

REPRESENTATIVES FOR PETITIONER: George Spenos, Geeslin & Associates

REPRESENTATIVES FOR RESPONDENT: Lori Harmon, Hamilton County Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

PHOENIX MUTUAL,)	Petition Nos.: 29-018-95-1-4-00689
)	29-018-97-1-4-00039
Petitioner,)	
)	Parcel No.: 16-13-11-00-00-012.000
v.)	
)	County: Hamilton
CLAY TOWNSHIP ASSESSOR,)	
)	Township: Clay
Respondent.)	Assessment Year: 1995; 1997

Appeal from the Final Determination of
Hamilton County Board of Review

August 5, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Findings of Fact and Conclusions of Law

1. The issues presented to the Board were:
Issue 1 - *Whether the grade should be 'B' rather than 'B+2.'*
Issue 2 - *Whether the land classification is incorrect.*
Issue 3 - *Whether the primary base rate should be \$200,000 per acre.*

2. Pursuant to Ind. Code § 6-1.1-15-3, Geeslin and Associates filed a Form 131 petition on behalf of Phoenix Mutual for 1995 and 1997 petitioning the Board to conduct an administrative review of the above petition. The Form 131 petition was filed on May 23, 1997 and amended on October 15, 1998 for the 1995 appeal. The Form 131 petition was filed on February 22, 1999 for the 1997 appeal. The Hamilton County Board of Review (BOR) issued its determination on April 19, 1997 for the 1995 petition. The BOR issued its determination on January 22, 1999 for the 1997 petition.

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on July 14, 2000 before Hearing Officer Debra Eads. The Petitioner signed a waiver of 10 day notice for hearing on the 1997 petition. This waiver is made part of the record as Board Item C.

4. The following persons were present at the hearing:
For the Petitioner: George Spenos, Geeslin & Associates
For the Respondent: Lori Harmon, Hamilton County Deputy Assessor.

5. The following persons were sworn in as witnesses and presented testimony:
For the Petitioner: George Spenos, Geeslin & Associates
For the Respondent: Lori Harmon, Hamilton County.

6. The following documents were submitted at the administrative hearing:
For the Petitioner:

Petitioner's Exhibit 1 including:

- 1 - Aerial photo of subject area
- 2 - Subject area zoning map
- 3 - Carmel Clay Land Use Regulations Pages 61-65
- 4 - Carmel Clay Land Use Regulations Pages 66-69
- 5 - Parking and Loading Regulations Pages 173-187
- 6 - Zoning Ordinance Page 17
- 7 - 50 IAC 2.2 Rule 4 Page 3
- 8 - Comparables of subject property
- 9 - Petitioner's Land Analysis
- 10 - Subject location plat with county comments
- 11 - Property record card (PRC) for adjoining parcel 16-13-11-00-00-036.000
- 12 - Land Analysis of Petitioner's Comparables
- 13 - PRCs for properties in Exhibit 12
- 14 - Correlation of land comparables
- 15-19 – PRC of parcels used in land correlation
- 20- 50 IAC 2.2 Rule 4, Page 22
- 21 - PRC from STB Final Determination for subject property for March 1, 1989
- 21A-21F – Petitioner's grade information
- 22 - 50 IAC 2.2 Rule 10, Pages 16-23
- 23 - 50 IAC 2.2 Rule 11, Pages 107-107
- 24 - Petitioner's analysis of General Office base rates

Petitioner's Exhibit 2 – Letter to Hearing Officer in response to Respondent's testimony at the hearing (received by the Hearing Officer 7-26-00)

Petitioner's Exhibit 3 – Videotape of the subject property – both interior and exterior, viewed at the hearing and submitted by mail to the Hearing Officer on 7-26-00

Respondent's Exhibit 1 – Text in support of Respondent Contentions and

1 – Subject PRC or 1995

2 – Subject PRC for 1997

3 – Page 12 of 20 of Hamilton County Land Order

4a,b, c – Sales info used to determine land order values

5 – Aerial photo of subject (100 scale)

7. The following additional items are officially recognized as part of the record of proceedings:

Board Item A-Form 131 petition for both 1995 and 1997

Board Item B- Notice of hearing for 1995 petition.

Board Item C–Waiver of Notice of Hearing for 1997 petition.

8. The following matters or facts were stipulated and agreed to by the parties:

Issue 2- *Whether the land classification is incorrect.*

The parties agreed that in 1997 .378 acres were reclassified from primary to unusable undeveloped. The parties also agreed that the same change should be made to the 1995 assessment.

9. The subject property is an office building located at 10333 N. Meridian St., Indianapolis. The assessment years under appeal are 1995 and 1997 and the assessed value as determined by the Hamilton County BOR for 1995 is:

Assessed value: Land: \$578,000 Improvements: \$1,707,900

The assessed value as determined by the Hamilton County BOR for 1997 is:

Assessed value: Land: \$546,570 Improvements: \$1,707,900

Jurisdictional Framework

10. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including

all case law pertaining to property tax assessment or matters of administrative law and process.

