

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, Michael Caron, DuCharme, McMillen & Associates, Inc., on behalf of Lees Inn of America, Inc. (the Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 was filed on May 9, 1997. The Vanderburgh County Board of Review (County Board) determination was issued on April 23, 1997.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on August 3, 1998 before Hearing Officer Carl Edwards.

4. On October 24, 2001, the Petitioner and Respondent entered into mediation, which resolved two of the three issues raised on the Form 131. The Petitioner withdrew the issue regarding the schedule for pricing Jacuzzis. The Withdrawal Agreement is labeled Board Exhibit C and entered as evidence. The Petitioner and Respondent submitted a Stipulation Agreement regarding sprinklers, which is labeled Board Exhibit D and entered as evidence.

5. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on December 11, 2001 before Hearing Officer Betsy Brand regarding the remaining issue, grade. Michael Caron, Ducharme, McMillen and Associates, Inc., represented Lees Inns. J. F. Rick Barter represented Vanderburgh County. Joseph B. Gries represented Knight Township.

6. At the hearing, the following documents were made part of the record and labeled Board Exhibits:

Board Exhibit A – The Form 131 petition with attachments:

1. A copy of the Power of Attorney.
2. A copy of a Certificate of Attorney in Fact.
3. A copy of the Board of Review determination.
4. A copy of a Memorandum from the Vanderburgh County Assessor to the Board of Review.
5. A copy of the property record card (PRC) for parcel 09-551-15-141-003.

Board Exhibit B – Notice of Hearing on Petition – Re-schedule.

Board Exhibit C – A Withdrawal Agreement regarding Jacuzzis.

Board Exhibit D – A Stipulation Agreement regarding sprinklers.

7. In addition, the following exhibits were submitted to the State Board:

Petitioner's Exhibit A – Brief including:

1. Form 131 petition
2. Power of Attorney
3. Acknowledgement of disclosure
4. Letter certifying status as tax representative
5. Contingent fee disclosure
6. Copy of the BOR determination
7. Withdrawal agreement
8. Stipulation agreement
9. Photographs of subject
10. Comparable #1, PRC and photographs
11. Comparable #2, PRC, photographs, and State Board determination
12. Comparable #3, PRC and photographs
13. Comparable #4, PRC and photographs
14. Comparable #5, PRC, photographs, and State Board determination
15. Comparable #6, PRC and photographs
16. Comparable #7, PRC and photographs
17. Comparable #8, PRC, photographs, and State Board determination

18. Comparable #9, PRC and photographs
19. Comparable #10, PRC, photographs, and State Board determination
20. Comparable #11, PRC and photographs
21. Revised PRC for the subject
22. Mr. Caron's qualifications.

Respondent's Exhibit 1 – PRC for Drury Inn

Respondent's Exhibit 2 – PRC for Ramada Inn

Respondent's Exhibit 3 – PRC for Encore Residential Hotel

Respondent's Exhibit 4 – PRC for parcel #09-251-12-157-010.

8. The commercial motel property is a Lees Inn located at 110 Royal Avenue, Evansville, Knight Township, Vanderburgh County. The Hearing Officer did not view the subject property.

Issue 1-Sprinklers

9. The parties agreed and stipulated to this issue. The stipulation agreement is included in the documentation as Board Exhibit D and Petitioner's Exhibit A-8.

Issue 2- Jacuzzi Pricing

10. The Petitioner withdrew this issue. The withdrawal is included in the documentation as Board Exhibit C and Petitioner's Exhibit A-7.

Issue 3- Grade

11. The subject property is a Lees Inn. In 1989, the subject was graded "C"; in 1995, the grade was increased to "C+2".

12. Petitioner argued that there should be no reason for such a change since the sections on grade and the methodology for determining grade are the same in both assessment manuals. The eleven comparable properties submitted are in Indiana. They are identical, comparable properties in terms of quality, workmanship, and design. The subject should be graded “C” as are the comparable properties. *Caron Testimony. Petitioner’s Exhibit A 10-20.*
13. Respondent stated that the township believes the grade of the subject should be lowered to “C+1”. The comparable properties he has entered as evidence are all graded “C+2”; they exhibit a better quality than the subject. *Gries Testimony. Respondent’s Exhibits 1-4.*

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 1 -Sprinklers

18. The Petitioner and the local officials stipulated and agreed that only 210 square feet of utility storage area had a sprinkler system. The State accepts the parties' stipulation and agreement. In doing so, the State does not decide the propriety of this agreement, either explicitly or implicitly. A change is made as a result of the stipulation.

Issue 2- Jacuzzi Pricing

19. The Petitioner withdrew this issue.

Issue 3- Grade

20. "Grade" means the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.
21. 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.
22. 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.
23. 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%

24. Intermediate grade levels ranging from A+10 through E-4 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).
25. Mr. Caron asserts that the appropriate Grade and Design Factor for the subject property is “C”. This conclusion is based upon the Grade and Design Factor of “C” being applied to eleven (11) comparable Lees Inns located throughout Indiana. Mr. Caron identified these properties as identical to the subject in quality, workmanship, and design. Mr. Caron included photographs of the subject and the comparables, the property record cards for the comparables and State Board determinations where applicable.
26. Mr. Gries testified that the grade should be lowered to “C+1” and submitted four (4) properties, all graded C+2”. Mr. Gries testified that the properties he submitted were of better quality than the subject.
27. 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.
28. The Petitioner identified similarly situated properties and has established disparate treatment. In doing so, the burden then shifted to the Respondent to present evidence to contradict the Petitioner’s evidence and justify its decision with substantial evidence.

29. The Respondent did not present any evidence or testimony that contradicts the set of facts established by the Petitioner. The only testimony on record is a conclusory statement that the grade factor selected for the subject property should be lowered to “C+1” because the subject is not of the same quality as the four (4) “C+2” properties submitted by the Respondent. A conclusory statement and evidence that the four (4) properties are not comparable to the subject is certainly not enough to contradict the evidence presented and the set of facts established by the Petitioner.
30. For all the reasons set forth above, the County Board has failed to meet its burden in this matter. Therefore, the State will make the requested change in the grade factor from “C+2” to “C”. A change in the assessment is made as a result of this issue.

Summary of Final Determination

Issue No. 1—Sprinklers: As a result of a stipulation, the parties agreed that 210 square feet of utility storage had a sprinkler system.

Issue No. 2—Jacuzzi: Petitioner withdrew this issue, accordingly, there is no change in the assessment as a result of this issue.

Issue No. 3—Grade: The grade of the subject should be changed from C+2 to a C.

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