

**STATE OF INDIANA
Board of Tax Review**

BENDER ENTERPRISES LLC)	On Appeal from the Washington County
PAUL BENDER)	Property Tax Assessment Board
)	of Appeals
)	
Petitioner,)	
)	
v.)	Petition for Review of Assessment,
)	Form 131
JACKSON COUNTY PROPERTY)	Petition No. 36-009-00-1-4-00009
TAX ASSESSMENT BOARD OF)	Parcel No. 0606160000502 (Real)
APPEALS And JACKSON 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 computerized property record card (PRC) is correct.

2. Whether the siding on the subject structures should be classified as heavy gauge.
3. Whether the interior finish of the subject structures is listed correctly.
4. Whether the additional charge for cement hardener is correct.
5. Whether the subject structures are of rigid frame construction.
6. Whether the year of the appeal is 1997 or 2000.

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, Paul E. Bender filed a Form 131 petition requesting a review by the State. The Form 131 petition was filed on January 11, 2001. The Jackson County Property Tax Assessment Board of Appeals (PTABOA) Notification of Final Assessment Determination on the underlying Form 130 is dated December 27, 2000.
3. Pursuant to Ind. Code §6-1.1-15-4, a hearing was held on July 12, 2001 before Hearing Officer Jennifer Bippus. Testimony and exhibits were received into evidence. Mr. Paul Bender represented himself. Mrs. Patricia Cummings, Jackson Township Assessor, represented the Township. No one appeared to represent Jackson County.

4. At the hearing, the subject Form 131 petition was made a part of the record and labeled as Board's Exhibit A. Notice of Hearing on Petition was labeled Board's Exhibit B. In addition, the following exhibits were submitted to the State:
Petitioner's Exhibit A - A binder with the following exhibits included:
 - a. An envelope with a piece of the metal siding enclosed
 - b. An outline of the Bender Appeal
 - c. Copies of various letters sent to the Jackson Township Assessor
 - d. Various copies of information pertaining to Issue #2 - gauge of the metal siding
 - e. Various copies of information pertaining to Issue # 3 - interior finish
 - f. Various copies of information pertaining to Issue # 4 - concrete hardener
 - g. Various comparables from Jackson, Monroe, and Lawrence Counties pertaining to Issue #5 – post and beam construction v. rigid steel frame
 - h. Copies of PRCs - 1. Proposed PRC from Mrs. Cummings at the PTABOA hearing; 2. Final PRC issued after the PTABOA hearing
 - i. Copies of faxes and letters sent to the Jackson County Assessor
 - j. Copies of letters to Mr. Bender from Montgomery, Elsner, and Pardieck
 - k. Copies of information on curing compounds, including CS309
 - l. Miscellaneous exhibits labeled as "other"

Petitioner's Exhibit B - Photographs of All Phase, 84 Lumber and Skaggs

Petitioner's Exhibit C - Photographs of Bender Lumber and All Phase

Respondent's Exhibit A - A copy of "possible" change in values for the subject property per Mrs. Cummings, using various components of the GCK schedule

5. The subject parcel is a commercial property located on 320 Meyers Lane, Seymour, Jackson Township, Jackson County.
6. The Hearing Officer did not view the subject property.

7. At the hearing, the Hearing Officer requested additional evidence from Mr. Bender. The request was for interior and exterior photographs of the subject structure and additional information regarding the concrete. Mr. Bender was given until July 22, 2001 to respond. Mr. Bender submitted the additional evidence by the deadline of July 22, 2001. The Hearing Officer's Request for Additional Evidence and Mr. Bender's responses are labeled Board's Exhibit D and Petitioner's Exhibit D and E, respectively.

Issue No. 1 - Whether the computerized property record card is correct.

8. The assessment should be reflected on an individual PRC that lists all of the components as shown in the Indiana Assessment Regulation. There are errors in the assessment and reconciliation with the Township Assessor could not be reached. *Bender testimony.*
9. A computer generated PRC achieves the same value. However, all of the components are not actually shown on the computerized PRC. *Cummings testimony.*

Issue No. 2 - Whether the siding of the subject property should be classified as heavy gauge.