11. The Board is authorized to issue this final determination of corrected assessment pursuant to Indiana Code § 6-1.1-15-8.

Indiana's Property Tax System

12. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.

State Review and Petitioner's Burden

13. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
14. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax. 1998), and *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
15. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Board of Tax Commissioners*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]

16. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
17. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.* 743 N.E. 2d 247, 253 (Ind. Tax 2001), and *Blackbird Farms Apartments, LP v. Department of Local Government Finance* 765 N.E. 2d 711 (Ind. Tax, 2002).
18. The Board will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case' and, by a 'preponderance of the evidence' proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the Board (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the Board that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of the Issues

Issue 1: Whether the grade should be 'B' rather than 'B+2.'

19. The Petitioner contends that the grade of the subject building should be 'B.'

20. The applicable rules and case law governing this issue are:

50 IAC 2.2- 1-30

Grade means the classification of an improvement based on certain construction specifications and quality of materials and workmanship.

50 IAC 2.2-1-31

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 2.2-10-3

Grade is used in the cost approach 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 2.1-10-3(a)(3)

'C' grade buildings are moderately attractive and constructed with average quality materials and workmanship. These buildings have minimal to moderate architectural treatment and conform with the base specifications used to develop the pricing schedules.

They have an average quality interior finish with adequate built-ins, standard quality features, and mechanical features.

Mahan v. State Board of Tax Commissioners, 622 N.E. 2d 1058, 1064 (Ind. Tax 1993) The determination of the proper grade requires assessors to make a variety of subjective judgments regarding variations in the quality of materials and workmanship and the quality of style and design.

50 IAC 2.2-11-4.1

Photographs serving as examples of graded properties.

Ronald D. Clark d/b/a The Arches v. Department of Local Government Finance, 779 N.E.2d 1277 (Ind. Tax 2002)

Requires the Petitioner, to prevail in a grade challenge, to prove the current grade as assigned by the local assessing official is incorrect and for the Petitioner to prove what the proper grade should be.

21. Evidence and testimony considered particularly relevant to this determination include the following:
 - (a) A Board determination for the 1989 assessment year shows that a ‘B’ grade was applied to the subject improvement. Comparison with the GCM – General Office model illustrates that the subject has features that fall predominately in the ‘C’ and ‘B’ range. Quantification of the grade results in a ‘C+2’ grade. *Spenos testimony. Petitioner’s Exhibit 1 (21-24).*
 - (b) The videotape shows the parking, green areas of the land, and the interior common areas of the subject. *Petitioner’s Exhibit 3.*
 - (c) The subject improvement has superior architectural design including rounded corners, multiple building “cuts” and an excessive amount of glass exterior walls. The videotape fails to give a complete view of the subject building. *Harmon testimony.*
 - (d) The “sister” property of the subject located adjacent to the subject reflects a B+2” grade, which the State applied as a result of a 1995 appeal. *Harmon testimony. Respondent’s Exhibit 1 (7-9).*
 - (e) The buildings are not comparable due to the superior atrium on the “sister” building; however, the materials used are comparable. Furthermore, the “sister” property has been appealed to the Indiana Tax Court. *Spenos testimony.*

Analysis of Issue 1

22. The Petitioner's contention of grade hinges on the videotape of the subject property, the 1989 State Board determination, and a grade calculation.
23. The videotape of the subject improvement was extremely limited in scope. No attempt was made to show the degree of finish in the individual tenant spaces and no attempt was made to illustrate the extremely irregular shape/architectural design.
24. The 1989 State Board determination establishes the improvement was graded 'B' in 1989. It is only the opinion of the Petitioner that the grade should be the same for 1995. No explanation was given regarding how this determination relates to the 1995 assessment. Furthermore, each tax year stands alone. *Glass Wholesalers, Inc. v. State Board of Tax Commissioners*, 568 N.E. 2d 1116, 1124 (Ind. Tax Ct. 1991). Consequently, property is to be assessed separately and distinctly each year.
25. In the grade calculation, the Petitioner gives equal weight to the building components, considering foundation and wall costs as equivalent to the cost of carpeting or lighting. The Petitioner gives no explanation why he has decided that the features he classifies as 'A' and 'B' features are, in fact, 'A' and 'B' features. The Petitioner has not included features of the structure not listed in the model, such as the quality of interior components, e.g. doors and plumbing. In short, the Petitioner's calculation of grade is inadequate.
26. The testimony of the Respondent indicated that the adjacent building (with the same ownership as the subject) is comparable to the subject and therefore should reflect the same 'B+2' grade that has been applied to the "sister" property. In fact, the Petitioner agreed that both buildings were comparable, with the exception of the atrium area.

27. The Petitioner’s statement that the grade of the “sister” property is under appeal to the Indiana Tax Court has no bearing on the determination to be made in this appeal.
28. For all the reasons above, the Petitioner failed to meet the burden on the grade and design issue. Accordingly, no change is made to the assessment.

