STATE OF INDIANA
Board of Tax Review

JEFFERY N. BUSH & MARK B. HAYS	)	On Appeal from the Bartholomew County Board of Review
Petitioners,	)	
	)	Petition for Review of Assessment, Form 131
v.	)	Petition No. 03-019-97-1-4-00005
	)	Parcel No. 1999616242407
BARTHOLOMEW COUNTY BOARD OF REVIEW and COLUMBUS 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 property taxes charged to the subject property are unconstitutional.
2. Whether the subject building is properly valued under the GCM – Medical Office model (Medical Office).
3. Whether the grade factor should be lowered to allow for deviations from the model.
4. Whether a negative base rate adjustment should be made due to an inferior Heating, Ventilation, and Air Conditioning (HVAC) system.

5. Whether a negative base rate adjustment should be made due to fewer partitions than included in the model.
6. Whether a negative base rate adjustment should be made due to the construction of the exterior walls of the subject building.

Findings of Fact

1. If appropriate, any finding of fact made herein shall be considered a conclusion of law. Also, any conclusion of law made herein shall be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-3, Tax Consultants, Inc. (Tax Consultants), on behalf of Mr. Jeffrey N. Bush and Mr. Mark B. Hays (Petitioners), filed a Form 131 petition requesting a review by the State. The Form 131 petition was filed on March 20, 1998. The Bartholomew County Board of Review (County Board) gave notice of its decision on the underlying Form 130 petition on February 23, 1998.

3. Pursuant to Ind. Code § 6-1.1-15-4, an administrative hearing was held on March 15, 1999, before Hearing Officer Kay Schwade. Testimony and exhibits were received into evidence. Mr. Milo Smith with Tax Consultants was present at the hearing on behalf of the Petitioners. Ms. Clara Claycamp, Bartholomew County Assessor and Mr. Robert Blessing were present at the hearing on behalf of the County Board. Ms. Katie Garvey, Columbus Township Assessor, and Ms. Diana Fear, Deputy Township Assessor were present on behalf of Columbus Township (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 and labeled Board Exhibit B. In addition, the following documents were submitted to the State:

Petitioner's Exhibit A – A summary of the contentions with the following documents attached:

a. A copy of an excerpt from the Indiana Probate, Trust, Property, & Death Tax Newsletter, Vol. 18, No. 1, February 1999, published by the Indiana Bar Association.
b. A copy of the "Schedule C Base Price Interior Components and Adjustments" (Schedule C) narrative (50 IAC 2.2-10-6.1(c)).
c. A copy of Section 45, Page 4, May 1997 from *Marshall Swift Valuation Services* (*Marshall Swift*).
d. A copy of the GCM – Medical Office Model description (50 IAC 2.2-11-1).
e. A copy of Schedule C (50 IAC 2.2-11-6).
f. A copy of the "Schedule A Base Prices" (Schedule A) narrative (50 IAC 2.2-10-6.1(a)).

Respondent's Exhibit A – A packet of documents containing the following:

a. A copy of the Notice of Hearing.
b. A copy of the front portion of the subject Form 131 petition.
c. A copy of the underlying Form 130 petition.
d. A copy of the Township response regarding the issues raised on the underlying Form 130 petition.
e. A copy of the property record card for the subject property reflecting the assessed values established by the County Board.

5. The subject property is a 3,654 square foot, single story building located at 4610 25th Street in the City of Columbus, Columbus Township, Bartholomew County. The occupants of the subject building operate a physical therapy business. The assessed value established by the County Board is (1) $18,270 for the land and (2) $61,170 for the improvements. The Hearing Officer did not conduct an on-site inspection of the subject property.

Issue No. 1 - Constitutionality

6. Mr. Smith testified that, because certain portions of the State's Regulation were found to be unconstitutional, the real property taxes charged against the subject property are unconstitutional as well.

7. The portion of the article published in the Indiana Probate, Trust, Property, & Death Tax Newsletter, Vol. 18, No. 1, February 1999, submitted by the Petitioner (Pet. Ex. A) discusses the Indiana Supreme Court's holding in *Town of St. John v. State Board of Tax Commissioners*, 703 N.E. 2d 1136 (Ind. App. 1998) with regard to the cost schedules found in the State's Regulation. The section highlighted points to the Supreme Court's affirmation that the cost schedules used to value real property were unconstitutional.

