

**STATE OF INDIANA
Board of Tax Review**

THE DUTCH CORPORATION)	On Appeal from the Elkhart County Property
)	Tax Assessment Board of Appeals
Petitioner,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition No. 20-034-01-1-4-00001
)	Parcel No. 11-08-09-451-006
ELKHART COUNTY PROPERTY TAX)	
ASSESSMENT BOARD OF APPEALS)	
and MIDDLEBURY TOWNSHIP)	
ASSESSOR)	
)	
Respondents.)	

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

Whether the grade of the improvement is correct.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. The property that is the subject of this appeal is located at 13489 County Road 16, Middlebury, Indiana (Middlebury Township, Elkhart County). The tax year under appeal is 2001.
3. Pursuant to Ind. Code § 6-1.1-15-3, DeWald Property Tax Services, on behalf of The Dutch Corporation, filed a petition requesting a review. The Form 131 was filed on September 17, 2001. The Property Tax Assessment Board of Appeals' (PTABOA) Final Determination was mailed on August 14, 2001. *Board Ex. A*
4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on December 18, 2001 before Hearing Officer Joseph Stanford. Testimony and exhibits were received into evidence. Edwin K. DeWald of DeWald Property Tax Services represented the Petitioner. Cathy Searcy, Recording Secretary, represented the PTABOA. Veronica Williams, County Deputy, and R. Eugene Inbody, County Assessor, represented Middlebury Township.
5. 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 was labeled Board Ex. B. In addition, the following items were received into evidence:
 - Petitioner's Ex. 1 – Subject property record card.
 - Petitioner's Ex. 2 – "C" grade model comparison.
 - Petitioner's Ex. 3 – Photographs of subject property.
 - Petitioner's Ex. 4 – Schedule of comparable properties and grades.
 - Petitioner's Ex. 5 – Photographs of comparable properties.
 - Petitioner's Ex. 6 – Property record cards of comparable properties.
 - Petitioner's Ex. 7 – Grade calculation using comparable property grades.
 - Petitioner's Ex. 8 – Tax Representative Disclosure Statement.
 - Petitioner's Ex. 9 – Copy of the Procedural Rules.
 - Respondent's Ex. 1 – Copy of Form 130, Form 115, and PTABOA Findings.
 - Respondent's Ex. 2 – Written response to appeal.

Respondent's Ex. 3 – Letter in response to Petitioner's Ex. 9.

6. Subsequent to the hearing additional evidence was submitted by both the Petitioner and Respondent. The Petitioner submitted a copy of the procedural rules applicable to filing additional evidence with the Form 131 petition (Petitioner's Ex. 9). The PTABOA filed a written response to this evidence (Respondent's Ex. 3).
7. The assessed value under appeal is \$15,500 (land) and \$109,500 (improvements). The Hearing Officer did not view the property.

Whether the grade is correct

8. The Petitioner operates a gift and craft shop on the subject property, doing business as Gift For A Friend. *Board Ex. A.*
9. Currently, the improvement is graded "C+2." Mr. DeWald contends that the property receives disparate treatment, both within the county and within the state, and should be graded "D+1."
10. Mr. DeWald describes the property as having "barn-type" construction. He contends that the subject, in several areas, has lower reproduction cost than the GCM Retail model calls for. *Pet. Ex. 2.* Examples of differences between the subject and model, according to Mr. DeWald, are in the foundation, exterior and interior walls, ceiling, partitions, and HVAC. Mr. DeWald also notes that the floor is of higher cost than the model specifies.
11. Mr. DeWald also submitted an analysis of "Amish-style construction" properties that he deemed to be comparable to the subject. *Pet. Ex. 4-7.* His calculation of grade, using a weighted average of the comparable properties, results in a grade of "D." Mr. DeWald raised the grade to "D+1" due to the presence of wood trim in the subject.

