

**STATE OF INDIANA
Board of Tax Review**

RICHARDS RESTAURANTS, INC.)	On Appeal from the Jay County Property
)	Tax Assessment Board of Appeals
)	
)	
Petitioner,)	
)	Petition for Review of Assessment, Form 131
)	Petition No. 38-020-96-1-4-00001
)	
v.)	
)	Parcel No. 020240001800001
)	
)	
JAY COUNTY PROPERTY TAX)	
ASSESSMENT BOARD OF APPEALS)	
And BEARCREEK 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:

Issue

1. Whether the grade of the cabins is correct.

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, George Olive and Co., LLC, filed a petition on behalf of Richards Restaurants, Inc., requesting a review by the State. The Jay County Board of Review (BOR) determination was issued on September 18, 1996. The Form 131 petition was filed on October 17, 1996.

3. Pursuant to Indiana Code § 6-1.1-15-4, a hearing was held on April 16, 2002, before Administrative Law Judge Jennifer Bippus. Testimony and exhibits were received into evidence. Teresa Worthington, JD, LLM, represented the Petitioner. E. Anita Mills, Jay County Assessor, and Virginia Whipple, County Representative, represented the Jay County Assessor's Office. Alan Campbell was present representing the Bearcreek Township Assessor's Office.

4. At the hearing, the Form 131 petition was made part of the record and labeled as Board's Exhibit A, the Notice of Hearing was labeled as Board's Exhibit B, and the Power of Attorney was labeled as Board's Exhibit C.

5. At the hearing, the following evidence was submitted:
Petitioner's Exhibit A – Photographs of the subject buildings.
Petitioner's Exhibit B – Construction costs of subject buildings.

Respondent's Exhibit A – Property record card.

6. The motel cabins are located at Route 1, Box 180B, Bryant, Bearcreek Township, Jay County.

7. The Administrative Law Judge did not view the property.

8. The assessed value as determined by the Jay County BOR is:
Land: \$24,100 Improvements: \$657,330 Total: \$681,430
9. The year under appeal is March 1, 1996.

Whether the grade of the cabins is correct.

10. The BOR determined that the grade of the cabins is best described as “D+1”. The Petitioner contended that the grade should be “D-2”.
11. Ms. Worthington contended that the buildings were built at various times over a period extending from 1989 through 1996. She asserted that the construction cost of the various buildings is less than the true tax value shown on the card; a “D-2” grade is requested after comparing the construction costs to the true tax values of the subject buildings.
12. Ms. Worthington introduced three photographs, which she contended show square buildings with minimal features, no extra details, no high pitched roofs, no extra windows, no special entrances, no special interior features, and no extra cut-outs. She further asserted that the buildings are constructed of economy materials and fair workmanship.
13. Ms. Worthington introduced a calculation in which the true tax value of the cabins was multiplied by 60% (the grade multiplier for the proposed grade of “D-2”). The Petitioner contended that, because the product of this calculation approximates the claimed construction costs of the cabins, the calculation supports a grade of “D-2”.
14. Ms. Worthington testified she is being compensated on a contingency fee basis.

15. Ms. Whipple testified that the County officials agree that the cabins are plain buildings, with below average construction. She contended that the County's assigned grade of "D+1" takes into account the slightly elevated pitched roofs, wider overhangs, and some cuts in the porch areas.
16. Ms. Whipple also contended that the construction costs presented by the Petitioner do not identify labor costs, and this could cause flaws in the Petitioner's calculation.
17. Ms. Whipple referred to the photographs from the Indiana Real Property Assessment Manual, 50 IAC 2.2. She contended that the subject buildings are actually very close to the "D+2" range identified in the photographs.
18. Ms. Whipple noted that the cabins were given fifteen percent obsolescence depreciation, which is allowing a negative adjustment to the true tax value. Ms. Whipple opined that, although obsolescence is not an issue in the subject appeal, it does play into the total cost of the buildings.

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. “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 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.

Credibility of Certain Evidence

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. "Past decisions of this [Tax] Court have evaluated the opinion testimony of contingently paid witnesses in light of the contingent nature of their compensation. [Citation omitted]. The State Board is entitled to do so as well." *Clark*, 694 N.E. 2d at 1241, n. 17 (Ind. Tax 1998).

Whether the grade of the cabins is correct.

19. The BOR determined that the grade of the cabins is best described as "D+1". The Petitioner contended that the grade should be "D-2".
20. Grade is defined as "the classification of improvement based on certain construction specifications and quality of materials and workmanship." 50 IAC 2.2-1-30.
21. The characteristics of a "D" grade building are described in 50 IAC 2.2-10-3(a)(4) which 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."
22. Because the classification of an improvement may fall between major grade classifications, a method of interpolation is contained in the regulation. The method for prescribing a plus or minus factor is described in 50 IAC 2.2-10-3(c) (1) and (2) which state:

“Plus or minus two (+/- 2) indicates that the grade falls halfway between the assigned grade classification and the grade immediately above or below it. For example, a grade of ‘C+2’ indicates that the quality and design grade classification is estimated to fall halfway between ‘C’ and ‘B’ or average to good condition. The applicable percent is one hundred ten percent (110%).

Plus or minus one (+/- 1) indicates that 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. For example, a grade of ‘C+1’ indicates that the quality and design grade classification is estimated to be slightly better than average or approximately halfway between a ‘C’ grade and a ‘C+2’ grade. The applicable percentage is one hundred five percent (105%).”

