

STATE OF INDIANA
Board of Tax Review

In the matter of the Petition for Review)
of Assessment, Form 131) Petition No. : 21-003-95-1-4-00055

Parcel No. : 0100305100

Assessment Year: 1995

Petitioner: Union County National Bank
832 Central Avenue
Connersville, Indiana 47331

Petitioner Representative: Uzelac & Associates
5144 Stop 11 Road
Suite 22
Indianapolis, Indiana 46237

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 square footage (SF) of the subject structure is correct.
2. Whether the perimeter-to-area ratio (PAR) is correct.
3. Whether the wall height is correct.

4. Whether adjustments should be made for interior finish.
5. Whether the banking features are assessed correctly.
6. Whether the canopy has been priced correctly.
7. Whether the grade factor for the subject structure 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. Pursuant to Ind. Code § 6-1.1-15-3, Mr. Rex Hume, of Uzelac & Associates, on behalf of Union County National Bank (Petitioner) filed a Form 131 petition requesting a review by the State. The Form 131 was filed on December 16, 1996. The Fayette County Board of Review's (County Board) Notification of Final Assessment Determination on the underlying Form 130 is dated November 15, 1996.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on August 9, 1999 before Hearing Officer Jennifer Bippus. Testimony and exhibits were received into evidence. Mr. Hume represented the Petitioner. No one appeared to represent either Fayette County or Connersville Township.
4. At the hearing, the subject Form 131 petition was made a part of the record and labeled Board Exhibit A. Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following exhibits were submitted to the State Board:
 - Petitioner Exhibit A - Brief containing the following:
 - a. The measurements of subject structure
 - b. The measurements of the wall height of subject structure
 - c. The interior finish and partitioning adjustments for the subject structure
 - d. The list of banking features in the subject structure

- e. The categorization of exterior features
- f. A discussion of the grade factor for the subject structure
- g. Exhibit "A" - sketch of wall height
- h. Exhibit "B" - sketch with square footage of subject structure
- i. Copy of proposed assessed value worksheet

Petitioner Exhibit B – Five (5) exterior photographs of subject structure

Petitioner Exhibit C - Copy of data collection materials by Mr. Jim
Cornwell (ex-Uzelac employee)

- 5. The subject structure is a bank located at 832 Central Avenue, Connersville, Connersville Township, Fayette County.
- 6. The Hearing Officer did not view the subject property.
- 7. At the hearing, the Hearing Officer asked Mr. Hume about his fee arrangements with the Petitioner. Mr. Hume stated he is paid on a contingency basis and that the contract is not privy information, but is jointly proprietary to the clients and the contractor.
- 8. At the hearing, the Hearing Officer requested additional evidence from Mr. Hume consisting of the following: interior photographs of the bank, determination of the number of drive-up teller windows, and photographs of the porch areas. Mr. Hume was given until August 18, 1999 to respond. This request for additional information is entered into the record and labeled as Board Exhibit C.
- 9. On August 18, 1999 in response to the Hearing Officer's request for additional evidence, Mr. Hume submitted the following: photographs of the canopy, teller windows and interior of the subject bank. Mr. Hume's response is entered into the record and labeled as Petitioner Exhibit D.

Issues No. 1 - Whether the square footage (SF) of the subject structure is correct.

Issue No. 2 - Whether the perimeter-to-area ratio (PAR) is correct.

10. The subject structure is a single story brick and frame building valued from the GCM pricing schedule as a bank.
11. The square footage of the subject building is 2,292 SF. These measurements were determined by Mr. Jim Cornwell, a former employee of Uzelac and Associates. *Hume testimony & Petitioner Exhibit A and C.*
12. As a result of the new determined SF measurements the PAR should be eleven (11). *Hume testimony.*

Issue No. 3 – Whether the wall height is correct.

13. 50 IAC 2.2-16-4 indicates that story height is based upon the top of the floor to the top of the floor/roof distance. In the subject structure from the top of the floor to the top of the roof is 14 feet high. The extended exterior height determined by the local assessing officials of the subject is due to parapet walls, which are not included in story height. *Hume testimony & Petitioner Exhibit A - Exhibit "A".*
14. If the wall height were determined to be 14 feet, there would be no adjustment needed for the wall height since the model calls for 14 feet. *Hume testimony.*

Issue No. 4 - Whether adjustments should be made for interior finish.

