STATE OF INDIANA
Board of Tax Review

In the matter of Petition for)
Correction of Error, Form 133) Petition Nos.: 29-012-92-3-4-00004
29-012-93-3-4-00004

Parcel No. 11180000004105

Assessment Years: 1992 & 1993

Petitioner: Stoney Creek Industries, Inc.
15320 Herriman Blvd.
Noblesville, IN 46060

Petitioner Representative: Denise Praul
True Tax Management Corporation
12141 Admirals Pointe Circle
Indianapolis IN 46236

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 subject structure should be assessed as an economy kit building with a “C” grade; alternatively, whether the grade should be reduced to a “D” if the current cost schedule is not changed.
2. Whether the structure should be depreciated from the 30-year depreciation table.

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 herein shall also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-12, Dale Armbruster of True Tax Management Corporation, on behalf of Stoney Creek Industries, Inc. (Stoney Creek), filed Form 133 petitions requesting a review by the State. The Form 133 petitions were originally filed on May 10, 1994. Due to an error at the County level, these petitions were then filed for a second time on March 30, 1996. The Hamilton County Board of Review' s (BOR) Final Determination was issued on April 13, 1995 and again on March 26, 1996. (See Petitioner’s Exhibit B for the complete filing history.)

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on June 29, 2000, before Hearing Officer John Nussel. Testimony and exhibits were received into evidence. Denise Praul of True Tax Management Corporation represented Stoney Creek. Lori Harmon represented the Hamilton County Assessor’s Office. James Pee represented the Noblesville Township Assessor’s Office.

4. At the hearing, the Form 133 petitions were made a part of the record and labeled Board’s Exhibit A. The Notices of Hearing on Petitions are labeled Board’s Exhibit B. In addition the following exhibits were submitted:

Board's Exhibit C – Request for Additional Evidence.

Petitioner's Exhibit A - Five photographs of the subject building.
Petitioner's Exhibit B - A letter from True Tax Management Corporation to the State inquiring as to the disposition of these appeals.
Petitioner's Exhibit C – Real Property Tax Service Agreement.

Respondent's Exhibit 1 - Hamilton County Assessor's response to the petition.
Respondent's Exhibit 2 - Property record card for the subject parcel.
Respondent's Exhibit 3 – Five photographs of the subject.
Respondent's Exhibit 4 - Application for building permit.

5. The subject property is a manufacturing facility located at 15320 Herriman Boulevard, Noblesville, Noblesville Township, Hamilton County.

6. The Hearing Officer did not view the property.

7. The Assessed Values for 1992 and 1993 were:
Land: $14,770 Improvements: $117,430 Total: $132,300.

8. At the hearing, Ms. Praul testified to the following:
   (a) She is a Level II certified assessor-appraiser in Indiana.
   (b) She has eight years of experience in assessing.
   (c) She is a member of the IAAO.
   (d) She did the analysis of the subject early in 1994.

9. Subsequent to the hearing, the Real Property Tax Service Agreement between True Tax Management Corporation and Stoney Creek was entered into the

record (Petitioner's Ex. C). This agreement indicates that True Tax Management Corporation was employed on a contingency fee basis.

Issue No. 1 - Whether the subject structure should be assessed as an economy kit building with a "C" grade; alternatively, whether the grade should be reduced to a "D" if the current cost schedule is not changed.

and

Issue No. 2 - Whether the structure should be depreciated from the 30-year depreciation table.

10. The BOR determined that the building should be assessed using the General Commercial Industrial (GCI) schedule. The BOR further determined that the correct grade of the building is "C". The Petitioner contended that the building qualified for a 50% reduction in the base rate because it is a pre-engineered economy kit structure. Alternatively, the Petitioner contended that the grade should be reduced to "D" if the building is priced from the GCI schedule.

11. Ms. Praul testified to the following:
    (a) In accordance with State Board Instructional Bulletin 91-8, Stoney Creek is requesting a 50% reduction in the base rate because the building qualifies as a kit building. It is a pre-engineered, steel-framed building with some concrete block at the bottom.
    (b) It is presumed the concrete block was considered in the grade since the building has a "C" grade factor applied to it.
    (c) If the building is not a kit building, it should then receive a "D" grade.
    (d) If the building qualifies for the kit adjustment, it should then be depreciated from the 30-year depreciation table.
    (e) The exterior photographs show a predominately metal building and the interior photographs show the metal bracing.

12. Ms. Harmon testified to the following:

(a) The subject building is 140 feet wide; this exceeds the suggested parameters in State Board Instructional Bulletin 91-8.