23. A grade factor or multiplier is “applied to a base grade level for the purpose of interpolating between grades or establishing an intermediate grade. 50 IAC 2.2-1-31. The grade multiplier for a grade of “D+1” is 85%. The grade multiplier for a grade of “D-2” is 60%. 50 IAC 2.2-11-6, Schedule F.
24. The determination of the proper grade factor requires assessors to make a variety of subjective judgments regarding variations in the quality of materials and workmanship as well as the quality of style and design. *Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d 1058, 1064 (Ind. Tax 1993). The selected grade represents a composite judgment of the overall quality and design. *Mahan*, 622 N.E. 2d at 1064; 50 IAC 2.2-10-3(d).
25. Subjectivity is used in the grading process. For assessing officials and taxpayers alike, however, the Regulation provides indicators for establishing grade. The text of the Regulation (50 IAC 2.2-10-3) and graded photographs (50 IAC 2.2-11-4) provide assistance in the selection of the proper grade.

26. The taxpayer has the responsibility to provide probative and meaningful evidence to support a claim that the assigned grade factor is incorrect. *Bernacchi v. State Board of Tax Commissioners*, 727 N.E. 2d 1133 (Ind. Tax 2000); *Hoogenboom-Nofziger v. State Board of Tax Commissioners*, 715 N.E. 2d 1018 (Ind. Tax 1999); *Whitley*, supra.
27. True tax value does not equal market value. Ind. Code § 6-1.1-31-6. True tax value does not attempt to determine the actual market value for which a property would sell if it were offered on the open market. Nevertheless, true tax value's method for valuing structures is the same as one of the well-accepted methods for determining fair market value – reproduction cost less depreciation. International Association of Assessing Officers Property Assessment Valuation, 127 (2nd ed. 1996). Common appraisal techniques are permissible in assessing property under the current true tax value system even when such appraisal techniques are rooted in market value. *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801 (Ind. Tax 1998).
28. The cost tables in the Regulation are at the heart of true tax value's method for determining values. The cost schedules effective for the 1995 general reassessment, 50 IAC 2.2-11-6, reflect 1991 reproduction costs (based on market information derived from *Marshall Valuation Service* price tables) that were then reduced across the board by 15%. The overall purpose of these cost schedules was to approximate prevailing construction costs in 1991, less 15%. 50 IAC 2.2, Forward [sic] [Foreword] at i; *Town of St. John III*, 690 N.E. 2d at 373, n. 5.
29. In support of its position, the Petitioner provided a calculation in which it multiplied the true tax value of the cabins by 60% (the grade multiplier for the proposed grade of "D-2"). The Petitioner contended that, because the product of this calculation approximates the alleged construction costs of the cabins, the calculation establishes that the grade of "D-2" is correct.

30. 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.
31. The correct procedures for using construction cost data to arrive at grade are well defined.
32. “In sum, the Garcias’ grade of ‘A+6’ was arrived at by deflating their dwellings’ actual cost of construction to a 1985 cost level, then dividing by the grade ‘C’ reproduction costs from the State Board’s cost schedules, to arrive at a rounded grade multiplier of 280 percent.” *State Board of Tax Commissioners v. Garcia*, 766 N.E. 2d 341, 347 (Ind. 2002).¹
33. The Petitioner’s calculation is flawed.
34. The Petitioner provided only an amount purportedly representing the total cost of the cabins. No itemized costs were included in support of this number to enable the State to determine the cost components actually contained in this total proposed amount.
35. The Petitioner also failed to adjust the actual cost information to the 1991 cost level. The Petitioner cannot compare costs incurred in 1989, 1990, 1994, and 1996 with construction cost information based on 1991 dollars (cost schedules in 50 IAC 2.2).
36. The Petitioner did not reduce the adjusted 1991 cost by fifteen percent to determine the adjusted construction cost of the cabins.

¹ *Garcia* concerned a 1989 assessment, in which the base year for the cost schedules was 1985. *Town of St. John III*, 690 N.E. 2d at 373, n. 5. This appeal concerns the 1996 assessment; the base year for the relevant cost schedules was 1991. 50 IAC 2.2, Forward [sic] [Foreword] at i.

37. Finally, the Petitioner failed to divide the adjusted 1991 construction costs by the grade “C” reproduction costs from the State’s cost schedules to arrive at a grade multiplier.
38. The Petitioner’s calculation, therefore, does not correctly employ a *Garcia*-type analysis of construction costs to determine grade. The State is under no obligation to give, and does not give, this calculation any weight.
39. The Petitioner’s unsubstantiated conclusions concerning grade do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
40. Reduced to its essence, the Petitioner’s argument attempts to use grade as a means to reduce the true tax value of the property to the construction costs (the fair market value) of the improvements. However, when assessing real property, “true tax value does not mean fair market value.” Ind. Code § 6-1.1-31-6(c). The true tax value and the price paid for the property (the construction costs) are “two unrelated numbers.” *Damon Corporation v. State Board of Tax Commissioners*, 738 N.E. 2d 1102, 1109 (Ind. Tax 2000).
41. For all the reasons above, the Petitioner failed to meet its burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

Summary of Final Determination

ISSUE 1 - *Whether the grade of the cabins is correct.*

42. The Petitioner failed to meet its burden on this issue. No change is to be made 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.

Chairman, Indiana Board of Tax Review