

**STATE OF INDIANA  
Board of Tax Review**

NBD BANK,	)	On Appeal from the Elkhart County
	)	Board of Review
	)	
Petitioner,	)	
	)	Petition for Review of Assessment, Form 131
v.	)	Petition No. 20-020-96-1-4-00005
	)	Parcel No. 20-03-27-284-007
ELKHART COUNTY BOARD OF	)	
REVIEW And WASHINGTON	)	
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 of "A" assigned to the subject property is excessive.
  
2. Whether the condition assigned to the subject property 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 also be considered a finding of fact.
  
2. Pursuant to Ind. Code § 6-1.1-15-3, Beth Bostic of Uzelac & Associates, on behalf of NBD Bank (the Petitioner), timely filed a Form 131 petition requesting a review by the State. The Form 131 was filed on November 24, 1997. The Elkhart County Board of Review's Final Determination is dated October 27, 1997.
  
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was scheduled for May 20, 1998. *Board Exhibit B.* No one appeared on behalf of NBD. An additional hearing on the property was scheduled for July 19, 2000. *Board Exhibit C.* At the request of the State, the hearing was rescheduled for February 13, 2002 before Hearing Officer Patti Kindler. *Board Exhibit D.* Testimony and exhibits were received into evidence. Rex D. Hume of Uzelac & Associates appeared on behalf of NBD Bank. Veronica Williams and R. Eugene Inbody appeared on behalf of Washington Township.
  
4. At the hearing, the subject Form 131 petition was made part of the record and labeled Board Exhibit A. The Notices of Hearing on Petition were labeled Board Exhibits B – D. The Waiver of the advance notice of hearing is labeled Board Exhibit E. In addition, the following items were received into evidence:

Petitioner's Exhibit 1 – Brief including interior and exterior subject photos, issues, grade specifications from 50 IAC, copy of bank model specifications from 50 IAC, discussion of various components of construction, mathematical comparison of the subject construction to the model construction located in 50 IAC, definition of condition from 50 IAC and discourse on condition and maintenance

Petitioner's Exhibit 2 – Copies of two pages of the subject building plans

Petitioner's Exhibit 3 – List of witnesses and exhibits, date stamped 1/29/02.

5. The assessed values as agreed to by the parties to the appeal for the year 1996, are: Land: \$4,400 Improvements: \$114,300.
6. The subject property is assessed as a commercial bank and is located at 308 S. Division Street, Bristol (Washington Township, Elkhart County). The hearing officer did not inspect the property.
7. The taxpayer representative is compensated on a contingency fee basis.

**Issue 1 - Whether the grade is excessive**

8. The subject building, the former NBD Bank, now Bank One, was built in 1981 and was assigned a grade factor of "A". The Petitioner is seeking a reduction in the grade to a "C-1", or at least a "C".
9. The Petitioner testified that the construction of the bank basically consists of a square wood-framed, hipped canopy supported by eight concrete posts with the bank and drive-through area under the canopy, which results in an unusual but inexpensive construction method. *Hume Testimony. Petitioner's Exhibit 1, page 1.*
10. The Petitioner testified that the building exhibits none of the "A" grade characteristics, such as extensive built-in features, high-grade lighting, custom HVAC system, or superior quality materials and workmanship. *Hume Testimony. Petitioner's Exhibit 1, pages 3-10.*
11. The Petitioner testified that many of the differences between the model and the subject bank building can be quantified using schedules from 50 IAC. Other differences, such as the roof structure, require a more qualitative approach

because the regulations do not provide a sufficiently precise definition or schedule for quantification. *Hume Testimony. Petitioner's Exhibit 1, page 3.*