(b) The bay spacing is 70 feet; this also exceeds the parameters in State Board Instructional Bulletin 91-8.

(c) In State Board Instructional Bulletin 91-8, there are photographs of non-qualifying steel frame kit structures. The description of the steel frame retail store specifically mentions H-columns as disqualifying the building from the 50% reduction.

(d) The 3-½ foot concrete block sill wall is not a standard feature in a kit building.

(e) If the subject structure were to be assessed as a kit building, the grade would need to be adjusted to a "B" to account for the concrete block wall.

(f) The girts and purlins in the building are not the "cee" channel type discussed in State Board Instructional Bulletin 91-8; they are more of an "S" configuration. Most cee channels are 4 inches to 6 inches deep; these are between 8 inches and 12 inches deep.

(g) The building permit shows the estimated construction cost at $500,000; this is $25.48 a square foot. This is not what she would call an economical building. A low-cost building in the early 90's would be $12 to $15 per square foot, not $25 per square foot.

13. Mr. Pee testified to the following:

(a) In State Board Instructional Bulletin 91-8, it mentions that the column supports are typically circular and not H-column.

(b) The girts and purlins and the H-beam are heavier than what is typically seen in a kit building.

(c) If it is determined the warehouse and light manufacturing building is a kit building, it should be noted that the office in front is not. It is a concrete block structure and would need to be priced separately.

Conclusions of Law

1. 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. 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 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. *See also* Ind. Code § 4-21.5-2-4(a)(10) (Though the State is exempted from the Indiana Administrative Orders & 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 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 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 contingent fee agreement between the taxpayer and taxpayer representative calls into question the credibility of the testimony and certain evidence presented. Clearly, expert witnesses should not receive contingent fees. Courts agree that an expert witness whose fee is contingent upon the outcome of a case is improperly motivated and can not objectively inform the court on an issue before it. "It is the potentially adverse influence of the motivation to enhance his compensation that makes a contingent fee arrangement for an expert witness inappropriate." *City & County of Denver v. Board of Assessment,* 947 P.2d 1373, 1379 (Colo. 1997)(citing *New England Tel. & Tel. Co. v. Board of Assessors of Boston,* 392 Mass. 865, 468 N.E. 2d 263, 265 (1984)). "[A] bargain to pay compensation to an expert witness for the purpose of 'forming an opinion' is lawful 'provided that payment is not contingent on success in litigation affected by

the evidence." *Id* (citing Arthur Linton Corbin, *Corbin on Contracts,* § 1430 (1962 & Supp. 1997)). Moreover, the Uniform Standards of Professional Appraisal Practice (USPAP) state that it is "unethical" to accept compensation that is contingent upon reporting "a direction in value that favors the cause of the client . . . [or] the attainment of a desired result." *Denver,* 947 P. 2d at 1378 (citing USPAP at 2 (1996)). *See also Wirth v. State Board of Tax Commissioners,* 613 N.E. 2d 874 (Ind. Tax 1993) (The contingent fee nature of the representative's agreement goes to the weight of the testimony).

Issue No. 1 - Whether the subject structure should be assessed as an economy kit building with a "C" grade; alternatively, whether the grade should be reduced to a "D" if the current cost schedule is not changed.

19. The BOR determined that the building should be assessed using the General Commercial Industrial (GCI) schedule for office, manufacturing, and light warehouse use types. The BOR further determined that the correct grade of the building is "C". The Petitioner contended that the building qualified for a 50% reduction in the base rate because it is a pre-engineered economy kit structure. Alternatively, the Petitioner contended that the grade should be reduced to "D" if the building is priced from the GCI schedule.

20. In support of her position, Ms. Praul presented two exterior photographs and three interior photographs of the building. She testified that the structure is a steel-framed building with some concrete block at the bottom. Ms. Praul concluded that the building is pre-engineered.

21. The fact that the structure may be steel framed or steel skinned does not necessarily make the structure a pre-engineered or economical building. "Although steel skin is a characteristic of a kit building, not all steel skinned improvements qualify for the kit adjustment." *Barker v. State Board of Tax Commissioners*, 712 N.E. 2d 563, 567 (Ind. Tax 1999).

22. The factors to be considered in determining whether a building qualifies for a kit adjustment are discussed in State Board Instructional Bulletin 91-8, dated October 1, 1991.

23. In general terms, State Board Instructional Bulletin 91-8 described kit buildings as structures that are fabricated at central manufacturing facilities and shipped to the construction site ready for fast and efficient assembly. Qualifying structures include pre-engineered and pre-designed steel frame economy kit structures.

