

**STATE OF INDIANA**  
**Board of Tax Review**

In the matter of the Petition for Review    )  
of Assessment, Form 131                    )     Petition No. : 49-900-95-1-4-00086

Parcel No. : 9050852

Assessment Year: 1995

Petitioner:   Lance B. Sandlian  
                  7507 Rockville Road  
                  Indianapolis, IN

Petitioner Representative: Landman & Beatty  
                                  1150 Market Square Center  
                                  151 N. Delaware St.  
                                  Indianapolis, IN 46204

**Findings of Fact and Conclusions of Law**

The Indiana Board of Tax Review (State Board), having reviewed the facts and evidence, and having considered the issues, now makes the following findings of fact and conclusions of law.

**Issues**

1.     Whether the land base rate is correct.
2.     Whether the true tax value placed on the land is excessive.

3. Whether the grade and design factor is correct.
4. Whether the true tax value placed on the improvement is excessive.

### **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 be considered a finding of fact.
2. Pursuant to Ind. Code § 6-1.1-15-3, James W. Beatty of Landman & Beatty, on behalf of Lance B. Sandlian (Petitioner), filed a Form 131 petition requesting a review by the State Board. The Form 131 was filed on July 14, 1998. The Marion County Board of Review's (County Board) Assessment Determination on the underlying Form 130 is dated June 26, 1998.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on February 16, 1999, before Hearing Officer Phyl Olinger. Testimony and exhibits were received into evidence. James W. Beatty and Sheila Murray of Landman & Beatty represented the Petitioner. Jack Compton and Earl Salisbury represented the Wayne Township. No one appeared to represent Marion County.
4. At the hearing, the subject Form 131 was made a part of the record and is labeled Board Exhibit A. Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following exhibits were submitted to the State Board:
  - Petitioner Exhibit 1 – Copy of list of construction costs of subject with the land cost highlighted
  - Petitioner Exhibit 2 – Copy of Wayne Township, Marion County Land Order with the subject tract highlighted
  - Petitioner Exhibit 3 – Zoning map with the subject property highlighted
  - Petitioner Exhibit 4 – Copies of comparable property record cards (PRCs)

Petitioner Exhibit 5 – Copy of State Board Final Assessment Determinations with the grade determination highlighted

Respondent Exhibit 1 – Copy of subject 1995 County Board PRC

Respondent Exhibit 2 – Copy of computer printout detailing properties owned by Colby B. Sandlian

5. The subject property is located at 7507 Rockville Road, Indianapolis, Wayne Township, Marion County.
6. The Hearing Officer did not inspect the subject property.

**Issue No. 1 –Whether the land base rate is correct.**

7. At the hearing, Ms. Murray testified to the following:
  - a. The land base rate should be \$29,000 per acre;
  - b. The property was purchased in 1988 for \$24,925 an acre;
  - c. The subject is a mini-warehouse which is priced using the GCI schedule, but the land is priced per square foot as commercial;
  - d. The subject parcel is a 5 acre tract;
  - e. The Wayne Township Land Order values industrial land at \$29,000 per acre; and
  - f. The subject is adjacent to the FMC Bearing Division, which is priced as industrial land.
8. At the hearing, Mr. Salisbury gave no testimony regarding this issue.

**Issue No. 2 –Whether the true tax value placed on the land is excessive.**

9. At the hearing, Mr. Beatty withdrew this issue from review by the State Board.

**Issue No. 3 – Whether the grade and design factor is correct.**

10. At the hearing, Ms. Murray testified to the following:
  - a. The grade of the mini-warehouse units should be D;
  - b. The structures do not have concrete block dividing walls;
  - c. The structures have the metal furring strips with white dry wall material so you can combine storage units if a larger area is needed;
  - d. Nine (9) comparable PRCs from six (6) townships in Marion County showing other mini-warehouse structures owned and constructed by the taxpayer are graded D; and
  - e. The mini-warehouses were constructed at \$11.00 per square foot.
  