12. The local officials point to items in the subject such as a wood deck ceiling with exposed beams, oak flooring, barn siding interior, some brick flooring, and vinyl wall covering, which are above model specifications, as justification for a grade of “C+2.” *Resp. Ex. 2, Williams Testimony.*
13. Both parties agree that the subject property is unique, and there are no comparable photographs in the manual to use for guidance.
14. The PTABOA objected to all evidence and testimony submitted by Mr. DeWald. Mr. DeWald did not appear at the PTABOA hearing on this matter, and therefore submitted no testimony and evidence. Mr. DeWald contends that 50 IAC 17-7-1 allows a petitioner to submit additional evidence within 30 days after the filing of the Form 131 petition. Mr. DeWald attached the additional evidence to the petition itself. The PTABOA contends, however, that Mr. DeWald filed the petition only to the County Assessor, and therefore failed to serve copies of the additional evidence on the PTABOA and the Township Assessor, as required by 50 IAC 17-7-1.

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. Whether the Petitioner's evidence should be considered by the State Board

18. The PTABOA objected to all evidence and testimony submitted by Mr. DeWald. Mr. DeWald did not appear at the PTABOA hearing on this matter, and therefore submitted no testimony and evidence. Mr. DeWald contends that 50 IAC 17-7-1

allows a petitioner to submit additional evidence within 30 days after the filing of the Form 131 petition. Mr. DeWald attached the additional evidence to the petition itself. The PTABOA contends, however, that Mr. DeWald filed the petition only to the County Assessor, and therefore failed to serve copies of the additional evidence on the PTABOA and the Township Assessor, as required by 50 IAC 17-7-1.

19. Mr. DeWald filed the Form 131 petition and additional evidence with the County Assessor. In this case, in doing so Mr. DeWald also effectively filed his petition with the Elkhart County PTABOA, since the County Assessor is the Secretary of the PTABOA. The PTABOA therefore knew of the additional evidence at the time of the filing of the petition.
20. While Mr. DeWald failed to serve copies of the evidence on the Middlebury Township Assessor, it is noted that the Township Assessor did not appear at this hearing. In this case, the Township Assessor was represented by the County Assessor and a deputy from the County Assessor's office. Thus, the Middlebury Township Assessor was not put at any disadvantage by not receiving a copy of the evidence. Again, the County Assessor's office received copies of the additional evidence with the petition.
21. While Mr. DeWald may have been deficient in his filing of the additional evidence, the deficiency, in this particular case, did not disadvantage any party to this hearing. Mr. DeWald filed additional evidence with the Form 131 petition, and all parties present at the hearing are employed in the office where evidence was filed. For this reason, the State Board will consider the evidence submitted by Mr. DeWald.

E. Whether the grade is correct

22. Pursuant to the State's Regulation (50 IAC 2.2), 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.

23. 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 50 IAC 2.2-11.
24. The State's 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 50 IAC 2.2-11-6 (Schedules A through E).
25. The pricing schedules in the State's Regulation reflect the "C" grade standards of quality and design unless otherwise stated. 50 IAC 2.2-10-3(b). Grade is used to account for deviations from the norm or "C" grade. The quality and design of a building are the most significant variables in establishing grade. 50 IAC 2.2-10-3(a). 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 State's Regulation and the building being assessed.
26. The Tax Court invalidated subjective elements of the State's Regulation, e.g., grade, holding that the State's 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 (Ind. Tax 2001).
27. 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*.

28. 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*, 704 N.E. 2d 1113.
29. "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*, 747 N.E. 2d 88, 94 (Ind. Tax 2001).
30. 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.
31. 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, 953 (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.
32. While the Petitioner's evidence identifies certain differences between the subject and the GCM General Retail model, the evidence does not quantify the

differences listed. In addition, many of the items that are listed appear to be accounted for already in the base rate. The burden is placed on the Petitioner to quantify the differences between the subject and the model, and calculate the new base rate.

33. The Petitioner's evidence identifies differences between the subject and the model. While Mr. DeWald points out areas where the subject is inferior to the model, the local officials provided unchallenged testimony and evidence that the subject is, in several areas, superior to the model. Mr. DeWald failed to account for items such as wood deck ceilings, oak flooring, barn siding interior, brick flooring, and vinyl wall covering in his analysis.
34. Finally, the Petitioner uses properties that it deems comparable to the subject to perform a weighted average calculation of the grade. *Pet. Ex. 7*. Mr. DeWald, however, failed to show that these properties are actually comparable to the subject. The Petitioner is required to present probative evidence to show that the purported comparables are in fact comparable to the subject property.
35. For the reasons set forth, the Petitioner has failed to meet its burden that the grade is incorrect, and has also failed to show that a change in the base rate should be made. Thus, 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