

**STATE OF INDIANA  
Board of Tax Review**

In the matter of the petition for review     )  
of assessment, Form 131                     )     Petition No. 43-019-97-1-3-00002

Parcel No. 021-143-001

Assessment Year: 1997

Petitioner:     Robert H. & Doris E. Kesler  
                  2749 N. Fox Farm Road  
                  Warsaw, IN 46580

Petitioner Rep:     Landmark Appraisals, Inc.  
                          7246 E. CR 800 North #A  
                          Syracuse, IN 46567

**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 the structure on property record card 1 of 15 is correct.
2.     Whether the State Board has provided instructions for determining the effects location and use have on the value of real property.
3.     Whether the method used to determine the assessed value is in violation of Article X, Section I of the Indiana Constitution.

## 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 Landmark Appraisals, Inc. on behalf of Robert H. and Doris E. Kesler, the Petitioners, filed a petition requesting a review by the State. The Form 131, Petition to the State for Review of Assessment was filed on November 25, 1997. The County's determination on the underlying Form 130 petition was issued November 12, 1997.
  
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on July 8, 1998, before Hearing Officer Carl J. Edwards. Lance Rickard, Landmark Appraisals, Inc. represented the petitioners. Kosciusko County was represented by: Sue Ann Mitchell, Kosciusko County Assessor; Sharon Thompson, Kosciusko County Chief Deputy Assessor; and Darby Davis and Missy Kirkland, Kosciusko County's commercial and industrial appraisers. There was no one present to represent the Prairie Township Assessor.
  
4. At the hearing the State entered as evidence the following:  
Board Exhibit A – The Form 131 with attachments:
  - a. A copy of the Form 130, Petition to the County Board of Review.
  - b. A copy of the Board of Review response and determination.
  - c. A copy of the Power of Attorney.
  - d. A copy of a Form 11 C/I, Notice of Assessment, dated June 17, 1997.
  - e. A copy of the property record card for the subject property.
  - f. A copy of a letter from Landmark Appraisals, Inc. to the Kosciusko County Auditor.
  - g. A copy of Board of Review minutes regarding the subject property.Board Exhibit B – A copy of the Notice of Hearing.

5. In addition the following exhibits were submitted to the State:  
Petitioner's Exhibit 1 – A copy of State Board Issues and Determinations for the March 1, 1996 assessment with attached property record card for the subject property.

Respondent's Exhibit 1 – A copy of Issues and Responses with attachments:

- a. A copy of the property record card (pages 1 through 15) for the subject property.
  - b. A copy of page 76, Rule 11, Real Property Assessment Manual.
  - c. Exterior photographs of the subject building.
5. The subject is a commercial property located at 2749 N. Fox Farm Rd., Prairie Township, Kosciusko County, Indiana.
  6. The Hearing Officer viewed the subject property. Also present at the site visit were: Lance Rickard, representing the Petitioners; and Darby Davis and Missy Kirkland, representing Kosciusko County.

### **Regarding Grade**

7. Page 1 of 15 of the property record card shows the local officials have applied a grade of D-1 (70%) to the 30,000 square foot building. The Petitioners contend a grade of D-2 (60%) is appropriate because the building is a pre-engineered, light steel building. (*Rickard testimony*.)
8. A State Board determination for the March 1, 1996 assessment determined a grade of D-1 (70%) was appropriate for the subject building. (*Rickard testimony* and Petitioner's Exhibit 1)
9. A Form 11 issued by the Prairie Township Trustee/Assessor on June 17, 1997 shows a grade of D-1 (70%) was applied to the subject building. The County

Board of Review determined that no change be made in the grade of the subject building. (Board Exhibit A, attachment b and attachment d.)

### **Regarding State Board Instructions**

10. On the Form 131 the Petitioners contend the State Board does not provide instructions for determining “the effects that location and use have on the value of real property,” nor for determining “productivity of earning capacity of the land” for the subject property as required in Ind. Code § 6-1.1-31-6. At the hearing the Petitioners did not submit any evidence to support their contention.
11. Respondent’s Exhibit 1 states, “The State Board has provided instruction, fulfilling the requirement of Ind. Code § 6-1.1-31-6, through promulgation of 50 IAC 2.2.”

