

**STATE OF INDIANA**  
**Board of Tax Review**

In the matter of the Petition for Review )  
of Assessment, Form 131 ) Petition No. 49-500-95-1-4-00009

Parcel No. 5026730

Assessment Year: 1995

Petitioner: Indiana Bell Telephone Company  
30 S. Wacker Drive  
Suite 3600  
Chicago, IL 60606

Taxpayer Representative: Michael Caron  
DuCharme, McMillen, & Associates  
8275 Allison Pointe Trail  
Indianapolis, IN 46250

**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 building should be priced using the GCK schedule.
2. Whether the grade is correct.
3. Whether the subject is depreciated using the correct schedule.

## 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, Michael Caron of DuCharme, McMillen and Associates, on behalf of Indiana Bell Telephone Company (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 was filed on June 24, 1998. The Marion County Board of Review's (County Board) Assessment Determination is dated June 26, 1998.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on February 2, 1999, before Hearing Officer Jennifer Yochum. Testimony and exhibits were received into evidence. Michael Caron represented the Petitioner. Kathy Price and Fred Butler represented the township. No one was present to represent the County Assessor or the County Board.
4. At the hearing, the subject Form 131 petition was made part of the record and labeled Board Exhibit A. The Notice of Hearing was labeled as Board Exhibit B. In addition, the following exhibits were submitted to the State Board:

Petitioner Exhibit 1 - Photographs of the subject property.

Petitioner Exhibit 2 - An addendum to Form 131 RP.

Respondent Exhibit 1 - A stapled packet including a copy of the 1995 BOR property record card (PRC), an aerial photo of the subject, and a plat map of the subject property.

5. The subject property is located at 650 East Hanna Avenue, Indianapolis, Indiana, Marion County, Perry Township.
6. The Hearing Officer viewed the subject property on February 17, 1999.

**Issue No. 1 - Whether the subject building should be priced  
using the GCK schedule**

7. Mr. Caron contends that the building is a pre-engineered, metal skinned structure, and that the proper schedule to price this building is the GCK schedule.
8. The Petitioner describes the subject building as a one-story metal building, basically rectangular in shape, with very minimal architectural treatment (Pet. Exhibit 1).
9. The Petitioner also submitted photographs of the subject, showing a metal exterior. The photos show overhead doors, and a stone face front on the building. (Pet. Exhibit 2).
10. Ms. Price argues that the township has priced this building fairly and equitably. She opines that the building does not qualify for GCK Schedule pricing.
11. An inspection of the subject found that the building is metal with stone on the front, I-beam construction with overhead doors, and a 4' concrete back up wall. The section classified as GCM Office is enclosed with painted concrete block walls.

## **Issue No. 2 - Whether the grade is correct**

12. Mr. Caron testified that the subject is a one story metal building. He stated the building is rectangular in shape, with very little architectural treatment. He describes the interior finish in the section valued as office as having standard acoustical ceiling tile in suspension grid with recessed fluorescent lighting fixtures. The wall finish is painted concrete block. Floors are finished with vinyl tile. (Pet. Exhibits 1 and 2). The Hearing Officer inspection confirmed this description. In his opinion, there are no design considerations that would add to the value.
13. Ms. Price contends that the grade and design factor applied by the township is adequate to describe the subject, and the grade should remain "C".

## **Issue No. 3 - Whether the subject is depreciated using the correct schedule**

14. Mr. Caron opines that the subject is a light pre-engineered style of building and physical depreciation should therefore be taken from the 30-year life schedule for light pre-engineered buildings.
15. Ms. Price disagrees that the subject is a light pre-engineered building, and contends that the building is correctly priced from the 40-year life schedule.

## **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.



**Issue No. 1 - Whether the subject building should be priced  
using the GCK schedule**

18. 50 IAC 2.2-10-6.1(1)(D) states "General Commercial Kit" (referred to as "GCK") does not include use type descriptions. This schedule is utilized for valuing pre-engineered and pre-designed pole buildings that are used for commercial and industrial purposes. A format has been developed to value the base building on a perimeter area ratio basis and adjust the value based on the various individual components of the building. "Buildings classified as a special purpose design are not valued using the GCK pricing schedule."
19. Petitioner concludes that the subject building should be valued using the GCK schedule rather than the GCM schedule.
20. The State Board will not find that the building should be priced from the GCK schedule just because the Petitioner says so. Again, the Petitioner bears the responsibility of presenting probative evidence in order to establish a prima facie case. In order to establish a prima facie case, the Petitioner must present evidence sufficient to establish a given fact that if not contradicted will remain fact.
21. The Petitioner failed to provide basic relevant information concerning this building, such as the gauge of the metal walls and girts and purlins. In addition, analysis of the Petitioner's evidence and the inspection of the property appear to show that the exterior walls and roof are not of GCK schedule specifications.
22. Therefore, after inspection of the property, in consideration of the Petitioner's issue, evidence and testimony, consideration of the Respondent's statement and evidence, and in consideration of 50 IAC 2.2-10, it is determined the structure shall remain priced using the GCM schedule for this General Office and Light Utility Storage facility. There is no change in the assessment as a result of this issue.