Issue 2- Whether the land classification is incorrect.

29. The parties agreed that .378 acres should be changed from “primary” to “unusable undeveloped” for 1995 to mirror a change made with the 1997 assessment.

Issue 3 - Whether the primary base rate should be \$200,000 per acre.

30. The Petitioner contends that the base rate of the subject is overstated when compared to other properties in the immediate area.
31. The Respondent contends that the base rate falls within the range established by the Hamilton County Land Order.
32. The applicable rules and case law governing this issue are:

50 IAC 2.2-4-4

The commission shall use plat maps or recorded plats to establish land value maps for the county.

The commission shall collect sales data and land value estimates from licensed real estate brokers and record this information on the maps.

From the information, the commission shall delineate general geographic areas, subdivisions, or neighborhoods based on characteristics that distinguish a particular area from the surrounding areas. The bases for delineation are such things as the following:

- (1) Range of improvement values
- (2) Zoning
- (3) Restrictions on and use
- (4) Natural geographic features, such as waterways, lakes, major roads, or streets.

Precedent v. State Board of Tax Commissioners, 659 N. E. 2d 701 (Ind. Tax 1995)

Assessing officials have the discretion to assess commercial land within a prescribed range of values.

33. Evidence and testimony considered particularly relevant to this determination include the following:
- (a) Numerous property record cards show a range of land base rates; the base rate of the subject property is overstated when compared to other properties in the immediate area. The base rate of the subject should be \$200,000, not \$250,000. *Spenos Testimony. Petitioner's Exhibit 1 (8-20)*
 - (b) The application of primary base rates along North Meridian Street lacks uniformity. Parcels across from the subject with superior zoning, B-6, have a primary base rate of \$220,000, which is \$30,000 per acre less than the subject. *Petitioner's Exhibit 1, 14-18.*
 - (c) The base land rate assigned by the County falls well within the range (\$130,700 to \$330,000) established by the Hamilton County Land Commission. Three (3) raw land sales support the development of the land rates. The base rates established for the Meridian Street corridor as indicated on the Hamilton County Land Order decrease as you go further north. *Harmon Testimony. Respondent's Exhibit 1(3, 4a, 4b and 4c).*

Analysis of Issue 3

34. The evidence submitted by the Petitioner clearly supports the land base rate established by Hamilton County.
35. The properties immediately surrounding the subject property all show a primary land base rate of \$250,000 for the parcels of comparable size, frontage on Meridian Street and location in the same block as the subject property.

36. According to the maps and the property addresses shown on the property record cards, the parcels that have a primary land base rate of \$220,000 are located in the same block as the subject with an adjustment for size, the parcels that have a primary base rate of \$200,000 are located in the block to the north of the subject, those properties with a primary base rate of \$180,000 do not have frontage on Meridian Street and those properties that are classified as “useable undeveloped” have the appropriate proportion of the “primary” land base rate assigned to the area in which they are located.
37. The Petitioner claims a lack of uniformity, but the evidence presented clearly negates that claim. For instance, the exhibits show that properties zoned B-6 are valued at \$180,000 per acre primary land. The Petitioner claims that this zoning is superior to the subject, but the subject’s location is somewhat better. The subject location has direct access to Meridian Street; all road access for B-6 properties must come from an existing secondary street specifically constructed for that purpose.
38. The Petitioner presents a land analysis of comparables to show that the value of the subject is overstated, but bases the calculation on average per acre values, which fails to account for the differences in the parcels’ land classifications.
39. That same land analysis lists fifteen (15) properties; twelve of those properties are valued at \$250,000 per acre primary land, the same as the subject.
40. The Petitioner has not proven that land assessment is inequitable or in conflict with the Hamilton County Land Valuation Order.
41. For all the reasons above, the Petitioner failed to meet the burden concerning the land base rate issue. Accordingly, no change is made to the assessment.

Other Matters Addressed at Hearing

42. Mr. Spenos submitted information concerning the pricing of a roof adjustment, though this was not an issue on the Form 131 Petition.
43. Ms. Harmon however agreed that the obsolescence applied to the entire building should also be applied to the roof adjustment as merely a correctable error with no other change in the pricing.
44. Mr. Spenos requested two (2) weeks to respond to the evidence submitted by the county. That response, in letterform, was received in a timely manner along with the videotape of the property viewing.

Summary of Final Determination

Determination of ISSUE 1: *Whether the grade should be 'B' rather than 'B+2.'*

45. The Petitioner failed to meet the burden of burden. No change is made.

Determination of ISSUE 2: - *Whether the land classification is incorrect.*

46. The parties agreed that .378 acres should be reclassified from “primary” to “unusable undeveloped” for 1995 to mirror a change made in the 1997 assessment.

Determination of ISSUE 3 - *Whether the primary base rate should be \$200,000 per acre.*

47. The Petitioner failed to establish that the land value applied to the subject property is incorrect. No change is made.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.