

**STATE OF INDIANA  
Board of Tax Review**

In the matter of the Petition for Review )  
of Assessment, Form 131 )      Petition No.: 18-011-96-1-4-00017

Parcel No.: 1100847000

Assessment Year: 1996

Petitioner:    Steaks R Us, Inc.  
                  4949 West Hessler Road  
                  Muncie, IN 47304

Petitioner Representative: Milo Smith  
                                  331 Franklin Street  
                                  Columbus, IN 47201

**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 factor and condition rating are excessive.
2.     Whether an inadequate negative partitioning adjustment is applied.
3.     Whether an inadequate negative interior finish adjustment is applied.
4.     Whether the base price was incorrectly developed.

5. Whether the special features and exterior features were priced incorrectly.
6. Whether incorrect functional and economic obsolescence depreciation percentages are applied.
7. Whether the true tax value of land is higher than that of comparable properties.
8. Whether the land value is not in accordance with the County Land Valuation Order.
9. Whether improper negative influence factors have been applied.

### **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, Milo Smith, on behalf of Steaks R Us, Inc. (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 was filed on November 27, 1996. The County Board of Review's (County Board) Final Determination on the underlying Form 130 is dated October 30, 1996.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on October 30, 2001 before Hearing Officer Joseph Stanford. Testimony and exhibits were received into evidence. Milo E. Smith represented the Petitioner. Charles F. Ward represented the County Board. Deborah L. Crosley represented Mount Pleasant Township.
4. At the hearing, the subject Form 131 petition was made part of the record and labeled Board Ex. A. The Notice of Hearing on Petition is labeled Board Ex. B. In addition, the following items were submitted to the State:  
Petitioner's Ex. 1 – Summary of presentation.  
Petitioner's Ex. 2 – Copy of 50 IAC 2.2-13-4, fast food restaurant grade specifications.

Petitioner's Ex. 3 – Photograph of exterior south side of subject building.  
Petitioner's Ex. 4 – Photograph of exterior west side of subject building.  
Petitioner's Ex. 5 – Photograph of roof of subject building.  
Petitioner's Ex. 6 – Photograph of interior front center of subject building.  
Petitioner's Ex. 7 – Photograph of interior center of building.  
Petitioner's Ex. 8 – Photograph of interior southwest corner of building.  
Petitioner's Ex. 9 – Photograph of banquet room.  
Petitioner's Ex. 10 – Photograph of kitchen.  
Petitioner's Ex. 11 – Copy of 50 IAC 2.2-1-35.  
Petitioner's Ex. 12 – Copy of 50 IAC 2.2-10-3.  
Petitioner's Ex. 13 – Copy of 50 IAC 2.2-10-6.1.  
Petitioner's Ex. 14 – Copy of 50 IAC 2.2-11-5(100)(B).  
Petitioner's Ex. 15 – Copy of State Final Determination for Steaks and More  
Incorporated, Lafayette, IN, 79-001-96-1-4-00008.  
Petitioner's Ex. 16 – Copy of State Final Determination for Byrd Enterprises, Inc.,  
Greenwood, IN, 41-074-89-OCI-00005.  
Petitioner's Ex. 17 – Original 1995 property record card for Byrd Enterprises, Inc.  
Petitioner's Ex. 18 – Corrected 1995 property record card for Byrd Enterprises,  
Inc.  
Petitioner's Ex. 19 – Tax representative disclosure statement.

Respondent's Ex. 1 – Photograph of exterior of subject.  
Respondent's Ex. 2 – Photograph of counter area.  
Respondent's Ex. 3 – Photograph of buffet area.  
Respondent's Ex. 4 – Photograph of restrooms.  
Respondent's Ex. 5 – Photograph of kitchen.  
Respondent's Ex. 6 – Photograph of interior wall.  
Respondent's Ex. 7 – Photograph of buffet area.  
Respondent's Ex. 8 – Copy of 50 IAC 2.2-13-2.  
Respondent's Ex. 9 – Copy of 50 IAC 2.2-11-5(100)(B).  
Respondent's Ex. 10 – Photograph of exterior of subject.

Respondent's Ex. 11 – Property record card and photograph of Olive Garden, 304 West McGalliard Road, Muncie.

Respondent's Ex. 12 – Property record card and photograph of Ryan's Family Steak House, 4221 West Bethel Avenue, Muncie.

Respondent's Ex. 13 – Property record card and photograph of Red Lobster, 223 West McGalliard Road, Muncie.

Respondent's Ex. 14 – Property record card and photograph of Ponderosa, 3100 North Oakwood Avenue, Muncie.

Respondent's Ex. 15 – Graded photographs of fast food restaurants from manual.