24. State Board Instructional Bulletin 91-8 further states, “The key element in identifying this low-cost economical ‘kit-type’ structure is the type of interior column and roof beam support. Understanding the correlation between cost and strength in the type of column or beam being used in the structure is essential in identifying a qualifying structure: the higher the load tolerance commands, the higher the dollar cost for the supports.

    Column and beams with heavy load tolerances do not qualify for the 50% reduction. The economy version is built to withstand minimal load tolerances; therefore, the interior column and roof beams are not designed to withstand structural load.”

25. Instructional Bulletin 91-8 also provided “clues” to identifying kit buildings. These “clues” include:
    (a) Cold form open cee channel interior walls and roof (prominent);
    (b) Tapered interior column (usually found in mixed column and beam systems). Important to verify system is low cost, lightweight steel;
    (c) H-column interior walls or intermediate support for the roof beam system in conjunction with other inexpensive columns and beams;
    (d) Steel pole, often used in conjunction with cee columns;
    (e) Sheeting for walls and roof of 26 or 28 gauge;

(f) Purlins and girders of 14 or 16 gauge;

(g) Width dimensions up to 120 feet in 10 foot increments;

(h) Vertical supports in 20,25, or 30 equal spacing, not mixed;

(i) Roof pitch 1:12 or 2:12; and

(j) "X" bracing may be in the side walls and the plane of the roof.

26. Although the type of interior column and roof beam support is defined in State Board Instructional Bulletin 91-8 as the "key element" in determining whether a building qualifies for the 50% reduction, Ms. Praul provided no probative evidence concerning these features. As discussed, Ms. Praul provided only three interior photographs of the structure. These photographs provide insufficient detail to enable a determination to be made concerning the type of interior column and roof beam support present in the building.

27. Additionally, Ms. Praul provided no probative evidence concerning the gauge of the metal walls, purlins and girders, and roof pitch.

28. Further, Ms. Praul presented no construction cost information concerning the building. Although Ms. Praul conceded that the building has some concrete block at the bottom, no measurements or cost data were provided to determine the extent of the concrete block. Absent this data, there was no showing that the concrete block was a minimal feature option of an economically built building rather than a significant addition.

29. Although the local taxing officials do not have the responsibility to make a case until the taxpayer sustains its burden of proof regarding the alleged error in assessment, the record establishes that the structure does not qualify for the kit type adjustment.

30. The local taxing officials presented an Application for Building Permit (Respondent's Exhibit 4) for the building under appeal. This document was

signed by the owner of Stoney Creek and indicated the size, use, location, owner, builder and the value of the structure. This building permit indicated that the value of the building was $500,000.

31. The local officials calculated that the construction cost of the building was $25.49 per square foot ($500,000/19,616 square feet). The reproduction cost from the property record card is $17.20 per square foot ($337,330/19,616 square feet).

32. Ms. Praul failed to explain her reasoning for concluding that a building valued at $500,000 is "economical." She further failed to explain her reasoning for concluding that a building, valued on a building permit signed by Stoney Creek's owner at approximately $160,000 more than the true tax value, has been erroneously assessed.

33. For all the reasons above, Ms. Praul has failed to establish that the building qualifies for the 50% reduction in base price described in State Board Instructional Bulletin 91-8.

34. Arguing in the alternative, Ms. Praul contended that, if the building does not qualify for the kit reduction, it should receive a "D" grade.

35. 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.*

36. "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).

37. 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 the improvement's base rate." *Clark II,* 742 N.E. 2d at 49. See also *Whitley,* 704 N.E. 2d 1113.

38. 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,* 2001 WL 422991 (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.

39. Ms. Praul presented no data to identify the cost of components and features present in the structure. Ms. Praul presented no discussion of the manner in which the components of the building deviate from the components identified in the models for office, manufacturing, and light warehouse contained in the GCI schedules. Additionally, Ms. Praul presented no comparable properties to demonstrate that the structure under appeal is receiving disparate tax treatment.

40. Ms. Praul's unsubstantiated conclusions concerning grade do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.

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.

Issue 2 – Whether the structure should be depreciated from the 30-year depreciation table.

42. The Petitioner contended that, if the subject building qualified for the kit adjustment, the depreciation table should then be changed to the 30-year life expectancy table in accordance with State Board Instructional Bulletin 91-8.

43. As discussed, Ms. Praul failed to establish that the building qualified for the kit reduction. Accordingly, Ms. Praul has failed to present probative evidence that the building should be depreciated from the 30-year life expectancy table.

44. 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.

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