Issue No. 2 – Model Selection
Issue No. 4 – HVAC System

8. Mr. Smith testified that the subject building is used for physical therapy and should not be valued using the GCM – Medical Office model (Medical Office).

9. Mr. Smith testified that the subject building is currently valued as Medical Office. He testified that Medical Office includes a zoned air conditioning with warm and chilled water HVAC system. He also testified that the value included in the subject building's valuation for a zoned air conditioning with warm and chilled water HVAC system valued at $21,376. Mr. Smith testified that the value of $21,376 for the zoned air conditioning with warm and chilled water was calculated based on the component cost of HVAC for Medical Office from Schedule C of $5.85 times 3,654 square feet (the square footage of the subject building) (Pet. Ex. A).

10. Mr. Smith testified that the actual HVAC system found in the subject building is more like the HVAC system included in the GCM – General Retail model

(General Retail). He testified that, using the HVAC component cost for General Retail from Schedule C of $3.30 times 3,654 square feet, the value of the HVAC of the subject building is $12,058.

11. Mr. Smith testified that Schedule C is used to adjust the base price of a structure to account for variations between the subject and the model. He testified that the costs given in Schedule C indicate the interior and mechanical component costs included in a model's base price. He further testified that the component costs apply to 100% of the area unless otherwise specified within a particular model.

12. Mr. Smith testified that, before adjusting for time and a 15% reduction, *Marshall Swift* shows that the cost for a zoned air conditioning with warm and chilled water is $12.40 per square foot. Mr. Smith also testified that *Marshall Swift* provides a cost of $6.10 per square foot for a heat pump HVAC system. (Pet. Ex. A)

13. Mr. Smith testified that *Marshall Swift* indicates that the cost of a heat pump HVAC system is one-half of the cost of the zoned air conditioning with warm and chilled water HVAC system built into Medical Office. Mr. Smith further testified that the subject building's "heat" should be adjusted by a negative $2.55. Mr. Smith testified that the calculation of the negative $2.55 adjustment is $5.85 less $3.30 equals $2.55.

14. Mr. Smith also testified that *Marshall Swift* was used to simply check the calculation submitted in Petitioner's Ex. A.

Issue No. 3 – Grade

15. The Petitioner did not offer any testimony or evidence addressing the issue of grade.

Issue No. 5 - Partitioning

16. Mr. Smith testified that Medical Office describes the amount of interior partitioning as typical for medical offices. Mr. Smith testified that the value of the subject building currently includes $51,521 of interior partitioning cost. Mr. Smith testified that the $51,521 cost of interior partitioning was calculated by multiplying the Medical Office interior partitioning cost of $14.10 from Schedule C and 3,654 square feet (the square footage of the subject building).

17. Mr. Smith testified that "typical" is defined by calculating the cost of interior partitioning included in the model. Mr. Smith testified that, based on the calculation of $14.10 times 3,654 square feet, $51,251 is "typical" partitioning included in Medical Office.

18. Mr. Smith testified that the subject building has 5,064 square feet of interior partitioning (422 linear feet times 12 foot ceiling height)(Pet. Ex. A). Mr. Smith testified that, using the Unit Cost Adjustments schedule, the interior partitioning of the subject building has a cost of $2.75 per square foot. Mr. Smith testified that the cost of interior partitioning found in the subject building is $13,926 (5,064 square feet times $2.75)(Pet. Ex. A).

19. Mr. Smith testified that, because the subject building has less interior partitioning than "typical" for Medical Office, a negative $10.29 adjustment should be made to the base rate. The calculation for this negative adjustment is shown in Petitioner's Ex. A as follows:

    $51,251 - $13,926 = $37,595 / 3,654 = -$10.29

20. Mr. Smith testified that the base prices found in Schedule A consist of square foot unit rates by floor for various use and finish types. He testified that the models are conceptual tools used to replicate the reproduction cost of a given structure and assume certain construction elements for a given use type. Mr. Smith also testified that use type means the model that most closely resembles

the structure being valued. He further testified that the model that best represents the structure is to be located, using the guide provided in the Regulation, and used when valuing the structure. Mr. Smith testified that, when necessary, adjustments to the base price are made from Schedule C to account for variations from the model.