15. Per 50 IAC 2.2-11-5, Schedule C, the following adjustments should be made for differences between the subject structure and the GCM Bank Model:
 - a. A positive adjustment of \$.66 per SF should be added for interior wall finish of the exterior walls;
 - b. A negative adjustment of \$.59 per SF should be applied for floor finish;
 - c. A negative adjustment of \$1.20 per SF should be applied for ceiling finish;

- d. A negative adjustment of \$10.98 per SF should be applied for lack of partitioning; and
 - e. An overall negative adjustment of \$12.11 per SF should be applied.
- Hume testimony & Petitioner Exhibit A.*

Issue No. 5 - Whether the banking features are assessed correctly.

16. The following are features of the subject structure:
- a. 8 inch rectangular money vault door (\$22,900);
 - b. 10 foot by 11-foot money vault (110 SF @ \$85.20 per SF);
 - c. One (1) drive-up teller window (\$5,500);
 - d. Vision window with two (2) stations (\$5,600); and
 - e. One (1)-night depository (\$7,400).

The total value for these banking features is \$50,770. *Hume testimony & Petitioner Exhibit A.*

Issue No. 6 – Whether the canopy has been priced correctly.

17. The canopy is more typical of the "Commercial Plaza and Auto Agency" type found in 50 IAC 2.2-11-5 - Canopies, and classified as "Good, finished soffit, lighting" at a SF rate of \$10.45 or a total cost of \$6,520. *Hume testimony.*
18. There are two (2) enclosures (entryways), equal in value to enclosed frame porches of 7 feet by 12 feet (84 SF) valued in the exterior features section of the property record card. It should be noted the porches are masonry not frame. *Hume testimony & Petitioner Exhibit D.*

Issue No. 7 - Whether the grade factor for the subject structure is correct.

19. Grade is a cumulative effect of workmanship, cost of materials and the individuality of design based upon a set of specifications (model). *Hume testimony.*

20. The outward appearance of structures undoubtedly has a pronounced effect upon the grade factor assigned, however, design is only one attribute to be considered. Each category must be weighed independently and, as the manual directs, a cumulative effect determines the grade. *Hume testimony.*

21. Upon visual inspection of the subject structure the following was determined:
 - a. The design of the building is a brick rectangular building (41 feet by 60 feet) with two recessed entryways measuring 7 feet by 12 feet;
 - b. The height of the building is 14 feet with a 15 foot by 60 foot section having a two (2) foot parapet and a 19 foot by 60 foot section having a four (4) foot parapet;
 - c. The center section of the interior exhibits a skylight 36 feet in length by 7 feet in width;
 - d. Window treatment is aluminum sash with tint;
 - e. The exterior construction is face brick on plywood sheathing on metal studding;
 - f. The roof is flat preformed ribbed galvanized steel on a steel frame with asphalt composition and gravel;
 - g. Interior partitioning is drywall on metal studs with good quality wallpaper in most areas;
 - h. Carpeting is indoor/outdoor quality (no separate padding) in 80% of the area and quarry/ceramic tile in the remaining 20 %;
 - i. The interior exhibits very minimal built-ins being a break area with kitchen sink and cabinets;
 - j. Plumbing fixtures are minimal 2 restroom fixtures and 1 kitchen sink; and

- k. The air-conditioning system consists of three (3) natural gas roof mounted units.

Hume testimony.