12. Photographs of the interior and exterior of the subject building were submitted, along with detailed comparisons of the foundation, walls and openings, interior finish, HVAC, lighting and plumbing fixtures, and general design between the building and the "C" model costs. *Petitioner's Exhibit 1, pages 1,2, and 4-11.* The Petitioner determined the price for the model using the unit-in-place schedule or unit costs schedule from 50 IAC and compared the model costs to the subject's actual construction costs using the same source. *Hume Testimony. Petitioner's Exhibit 2.* The same methodology was used for all the model deviations compared. *Hume Testimony.*
13. The Petitioner determined a negative quantification of \$20,595 for the walls and openings, \$3,510 for the ceiling finish, \$33,630 for the interior partitioning, and a positive adjustment of \$6,014 for the wall finish by comparing the model components to the actual costs of the components that exist in the subject property. *Petitioner's Exhibit 1, pages 5,6,7, and 9.*
14. The Petitioner testified that the quantifiable deficiencies from the model total \$51,721, or 19% of the total base cost of the property, which would indicate a "D" grade. The Petitioner's quantifications do not take into account the roof design and materials, but they could "not possibly offset" all of the other deviations. Consequently, the highest supportable grade is in the "C" range and probably on the low side of it. *Hume Testimony. Petitioner's Exhibit 1, page 11.*
15. The Respondent testified that the roof is constructed with wood shingles and is of an unusual design, which results in more expensive construction and a higher grade factor. *William Testimony.* The blueprints indicate that the roof is supported by a heavy duty steel ridge beam,  $\frac{3}{4}$  inch tongue and groove plywood,

and wood shingles, which are not typical of “C” grade construction. *Inbody Testimony.*

16. The Respondent also testified that the windows are top of the line Pella clad windows, some with one inch tempered glass, the bank vault is superior to most vaults found in drive-through banks, and the double brick angular walls increase construction design and labor costs extensively. The “A” grade assigned to the building is the result of the unquantifiable costs of the roof structure and components, double brick walls, and the architectural design. *Inbody Testimony.*
17. The Petitioner argued that the extra cost attributable to the unique shape of the building is handled by the perimeter-to-area (PAR) adjustment and should not be considered in determining the grade factor. *Hume Testimony.* Taking into account the design of the roof and the wood shingles, and because there is no way to quantify these differences from 50 IAC, the grade of “D” calculated by the Petitioner is increased to a request in the “C” grade factor range to offset the differences in the subject construction that can not be quantified. *Petitioner’s Exhibit 1, page 11.*

## **Issue 2 – Whether the condition is excessive**

18. The Petitioner argued that the current condition rating of good is excessive for the subject building. Photographs submitted indicate small amounts of deferred maintenance such as ceiling tile sag, roof wear, weathering in window frames, and carpet stains. *Hume Testimony. Petitioner’s Exhibit 1, pages 11-14.*
19. The Petitioner argued that the condition should remain average as long as the structure is properly maintained and wear-items are replaced on schedule. There is no evidence that anything has been done to improve the property’s condition, nor has anyone presented any proof that the condition should be good. *Hume Testimony.*

20. The Respondent testified that the subject building, which was fourteen years old on the assessment date is in excellent condition relative to age. *Inbody Testimony*. The photographs submitted by the Petitioner indicate normal wear and tear on the building, but nothing that suggests a lower condition rating than good. *Williams Testimony*.

### **Conclusions of Law**

1. The Petitioner is limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 130 petition. 50 IAC 17-5-3. See also the Forms 130 and 131 petitions authorized under Ind. Code §§ 6-1.1-15-1, -2.1, and -4. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.

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

### **A. Indiana's Property Tax System**

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.
4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State's decision.

## B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. See 50 IAC 17-6-3. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.
10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. “Allegations, unsupported by factual evidence, remain mere allegations.” *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at



1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).

11. One manner for the taxpayer to meet its burden in the State's administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V*, 702 N.E. 2d at 1040.
12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not "triggered" if the taxpayer does not present any probative evidence concerning

the error raised. Accordingly, the Tax Court will not reverse the State's final determination merely because the taxpayer demonstrates flaws in it).

