

**STATE OF INDIANA**  
**Board of Tax Commissioners**

In the matter of the Petition for Review )  
of Assessment, Form 131 ) Petition No.: 82-027-95-1-4-00310

Parcel No.: 0972017121047

Assessment Year: 1995

Petitioner: NBD Indiana Properties, Inc.  
One Indiana Square  
Suite 1040  
Indianapolis, IN 46266

Petitioner Representative: Rex Hume  
Uzelac & Associates  
1551 East 85<sup>th</sup> Avenue  
Merrillville, IN 46610

**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 first floor wall height is correct.
2. Whether the grade is correct.
3. Whether interior finish adjustments are warranted for floor finish, ceiling finish, and basement partitioning.

## **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 IC 6-1.1-15-3, Rex Hume of Uzelac & Associates, on the behalf of NBD Indiana Properties, Inc. (Petitioner), filed a Form 131 petition requesting a review by the State Board. The Form 131 was filed on May 28, 1997. The Vanderburgh County Board of Review's (County Board) Final Determination is dated April 23, 1997.
3. Pursuant to IC 6-1.1-15-4, a hearing was held on September 8, 1999, before Hearing Officer Mary Kay Fischer. Testimony and exhibits were received into evidence. Rex Hume of Uzelac & Associates represented the Petitioner. Khris Seger represented Vanderburgh County. John Gerard and Joe Gries represented Knight Township.
4. At the hearing, the following exhibits were entered into the record:

Board Exhibit A – The Form 131 with attachments:

- a. A copy of the Board of Review determination issued April 23, 1997
- b. A copy of memorandum to the Board of Review

- c. A property record card for the subject property reflecting values prior to the Board of Review determination
- d. A property record card for the subject property reflecting values after the Board of Review determination
- e. A copy of the Form 130
- f. A copy of Petitioner's written presentation to the Board of Review
- g. A copy of the Power of Attorney
- h. A copy of Petitioner's Receipt for Certified Mail
- i. A copy of Notice of Defect.

Board Exhibit B – A Notice of Hearing on Petition

Board Exhibit C – A copy of the property record card that reflects the Board of Review determination.

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

Respondent's Exhibit 1 – Statement of Issues and Response with attachments:

- a. Minutes from the April 3, 1997, Board of Review hearing .
- b. A copy of the Board of Review final determination dated April 23, 1997 .
- c. A Memorandum from the County Assessor to the Board of Review .
- d. A property record for the subject property
- e. A plat map for the subject property
- f. Exterior photographs of the subject property .
- g. A copy of 50 IAC 2.2-11-4 (Graded photographs)
- h. A copy of property record for parcel no. 0972017121035
- i. A copy of property record for parcel no. 0972017121033
- j. A copy of property record for parcel no. 0971017111012
- k. A copy of property record for parcel no. 0972017121066.

6. The subject property is a commercial banking facility located at 4601 Bellemeade Avenue, Evansville, Knight Township, Vanderburgh County. The Hearing Officer did not view the property.

### **Issue 1 – Testimony and Documents Regarding Wall Height**

7. A wall height of twelve feet (12') is correct. The monitor roof should be considered in the grade factor not in wall height adjustments. The photographs presented in Respondent's Exhibit 1 show an exterior wall height of twelve feet (12') unless the monitor style roof is added to the wall height. Hume Testimony.
8. The local officials originally used a wall height of twelve (12') to establish the assessment for the subject structure. The Board of Review determined the wall height to be sixteen feet (16'). See Board Exhibit A (a) and (d).
9. The subject structure is octagon in shape with a monitor roof elevated to twenty-two feet (22'). A wall height of sixteen feet (16') was determined by calculating the weighted average of the twelve feet (12') wall height and the twenty-two feet (22') wall height. Gerard and Gries Testimony.

### **Issue 2 – Testimony and Documents Regarding Grade.**

10. The Petitioner contends the grade factor should be B-2 (110%). Hume Testimony. The property record card shows the local officials applied a grade of B+1 (130%).
11. A chart prepared by Mr. Hume compares features of the subject structure to its model and the grading guidelines presented in 50 IAC 2.2-10-3. The ratings in the comparison chart average 1.04 or C+1 (105 %). The materials used in the construction of the bank are average quality. In addition, the workmanship is

average quality. The shape of the structure will cause a modest increase in labor costs. Hume Testimony. Board Exhibit A (f).