- 22. In Commercial properties each use type is compared to the same type. Each commercial model has its own classification. A bank built for today's standards is not like the banks of old. Older banks are quite extensive and massive, with many divided offices on several floors. The model in the Indiana Real Property Manual is more fitting of the old banks and the model used for general office is more fitting of banks built to the standards of today. Because of these differences, the base rate should be adjusted through the grade. *Hume testimony.*

- 23. The grade of the subject property can be determined as follows:
 - a. Design - C + 2
Adds \$18,585 to account for variations from the norm such as parapets, skylight and window treatment and overall design. However, it must be noted that a negative impact due to the framing of the exterior walls, metal studding versus reinforced concrete block and difference between the model and actual air conditioning system.
 - b. Workmanship - C
There was no note of any special treatment. The interior treatment was quite plain. No special cuts or irregular walls were found to exist to indicate better than average workmanship was required.
 - c. Materials - C
Walls were standard 1/2" to 5/8" drywall (C grade). Wallpaper was good grade with plain design, however, for walls with two sides papered an additional \$1.50 was adjusted from Schedule "C" (C grade). Carpeting - Indoor/Outdoor quality (C grade) carpeting was adjusted for from Schedule "C". Flooring - Quarry/Ceramic Tile (C grade) No special design, color or installation.

If these three (3) factors are given equal allocation, the cumulative grade of the structure is 1.03 or “C+1”. *Hume testimony*.

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. Credibility of Witness--Contingent Fee

18. Mr. Hume's testimony and calculations are the mainstay of evidence submitted in support of the Petitioner's claims in this appeal. The State Board considers this evidence, but the contingency 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).

19. At the hearing, Mr. Hume was questioned about his fee arrangements with the Petitioner. Mr. Hume responded that such an arrangement (contract) is not privy information but is joint propriety to the client and the contractor.

E. Issue Nos. 1 and 2 - Square footage and Perimeter Area Ratio

20. The local assessing officials valued the subject structure as having 2,418 SF, an effective perimeter of 214 linear feet (LF) with a PAR of 9.
21. It is the Petitioner’s contention that the subject structure has been valued incorrectly because the wrong SF was determined. In calculating the incorrect SF, the PAR was also incorrectly developed.
22. The Petitioner submitted what is purported to be field notes (Petitioner Exhibits A and C) from a site inspection of a Mr. Cornwell, an ex-Uzelac employee. Based on these notes, the Petitioner determines the SF to be 2,292, with an effective perimeter of 250 LF, equating to a PAR of 11.
23. Even though Mr. Hume presents Mr. Cornwell’s notes into evidence on this issue, there are differences in the sketches presented of the subject bank as it pertains to the issue under review. The main difference between Mr. Cornwell’s sketch, the County’s sketch and Mr. Hume’s sketch is that Mr. Hume determines the entranceways to be “open masonry porches”. Mr. Cornwell made no such labeling of this area and neither did the County. However, both Mr. Cornwell and

the County indicated the entranceways to be recessed in by either three (3) or four (4) feet.

24. Taxpayers are expected to make factual presentations to the State Board regarding alleged errors in assessment. These presentations should both outline the alleged errors and support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." Conclusions of Law ¶10.
25. 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." Conclusions of Law ¶13.
26. Based on the information made available by the Petitioner, the Petitioner was successful in showing errors may have occurred in the assessment of the subject bank.
27. 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. Conclusions of Law ¶14.
28. Since neither the Township nor County appeared at the hearing, the parties could not explain or testify as to how the SF was determined or to rebut the evidence presented by the Petitioner.
29. In reviewing Mr. Cornwell's notes (Petitioner Exhibits A and C), the photographs presented by Mr. Hume (Petitioner Exhibit D) and the County property record card, the following is determined:
 - a. The two (2) entranceways measuring 7 feet by 12 feet are recessed in by four (4) feet from the outside;

- b. The entranceways themselves are of the same construction as the main banking area. The ceiling (acoustical tile), lighting (fluorescent) and flooring (ceramic tile) are identical to this area. These areas will be considered part of the main floor and assessed accordingly; and
 - c. The SF of the banking floor is determined to be 2,404 SF with a perimeter of 218 LF (60+15+4+7+4+19+60+19+4+7+4+15) with a PAR of 9 (218/2,404).
30. For all the reasons set forth above, a change in the assessment is made as a result of this issue.

