

**STATE OF INDIANA
Board of Tax Review**

In the matter of the Petition for Review)
of Assessment, Form 131) Petition No. : 49-574-95-1-4-00023

Parcel No.: 5002385

Assessment Year: 1995

Petitioner: Westgate Building & Realty Inc
4350 S Madison Avenue
Indianapolis, IN 46227

Petitioner Representative: Philip C. Thrasher
Thrasher Girffith & Voelkel, P.C.
1900 Market Square Center
151 N. Delaware Street
Indianapolis, IN 46204-2505

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 land area should be 9.543 acres instead of 9.647 acres.
2. Whether the land classification breakdown is correct.

3. Whether the base rate of the laundry building is correct.
4. Whether the wall height adjustment of the laundry building is correct.
5. Whether plumbing fixtures should be assessed to the laundry building.
6. Whether the grade factor of the laundry building should be "C-2" instead of "C".
7. Whether the area and base rate for the car sheds is correct.
8. Whether the measurement of the brick wall should be 1038 linear feet instead of 2000 linear feet.
9. Whether the maintenance building should be depreciated from the 30-year life schedule and should be graded at "C-2".
10. Whether apartment building 1 is assessed correctly as to square footage, grade, and number of balconies.
11. Whether the exterior feature identified as a "portico" should be a roof extension and concrete patio and whether the open frame porch should be 1218 square feet instead of 2400 square feet.
12. Whether apartment buildings 2,3,4 and 5 are assessed correctly as to square footage, grade and number of balconies.
13. Whether apartment building 6 is assessed correctly as to number of balconies, grade, and size of the roof extension and concrete patio.

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, the Petitioner filed a petition requesting a review by the State. The Final Determination of the Marion County Board of Review was issued on June 26, 1998. The 131 Petition was filed on July 24, 1998.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on February 4, 2000 before Hearing Officer Debra Eads. Testimony and exhibits were received into

evidence. Mr. Philip C. Thrasher and Ms. Sanja Puletz represented the Petitioner. Mr. Frederick Butler represented Perry Township. No one was present to represent Marion County.

4. At the hearing, the subject Form 131 was made part of the record and labeled Board Exhibit A. The Notice of Hearing was labeled Board Exhibit B. Board Exhibit C is a letter from the Hearing Officer to Mr. Thrasher and Mr. Butler reminding them of the additional evidence that had been requested by the Hearing Officer. In addition, the following items were submitted into evidence:

Petitioner's Exhibit 1 – Cover letter detailing the Petitioners contentions

Petitioner's Exhibit 2 – Photos of the subject property

Petitioner's Exhibit 3 – Rule 11 Pages 48 and 49 from 50 IAC 2.2

Petitioner's Exhibit 4 – Survey of subject property dated 5-21-93

Petitioner's Exhibit 5 – Letter from Philip Thrasher in response to Hearing Officer request for additional information (P5 was received via the US Mail on 4-11-00)

Respondent's Exhibit 1 – Packet containing: property record card (PRC) for subject property (1995), sketches of subject building footprints, photos of subject property, plat map of subject property and aerial photo of subject property

Respondent's Exhibit 2 – PRC (1997) for subject property

Respondent's Exhibit 3 – Cover letter from Perry Township Assessor Katherine Price with additional information in response to Hearing Officer request for additional information (R3 was received via the US Mail on 4-4-00).

5. The subject property is located at 4350 S. Madison Avenue, Indianapolis, Indiana (Perry Township, Marion County).

6. The Hearing Officer did not conduct an on-site inspection of the property.

Issue 1-Parcel Size

7. Mr. Thrasher testified that following the Board of Review hearing, the Township had corrected the total land area and therefore the land area was no longer an issue.

Issue 2-Land Classification

8. Mr. Thrasher testified that a portion of the acreage located between the apartment buildings and Madison Avenue should be classified as secondary land because it is green area and cannot be used for buildings.
9. Mr. Butler and Mr. Thrasher agreed that the zoning of the subject property dictates the number of apartment units that can be built on it. Both parties agreed that the subject property contains the maximum number of units allowable by the zoning classification.

Issues 3, 4, 5 and 6-Laundry Building (Base rate, wall height, plumbing fixtures, and grade)

10. Mr. Thrasher testified that the building identified as the laundry building should be priced from the utility storage schedule rather than the general retail schedule. This change was made by the Township in 1997, but had not been changed for 1995. The survey shows the two (2) bathhouse buildings should be 800 and 870 square feet. The 1995 PRC has two (2) pools assessed when in reality, one (1) of the pools was filled in years before.

Issue 7-Car Sheds

11. Mr. Thrasher testified that the car sheds should not be priced from the car shed schedule included in the Real Property Assessment Manual because the subject

car sheds are not the type described in the model in 50 IAC 2.2. Mr. Thrasher stated, in response to questioning by Mr. Butler, the pricing he is suggesting is from the agricultural pricing schedules.