10. A piece of the metal siding from the subject structure was submitted and measured to show that the gauge of the metal siding was "25". *Bender testimony & Petitioner's Exhibit A(a) and (d).*
11. After a brief discussion regarding the gauge of the metal siding, Mrs. Cummings and Mr. Bender stipulated that the gauge should be "25", considered lightweight and an adjustment should be made to the PRC. Ms. Cummings and Mr. Bender signed a Stipulation Agreement (Board's Exhibit C) as it related to this issue.

12. Though the siding is agreed to be "25" gauge, a positive adjustment should be made from the GCK Schedule A.4, for aluminum. *Cummings testimony.*
13. The material used in the construction of the subject property is just metal siding and not aluminum. *Bender testimony.*

Issue No. 3 - Whether the interior finish of the subject property is listed correctly.

14. There is no finish to the floors, ceilings, or walls of the subject structure only insulation. *Bender testimony & Petitioner's Exhibits A(e) and C.*
15. In the retail area there is forty percent (40%) to fifty percent (50%) interior finish. Semi-finished interior pricing could from the GCK schedule, with negative adjustments made for the floors, partitions, and ceilings. Proposed values for the subject property eliminating the floor, partitions, and ceiling finish were submitted. If the State determines CS-309 is a sealer rather than a hardener, the floor finish should remain. *Cummings testimony & Respondent's Exhibit A.*

Issue No. 4 - Whether the additional charge for cement hardener is correct.

16. The CS-309, an acrylic compound used on the concrete floors for curing and sealing purposes. True liquid floor hardeners should not be applied to fresh concrete at the time of initial cure, because the concrete is still saturated with moisture. Also, liquid hardeners should not be applied as curing compounds, since they do not meet the requirements of ASTM C 309, "Standard Specification for Liquid Membrane-Forming Compounds for Curing Concrete". *Bender testimony & Petitioner's Exhibit A(k).*
17. Ms. Cummings did not perform any type of test to support her contention that value should be added for a "hardener" product. *Bender testimony.*

18. A letter from W.R. Meadows, Inc. was submitted citing CS-309 as a curing and sealing product, and suggesting the use of other products for floor hardening, density or dust proofing. *Petitioner's Exhibit A(k)*.
19. The additional cost for CS-309 was determined based on the specifications Mr. Bender provided. CS-309 is a special addition to the concrete that improves the hardness of the floor and makes the quality of the floor better than the norm. Other curing methods such as straw, water, and a tarp, add little cost to curing. However, Mr. Bender chose to use a product with an added value. The addition of CS- 309 is over and above the normal process and it needs to be accounted for in the value. 50 IAC 2.2-15-1, Unit-in-Place cost schedules were used to arrive at the value for the concrete sealer. *Cummings testimony*.
20. The specifications were put together by Mr. Bender's brother to "secure a loan". *Bender testimony*.
21. When the specifications were received from Mr. Bender, he did not indicate that the specifications were not correct. *Cummings testimony*.

Issue No. 5 - Whether the subject property is rigid frame construction.

23. There are eleven (11) buildings found in Jackson County that are very similar in construction to the subject. Nine (9) of the buildings have been assessed as post and beam, and two (2) of the buildings have no frame adjustment at all. *Bender testimony*.
24. The Petitioner owns buildings in Morgan and Lawrence Counties that were constructed by the same company as the subject structures. They are the same product and color as the subject structures. They are assessed as post and beam construction. *Bender testimony*.

25. 84 Lumber and All Phase Construction are post and beam construction and are adjacent to the subject property. The buildings are constructed in the same manner as the subject structure. The subject structure should be treated the same as the other buildings and not classified as "rigid frame". *Bender testimony & Petitioner's Exhibits B, C, and D (photographs)*.
26. Post and Beam construction is steel bolted together and not just one contiguous piece. Rigid frame construction is one solid piece of steel. *Cummings testimony*.
27. It should be noted that on the issue of rigid frame or post and beam construction, Mr. Bender stated that he did not know the difference between the two (2).