F. Issue No. 2 - Wall Height

31. 50 IAC 2.2-10-6.1(a)(6) states that “Wall Heights” specify the floor-to-floor or the floor-to-roof heights that are the most typical of that use.
32. 50 IAC 2.2-16-4.1 Informational Illustrations, Building Cross-Sections shows the wall height to be from the floor to the roof. This illustration also shows the existence of a parapet wall being separate from the determined wall height.
33. Mr. Hume testified the subject structure’s wall height should be 14 feet. Mr. Hume further testified the extended exterior height of the building (roof area) is due to parapet walls, which are not included in the story height. Mr. Hume provided photographs of the subject property (Petitioner Exhibit B) along with a sketch of the building (Petitioner Exhibit A) showing the wall height and the parapet walls.
34. A review of the County property record card indicated the wall height of the subject structure to be 37% at 10 foot and 63% at 15 feet. However, based on the testimony and evidence presented the wall height is calculated to be an average of 14 feet.

Skylight area:

7 feet x 36 feet = 252 SF @ 16 feet to 18 feet high = average of 17 feet

$252/2,292 = 11\%$

17 feet @ 11% = 1.87

14 feet @ 89% = 12.46

14.33 or 14 feet average

35. Since the County and the Township failed to appear at the hearing, they were not able to support their wall height determination/calculation nor were they able to rebut any evidence or testimony given by the Petitioner.
36. For all the reasons set forth above, a change in the assessment is made as a result of this issue.

G. Issue No. 3 - Base Rate Adjustments and Town of St. John V

37. Reproduction Cost - Depreciation = True Tax Value. In general terms, the reproduction cost for commercial and industrial property is the base rate for the model selected (GCM, GCI, or GCR) with adjustments. 50 IAC 2.2-10-6.
38. The State Board's Regulation, 50 IAC 2.2-10-6.1 (a), explains how to determine the base rate. Initially, one selects the model (GCM, GCI, or GCR) the *best resembles the physical characteristics* of the building being assessed. *Id*; *Barth /* at 802. The Regulation also provides for a number of use-type models, e.g., GCI - Light Manufacturing. See 50 IAC 2.2-11-1, -2 and -3 describing features for each use-type model. The use-type models were never intended to describe with exactitude the features of the building being assessed. In fact, it would be impossible for any regulation to accomplish such a task. Because the features of the building being assessed will not conform exactly to the use-type models, adjustments *may* be made to the base rates provided for in 50 IAC 2.2-11-6 (c).

39. 50 IAC 2.2-11-6, Schedule A provides for adjustments from the square foot base rate. The same rule, Schedule C, also provides for adjustments that *may* be made to the base rate. Schedule C adjustments fall into three categories: (1) base price components and adjustments, (2) unit cost adjustments, and (3) unit finish adjustments. 50 IAC 2.2-10-6,1(c) and –11-6.
40. The base price components and adjustments found in Schedule C show the cost of the interior and mechanical components included in the base rate to facilitate deduction from the base rate where appropriate. *Id.* Oftentimes, making adjustments from Schedule C - GC Base Price Components and Adjustments - is a simple task assuming that the taxpayer or taxpayer representative provides sufficient and supporting evidence regarding the building's features or the lack of them. Other Schedule C adjustments are more involved.
41. The unit cost adjustments found in Schedule C consist of a table of units costs the most typical interior components of buildings. Because the interior finish and other features identified in the model may not "match" those of the building under review, cost adjustments may be made but they may be made *only when there is a significant variation between the model and the subject building*. 50 IAC 2.2-10-6.1(c) (emphasis added.)
42. The unit finish adjustments found in Schedule C consist of tables of composite adjustments that are applied to apartments and motel and hotel units. *Id.*
43. The State Board is mindful of the body of case law established by the Tax Court regarding base rate adjustments, including *Barth I; Wareco Enterprises v. State Board of Tax Commissioners*, 689 N.E. 2d 1299 (Ind. Tax 1997); *Bock Products, Inc. v. State Board of Tax Commissioners*, 683 N.E. 2d 1368 (Ind. Tax 1997); and *Hatcher*, *supra*.
44. To the extent that the Tax Court decisions require a base rate adjustment for

every item that is described in the model but not present in the building under administrative or judicial review, *Town of St. John V* overrules them. For example, in *Barth I* the Tax Court held that "where an improvement does not contain a component presumed to exist in the model, and a cost for that component is listed in Schedule C, a deduction from the base rate is made pursuant to that schedule." *Barth I* at 802. With due respect to the Court, its holding has been overruled by *Town of St. John V*.

