

STATE OF INDIANA
Board of Tax Review

In the matter of the Petition for Review)
of Assessment, Form 131) Petition No.: 32-013-99-1-5-00001

Parcel No.: 0721341W 415-001

Assessment Year: 1999

Petitioners: Kim W. & Lynn M. Schmidt
2551 E. CR 750 S.
Clayton, IN 46118

Petitioner Representative: Milo Smith
Tax Consultants, Inc.
331 Franklin St.
Columbus, IN 47201

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 is excessive.

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 be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-3, Tax Consultants, Inc. filed a Form 131 petition on behalf of the Petitioners. The Form 131 was filed on January 6, 2000. The Hendricks County Property Tax Assessment Board of Appeals' (PTABOA) determination on the underlying Form 130 petition was issued December 7, 1999.

3. Pursuant to Ind. Code § 6-1.1-15-4, a (rescheduled) hearing was held on November 14, 2000. Testimony and exhibits were received into evidence. Mr. Milo Smith represented the Petitioners. Messrs. Ronald Faulkner and Lester Need represented the Hendricks County PTABOA.

4. At the hearing, the subject 131 petition was made a part of the record and labeled Board Exhibit A. The Notice of (Rescheduled) Hearing on the Petition was labeled Board Exhibit B. The Hearing Sign In Sheet was labeled Board Exhibit C. In addition, the following items were received into evidence:
 - Petitioners' Exhibit – 1 – Property Record Card (PRC) for the home under appeal reflecting the original B+2 grade;
 - Petitioners' Exhibit – 2 – Grade specification table;
 - Petitioners' Exhibit – 3 – Builder's statement;
 - Petitioners' Exhibit – 4 – Photograph of the house under appeal;
 - Petitioners' Exhibit – 5 – Photograph and PRC of "comparable" property;
 - Petitioners' Exhibit – 6 – Photograph and PRC of "comparable" property;
 - Petitioners' Exhibit – 7 - 50 IAC 2.2 –7-6(d)(1) grade classifications;
 - Respondent's Exhibit – 1 – Photographs of C grade house;

Respondent's Exhibit – 2 - Photograph of C grade house; and,
Respondent's Exhibits – 3 through 14 – Photographs of home under appeal.

5. A copy of the PTABOA's response to Petitioners' contentions is also a part of the record and labeled Respondent's Exhibit 15.
6. The property under appeal is a residence located at 2551 E. County Road 750 S., Clayton, Indiana (Liberty Township in Hendricks County). The Hearing Officer did not view the property.

Whether the grade is excessive

7. This home was originally assigned a B+2 grade factor when it was 56% complete. As a result of the appeals process, the PTABOA increased the grade factor to an A. *Testimony of Smith & Faulkner*, Petitioners' Ex. 1.
8. Initially, the Petitioners sought the application of a C grade factor, and used a grade specification table to support their claim of a C grade. The grade C category of the specification table was modified after Mr. Smith became Petitioners' representative. *Smith Testimony & Petitioners' Ex. 2.*
9. Features of the home under appeal include: (1) 2 x 4 framing, (2) ½ inch drywall, (3) a majority of the interior trim is poplar, and (4) the staircase is oak. *Smith Testimony.* The design of the home stresses eye appeal. *Id.* The homeowner designed the home, but the homeowner is not an architect.
10. The custom home builder, Larry Good Homes, Inc., provided a statement reporting that standard electric, plumbing and HVAC materials were used in the home and that "average grade materials were used for a majority of the house." Petitioners' Ex. 3.

11. A photograph of the exterior of the home was submitted to the Appeals Division and Mr. Smith stressed the normal overhangs found on the house. Petitioners' Ex. 4; *Smith Testimony*. Exterior photographs of two properties that Mr. Smith deemed comparable to Petitioners' home were submitted together with PRCs. Petitioners' Exs. 5 & 6; *Smith Testimony*. The "comparable" Osmun home was assigned a B+1 grade, and the "comparable" Vintun home was graded B-1. Petitioners' Ex. 5 & 6.
12. Messrs. Faulkner and Need disagreed with Petitioners' claim at the State hearing. They pointed out that features of home can be found in the A, B, and C grade categories of the grade specification table, e.g., wood doors, and opined that exterior photographs of the home demonstrated: (1) numerous cut, angles, overhangs and unusual shapes in the exterior wall outlines, (2) numerous windows throughout the house, (3) extensive brickwork over the garage doors, wall corners, and gable ends that gained esthetic ornamentation, and (4) keystone placed in the brickwork and the soldiering of the brick adding to the esthetic value of the home. *Need Testimony*; Respondent's Exs. 3 through 14. Also, the home has two separate heating and cooling units. *Need Testimony*.
13. The PTABOA also inspected the interior of the home, but were not allowed to photograph it. *Need Testimony*. PTABOA members observed very nice woodwork, crown molding, an oak staircase, and 10 feet interior walls during the inspection. *Id.*
14. Characteristics of a C grade home include "typical subdivision homes with limited available number of models with various options available from a developer or homes in a typical multifamily residential complex." 50 IAC 2.2-7-6(d)(3)(I). Photographs of C grade homes were submitted to show such "cookie cutter" homes. Respondent's Exs. 1 & 2.

15. In rebuttal, Mr. Smith argued the vagueness of the Regulation, e.g., what are numerous cuts and angles, and that multiple heating and cooling units do not necessarily equate to zoned thermostats.