Issue No. 6 - Whether the year of the subject appeal is 1997 or 2000.

28. Though a Form 130 petition was filed by the Petitioner, the Petitioner concedes the appeal process was not followed in 1997. The Petitioner contends that the Board of Review (BOR) did not provide enough information and the Petitioner did not feel comfortable going on with the appeal. *Bender testimony*.

Conclusions of Law

1. Under the law applicable to these proceedings, the Petitioner is statutorily limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 130 petition. Ind. Code §§ 6-1.1-15-1, -2.1, and -4 (Statutes were amended in 2001, but amendments do not apply). See also the Forms 130 and 131 petitions. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of*

Review of Assessments for Lake County v. Kranz (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 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 Board. 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 appraisal system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.
4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art X, § 1

(a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.

6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State's decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. "Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies." *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.

9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See also, Ind. Code § 4-21.5-2-4(a)(10)(Though the State is exempted from the Indiana Administrative Orders 7 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 regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and the support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
11. The taxpayer's burden in the State's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V*, 702 N.E. 2d at 1040.
12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.

13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at § 5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State 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 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'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 computerized property record card is correct.

18. It is the Petitioner's contention that the assessment should have an individualized PRC (hand-written) with all of the components matching the Indiana Assessment Regulation. It is the Petitioner's belief that because the subject PRC is computerized, it does not match the components that are in the Indiana Assessment Regulation.
19. It is the Respondent's contention the subject PRC is correct, but that the computer does not list all of the components when calculating the assessed value.
20. The Petitioner's position that the PRC needs to be hand-generated is incorrect. The Petitioner did not provide any evidence showing what differences there might have been between a hand-generated PRC and a computerized PRC. Furthermore, the Petitioner failed to show that the components of the subject structure were valued incorrectly.
21. On this issue the Petitioner failed to present any evidence to show that the computerized PRC failed to accurately value the subject structure. The Petitioner did not submit any evidence to support their position that there were differences between a hand-written and computerized PRC.
22. As stated in Conclusions of Law ¶ 9 and 10, "It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief." "Taxpayers are expected to make factual presentations to the State Board regarding alleged errors in assessment. These presentations should both outline the alleged errors and support the allegations with evidence." "Allegations, unsupported by factual evidence, remain mere allegations."

23. For all the reasons set forth above, the Petitioner failed to show the current PRC is in error. Accordingly, there is no change in the assessment as a result of this issue.

Issue No. 2 - Whether the siding of the subject property should be classified as heavy gauge.

24. At the hearing, the Petitioner and the Respondent stipulated that the gauge of the siding was "25". Mr. Bender and Ms. Cummings signed the Stipulation Agreement to this fact (Board Exhibit C).
25. The agreement between the Township and the Petitioner is a decision between the parties and the State will accept the agreement. The State's acceptance of the agreement should not be construed as a determination regarding the propriety of the gauge of metal agreed to by the parties.
26. Though the parties agreed to the gauge of the siding being "25", the Respondent stated a positive adjustment for aluminum should be made from the GCK pricing schedule.
27. At the hearing, the Petitioner submitted a piece of the metal (Petitioner's Exhibit A(a)). It is the Petitioner's contention the exhibit not only shows the gauge of the metal but also disputes the Respondent's contention that an aluminum adjustment is appropriate.
28. The adjustment for aluminum siding is an add-on to the base rate due to the increase in cost between light metal/wood siding and aluminum pricing.
29. A review of the material presented by the Petitioner indicates that it is galvanized steel and not aluminum as stated by the Respondent. As a result of this observation, it is determined the subject structures are metal sided buildings and

the adjustment for aluminum is removed. A change in the assessment is made as a result of this issue.

Issue No. 3 - Whether the interior finish of the subject property is listed correctly.