45. Simple teachings of *Town of St. John V* bear repeating. The Indiana Supreme Court recognizes that Indiana's real estate property tax system is a mass appraisal system, and holds that taxpayers can not "expect the full achievement of absolute and precise exactitude" regarding property tax assessments. *Town of St. John V*, 702 N.E. 2d at 1040. For example, individual evidence may not be submitted for the purpose of obtaining an exact or precise assessment. Rather, individual evidence may be submitted to demonstrate that the wrong model has been selected, or an improper application of the Regulation.
46. Thus, to require a base rate adjustment for every item that is described in the model but not present in the building under administrative or judicial review erroneously mandates absolute and precise exactitude regarding property tax assessments and such mandate contradicts *Town of St. John V*.
47. Clearly, base rate reductions are not required because the building under review lacks features described in the models. Rather, base rate reductions are appropriate *only when the Regulation expressly permits them and makes them appropriate*. In determining whether a base rate adjustment is appropriate under the Regulation, the State Board will adhere to the well-established case law regarding regulatory construction. The rules of statutory construction apply to the construction of administrative regulations. *State Board of Tax Commissioners v. Two Market Square Associates Limited Partnerships*, 679 N.E. 2d 882, 885 (Ind. 1997). The foremost goal in regulatory interpretation is to determine the intent of the State Board. *Id* at 886. Indiana law is clear that interpretation of a regulation

is not necessary if the regulation is not ambiguous. *Indianapolis Historic Partners v. State Board of Tax Commissioners*, 694 N.E. 2d 1224, 1227 (Ind. Tax 1998)(case law addressing rules of statutory construction). "A clear and unambiguous statute must be read to 'mean what it plainly expresses, and its plain and obvious meaning may not be enlarged or restricted'." *Id* (quoting *Department of State Revenue v. Horizon Bancorp*, 644 N.E. 2d 870, 872 (Ind. 1994)). Words and phrases must be given "their plain, ordinary and usual meaning" ...and by reading the regulation "within the context of the entire act of which they are a part..." *Two Market Square*, 679 N.E. 2d at 886 (citations omitted.)

48. Mr. Hume requested that the following interior finish adjustments be made:
- a. Positive \$.66 for interior wall finish per SF
 - b. Negative \$.59 for floor finish per SF
 - c. Negative \$1.20 for ceiling finish per SF
 - d. Negative \$10.98 for partitioning per SF

The overall effect of these adjustments is a negative \$12.11 per SF.

49. As previously stated in these Conclusions, asking for adjustments in order to obtain a base rate that precisely accounts for the characteristics of the building under review is exactly what is prohibited by *Town of St. John V*. The tax system is a mass appraisal system that does not assess with exactitude and preciseness. The Petitioner's burden regarding this issue is two-fold: (1) it must identify properties that are similarly situated to the contested property, and (2) it must establish disparate treatment between the contested property and other similarly situated properties. The Petitioner met neither of the prongs of burden.
50. For all the reasons set forth above, the State Board will not grant the interior finish adjustments sought by Mr. Hume. No change in the assessment is made as a result of this issue.

H. Issue No. 5 - Banking Features

51. It is the Petitioner's contention that the banking features were incorrectly determined. The County assessed the subject bank with the following features: 7-inch rectangular vault door, drive-up teller window, night depository and money vault (8 feet x 11 feet).
52. The Petitioner contends the features are as follows: 8 inch rectangular money vault door, 10 foot x 11 foot money vault, one (1) drive-up teller window, vision window with two (2) stations, and one (1) night depository.
53. Photographs presented by the Petitioner (Petitioner Exhibits B and D) were placed into evidence and show the following features: one (1) vision window with one station, one (1) drive-up/walk-up teller window, and one (1) night depository.
54. In addition, Mr. Cornwell's inspection notes indicate a vault door that is 8 inches thick (Petitioner Exhibit C).
55. Taxpayers are expected to make factual presentations to the State Board regarding alleged errors in assessment. These presentations should both outline the alleged errors and support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." Conclusions of Law ¶10.
56. 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." Conclusions of Law ¶13.
57. Based on the information made available by the Petitioner, including photographs of the banking features, the Petitioner successfully showed that errors may have occurred in the assessment of the bank features.