21. Mr. Smith also testified that, because 29% of the subject building is open with no partitioning, an alternative to the negative adjustment would be to value 29% of the subject building as General Retail with a negative $2.25 partitioning adjustment.

Issue No. 6 - Exterior Wall Construction

22. The Petitioners did not offer any testimony or evidence addressing the issue a negative adjustment due to the exterior wall construction.

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 Form130/131 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.

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 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.

D. Issue No. 1 - Constitutionality

18. The Petitioners are challenging the constitutionality of the property taxes levied against the subject property based upon the Indiana Supreme Court's ruling in *Town of St. John V, supra*. The Petitioner presented the testimony of Mr. Smith and a portion of an article published by the Indiana Bar Association in support of this contention (Pet. Ex. A).

19. The portion of the article presented by the Petitioners relates the Indiana Bar Association's interpretation of the Supreme Court's holding in *Town of St. John V, supra*. This article, in no way, infers that the Courts declared the property

taxes levied against property unconstitutional. This evidence does not, in any fashion, aid the Petitioners' conclusion that the property taxes levied are unconstitutional.

20. As stated earlier, although the cost tables and certain subjective elements of the State's Regulation have been found unconstitutional, the assessment and appeals process will continue under the existing rules until a new property tax system is in place.

21. The Court's ruling in *Town of St. John V* addressed the constitutionality of the assessing system itself not the constitutionality of property taxes. Therefore, the Petitioners' desire to challenge the constitutionality of taxes based on this argument is without merit.

E. Issue No. 2 - Model Selection

22. The Petitioners claim that Medical Office is not the proper model to use in the valuation of the subject property. The Petitioners presented the testimony of Mr. Smith and the information contained in Petitioner's Ex. A in support of this contention. The summary presented as part of Petitioner's Ex. A represents Mr. Smith's testimony in written form.

23. The testimony presented by Mr. Smith focused on the valuation of zoned air conditioning with warm and chilled water HVAC system described under Medical Office versus the valuation of the HVAC system described under General Retail. The testimony and evidence presented also compared the *Marshall Swift* costs of a zoned air conditioning with warm and chilled water HVAC system and a heat pump HVAC system. The evidence presented also focused on the cost difference of various HVAC systems. Neither Mr. Smith's testimony nor the information provided in Petitioner's Ex. A offers any discussion as to why the subject building should be valued under the General Retail model rather than the Medical Office model.

24. The Petitioners did make mention of valuing the subject building under General Retail as part of its argument offered for another issue addressed later in these findings. However, simply suggesting that to use General Retail with a negative base rate adjustment for partitioning as an alternative to making a partitioning adjustment under Medical Office is not enough to show that the wrong model has been used to value the subject building.

25. Although the Petitioners clearly raised the issue of model selection (Pet. Ex. A, paragraph 2), at no point did the Petitioners offer any reasoning why the model selected by the local assessing officials is incorrect or offer any evidence related to model selection. The Petitioners merely claimed that Medical Office was not the correct model to use for the valuation of the subject building. If the Petitioners believed that, by simply raising the issue of model selection, the State would be obligated to perform an independent analysis of whether Medical Office or General Retail should be used to value the subject building, the Petitioners are mistaken. It is not the State's duty to make the Petitioners' case. When challenging an assessment, the taxpayer has the responsibility to specifically point out the alleged error and provide factual evidence probative of the alleged error.

26. For all of the above reasons, the Petitioners have failed to meet their burden regarding the issue of model selection. Therefore, no change is made to the assessment as a result of this issue.

F. Issue No. 3 - Grade

27. Although the issue of grade was raised by the Petitioners as part of the subject Form 131 petition filed, the Petitioners did not provide any testimony or evidence regarding the issue of grade.

28. When challenging an assessment, the taxpayer must do something more that claim an error exists. The taxpayer must make a case before the State regarding the alleged error by presenting factual evidence probative of the error. The Petitioners simply claimed that the grade should be lowered to account for deviations from the model and failed to present any testimony or evidence in support of their claim.

29. The Petitioners have failed to make a case before the State regarding the issue of grade. Therefore, no change is made to the assessment as a result of this issue.

G. Issue No. 4 - HVAC System

30. The Petitioners claim that a negative base rate adjustment should be made to the base rate because the type of HVAC system used in the subject building is more like the type of HVAC system found in General Retail rather than Medical Office.