30. The subject facility is a lumber company consisting of four (4) structures designated "Buildings" A, B, C and D. The local assessing officials valued the subject structures from the GCK pricing schedule. "Buildings" A and B (general retail, general office and light warehouse) were valued under the same perimeter to area ratio (PAR) as if a single structure, and Buildings C (light warehouse) and D (light warehouse) were each valued under their own PAR.
31. It is the Petitioner's contention that no finish exists to the floors, ceiling, or walls of the structures. The Petitioner submitted photographs (Petitioner's Exhibits C and D) of the subject property in support of this position. The photographs show a portion of one of the structures indicating the lack of floor, ceiling and wall finish. It should be noted that the same photographs showed the existence of insulation.
32. The Petitioner's interior photographs (Petitioner Exhibits C) seemed to be limited to only one section of a building, light warehouse. The Petitioner did not present any additional interior photographs of the general retail or general office areas nor were photographs submitted for the other structures. One cannot assume from the photographs presented (light warehouse), that the remaining portions of this building or the other buildings have the same unfinished properties.
33. The Respondent submitted proposed changes addressing the issue of finish by using semi-finished values and making adjustments for lack of finish for the ceilings, floors, and walls. The Respondent also opined that approximately forty percent (40%) to fifty percent (50%) of the retail area is finished.

34. As stated in Conclusions of Law ¶¶ 9 and 10, “It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief.” “Taxpayers are expected to make factual presentations to the State Board regarding alleged errors in assessment. These presentations should both outline the alleged errors and support the allegations with evidence.” “Allegations, unsupported by factual evidence, remain mere allegations.”
35. As stated in Conclusions of Law ¶¶ 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.”
36. In the case at bar, the Petitioner has shown that the light warehouse area of the main structure lacks finish to the floor, ceiling and walls. The Respondent has agreed that this area lacks certain finishes by using the semi-finish values and then making adjustments for deficiencies.
37. However, the light warehouse area is determined to have an “unfinished occupancy” interior finish requiring an adjustment to the base rate of a positive \$1.55. This adjustment of \$1.55 does not include values for ceiling, floor, or wall finishes (50 IAC 2.2-11-6, Schedule A.4). Such deficiencies have already been taken into consideration in the “unfinished occupancy” adjustment.
38. Other than his testimony, the Petitioner failed to present any evidence that areas such as general retail and general office in Building A and B, lack ceiling, wall, and floor finishes, such adjustments will not be made to these areas.
39. For all of the reasons set forth above, no change in the assessment is made as a result of this issue.

Issue No. 4 - Whether the additional charge for cement hardener is correct.

40. Mr. Bender testified that the CS-309 used to seal the concrete is not a hardener additive and therefore no additional value should have been added to the base rate of the subject building for this feature.
41. Ms. Cummings, on the other hand, stated the adjustment was made based on the specifications provided by the Petitioner at the time of construction.
42. Mr. Bender conceded the specifications provided to Ms. Cummings were provided to obtain a bank loan and that the CS-309 is a sealer and not a hardener. Mr. Bender then provided detailed information on the CS-309 sealer and the differences between a sealer and a hardening additive (Petitioner's Exhibits A(f), (k) and E).
43. 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.
44. At the time of the assessment, Ms. Cummings used the information provided by the Petitioner to determine the existence of a hardener. Because the Petitioner has now presented evidence to the contrary, it is clear that the CS-309 is a sealer that is used to cure the concrete. The added cost of the \$.55 placed on the subject building at the local level for a hardening additive is incorrect (Petitioner's Exhibits A(f), (k), and E).
45. For all the reasons set forth above, a change in the assessment is made as a result of this issue.

Issue No. 5 - Whether the subject property is rigid frame construction.