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.

Conclusions Regarding Grade Issue

A. Regulatory and Case Law

18. The approach to valuing residential homes is primarily found in 50 IAC 2.2-7. The approach to valuing homes is the application of various models to represent typical types of construction. "A model is a conceptual tool used to replicate reproduction costs of given structures using typical construction materials." 50 IAC 2.2-7-6. The model assumes that there are certain elements of construction defined as specifications. These specifications create an average or C grade home. *Id.*
19. "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.
20. Not all residences in the State are average or C grade homes. Therefore, grade factors are applied to account for differences in construction specifications and quality of materials and workmanship between the models in the Regulation and

the home being assessed. *Clark*, 694 N.E. 2d at 1236, n. 6. The major grade classifications are “A” through “E”. 50 IAC 2.2-7-6 (d)(1). The cost schedules in the Regulation reflect the “C” grade standards of quality and design. The following grade factors (or multipliers) are assigned to each major grade classification:

“A” grade	160%
“B” grade	120%
“C” grade	100%
“D” grade	80%
“E” grade	40%

50 IAC 2.2-7-6 (e).

21. Intermediate grade levels ranging from A+10 through E-1 are also provided for in the Regulation to adequately account for quality and design features between major grade classifications. 50 IAC 2.2-7-6 (g).
22. The determination of the proper grade factor 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). The selected represents a composite judgment of the overall quality and design. *Mahan*, 622 N.E. 2d at 1064; 50 IAC 2.2-7 (f).
23. Subjectivity is used in the grading process. For assessing officials and taxpayers alike, however, the Regulation provides indicators for establishing grade. The text of the Regulation provides indicators for establishing grade. The text of the Regulation (see 50 IAC 2.2-7-6 (d)), the grade specification table (50 IAC 2.2-7-6 (b)), and graded photographs (50 IAC 2.2-7-10) all provide guides for establishing grade.

B. Administration of the Existing System and Cost Information

24. The Tax Court invalidated subjective elements of the Regulation, e.g., grade, holding that the Regulation did not contain ascertainable standards. *Town of St. John III*, 690 N.E. 2d at 388. 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; *Town of St. John III*, 690 N.E. 2d at 398 & 99; *Whitley*, 704 N.E. 2d at 1121. Instead, the property tax system is currently administered in accordance with the true tax value system and existing law.
25. The Tax Court recognizes the difficulty in establishing whether a home has a “cheap quality interior finish with minimal built-in features” or is “devoid of architectural treatment”. *Whitley*, 704 N.E. 2d at 1119. But, the taxpayer has the responsibility to provide probative and meaningful evidence to support a claim that the assigned grade factor is 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*.
26. The Tax Court demands quantification techniques for grade application. *Garcia v. State Board of Tax Commissioners*, 694 N.E. 2d 794 (Ind. Tax 1998). The State Board has determined that cost-of-construction is the best (and most objective) way to measure the quality of materials, workmanship, and design. Such an approach gives meaning to the entire grade issue.
27. The home under appeal is new construction, but Petitioners did not support their allegation of erroneous grade (or quantify the requested grade) by using cost-of-construction information.

C. Discussion of Petitioners' Evidence

28. A grade specification chart highlighting characteristics in the A, B, and C grade categories did not demonstrate error in the grading of a home, but were merely conclusory statements. *Bernacchi*, 727 N.E. 2d at 1136; *Kemp v. State Board of Tax Commissioners*, 726 N.E. 2d 395, 400 & 401 (Ind. Tax 2000); *Whitley*, 704 N.E. 2d at 1120. Also, it is noted that the grade specification table in the Regulation does not list or identify every conceivable feature of every home in the State, e.g., the grade specification table does not list skylights. It would be impossible for the State to make such a list. Though Petitioners relied heavily upon a highlighted specification table, they did not make any provision for features not specifically identified in the table. Finally, credibility was not fostered when, in highlighting features of the home under appeal, a feature that was included in the A category was not highlighted, e.g., 4" concrete on gravel base, 5/8" plywood sheathing roof, and central forced air. See Petitioners' Ex. 2.
29. Likewise, the statement of the custom home builder provided only conclusory statements about average materials being used in the home and did not develop a case for the Petitioners. *Bernacchi*, 727 N.E. 2d at 1136.
30. Submitting one exterior photograph of the home under appeal and emphasizing "normal overhangs" did not develop a case for the Petitioners, but was merely a conclusory statement. *Bernacchi*, 727 N.E. 2d at 1136.
31. Lastly, labeling properties "comparable" and submitting one exterior photograph of each home with a property record card did not demonstrate disparate tax treatment. Petitioners' evidence relating to the "comparable" homes did not provide detailed information regarding the quality of any interior materials used in them, and the exterior photograph provided only cursory information concerning the quality of exterior materials. Petitioners did not demonstrate comparability.

32. For all of the reasons set forth above, the Petitioners did not submit probative evidence of error regarding the issue of grade. No change is made to the assessment of the property.

Other Conclusions

33. The Form 130 and 131 petitions and Mr. Smith's testimony mentioned dwelling condition and neighborhood rating. These factors are important in determining the physical depreciation to which a home is entitled. 50 IAC 2.2-7-9. Physical depreciation was not an issue in this appeal and the relevance of such factors to the grade issue was neither articulated nor shown.

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