58. 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. Conclusions of Law ¶14.
59. Since neither the Township nor County appeared at the hearing, the parties could not explain or testify to the banking features determined or to rebut the evidence presented by the Petitioner regarding those features.
60. Based on the evidence presented it is determined the banking features consist of the following:
 - a. 8 inch rectangular vault door
 - b. 10 foot x 11 foot money vault
 - c. one (1) drive-up/walk-up teller window
 - d. one (1) vision window
 - e. one (1) night depository
61. For all the reasons set forth above, a change in the assessment is made as a result of this issue.

I. Issue No. 6 - Exterior Canopy and Entryways

Conclusions Regarding Canopy

62. Mr. Hume testified the canopy under review, is more typical of the "Commercial Plaza and Auto Agency" type found in 50 IAC 2.2-11-6, Schedule E – GC Special Feature, Canopies, and should be classified as "Good, finished soffit, lighting" at a square foot rate of \$10.45.
63. The County seems to have valued the canopy from 50 IAC 2.2-7-11, Schedule E.2 – Exterior Features, Canopies. Under this schedule there are only two (2) types – roof extension and conventional roof type. A closer review seems to indicate the structure was assessed as a "conventional shed type" canopy.

64. It should be noted in 50 IAC 2.2-11-6, Schedule E – GC Special Feature, Canopies it states to “refer to the residential schedule for patios, porches, porticos, wood decks, balconies, and other residential type features.”
65. Mr. Hume provided a photograph (Petitioner Exhibit D) of the subject canopy. The photograph does not show a canopy that would fall into a residential “shed type” structure but rather one that would fall within the commercial category.
66. The Petitioner’s photographs show a structure made of brick with a finished soffit and lighting. The size of the canopy is 24 feet by 26 feet or 624 SF.
67. Taxpayers are expected to make factual presentations to the State Board regarding alleged errors in assessment. These presentations should both outline the alleged errors and support the allegations with evidence. “Allegations, unsupported by factual evidence, remain mere allegations.” Conclusions of Law ¶10.
68. 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.” Conclusions of Law ¶13.
69. Based on the information made available by the Petitioner, including a photograph of the canopy, the Petitioner successfully showed that an error may have occurred in the assessment of the canopy.
70. Since neither the Township nor County appeared at the hearing, the parties could not explain or testify to the valuation of the canopy or to rebut the evidence presented by the Petitioner regarding this feature.

71. Based on the testimony and evidence submitted, it is determined to value the canopy from 50 IAC 2.2-11-6, Schedule E – GC Special Feature, Canopies as requested by the Petitioner as “good, finished soffit, lighting” with a base rate per SF of \$10.45.
72. For all the reasons set forth above, a change in the assessment is made as a result of this issue.

Conclusions Regarding Entranceways

73. Additionally, Mr. Hume argued the areas between the two sets of double glass doors at each entranceway, should be valued as “enclosed masonry porches”. Mr. Hume determined this based on the exterior structural walls of the bank (brick walls) proper following the inside edges of each entranceway.
74. The County did not value these areas as being any type of “porches” but included the areas in the total SF of the banking floor.
75. As stated in Conclusions of Law ¶29, these entranceways have been determined to measure 7 feet by 12 feet and are recessed in by four (4) feet from the outside. The entranceways themselves are of the same construction as the main banking area. The ceiling (acoustical tile), lighting (fluorescent) and flooring (ceramic tile) are identical to the banking area. These areas will be considered part of the main floor and assessed accordingly.
76. No change in the assessment is made as a result of this issue.

J. Issue No. 7 - Grade and Design

77. “Grade” means the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.