11. At the hearing, Mr. Salisbury testified to the following:
  - a. The structures have a hip roof and venting;
  - b. D grade buildings have poor materials and poor workmanship; and
  - c. The grade should be in the C to C-2 range.

**Issue No. 4 – Whether the true tax value placed on the improvement is excessive.**

12. At the hearing, Mr. Beatty withdrew this issue from review by the State Board.

**Conclusions of Law**

1. The Petitioner is limited to the issues raised in the Form 131 petition filed with the State Board. Ind. Code § 6-1.1-15-1(e) and –3(d). See also Form 131 petition requiring the Petitioner to identify the specific grounds for appeal. The State Board has the discretion to address any issue once an appeal has been filed by the taxpayer. *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 in the Form 131 petition filed with the State Board.

2. The State Board 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 Board's decision.

## **B. Burden**

7. Ind. Code § 6-1.1-15-3 requires the State Board to review the actions of the PTABOA, but does not require the State Board to review the initial assessment or undertake reassessment of the property. The State Board 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 Board 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 Board 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 Board 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 Board 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 Board'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 Board is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State Board 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.<sup>2</sup> 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 Board'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 Board'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 land base rate is correct.**

18. The subject land was valued on a square foot basis. It is the Petitioner's position that the land should be valued on the acreage basis as industrial land instead of a square foot commercial basis.
19. Repeating, the taxpayer's burden in the State Board'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 disparage treatment between the contested property and other similarly situated properties.



20. In support of her client's position, Ms. Murray stated the following:
  - a. The subject property was purchased in 1988 for \$24,925 per acre (Petitioner Exhibit 1).
  - b. Since the subject property is a mini-warehouse and valued from the GCI pricing schedule the land should also be valued using an industrial base.
  - c. Adjacent to the subject property is FMC Bearing Division, which is valued as industrial land.
  
21. Before applying the evidence to reduce the contested assessment, the State Board must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.
  
22. Ms. Murray testified the subject parcel was purchased in 1988 for \$24,925. To support this testimony Ms. Murray presented Petitioner Exhibit 1 which appears to be a list of construction costs generated by the Petitioner for the subject property. Ms. Murray does not present into evidence the purchase agreement for the subject property. There is no documentation regarding the conditions of the sale of the subject property.
  
23. The County Land Commission establishes land value. 50 IAC 2.2-4. The value is derived from sales data and land value estimates. Furthermore, values are assigned to geographic areas, subdivisions or neighborhoods based on characteristics that distinguish one subdivision or neighborhood from another.
  
24. The Land Commission established 1995 reassessment property classifications and pricing methods based on property use or zoning. Land values are based on market value as of January 1, 1991.
  
25. The Petitioner failed to establish a link between the value of the parcel on the sale date in 1988 and the value of the parcel on the January 1, 1991 market value date. The Petitioner did not trend the purchase price upward to show what the cost would have been in 1991. The Petitioner did not include any site

preparation and other costs that are contained in primary land base rates pursuant to 50 IAC 2.2-4-17(b)(i). . In the absence of this foundation, the unsubstantiated sales price of the property approximately three (3) years prior to the valuation date lacks credibility as an indication of value.

26. The Marion County Land Commission for the 1995 reassessment determined that the subject parcel is to be valued as commercial land using square foot pricing.
27. The Petitioners did not produce any market analysis to demonstrate that the land value was incorrect. The Petitioner argues that the land should be valued as industrial acreage because the structure is assessed from the GCI pricing schedule and is in close proximity to other industrial land (FMC Bearing Division).
28. The fact that a building is valued from the GCI pricing schedule does not automatically mean the land would follow suit and be valued using the industrial pricing. The primary goal of commercial properties is to produce income and this is exactly what the mini-warehouse facility would do.
29. 50 IAC 2.2-1-33 defines “industrial property” to mean land, improvements, or machinery, or all three (3), used or adaptable for use in the production of goods. It also includes supporting auxiliary facilities. It is obvious the subject property is not involved in the production of goods but rather in supplying a service – storage.
30. Property class classification is based on the **predominant current use** (emphasis added). 50 IAC 2.2-10-4.
31. The Petitioner did not present any evidence for comparable properties. However, it is quite curious that the Petitioner did submit PRCs (11) for other mini-warehouses (all owned by the Petitioner except one) in support of their grade issue but does not use the same PRCs to argue the land issue. A review of

these PRCs, reveals that of the 11 properties (10 are in Marion County as the subject) nine (9), like the subject, are valued using the square foot method.