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

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

### **D. Witness Compensation**

18. The State's position is that it has the right to make general inquiry regarding, and to consider, the method by which a witness is compensated. Information about the witness's fee can be relevant and necessary in order to evaluate the potential partiality of the witness. A contingent fee arrangement may be considered to inherently affect the objectivity of a witness. The State believes it appropriate to consider the potential of such an arrangement to improperly motivate the witness and adversely affect the reliability of the testimony. It is for these reasons that the State will consider the method of witness compensation in the process of determining the credibility and weight to be given to testimony of a witness

whose fee is contingent on the outcome of the issues that he or she is testifying about. This position is supported by the discussion in the case of *Wirth v. State Board of Tax Commissioners*, 613 N.E. 2d 874 (Ind. Tax 1993).

### **E. Conclusions on Grade Issue**

19. “Grade is defined as the classification of an improvement based on certain construction specifications and quality of materials and workmanship.” 50 IAC 2.2-1-30.
20. Grade is used in the cost approach to account for deviations from the norm or “C” grade. The quality and design of a building are the most significant variables in establishing grade. Unlike the application of the pricing schedules, the selection of the proper grade relies on the judgment of the assessor to distinguish significant variations in quality and design. Graded photographs of commercial and industrial buildings are provided in 50 IAC 2.2-11-4 to assist the assessor in selecting the proper grade. (50 IAC 2.2-10-3 (a)).
21. The major grade classifications are A through E (50 IAC 2.2-10-3). The cost schedules (base prices) in the pricing 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%
22. Because structures sometimes fall between major classifications or at intermediate grade levels, a method of interpolation is built into the system. (50 IAC 2.2-10-3(c)).

- (1) Plus or minus two (+/-2) indicates the grade falls halfway between the assigned grade immediately above or below it.
- (2) Plus or minus one (+/-1) indicates the grade falls slightly above or below the assigned grade classification, or at a point approximately twenty-five percent (25%) of the interval between the assigned grade classification and the grade immediately above or below it.
23. Characteristics of “C” grade buildings are described in 50 IAC 2.2-10-3(a)(3) and states: “C” grade buildings are moderately attractive and constructed with average quality materials and workmanship. These buildings have minimal to moderate architectural treatment and conform to the base specifications used to develop the pricing schedules. They have average quality interior finish with adequate built-ins, standard quality fixtures and mechanical features.
24. Characteristics of “D” grade buildings are described in 50 IAC 2.2-10-3(a)(4) and states: “D” grade buildings are constructed with economy materials and fair workmanship. These buildings are devoid of architectural treatment and have a substandard quality interior finish with minimal built-in features, substandard quality electrical and plumbing fixtures and a substandard quality heating system.
25. The Petitioner asserts the appropriate grade factor for the subject property is a “C-1” grade. This conclusion is based upon certain features lacking from the subject property that are present in the “C” models. The Petitioner claims that the appropriate grade for the subject is not the current grade of “A”, but rather when compared to the model, the cost of the subject can be quantified well below a “C” grade.
26. 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 26,29 (Ind. Tax 2001) (Clark II). See also *Whitley*, 704 N.E. 2d 1113.

27. "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).
28. The second, and preferred method "is to use separate schedules that show the cost of certain components and features present in the model. This method allows an assessing official to make an objective adjustment to the improvement's base rate." *Clark II*, 742 N.E. 2d at 49. See also *Whitley*, 7-4 N.E. 2d 1113.
29. 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*, 2001 WL 422991 (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.
30. The Petitioner presented a detailed mathematical comparison of the cost difference between several of the bank's actual construction components and the components listed in the bank model located in 50 IAC. The Petitioner determined that there was a \$51,721 adjustment (19%) required for deviations from the model for exterior wall construction and openings, ceiling finish, and interior wall finish and partitions, resulting in a "D" grade factor. However, because his analysis does not account for the subject's superior roof design and materials, the Petitioner has reduced his request for grade by 14% to a "C-1".

