – Motel Unit model, the grade should be reduced to “C-2”.

² The grade issue as listed on the Form 131 petition sought to reduce the grade from “C+2” to “C-2”. The State Board notes that the current “C+1” grade is a result of a change made as part of a Final Determination issued for the 1995 assessment. Because the 1995 change was a result of a Form 131 petition, the change carried forward to the 1996 assessment year. Therefore, the Petitioner is seeking to change the grade applicable to the 1996 assessment or “C+1”.

Valuation of Pool Enclosure

10. The subject pool enclosure is currently valued under the GCM – General Retail use type. The Petitioner is seeking valuation of the pool enclosure under GCM – General Retail use type.
11. A State Board Final Determination issued for the 1995 assessment year changed the model under which the pool enclosure is valued from GCR – Motel Service to GCM – General Retail.
12. The parties agreed that the pool enclosure should be valued under the GCM – General Retail use type. A signed stipulation agreement reflects the agreement between the parties. (See Board Ex. D.)

Conclusions of Law

1. The Petitioner is statutorily limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 130 petition. Ind. Code §§ 6-1.1-15-1, -2.1, and -4. See also the Forms 130 and 131 petitions. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of

the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.

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

A. Indiana's Property Tax System

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

relevant. *Id.* Rather, the proper inquiry in all tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State’s decision.

B. Burden

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

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

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

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

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

Conclusions Regarding Grade

18. 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.

19. "Under some circumstances, an improvement's deviation from the model used to assess it may be accounted for via a grade adjustment." However, 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).
20. 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 improvement's base rate." *Clark II*, 742 N.E. 2d at 49. See also *Whitley*, 704 N.E. 2d 1113.
21. The Petitioner must identify the model used to assess the improvement. The Petitioner must also demonstrate whether the current grade does not already account for lower construction costs due to these features. *Miller Structures v. State Board of Tax Commissioners*, 748 N.E. 2d 943, 953 (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.
22. To repeat, the Petitioner is seeking to reduce the grade from "C+1" to "C-2". The Petitioner's theory is that the cost difference in the frame type and HVAC described in the GCR – Motel Unit model and the frame type and HVAC actually found in the subject structure requires a grade reduction.
23. The Petitioner first points to the type of framing material used in the construction of the subject structure in its grade challenge. The Petitioner argues that the wood framing type of the subject structure deviates from the model's description

of concrete block framing and concludes that the grade should be reduced to account for this deviation.

24. The Petitioner submitted cost tables from Marshall Swift Valuation and copies of the GCR – Motel Unit model (Pet. Ex. A) in an attempt to establish its frame type argument used in the grade challenge. The Petitioner calculated the reproduction cost of concrete block framing and the cost of wood framing using the square foot costs found in Marshall Swift Valuation, compared the difference in costs, and concluded the difference represented the reduction warranted in the assessment. The Petitioner is mistaken.
25. The subject structure is currently valued under the GCR – Motel Unit model. “The base rates in the GCR schedule are based upon wood joist construction...” 50 IAC 2.2-10-6.1(a)(9) “Wood joist” construction is defined as “nonfire resistant structural floor and roof components consisting of wood subflooring, or decking on wood joists, rafters, or purlins, supported by load bearing walls of timber or steel framing.” 50 IAC 2.2-10-6.1(a)(9)(A). The GCR – Motel Unit base rate used to value the subject structure is based on the use of wood framing and not the use of concrete block framing. Although this appears to create a deviation, because the GCR base rates have taken into consideration the cost of wood framing, the subject structure is valued under the basis of wood framing and any apparent deviation from the model is accounted for in the base rate.
26. Next the Petitioner points to the type of HVAC system found in the subject structure. The Petitioner argues that the heat pump HVAC system used in the subject structure deviates from the electric through the wall HVAC system described in the model and concludes that a grade reduction is required.
27. The Petitioner submitted cost table from Marshall Swift Valuation, copies of Schedule C from the State Board’s regulation, and a facsimile in an attempt to establish its HVAC argument used in the grade challenge (Pet. Ex. A). The

Petitioner did not rely on the information provided by the facsimile submitted. The Petitioner simply made a calculation using this information. The Petitioner, using the square foot price from Marshall Swift Valuation for individual heat pump units and the square foot price for GCR – Motel Unit HVAC from Schedule C, compared the calculated costs of each (square foot price multiplied by the square footage of the units) and concluded that the cost difference represented the amount of reduction warranted in assessed value. The Petitioner is mistaken.

28. Showing the difference between the HVAC cost found in the State Board's regulation and the cost for individual heat pump units found in Marshall Swift Valuation does not represent any foundation for a reduction in assessment. It merely shows a price difference between two individual valuation publications. Comparing the costs shown in the State Board's regulation with another valuation publication is like comparing apples to oranges. If seeking to show that value is affected by a difference in features, it is necessary to make a like comparison. Otherwise, any difference shown by the comparison could be caused by other factors. In other words, when following this type of theory, it is imperative that any comparison made is made within the confines of the cost tables or schedules found in the State Board's regulation.

29. Additionally, the Petitioner is seeking a grade reduction by claiming that the HVAC actually found in the subject structure is different than that described in the GCR – Motel Unit model. As stated above, the preferred method of adjusting a structure's assessment to account for deviations from the model is to use one of the schedules (base rate adjustment or unit-in-place), calculate the adjustment, and make an objective base rate adjustment. Schedule C provides an adjustment for HVAC; therefore, the preferred method of adjusting an assessment should be considered. Nowhere in the regulation are provisions made to differentiate between types of HVAC systems. Base rate adjustments are appropriate only when the regulation expressly permits them and makes them appropriate. As such, the only adjustment expressly permitted and made

appropriate by the regulation is made when the structure lacks HVAC and the model includes the cost for HVAC. Where no adjustment exists, none is made.

30. The Petitioner has challenged the grade by way of pointing out alleged deviations from the model. Through a reduction in grade, the Petitioner seeks to achieve a reduction in the assessment as a result of these supposed deviations. Using either method explained by the Court, in general, the Petitioner is required to point out the deviations and quantify how the alleged deviations affect the assessment. The Petitioner has failed to meet this requirement. Also, it is incumbent upon the Petitioner to present relevant and factual evidence probative of the alleged error to establish a prima facie case regarding the issues raised. The evidence presented by the Petitioner is meaningless or conclusory in nature and, as such, falls short of constituting probative evidence.
31. For the above reasons, the Petitioner has failed to make a case regarding the issue of grade. Therefore, the State Board will not make the grade change sought by the Petitioner and no change is made to the assessment as a result of this issue.

Conclusions Regarding the Valuation of the Pool Enclosure

32. This issue was raised before the State Board as part of a Form 131 petition filed challenging the 1995 assessment of the subject property. The Final Determination issued in this matter made a change regarding the valuation of the pool enclosure and addressed other issues as well. The State Board's Final Determination changed the model under which the pool enclosure is valued from GCR – Motel Service to GCM – General Retail. Because changes made as a result of a Form 131 petition carry forward to the following assessment years, this change is also effective for the 1996 assessment. Therefore, for the 1996 assessment, the pool enclosure is currently valued under the GCM – General Retail model at the local level and the Petitioner's challenge is moot.

33. Additionally, the parties entered into an agreement regarding the valuation of the pool enclosure reflecting that the pool enclosure should be valued under GCM – General Retail. Because this matter is a moot point, the State Board need not indicate acceptance or rejection of the parties’ agreement.

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