12. The assessor's grade of B+1 (130%) is substantiated by: the unique design, monitor roof, the mixture of brick and concrete construction, the concrete support beams and the metal roofing. There are comparable banks in the area graded at "B" or higher. Gerard Testimony. Respondent's Exhibit 1(h)-(k).

**Issue 3 – Testimony and Documents Regarding Interior Finish**  
**Adjustments For Floor Finish, Ceiling Finish and**  
**Basement Partitions**

13. The Petitioner contends an individual structure may have more or less finish than the model anticipates. Referencing calculations attached to Board Exhibit A, Mr. Hume testified the tables show actual finish in place in the subject structure, calculate its cost under Schedule C, and calculate the difference between actual cost and model cost.

**Floor Finish**

14. A base rate adjustment should be made because the floor finish in the subject structure differs from the floor finish described in the model. The model floor finish includes 25% terrazzo or equal with 75% carpet and pad; the subject bank structure displays almost one hundred percent (100%) carpet and pad with only fifty-four (54) square feet of ceramic tile. The calculation regarding floor finish indicates a negative interior finish adjustment of sixty-eight cents (-\$ .68) for floor finish. Hume Testimony. Board Exhibit A, (f).

### Ceiling Finish

15. A base rate adjustment should be made because the ceiling finish in the subject structure differs from the ceiling finish described in the model. The model describes plaster on lathe ceiling finish while the subject has taped and painted drywall. The calculation regarding ceiling finish indicates a negative interior finish adjustment of two dollars (-\$2.00) per square foot. Hume Testimony. Board Exhibit A (f).

### Basement Partitions

16. A base rate adjustment should be made because the basement partitions in the subject structure differ from the basement partitions described in the model. The calculation regarding basement partitions indicates a negative interior finish adjustment of six dollars (-\$6.00) per square foot. Hume Testimony. Board Exhibit A (f).
17. A negative adjustment for basement partitions was appropriate because of the octagonal shape. The size of the open area is thirty feet by thirty feet (30' x 30'). Gerard Testimony.
18. While testifying on partition adjustments, the Petitioner and the Respondents digressed on the issue of partition adjustments for the basement. Testimony centered on first floor adjustments while the specific issue defined in Board Exhibit A is basement partitions. However, the Board of Review granted a partition adjustment for the first floor and so the State Board allows the testimony.
19. Referencing the first floor partition adjustment reflected on the property record card, he incorporated a different methodology when calculating a partition adjustment on the first floor of the bank. The model calls for average cost frame

partitions typical for use. Typical is defined in Schedule C at twelve dollars and eighty cents (\$12.80) per square foot. His calculation indicates a negative adjustment of seven dollars and ninety-nine cents (\$7.99) per square foot for the first floor. The property record card indicates the Board of Review applied a negative adjustment of seven dollars and twenty-two cents (\$7.22) per square foot for the first floor. Hume Testimony. Board Exhibit A (f).

20. The difference in his calculation for the first floor partition adjustment and the assessor's calculation is based on the methodology in calculating the adjustment. He contends the assessor did not account for actual wall height in the subject. Hume Testimony. The stated adjustments are subjective. Because the interior features are below the model, the State Board should adjust the grade if it deems the base rate adjustments to be inappropriate. In that case, a grade lower than B-2 (110%) is indicated. The lower grade is measured and quantified with his submissions. Hume 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, Petitioner did not request that such discretion be exercised.

2. The Appeals Division 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 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. One manner for the taxpayer to meet its burden in the State’s administrative proceedings is to: (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. *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 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.

### **D Conclusions Regarding Wall Height**

18. “Wall Heights” specify the floor-to-floor or the floor-to-roof heights that are the most typical of that use. 50 IAC 2.2-10-6.1(a)(6).
19. The property record card shows the assessment was established using a wall height of sixteen feet (16’) for the first floor of the subject structure.
20. The Petitioner contends the correct wall height measurement for the first floor of the subject structure is twelve feet (12’) and that the exterior photographs in Respondent’s Exhibit 1 confirm an exterior wall height of twelve feet (12’). While the photographs attest to the unusual design of the subject structure they do not confirm the correct wall height of the structure is twelve feet (12’).
21. The Respondent offered testimony that a weighted average between twelve feet (12’) and twenty-two feet (22’) was used to arrive at the sixteen feet (16’) wall height measurement used on the property record card.
22. The Petitioner presented no factual evidence that would establish the exterior wall height measurement of the subject structure or prove that the weighted average used by the County was incorrect. The conclusory statements of Mr. Hume are unsupported by factual evidence.
23. For the reasons stated above, the Petitioner has failed to meet the burden of proof. Accordingly, no change is made to the assessment.