31. The Petitioners presented the testimony of Mr. Smith and the information provided in Petitioner's Ex. A in support their claim. Petitioner's Ex. A is simply a summary of Mr. Smith's testimony and calculations regarding the HVAC claim as well as other issues addressed elsewhere in these findings.

32. The HVAC system described for Medical Office is zoned air conditioning with warm and chilled water. The HVAC system described for General Retail is evaporative coolers. 50 IAC 2.2-11-1.

33. 50 IAC 2.2-10-6.1(c), Schedule C, does not provide for an adjustment depending upon the type of HVAC system found in a structure. The adjustments provided

under Schedule C, with regard to HVAC, address the lack of one or all of the heating components described in the model. For example, if the model includes the cost for heating and air conditioning and the structure being assessed lacks air conditioning, then a base rate adjustment is made from Schedule C to remove the cost of air conditioning from the base rate or if the model calls for heat and the structure does not have heat, then an adjustment is made to remove the cost for heat included in the model. Also, if the model includes only the cost for heat and the structure has air conditioning as well, the base rate is adjusted upward to include the additional cost for air conditioning.

34. The pages copied from the State's Regulation submitted by the Petitioners (Pet. Ex. A) are simply referenced throughout Mr. Smith's testimony demonstrating the sections of the State's Regulation from which Mr. Smith obtained particular language and information used in Mr. Smith's presentation. These exhibits do not establish that an error exists; they are merely informational in nature.

35. The Petitioners also offered a page copied from *Marshall Swift* as part of Petitioner's Ex. A. The Petitioners draw attention to the cost of a zoned air conditioning system with hot and chilled water and the cost of a heat pump system and note that a heat pump system is one-half the cost of a zoned air system. Mr. Smith's testimony claims that this information was used to check the calculation provided in Petitioner's Ex. A for the negative HVAC adjustment sought. However, the Petitioners have not shown how the cost difference of two HVAC systems from *Marshall Swift* is relevant to the negative base rate adjustment they seek. The mere fact that the cost for one type of system is approximately one-half the cost of another system using *Marshall Swift* cost tables does not somehow validate a negative $2.55 adjustment for the subject building. In fact, there is no correlation between the information drawn from

Marshall Swift and the Petitioners' calculation of the negative base rate adjustment. As such, this evidence is meaningless.

36. Although the Petitioners presented a calculation regarding the claimed HVAC adjustment, the calculation has no merit. The calculation merely shows the difference between the HVAC cost included in Medical Office and the HVAC cost included in General Retail. The Petitioners are simply attempting to pick and choose between models or types of HVAC systems not even described in the models to achieve a base rate adjustment. Adjustments will not be made simply because the Petitioners or their representative asks for them or opines that they should be made. The tax assessment system is a mass appraisal system that does not assess with exactitude and preciseness. The Petitioners burden is two-fold: (1) it must identify similarly situated properties; and (2) it must establish disparate treatment between the subject property and the similarly situated properties. In addition, the Petitioners are required to make a case before the State by presenting factual evidence probative of the alleged error. A conclusory statement regarding the alleged adjustment and relating same in testimony falls well short of this requirement.

37. The Petitioners have failed to identify similarly situated properties; to establish disparate treatment; and to present factual evidence probative of the alleged error. As such, the Petitioners have failed to meet the burden placed upon them in assessment challenges. Therefore, the State will not make the negative HVAC adjustment sought by the Petitioners. No change is made to the assessment as a result of this issue.

H. Issue No. 5 - Partitioning

38. The Petitioners claim that a negative base rate adjustment should be made because the partitioning in the subject building deviates from the description given for Medical Office.

39. In support of their allegation, the Petitioners presented the testimony of Mr. Smith and the information provided through Petitioner's Ex. A. Petitioner's Ex. A is basically Mr. Smith's testimony in written form and contains the calculation

pertaining to the alleged partitioning adjustment as well as other issues addressed elsewhere in these findings.

40. Petitioner's Ex. A also contains pages copied from the State's Regulation. The pages copied from the State's Regulation are merely referenced throughout Mr. Smith's testimony demonstrating the sections of the State's Regulation from which Mr. Smith obtained particular language and information used for the Petitioners' presentation. These exhibits do not establish that an error exists; they are simply informational in nature.