78. 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 2.2-10-3.
79. 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. *Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d 1058, 1064 (Ind. Tax 1993). 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), models, and graded photographs (50 IAC 2.2-11-4), assist assessors in the selection of the proper grade factor.
80. The Petitioner asserts that the appropriate grade for the subject structure is "C+1".
81. In support of this position the Petitioner presented a discussion on a base rate comparison between a bank and general office building. In addition, the Petitioner presented their own analysis of the design, workmanship and materials as they related to the subject bank.
82. Before applying the evidence to reduce the contested assessment, the State Board must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.
83. Mr. Hume testified that it would not be proper to compare a bank to a general office building. The State Board would agree with Mr. Hume that such a comparison would not be correct or proper. That the correct comparison would be comparing one bank to another or one general office building to another office building. However, a comparison of a bank to a general office building is exactly what Mr. Hume attempts to do by way of comparing the base rates of a bank to

that of an office building. In his comparison, Mr. Hume concludes that a general office is 18% less costly (\$63.05 vs. \$51.75). Mr. Hume then states that if a bank were to be used to grade a general office a 20% initial error would occur.

84. 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 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.
85. Mr. Hume did not present or identify any other banks similar to that of the subject nor does he attempt to establish disparate treatment between the subject and the similarly situated properties.
86. Mr. Hume opined that a bank built for today's standards is not like the banks of old. Mr. Hume stated that older banks are quite extensive and massive, with many divided offices on several floors. He went on to say, the model in the Manual is more fitting of the old banks and the model used for general office is more fitting of banks built to the standards of today. Mr. Hume concluded, that it is because of these differences the base rate should be adjusted through the grade.
87. Mr. Hume makes broad speculative statements as to what the model for a bank in the Manual is suppose to represent. Mr. Hume does not support any of his statements with any evidence credible or otherwise.
88. The structure under review is a bank and as stated in Conclusions of Law ¶38, "Initially, one selects the model (GCM, GCI, or GCR) the *best resembles the physical characteristics* of the building being assessed." All parties are in agreement the structure under review in this appeal is a bank. Thus, Mr. Hume's

comparison of a bank to general office building is unfounded and has no basis of fact within the Manual.

89. In addition, Mr. Hume submitted an analysis of the design, workmanship and materials (Petitioner Exhibit A) as they related to the subject structure. However, this analysis is flawed.
90. Mr. Hume makes a number of assumptions in the analysis. First, he assumes the total base price of the building to be \$185,850. Mr. Hume does not explain where this value comes from. A review of the County PRC shows a Reproduction Cost of \$212,470 prior to the application of grade. Mr. Hume's proposed PRC shows a Reproduction Cost of \$190,930, which included Mr. Hume's requested adjustments (Issue No. 4) and prior to the application of grade.
91. Mr. Hume in his analysis of the design factor ("C+2") adds \$18,585 for "variations from the norm such as parapets, skylight and window treatment and overall design." One can only make another assumption that the \$18,585 is 10% of the total base price of the building (\$185,580). There is no explanation presented by Mr. Hume, as to why this amount is the correct add-on amount or how this amount was determined. Mr. Hume does not make any cost analysis for the parapets, skylights or window treatment to determine the add-on.
92. Mr. Hume also makes an assumption that the three (3) factors he used to determine the grade (design, workmanship and materials) should be given equal weight. Again, Mr. Hume does not explain how he determined the three (3) factors should be of equal weight to one another.
93. Mr. Hume analysis makes conclusory statements as to the framing, the air conditioning, the special interior treatment, the non-existence of irregular walls, the wallpaper, the flooring and the ceiling. In doing so, Mr. Hume determined what these features represented in relation to the grade factor and arrives at a grade of "C+1" for the subject structure.

94. Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119 (Ind. Tax 1998).
95. Mr. Hume failed to meet his burden in this appeal with probative evidence that the local assessing officials erred in their determination of the grade.
96. Indiana's real estate property tax system is a mass appraisal system. It is too time-consuming, too costly, and wholly unrealistic for individual assessments to be made base upon individual evidence. Though the Property Taxation Clause of the Constitution of Indiana, 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.
97. For all of the reasons set forth above, 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