46. At the hearing, Mr. Bender stated that he did not know the difference between rigid frame and post and beam construction. However, it is Mr. Bender's contention the subject building is of post and beam construction.
47. The Petitioner presented seven (7) PRCs purported to be comparable properties. Included in the seven (7) PRCs were other buildings owned by the Petitioner. All the structures were purported to have been valued as post and beam construction. Additionally, the Petitioner submitted into evidence, photographs of the framing for the subject buildings.
48. Before applying the evidence to reduce the contested assessment, the State must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.
49. The Petitioner's photographs of the subject structure show tapered columns (single piece construction) narrow at the bottom and flaring at the top, bolted to the beams as well as the beams being in sections bolted to one another. The Petitioner's photographs do not show any additional post supports (H-columns or steel pole columns) evenly spaced throughout the structure. Additional support to the beams would be found in a post and beam construction. The type of construction shown in the Petitioner's own evidence is rigid steel frame construction.
50. The Petitioner failed to present comparative analysis of the purported comparables to the subject structure. There was no analysis presented to show the comparables were built in the same manner and with the same materials as the subject structure. The Petitioner did not submit interior or exterior photographs of the purported comparables. Mere references to photographs or regulations, without explanation, do not qualify as probative evidence. *Heart City*

Chrysler v. State Board of Tax Commissioners, 714 N.E. 2d 329, 333 (Ind. Tax Ct. 1999).

51. It is not enough for the Petitioner to submit PRCs of structures valued using the GCK schedule and conclude that the subject structure is just like these structures and therefore should receive the same adjustments. Conclusory statements do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
52. The Petitioner highlighted “framing” in the pricing ladder for each purported comparable. The fact that some show an adjustment and some do not does not mean that a “framing” adjustment was not included in the base rate. The Petitioner did not present any back-up data property cards that may have been used by the various local assessing officials in determining the base rates of the purported comparables. Without this information it cannot be determined whether a framing adjustment was or was not included in the base rate.
53. For those structures that did not receive an additional adjustment for framing there is no explanation as to why. It cannot be determined if they are comparable to the subject. One possible explanation as to why a framing adjustment was not made is that the structure was a light metal/wood sided, pole framed building requiring no additional adjustment to the base rate for either post and beam or rigid steel frame construction. 50 IAC 2.2-11-6, Schedule A.4.
54. Though the Petitioner attempted to show similarly situated properties via the submission of purported comparable PRCs (some based on the same use) the Petitioner did not prove the properties are in fact comparable to one another or to the subject structure. Because a building is metal or is valued using the GCK pricing schedule, does not, by itself, make the structures comparable to one another.

55. The taxpayer's burden is to identify similarly situated properties to the subject and to establish disparate treatment of the subject. To meet such a burden the Petitioner must present probative evidence in order to make a prima facie case. The Petitioner failed to adequately identify properties similar to the subject and failed to establish disparate treatment.
56. For all of the reasons set forth above, there is no change in the assessment as a result of this issue.

Issue No. 6 - Whether the year of appeal is 1997 or 2000.

57. On July 18, 1996, the Petitioner filed a Form 130 with the Jackson County Auditor. The petition was for the BOR to review the assessment of the subject property for the tax year 1997. On December 10, 1997, the BOR made their determination to value the subject building using the GCK pricing schedule. The BOR issued a Notification of Final Assessment Determination (Form 115) to the taxpayer. The taxpayer had 30 days after receiving this notification to file with the County Assessor for review by the State. When the taxpayer decided not to file a Form 131 within the allotted time frame, thus determining not to pursue the issue further, this ended the appeal process for the tax year 1997.
58. On May 9, 2000, the Petitioner filed a Form 130 with the Jackson County Assessor. On December 27, 2000, Jackson County issued a Form 115 with the final results of the PTABOA hearing. On January 11, 2001, the Petitioner filed a Form 131 petition with the Jackson County Assessor requesting a review of assessment by the State. This appeal was filed in accordance with Ind. Code § 6-1.1-15-4 in a timely manner.
59. In the case at bar, the year under appeal is determined to be 2000. The Petitioner admitted he did not file a Form 131 petition regarding the assessment for 1997. The Petitioner filed a Form 130 petition in 2000 and subsequently filed

a Form 131 petition for the tax year 2000, in accordance with Ind. Code § 6-1.1-15-4.

60. For all the reasons set forth above, the tax year under appeal is 2000. No change is made 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.

Chairman, Indiana Board of Tax Review