41. The Petitioners argue that the subject building has less partitioning than is "typical" of Medical Office. The Petitioners contend that "typical" is defined by multiplying the total square footage of the subject building by the interior partitioning cost for Medical Office from Schedule C. The Petitioners maintain that the result of this calculation demonstrates the "typical" amount of partitioning included in Medical Office. The Petitioners' argument is seriously flawed for one reason – its definition of "typical".

42. The courts have held many times over that words and phrases are to be given their common and ordinary meaning within statute. In *Webster's New World Dictionary, Second Edition*, "typical" is defined as "having or showing the characteristics, qualities, etc. of a kind, class, or group so fully as to be a representative example." Based on this definition, it is easily understood that if a building contains what one would normally expect to find in any other building of the same type then the building is typical of that type. Therefore, by applying the common and ordinary meaning of "typical", it is clear that, with respect to the model description for Medical Office, the amount of partitioning for Medical Office would be characteristic of what one would expect to find in any medical office.

43. The Petitioners wish to portray "typical" as a calculated number based upon the actual square footage of the subject building. Using the Petitioners' portrayal of "typical" partitioning, what is "typical" would be different for each individual

medical office assessed based on each individual building's square footage. This is simply absurd. Based on the Petitioners' definition of "typical", "typical" would be different for each and every building within a class or type. This in itself is a contradiction of terms. "Typical" does not mean that each building of a type would have differing characteristics, such as the amount of partitioning. "Typical" means that each building of a type would have the same characteristics.

44. The calculation for the alleged partitioning adjustment prepared by Mr. Smith first employs the cost of the Petitioners' calculated "typical" amount of partitioning and subtracts a calculated cost of partitioning based upon the amount of partitioning found in the subject building. The calculation then divides this result by the square footage of the building. The Petitioners' then conclude, based on this calculation, that a negative base rate adjustment of $10.29 is required. This calculation does not establish that an error exists; it merely shows the per square foot price difference between the cost of partitioning calculated by Mr. Smith using two different cost schedules from Schedule C. Other than this calculation and a flawed theory, the Petitioner did not present any evidence showing that the subject building contains less partitioning than what is typical for medical offices.

45. The State repeats, in an assessment challenge, the taxpayer has the responsibility to present factual evidence probative of the alleged error. In doing so, the taxpayer makes its case before the State. The taxpayer must (1) identify similarly situated properties and (2) demonstrate disparate treatment between the subject property and the similarly situated properties. In the case at hand, the Petitioners have wholly failed to present any factual evidence probative of the alleged partitioning error. The Petitioners simply offered an illogical argument; a calculation based on a flawed theory; and concluded that a negative partitioning adjustment should be made to the base rate. This offering is well short of constituting probative evidence of the alleged error. The Petitioners have failed to identify similar properties; to establish disparate treatment; and to present any factual evidence of the alleged partitioning error.

46. Finally, the State would like to point out that the Petitioners' suggestion for alternative pricing does not lend credibility to their case. First, the Petitioners raised the issue of model selection, but wholly failed to present any testimony or evidence that was even remotely linked to model selection. The Petitioners then suggest that changing the model selection for a portion of the subject building would serve as an alternate to making the negative partitioning adjustment the Petitioners' are arguing for. This leaves the impression that the Petitioners simply wish to have their assessment reduced without regard to how it is reduced.

47. For all of the above reasons, the Petitioners have failed to meet their burden regarding the negative partitioning adjustment. Therefore, the State will not make the negative adjustment sought by the Petitioners and no change is made to the assessment as a result of this issue.

I. Issue No. 6 - Exterior Wall Construction

48. Although the issue of a negative base rate adjustment for exterior wall construction was raised by the Petitioners as part of the subject Form 131 petition filed, the Petitioners did not provide any testimony or evidence regarding this issue.

49. When challenging an assessment, the taxpayer must do something more that claim an error exists. The taxpayer must make a case before the State regarding the alleged error by presenting factual evidence probative of the error. The Petitioners simply claimed that a negative base rate adjustment should be made.

61. The Petitioners have wholly failed to make a case before the State regarding this issue. Therefore, no change is made to 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.

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Chairman, Indiana Board of Tax Review