### E. Conclusions Regarding Grade

26. “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).
27. 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.
28. 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.
29. 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%

30. 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).
31. The characteristics of a “B” grade are described in 50 IAC 2.2-10-3(2). “B” grade buildings are architecturally attractive and constructed with good quality materials and workmanship. These buildings have a high quality interior finish with abundant built-in features, very good lighting and plumbing fixtures, and a custom heating and air conditioning system.
32. The property record card shows the local officials have applied a grade of “B+1”(130%).
33. The Petitioner contends the grade factor should be B-2 (110%). However, if the State Board finds the base rate adjustments requested by the Petitioner to be inappropriate, Mr. Hume testified the grade should be less than B-2 (110%), in fact a C+1 (105%).
34. In support of the Petitioner’s contention that the grade is overstated, Mr. Hume presented a calculation based on comparison of the subject’s features to the model and the grading guidelines in 50 IAC 2.2-10-3. The calculation arrives at a grade of C+1 (105%). There is no probative evidence in the record to substantiate the alleged differences between the subject structure and the model as assumed in the calculation. Mr. Hume’s conclusory statements are unsupported by any factual evidence.
35. ”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)).

36. The Petitioner did not submit evidence regarding comparable properties nor did it establish dissimilar treatment of the subject structure. 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.
37. For all the reasons stated above, the Petitioner has failed to meet the burden of proof. Accordingly, no change is made to the assessment.

#### **F. Conclusions Regarding Base Rate Adjustments**

38. The Petitioner contends base rate adjustments are warranted for floor finish, ceiling finish, and basement partitions. In support of its contention the Petitioner submitted calculations and proposed base rate adjustments. Board Exhibit A (f). The base rate adjustments shown in the worksheets are: (1) negative sixty-eight cents (-\$ .68) for floor finish; (2) negative two dollars (-\$2.00) for ceiling finish; and negative six dollars (-\$6.00) for basement partitions.
39. The Petitioner did not submit any evidence to support the conclusory statements of Mr. Hume that the subject structure's interior finish differed from the model. No interior photographs, blueprints, or construction costs were submitted.
40. Cost adjustments may be made but they may be made *only when there is a significant variation between the model and the subject building*. 50 IAC 2.2-10-6.1(c)(2)(emphasis added). See also *Deer Creek Developers v. Dept. of Local Government Finance*, 769 N.E.2d 259 (Ind. Tax 2002).

41. Assuming, for the sake of argument, that the type of adjustments Petitioner seeks are “significant,” the record is devoid of probative evidence establishing a “significant variation” between the model and the subject structure.
42. The Petitioner did not demonstrate that the local officials erred by selecting the wrong model nor did it establish an improper application of 50 IAC 2.2.
43. In testimony at the hearing the Township representative conceded that a base rate adjustment was appropriate for a thirty feet by thirty feet (30’ x 30’) portion of the basement. The property record card shows one thousand eight hundred seventy-six (1,876) square feet of the basement assessed as GCM-General Office and six hundred ninety-four (694) square feet assessed as GCM-Utility Storage. There is nothing in the record to establish which area of the basement the Township representative referenced in his testimony. Without specific factual information the State Board cannot give weight to the implied agreement.
44. For all the reasons above, the Petitioner failed to meet the burden of proof. Accordingly, no change is made to the assessment.

### **Summary of Final Determination**

#### Determination of Issue 1- *Whether the first floor wall height is correct*

59. Petitioner failed to meet its burden of proof as to the correct wall height. There is no change in the assessment as a result of this issue.

#### Determination of Issue 2 - *Whether the grade is correct*

60. Petitioner failed to meet its burden of proof on the issue of grade. There is no change in the assessment as a result of this issue.



Determination of Issue 3 - *Whether interior finish adjustments are warranted*

61. The Petitioner failed to meet its burden on this issue. There is no change in 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