## **Issue No. 2 - Whether the grade is correct**

23. “Grade” is defined as the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.
24. “D” grade buildings are constructed with economy materials and fair workmanship. These buildings are devoid of architectural treatment and have a substandard quality interior finish with minimal built-in features, substandard quality electrical and plumbing fixtures, and a substandard quality heating system.
25. “Design factor” means a factor or multiplier applied to a computed reproduction cost as an adjustment to account for cost variations attributable to the particular design of the subject property which were not accounted for in the particular pricing schedule used. 50 IAC 2.2-1-22.
26. “Grade factor” means a factor or multiplier applied to a base grade level for the purpose of interpolating between grades or establishing an intermediate grade. 50 IAC 2.2-1-31.
27. Subjectivity is used in grading property. For assessing officials and taxpayers alike, however, the Regulation provides indicators for establishing grade. The text of the Regulation (see 50 IAC 2.2-10-3(a)) and 50 IAC 2.2-10(b), and commercial and industrial models (see 50 IAC 2.2-11-1 and 50 IAC 2.2-11-2 and 50 IAC 2.2-11-3) and graded photographs (50 IAC 2.2-11-4.1) all provide guides for establishing grade.
28. The approach to valuing commercial and industrial structures is primarily found in the State Board’s Regulation, 50 IAC 2.2-10. The approach to valuing commercial and industrial structures is the application and selection of various

models to represent typical types of construction that best represents the structure being assessed. “The model is a conceptual tool used to replicate reproduction costs of given structure using typical construction materials.” 50 IAC 2.2-10-6.1. The construction components for each use type model are included in 50 IAC 2.2-11. When necessary, adjustments to the base price are made from Schedule C. A guide for selecting the correct model is included in 50 IAC 2.2-11. The model assumes that there are certain elements of construction defined as specifications. These specifications create an average or C grade structure. *Id.*

29. The Petitioner contends the grade of the subject should be lowered from “C” to “D.”
30. Again, the taxpayer’s burden in the State Board’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 the case at bar, the taxpayer has failed to meet either prong of its burden concerning the issue of grade. While the taxpayer summarily concludes that the grade should be “D”, the record lacks an analysis or explanation of how the taxpayer arrived at its requested grade.
31. Instead, it appears that the taxpayer has relied on the State Board’s Hearing Officer to make its case via the property inspection. To repeat, however, the State Board’s role in this appeal is as an impartial adjudicator. It is not the State Board’s role to make a case for the taxpayer.
32. For the reasons set forth, the Petitioner has clearly failed to meet its burden of proof that the grade of the subject building is in error. Therefore, the grade applied by the County Board is sustained, and there is no change in the assessment as a result of this issue.

### **Issue No. 3 - Whether the subject is depreciated using the correct schedule**

33. 50 IAC 2.2-10-7(c) Physical Depreciation is determined by the combination of age and condition. Each type of building has a life expectancy that is determined by the building components and the use of the building. By applying these factors, the correct physical depreciation can be applied to the building. The following tables are used to depreciate commercial and industrial buildings:

- (1) The thirty (30) year life expectancy table.
- (2) The forty (40) year life expectancy table.
- (3) The fifty (50) year life expectancy table.
- (4) The sixty (60) year life expectancy table.

(d) Physical depreciation on a commercial and industrial building is a combination of age and condition. To apply physical depreciation, the assessor must select the correct life expectancy table and identify the condition and age of the building. This provides a percentage factor for physical depreciation.

34. The Petitioner contends the subject building should be depreciated using the 30-year life table, versus using the 40-year life table.

35. The Petitioner submits as evidence a brief stating that the building is a light pre-engineered building, and physical depreciation should be taken from the 30-year life schedule.

36. For reasons previously stated (See Conclusions of Law 18-22), the Petitioner has failed to show that the subject building is a light pre-engineered building that should be priced from the GCK schedule. Thus, the Petitioner has failed to prove that the building should be depreciated from the 30-year life schedule.

37. For these reasons, 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.

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Chairman, Indiana Board of Tax Review