32. Taxpayers are required “to do something more than simply allege that an error exists in the assessment . . . “ *Whitley*, 704 N.E. 2d at 1119.
33. Taxpayers are expected to make detailed factual presentations to the State Board regarding alleged errors in assessment. *Id.* “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)).
34. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State Board can properly refuse to consider the evidence. *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)).
35. For all reasons set forth above, the Petitioner failed to meet their burden in this appeal. Accordingly, no change is made in the assessment as a result of this issue.

**Issue No. 2 – Whether the true tax value placed on the land is excessive.**

36. At the hearing, Mr. Beatty withdrew this issue from review by the State Board. No change in the assessment is made as a result of this issue.

**Issue No. 3 – Whether the grade and design factor is correct.**

37. “Grade” means the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.
38. 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.

39. 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.

40. The major grade classifications are A through E. 50 IAC 2.2-10-3. The cost schedules (base prices) in the Manual reflect the C grade standards of quality and design. The following factors (or multipliers) are assigned to each major grade classification:

“A” grade	160%
“B” grade	120%
“C” grade	100%
“D” grade	80%
“E” grade	40%

41. Intermediate grade levels ranging from A+10 through E-1 are also provided for in the Manual to adequately account for quality and design features between major grade classifications. 50 IAC 2.2-10-3(c).

42. The taxpayer’s burden in the State Board’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.

43. The Petitioner argues that a grade of “D” should be applied to the subject. The Petitioner based this on a grade of “D” being applied to the comparable mini-warehouses throughout Marion County and the one located in Johnson County. Of the 11 comparable properties presented 10 are owned by the Petitioner.
44. The Petitioner relies heavily on the fact that they are mini-warehouses and are owned by the Petitioner to justify a change in grade. It should be noted that not all mini-warehouses are constructed with the same materials or workmanship and just presenting PRCs and claiming that the properties are comparable is not enough.
45. Taxpayers are expected to make detailed factual presentations to the State Board regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. “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)).
46. However, even though the Petitioner did not make a detailed analysis of the properties to one another a review of the PRCs revealed the following:
  - a. Of the eleven (11) properties, ten (10) are owned by the Petitioner;
    - All structures are of brick construction;
    - All structures are of wood joist framing;
    - Units sizes typically are either 40 feet by 50 feet, 40 feet by 60 feet, 40 feet by 70 feet, or 40 feet by 80 feet;
    - Most of the units include an apartment for on site manager;
    - All units were built between 1984 and 1996 and are in average condition;
    - and
    - Nine (9) of the units receive an adjustment for the lack of heating, lighting and partitioning. The two (2) other units receive an adjustment for heating only.
47. The Respondent on the other hand testified the subject structures have a hip roof, venting and are not constructed with poor materials and workmanship as

would be found in a “D” grade structure. The Respondent did not present any documentation in support of their testimony.

48. After reviewing the issue, the testimony given, the evidence presented and in consideration of 50 IAC 2.2-10-3, it is determined the grade of the mini-warehouse units be changed to a “D”.
49. For all the reasons set forth above, the Petitioner met their burden in this appeal by showing similarly situated properties and disparate treatment of the subject property. Accordingly, a change in the assessment is made as a result of this issue.

**Issue No. 4 – Whether the true tax value placed on the improvement is excessive.**

50. At the hearing, Mr. Beatty withdrew this issue from review by the State Board. No change in the assessment is made as a result of this issue.

Issued this \_\_\_\_ day of \_\_\_\_\_, 2002  
by the Indiana Board of Tax Review.