5. The subject property is located at 4949 West Hessler Road, Muncie, Mount Pleasant Township, Delaware County. The hearing notice designation of Monroe Township is incorrect. The parties agreed that the assessed value under appeal is \$9,870 (land) and \$205,900 (improvements).
6. At the hearing, Mr. Smith withdrew Issues 5-9. Also, Issues 2 and 3 were combined with Issue 4. The issues discussed by Mr. Smith were grade and schedule selection/base rate.
7. Mr. Smith contends the grade should be lowered from "B" to "C." He testified to the following building characteristics:
  - a. Moderate architectural styling.
  - b. Flat plywood roof covered with tar.
  - c. Normal roof overhangs.
  - d. Stucco over plywood siding exterior walls.
  - e. Quarry tile with carpeting over concrete.
  - f. Drywall and one-eighth inch marlite interior walls.
  - g. Drywall ceilings.
  - h. Functional, not ornamental, lighting.
8. Mr. Smith contends that many of the "B" grade specifications are the same as the

“C” grade specifications. Where the two differ, he contends that the subject is closer to the “C” grade specification.

9. Mr. Smith opines that, since the determination of grade relies on the judgment of the assessor, it is unlikely the assessment can be uniform and equal from one county to another in a mass appraisal system.
10. Mr. Smith also contends that an error in the development of the base rate stems from an incorrect selection of pricing schedules. He contends that the subject, which is priced from the Fast Food Restaurants schedule, should be priced from the GCM-General Retail schedule. Mr. Smith argues that the subject is not engaged in the business of fast food. There are no drive-up windows, and very little of the business is carry-out.
11. In support of this claim, Mr. Smith submitted two State Final Determinations of similar properties (Pet. Ex. 15 and 16).
12. Mr. Smith formally requested that the hearing officer view this property to assist in making a recommendation.
13. Mr. Ward argues that the grade and schedule selection applied by the local officials are supported by the graded fast food restaurant photographs in the manual. He submitted that many of the characteristics listed by Mr. Smith could also be indicative of an “A” grade. Also, he argues that the subject is a chain restaurant with the pre-designed construction specifications of fast food restaurants. He submitted examples of comparable properties in Muncie with similar grades and pricing (Resp. Ex. 11-14). In addition, he questions the validity of Mr. Smith’s comparison to the fast food restaurant model when he also contends that this is the incorrect model for the subject building.
14. Mr. Ward requested that if the hearing officer view the subject property, he also view the properties submitted as comparables by the County Board.

## Conclusions of Law

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

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

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

### **B. Burden**

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax*

*Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).

8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. See 50 IAC 17-6-3. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.
10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. “Allegations, unsupported by factual evidence, remain mere allegations.” *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
11. One manner for the taxpayer to meet its burden in the State’s administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). In this way, the



taxpayer properly frames the inquiry as to “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Town of St. John V*, 702 N.E. 2d at 1040.

12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer’s case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not “triggered” if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State’s final determination merely because the taxpayer demonstrates flaws in it).

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

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property’s market value will fail.

16. Although the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.
17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

#### **D. Requests to View Properties**

18. The Petitioner formally requested that the hearing officer inspect the subject property to assist in making a recommendation. The County Board then requested that the hearing officer inspect all properties it submitted as comparables.
19. To repeat, the State's role in this appeal is to be an impartial adjudicator. It is the taxpayer's burden, not the State's burden, to introduce probative evidence of error in the assessment. The State Board does not have a duty to make a taxpayer's case. *North Park Cinemas, Inc.*, 689 N.E. 2d at 769. After all, the taxpayer is the party petitioning for relief.
20. The Petitioner in this case contends that a property inspection by the hearing officer would give the State more evidence and information with which to make a determination. However, the burden is on the Petitioner to submit such evidence and information, by making detailed factual presentations to the State, at the hearing. *Clark*, 694 N.E. 2d at 1241.
21. If the State would perform a property inspection, it would force the State into the role of a witness in this case. It would also put the State in the position of collecting evidence to make a case for the taxpayer. Clearly, this is contrary to

the State's role of an impartial adjudicator. Therefore, the State declines the Petitioner's invitation to inspect the subject property.