Issue 8-Masonry Wall

12. Mr. Thrasher questioned the linear feet of masonry brick wall assessed on the property. Mr. Butler testified that at the time of a 1997 field review, the amount of linear feet was re-measured and was broken down into three (3) different heights.

Issue 9-Maintenance Building

13. Mr. Thrasher testified that in his opinion the grade factor assigned to the maintenance building was excessive. Mr. Thrasher further testified that the maintenance building is constructed of concrete block that is unpainted. He provided no photographs or further evidence about the construction of the maintenance building.

Issues 10, 11, 12, and 13- Apartment Buildings

(Grade, size, exterior features)

14. Mr. Thrasher testified that the apartment buildings have electric radiant heat and not the forced air gas heat included in the apartment model description. He further testified that the buildings are air conditioned by the use of cold water being circulated into each building and dispersed by a fan coil in the ceiling of each unit. Mr. Thrasher stated that both the heating and cooling methods are more expensive and less efficient than the methods used by their competitors and not the quality of the methods included in the model for apartments in 50 IAC 2.2.

15. Mr. Thrasher testified that he questions the amount of square footage for each of the apartment buildings. His concern is due to the dimensions indicated on the survey submitted into evidence as Petitioner's Exhibit 4. Mr. Butler indicated that the Township had physically measured each building and rounded to the nearest foot. Mr. Thrasher indicated that the dimensions on the survey should be accurate and it should not be necessary to round the measurements.
16. Mr. Butler testified that the subject apartments are fully brick structures and are at least a "C" grade. He also stated that the building is graded based on the materials and workmanship of the building and that the appliances (alleged by Petitioner to be lower than average) are not included in 50 IAC 2.2 as considerations when determining the grade. He further testified that the township had applied a fair condition to the structure based on its condition.
17. In response to Mr. Butler's testimony, Mr. Thrasher testified that grade is based on the design of the structure. He further stated that materials and workmanship have more to do with condition than grade. He concurred with Mr. Butler that the apartments were "C" grade when they were constructed but he stated that designs have changed since 1965, that the manual was written for 1995 and that the subject apartments suffer when compared to buildings being built in the present time.
18. Mr. Butler testified that all changes made by the Township for the 1997 assessment date were equally applicable for the 1995 assessment date of this appeal.
19. The Petitioner and the Township were instructed by the Hearing Officer to come to an agreement about the factual issues concerning square footage and number of exterior features and to communicate that information to the Hearing Officer.
20. Neither the Petitioner nor the Township responded to the Hearing Officer in the specified amount of time. The Hearing Officer sent a letter (Board's Exhibit C) to

both parties requesting responses to the factual questions concerning square footages and exterior feature classifications and size. Those responses are included herein as Petitioner's Exhibit 5 and Respondent's Exhibit 3.

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.

D. Issue 1-Parcel Size

18. In 1997, as a result of the Form 130 petition, the Township inspected the subject property and changed the land area to the amount requested by the Petitioner. Accordingly, a change is made to the 1995 assessment as a result of this issue.

E. Issue 2-Land Classification

19. 50 IAC 2.2-4-17(b) states: "There are four (4) categories of commercial and industrial land. Those categories are primary, secondary, usable undeveloped, and unusable undeveloped. The amount of acreage necessary to support the existing facility and its purposes is classified as primary. The acreage that is used in the enterprise, but not on a regular basis is, classified as secondary. The amount of acreage that is vacant and held for future development is classified as usable undeveloped land. The amount of acreage that is unusable for commercial or industrial purposes, and not used for agricultural purposes, is classified as unusable undeveloped. Normally, large acreage tracts are partitioned to indicate the various uses of the individual tract. Small acreage

tracts of one (1) acre or less are often utilized as a primary building site and require the primary land classification.”

20. Both the Petitioner and the Township agreed in testimony that the number of units built on the subject property is the maximum number of units allowable by the zoning of the subject property. The green area the Petitioner is requesting to be priced as secondary is necessary support land. Necessary support land is classified as primary land.
21. For the above reasons, the Petitioner did not meet his burden in this appeal. Accordingly, there is no change in the assessment as a result of this issue.

F. Issues 3, 4, 5 and 6-Laundry Building (Base rate , wall height, plumbing fixtures, and grade)

22. In 1997, as a result of the Form 130 petition, the Township inspected the subject property. The Township reclassified the laundry building as utility storage instead of general retail. That classification is the change sought by the Petitioner in this 1995 appeal. Accordingly, a change in usage is made as a result of the base rate issue.
23. As a result of the 1997 inspection, the Township made no change to the wall height of the laundry building. The Petitioner presented no evidence at the hearing regarding the wall height. No change is made as a result of this issue.
24. Based on their 1997 inspection, the Township also removed the pricing for the four (4) plumbing fixtures located in this structure. Accordingly, a change is made in the 1995 assessment as a result of this issue.
23. "Grade" means the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.