31. Thus, in this appeal the Petitioner has offered objectively verifiable data in the form of cost schedules located in 50 IAC, as well as requesting a subjective grade reduction based on components in which the actual costs were not verified. In his claim for a grade adjustment, the Petitioner did not explain to what extent the components of the subject's roof deviated from the model. The Petitioner merely offers a subjective estimate that the subject's superior roof cost is equal to approximately 14% of the total base cost of the subject property.
32. The record lacks adequate support for this methodology. The deviations from the model that the Petitioner claims should reduce the grade factor represent only a portion of the overall design and construction quality of the building. The calculations do not represent a legitimate comparison between the subject's roof costs to the model roof costs. See ¶ 29. The Petitioner could have offered the original construction costs for the building or an affidavit from a construction expert to support his request for a "C-1" grade factor. Instead, the Petitioner shows that his grade request is an unsupported estimate when he states that the "highest supportable grade is in the "C" range, and is probably on the low side of it. "
33. The Respondents rebutted several of the Petitioner's calculations, including the calculation made for the openings. Mr. Inbody, who used to build bank buildings, contends that according to the blueprints submitted, the building has Pella clad windows, some with one inch (1") tempered glass, heavy steel roof support beams and a labor intensive double brick wall that were not accounted for in the Petitioner's wall-cost comparisons. In addition, the Respondents contend that the building's roof structure and materials represent most of its cost and superior architectural design, and the grade factor assigned to the subject property reflects those extra costs.

34. When subjective data is used in an appeal claim, the data must be supported by more than conclusory statements. Taxpayers are expected to make detailed factual presentations to the State Board regarding 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)).
35. The Petitioner could have supported his calculations regarding model deviations using comparable properties. In this argument, the Petitioner would not be arguing deviations solely from the model, but would be arguing comparisons between his property and other similar bank properties.
36. 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.
37. The Petitioner did not identify any similarly situated properties or establish disparate treatment between the contested property and other similarly situated properties. Insufficient evidence was presented to show the statute or regulations were not properly applied to individual assessments. The Petitioner did not make a prima facie case on the evidence presented.
38. For the above reasons, the Petitioner has not met the two-fold burden of proof and there is no change in the grade.

## **F. Conclusions on the condition issue**

39. “Condition” is a judgment of the physical condition of the item relative to its age. Average condition indicates that structure is in average condition relative to its age, or the condition in which it would normally be expected. 50 IAC 2.2-10-5(d)(8)(D). Good condition indicates that the structure is in good condition relative to its age and there is minor deterioration, but is in somewhat better condition than would normally be expected. 50 IAC 2.2-10-5(d)(8)(C). Condition measures the remaining usefulness of the building based on its age. (See 50 IAC 2.2-10-7(b)).
40. Physical depreciation is evidenced by wear and tear, decay, dry rot, cracks or structural defects. (See 50 IAC 2.2-10-7(a)).
41. The condition factor assigned to the subject building is good. The Petitioner states that the condition factor is excessive and the property should be rated average condition.
42. The Petitioner testified that the subject building has had normal maintenance, including the replacement of components on their normal replacement schedule, and is in average condition for its age. He contends that the building, which was fourteen years old on the assessment date, exhibits no updates other than the addition of wood shingles.
43. The Petitioner submitted photographs of rippled roof shingles, sagging ceiling tiles, soiled carpeting and one window frame, which is weathered and warped, as evidence that the building’s condition should be in average condition due to modest amounts of deferred maintenance. In addition, the Petitioner discussed the definitions of both average and good condition from 50 IAC.
44. The Petitioner’s statements regarding condition do not constitute probative



evidence of error. The submitted photographs of a few areas of rippled roof tiles, sagging ceiling tiles, a weathering interior window frame, and soiled carpet do not on their own offer probative evidence that the property is not in good condition. In fact, the Petitioner's own submissions from 50 IAC regarding condition state that there is some minor deterioration found in properties that are rated good. The Petitioner has not offered probative evidence that the minor deterioration shown in the photographs is better represented by an average condition rating instead of good condition rating.

45. 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.
46. The Petitioner did not identify any similarly situated properties or establish disparate treatment between the contested property and other similarly situated properties. Insufficient evidence was presented to show the statute or regulations were not properly applied to individual assessments. Therefore, the Petitioner has not made a prima facie case on the evidence presented.
47. For all the above reasons, the Petitioner has not met the two-fold burden of proof and there is no change in the condition rating.

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