22. For the same reasons, the State will not perform inspections of the County Board's comparable properties.

### **E. Whether the grade factor is excessive**

#### **I. The Regulation and Grade**

23. Property is valued on a mass appraisal basis. Mass appraisal is the appraisal of property on a wholesale scale, using standardized appraisal techniques and procedures to effect uniform and equal valuations with a minimum of detail, within a limited time period, and at limited cost. 50 IAC 2.2-1-35.
24. General mass appraisal models are at the heart of Indiana's valuation method. Assessors select the model that best describes a particular building so that a base cost is determined. 50 IAC 2.2-10-6.1 (a model is a conceptual tool used to replicate reproduction cost of a given structure and assumes typical construction materials and certain elements of construction) and 2.2-11.
25. The Regulation limits the adjustments that may be made to the base cost to account for differences between the model and the building at hand. 50 IAC 2.2-10-6.1 and 11-6 (Schedules A through E).
26. Grade is also a method for adjusting cost. The general models in the Regulation are deemed normal or C grade buildings. 50 IAC 2.2-10-3(b). Applying a grade higher or lower than a "C" grade accounts for differences in construction specifications and the quality of materials and workmanship between the models in the Regulation and the building being assessed. 50 IAC 2.2-1-30 and 10-3 (grade is used to account for deviations from a C grade, and the quality and design of a building are the most significant variables in determining grade).

27. The Tax Court invalidated subjective elements of the Regulation, e.g., grade, holding that the Regulation did not contain ascertainable standards. *Town of St. John III*, 690 N.E. 2d at 386. Nevertheless, the Indiana Supreme Court and the Tax Court did not throw out the whole system immediately. *Town of St. John V*, 702 N.E. 2d at 1043. Property must still be assessed under the present system. *Id*; *Bishop v. State Board of Tax Commissioners*, 743 N.E. 2d 810, 812 (Ind. Tax 2001), *review denied*.
28. The Tax Court recognized the difficulty one might have in establishing grade, but held that it was the taxpayer's responsibility to provide probative and meaningful evidence to support a claim that the assigned grade factor was 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*.

## II. Analysis of Evidence Submitted

29. In support of his claim that the grade is incorrect, Mr. Smith submitted photographs of the subject building, the grade specification chart for fast food restaurants, and testimony concerning the construction elements of the subject. He concludes that the grade should be lowered from "B" to "C" whether the fast food restaurant schedule is used to price the building, or the general retail model is used.
30. It is important to note that the fast food grade specification chart cannot possibly identify every feature found in a building such as the subject. The chart is intended only as a guide. Many construction characteristics listed in the chart, and, in fact, discussed by the Petitioner are listed in two or three different grade categories. Therefore, simply submitting this chart and attempting to place certain characteristics into certain grade classifications does not constitute probative evidence of error in the assessment.

31. Furthermore, the County Board raises a valid point concerning the Petitioner's use of the fast food restaurant schedule to challenge the grade factor, but also contending that the fast food schedule is the incorrect schedule. Mr. Smith contends the correct grade is "C" no matter which schedule is used. This contention, however, seems only to highlight the lack of probative evidence that was submitted to establish that the grade is incorrect. It is highly unlikely that a thorough analysis of the subject compared to both models would yield exactly the same grade.
32. Even though the burden in this appeal has not shifted to the County Board to justify its decision to grade the property "B" with substantial evidence, the County Board has submitted evidence to support its assessment. Both the comparable properties submitted by the County Board, as well as the graded photographs from the manual, support and justify the County Board's grade of the subject.
33. For the reasons set forth, the Petitioner has failed to prove error in the grade factor applied to the subject building. Accordingly, there is no change in the assessment as a result of this issue.

**F. Whether the incorrect pricing schedule has been applied**

34. The model is a conceptual tool used to replicate reproduction cost of a given structure using typical construction materials. The model assumes that there are certain elements of construction for a given use type, which can be defined as specifications. 50 IAC 2.2-10-6(a)(1) and 50 IAC 2.2-13-1(a).
35. Basically, the Petitioner argues that, since the subject is a streak house and not a fast food restaurant, it should not be priced as a fast food restaurant. He testified that the subject has no drive-up windows and does very little carry-out business.

36. The term fast food restaurant does not always describe the amount of time a customer waits for food. Fast food restaurants are pre-designed and normally are built with different variations of the same plans with periodic update of design to characterize changing patterns within the industry. Fast food restaurant services may vary from counter style to sit down dining. 50 IAC 2.2-13-2(c).
37. Therefore, the Petitioner's argument that the subject is incorrectly priced simply because it does not serve "fast food" is incorrect, and the Petitioner fails to meet its burden of proof that the assessment is in error.
38. Again, even though the burden of proof in this appeal has not shifted to the County Board, the County Board submitted evidence that supports its assessment. The graded photographs of fast food restaurants from the manual include such restaurants as Bob Evans, Denny's, Ponderosa, Red Lobster, and Sizzler. These restaurants and buildings are very comparable to the subject property. In addition, the County Board submitted similarly assessed properties, showing that the subject does not suffer from disparate treatment.
39. For the reasons set forth, the County Board's decision to price the subject from the fast food restaurant schedule is sustained. Accordingly, 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.

---

Chairman, Indiana Board of Tax Review