24. Grade is used in the cost approach to account for the deviations from the norm or "C" grade. The quality and design of a building are the most significant variables in establishing grade.
25. Subjectivity is used in grading property. For assessing officials and taxpayers alike, however, the Manual provides indicators for establishing grade. The text of the Manual (see 50 IAC 2.2-10-3) and graded photographs (50 IAC 2.2-11-4.1) provide guides for establishing grade.
26. The Petitioner sought a reduction in the grade factor of the laundry building. No evidence to support this change was made by the Petitioner with the exception of the mere allegation that the grade was excessive. Therefore, the Petitioner failed to meet the burden of proof with regard to this issue. No change is made to the assessment as a result of the grade issue.

G. Issue 7- Car Sheds

27. The Petitioner sought a change in square footage, base rate and depreciation for the car sheds. The Petitioner requests that the car sheds be priced from the industrial canopy schedule and depreciated from the 20-year life schedule.
28. The Petitioner did not present any evidence, beyond a few photographs, indicating why the industrial canopy schedule would be more appropriate for the subject.
29. The Petitioner did not present any evidence of comparable properties to show similar car sheds priced from the industrial canopy schedule. For these reasons, the Petitioner did not meet its burden in this appeal. Accordingly, there is no change in the assessment as a result of this issue.

30. The Petitioner and the Respondent should have addressed the question of square footage in their additional information letters. Neither party addressed the square footage of the car sheds. The PRC indicates that the car sheds are the same length as the buildings. These measurements seem reasonable and are undisputed by the Petitioner. Therefore a change is made to the assessment as a result of the car shed issues.

H. Issue 8-Brick Walls

31. The letter from the Petitioner dated April 11, 2000 stipulates to the linear feet of brick walls as listed on the PRC. A change is made to the assessment as a result of this issue.

I. Issue 9-Maintenance Building

32. The Petitioner contends that the grade factor of the maintenance building is excessive. The only evidence presented was the allegation that the building is plain and unattractive. No supporting evidence was presented. The mere allegation of an incorrect grade is insufficient to support a change in the grade factor. The Petitioner failed to meet the burden on the grade issue; therefore, no change is made to the assessment of the maintenance building as a result.
31. The Petitioner requested a change in the depreciation of the maintenance building. The building is fire-resistant and therefore has been appropriately depreciated using the 40-year life schedule. No change is made to the assessment as a result of the maintenance building depreciation issue.

J. Issues 10, 11, 12, and 13- Apartment Buildings

(Grade, size, exterior features)

32. The issues concerning the apartment buildings are with regard to square footage, grade factor and exterior features. The Petitioner's letter dated April 11, 2000

stipulates to the number and classification of exterior features. The square footage question, which the Petitioner and the Township were unwilling or unable to reconcile, seems to concern the rounding of measurements to the whole foot by the Township. The measurements for the individual buildings as reflected on the Township's PRC are in agreement with the dimensions reflected on the Petitioner's survey (rounded to the nearest foot). The practice of rounding to the nearest foot is universal in the assessment community and should therefore come as no surprise to the Petitioner. The difference in square footage sought by the Petitioner and the amount determined by the Township is less than .1% for each building. Disputed differences that small could easily be the result of the rounding of measurements. A change is made to the assessment as a result of the stipulation regarding the number and classification of exterior features.

33. The Petitioner contends that the grade factor of the apartment buildings is excessive. The evidence presented by the Petitioner dealt primarily with the out-dated appliances and the heating and cooling system. The Township correctly stated that the appliances are not a factor in the establishment of the grade. While the heating and cooling system may be different from the system identified in the apartment model, the Petitioner made no effort to quantify the value of the difference between the two systems. The only other evidence submitted was the mere allegation by the Petitioner that the grade factor is excessive. The Petitioner did not submit any evidence that similar properties were assessed differently. Without supporting evidence, an allegation is insufficient to necessitate a change in the established grade factor. For these reasons, the Petitioner failed to meet the burden on the grade issue. No change is made to the assessment of the apartment buildings as a result of this issue.

K. Other Findings

34. The Petitioner testified that two (2) pools were assessed in 1995 when only one (1) pool existed at that time. This issue was not listed on the Form 131 petition, but was shown on the Form 130 petition. The Petitioner stated in his brief that the

pool had been filled in previous to the 1995 assessment. The Township removed one pool from the assessment and applied 25% obsolescence to the other pool after a field inspection as noted in Respondent's Exhibit 3, which states that this action was taken as a result of the Form 130 petition. A change is made as a result of this issue.

35. As a result of the November 1997 field inspection, the Township made several changes to the assessment of the subject. These changes were submitted as evidence at the State Board administrative hearing and are included on the revised PRC.

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