### **Regarding Violation of Article X, Section I of the Indiana Constitution**

12. On the Form 131 the Petitioners contend “The valuation method used to determine the assessed value of the subject property is not uniform or at an equal rate and is not based upon a just valuation, therefore, is in violation of Article X, Section I of the Indiana Constitution.” At the hearing the Petitioners did not submit any evidence to support their contention.
13. Respondent’s Exhibit 1 states, “The method for assessing real property in Indiana has never been found to be in violation of Article 10, Section 1 of the Indiana Constitution, Ind. Code § 6-1.1-31(c), or Title 50.”

### **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.



## Conclusions Regarding Grade

18. “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.
  
19. 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 variable 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). In addition to the text of the manual and the graded photographs, the manual contains the commercial and industrial models guide (50 IAC 2.2-11) for assistance in establishing grade.
  
20. 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.
  
21. 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.
  
22. 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 grades 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%

23. Because structure 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 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.
24. The local officials have applied a grade of D-1 (70%) to the subject building. The Petitioner contends a grade of D-2 (60%) is appropriate because the structure does not have characteristics described in the model for GCI pricing.
25. 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 46, 49 (Ind. Tax 2001) (Clark II). See also *Whitley*.
26. "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*, 2001 WL 419066 (Ind. Tax 2001).

27. 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 improvement’s base rate.” *Clark II*, 742 N.E. 2d at 49. See also *Whitley*, 704 N.E. 2d 1113.
28. 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*, 748 N.E. 2d 943 (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.
29. On the Form 131 the Petitioners contend, “The building is substantially inferior to the base model. To reflect this, the grade should be substantially lower.” The petitioners’ witness asserts the building is a light, pre-engineered steel building without brick or block. There is no evidence beyond these statements. Conclusory statements are not probative evidence. *CDI, Inc. v. State Board of Tax Commissioners*, 725 N.E. 2d 1015, 1019 (Ind. Tax 2000).
30. Taxpayers are required “to do something more than simply allege that an error exists in the assessment ...” *Whitley*, 704 N.E. 2d at 1119.
31. Taxpayers are expected to make detailed factual presentations to the State Board regarding alleged errors in assessment. *Id.* “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)).

32. A statewide general reassessment occurred in 1995. As a result of a 1996 appeal, the grade was changed to D-1 (70%). To challenge the grade after 1996 the taxpayer must meet his burden. In this case, burden was not met.
33. 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.
34. Mr. Rickard did not identify any similarly situated properties or establish disparate treatment between the contested property and other similarly situated properties. No evidence was presented to show the statute or regulations were not properly applied to individual assessments.
35. For all the reasons stated above the Petitioners have failed to meet their burden. Accordingly there is no change in the assessment as a result of this issue.

### **Conclusions Regarding State Board Instructions**

36. The Petitioners submitted no evidence regarding whether the State Board provides instructions for determining "the effects that location and use have on the value of real property," nor for determining "the productivity of earning capacity of the land" for the subject property as required in Ind. Code § 6-1.1-31-6.
37. As stated previously, taxpayers are required "to do something more than simply allege that an error exists in the assessment ..." *Whitley*, 704 N.E. 2d at 1119.

38. The Petitioners have failed to meet their burden. Accordingly, no change is made to the assessment.

### **Conclusions Regarding Violation of Article X, Section I of the Indiana Constitution**

39. The Petitioners submitted no evidence regarding whether the valuation method used to determine the assessed value of the subject property is in violation of Article X, Section I of the Indiana Constitution.

40. As stated previously, taxpayers are required “to do something more than simply allege that an error exists in the assessment ...” *Whitley*, 704 N.E. 2d at 1119.

41. The Petitioners have failed to meet their burden. Accordingly, no change is made to the assessment.

### **Summary of Final Determination**

Issue No. 1 – Grade – No Change

Issue No. 2 – Location and Use – No Change

Issue No. 3 – Constitutionality – No Change

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 14<sup>th</sup> day of June, 2002.

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Chairman, Indiana Board of Tax Review