STATE OF INDIANA
Board of Tax Review

HARDEEP SIKAND	)	On Appeal from the County Property
	)	Tax Assessment Board of Appeals
	)	
Petitioner,	)	
	)	Petition for Review of Assessment, Form 131
	)	Petition No. 49-600-00-1-5-00688
	)	Parcel No. 6017542
v.	)	
	)	
	)	
MARION COUNTY PROPERTY TAX	)	
ASSESSMENT BOARD OF APPEALS	)	
And PIKE TOWNSHIP ASSESSOR	)	
	)	
Respondents.	)	

Findings of Fact and Conclusions of Law

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

Issues

1. Whether the subject property's land value is correct.
2. Whether the grade factor applied to the residence 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 also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-3, Mr. Hardeep Sikand (Petitioner/property owner) filed a Form 131 petition requesting a review by the State. The Form 131 petition was filed on December 18, 2001. The Marion County Property Tax Assessment Board of Appeals (PTABOA) Notification of Final Assessment Determination on the underlying Form 130 petition is dated November 16, 2001.

3. On April 17, 2002, the PTABOA, by counsel, filed a Motion to Dismiss pursuant to 50 IAC 17-10-3(3). The PTABOA stated that the Petitioner did not file the Form 131 in a timely manner. The PTABOA sent the Petitioner the Form 115 on November 16, 2002 and the Petitioner subsequently filed a Form 131 on December 18, 2002. The PTABOA stated that the Petitioner's filing of the Form 131 petition was untimely and did not meet Ind. Code § 6-1.1-15-3(c) and 50 IAC 17-4-3(a) requiring a Form 131 petition to be filed within thirty (30) days after notification of the PTABOA's determination(s).

4. On May 6, 2002, the State denied the Motion to Dismiss and stated the State would follow the guidance of Ind. Code § 4-21.5-3-2. In general, three (3) days are added to allow for mailing, and in the case at bar, considering Ind. Code § 4-21.5-3-2, the Petitioner did file the Form 131 petition within the time frames allowed by Ind. Code § 6-1.1-15-3(c) and 50 IAC 17-4-3(a).

5. Pursuant to Indiana Code § 6-1.1-15-4, a hearing was held on May 14, 2002, before Administrative Law Judge (ALJ) Jennifer Bippus. Testimony and exhibits were received into evidence. The Petitioner was self-represented. No one appeared to represent either the PTABOA or Pike Township.

6. During the hearing, an official from the Pike Township Assessors Office telephoned the ALJ and stated that they would send their evidence pertaining to the issues in this appeal, to both the State and the Petitioner by May 20, 2002.

7. On May 20, 2002, a Pike Township representative telephoned the ALJ and requested an extension of time to submit their evidence. The ALJ agreed to extend the time for the Township's submission of evidence until May 23, 2002. On May 22, 2002 via a fax, Pike Township submitted their rebuttal and evidence to the State and provided copies of such to the Petitioner.

8. At the hearing, the Form 131 petition was made a part of the record and labeled as Board's Exhibit A. Notice of Hearing on Petition was labeled as Board's Exhibit B. In addition the following exhibits were submitted:
Board's Exhibit C - Respondent's Motion to Dismiss
Board's Exhibit D - State's Order denying the Respondent's Motion to Dismiss

Petitioner's Exhibit A – A copy of the plat map for the subject Lot 23
Petitioner's Exhibit B – A copy of the settlement statement for the purchase of the subject lot for $56,500
Petitioner's Exhibit C – A copy of construction costs for the subject residence
Petitioner's Exhibit D – A copy of the Uniform Residential Appraisal Report for the subject dwelling

9. As stated in Findings of Fact ¶5, 6, and 7, the Respondent (Pike Township) failed to appear at the hearing but requested an opportunity to submit evidence. On May 22, 2002, the ALJ received the following exhibits and entered them into the record as:
Respondent's Exhibit A – A copy of the plot plan for the subject lot
Respondent's Exhibit B – A copy of the Marion County Land Valuation Order (Land Order) for Pike Township
Respondent's Exhibit C – A copy of the field inspection notes done by Pike Township on the subject dwelling

Respondent's Exhibit D – A copy of the rebuttal to the Petitioner presented by Pike Township, Brian McHenry

Respondent's Exhibit E – A copy of the calculations presented by Pike Township to uphold the applied grade of "A+3" on the subject dwelling

Respondent's Exhibit F – A copy of the resume of Brian McHenry, Marion County Assessor's Office Deputy Assessor

Respondent's Exhibit G – A copy of the resume for Clifford Hardy, Residential Lead Assessor for Pike Township

Respondent's Exhibit H – A disk with photographs of the subject property

10. The subject property is a residence located at 8104 Traders Hollow Lane, Indianapolis, Pike Township, Marion County.

11. The ALJ did not view the subject property.

12. The assessed values as determined by the PTABOA are:
Land: $21,230 Improvements: $144,830 Total: $166,060

13. The assessment date under appeal is as of March 1, 2000.

Issue No. 1 – Whether the subject property's land value is correct.

14. The closing document for the subject lot shows the amount paid for the lot ($56,500) to be less than the true tax value shown on the property record card (PRC). The subject lot is atypical and odd shaped, with a creek running through the middle. The lot is sloping and was difficult to build on. *Sikand testimony & Petitioner's Exhibits A and B.*

15. According to the Land Order approved by the State for Pike Township, the value assigned to the subject lot is correct. The Pike Township Assessor has placed a

negative ten percent (10%) influence factor on the lot due to the irregular shape and size. *Respondent's Exhibits A, B, and D.*

Issue No. 2 – Whether the grade factor applied to the residence is excessive.

16. Petitioner testified that the subject residence is in a subdivision with forty (40) or fifty (50) other homes. In comparing the other homes in the addition, the average grades on the homes are "A" and "A+1". The subject home has the highest grade in the subdivision at "A+3". *Sikand testimony.*

17. Petitioner testified that the subject home is in the mid-range of the homes in the area. The construction cost of the home is close to $600,000, but that is including the lot value of $56,500. The cost provided to build the home is $503,605 with an additional cost of $43,321 for overruns. The total cost to build the home is $545,926. The appraisal on the home for June 10, 1999, shows the appraised value of the home as $650,000 (including the lot) using the sales comparison approach and $574,512 using the cost approach (improvements only). *Sikand testimony & Petitioner's Exhibits C and D.*

18. Respondent argued that the "cost of construction" provided by the Petitioner does not verify its source of origin and falls under the auspices of "hearsay" and should not be allowed into evidence. The first column of figures is referred to as an "initial guess". The second column, which is cited by the Petitioner as the construction cost, is labeled as an "estimate" and is a best guess not an actual hard number. The Township does not accept this as a legitimate cost to construct. The best evidence to use for the cost of the subject home is found in "The Uniform Residential Appraisal Report" (in evidence as Petitioner's Exhibit D) which lists a value as of June 1999 of $650,000. *Respondent's Exhibit D (Brian McHenry).*

19. Respondent argued that the Indiana Supreme Court's recent decision in the *State Board of Tax Commissioners v. Garcia, 766 N.E. 2d 341 (Ind. 2002)(Garcia III)* case supports the use of costs and values to arrive at the correct grade for a structure. Pike Township's grade selection of "A+3" is affirmed with a worksheet provided as evidence (Respondent's Exhibit E) showing trended costs from 1999 back to 1991, using both Marshall & Swift Cost Manual and also the RSMeans Building Construction Cost Data manual (2001 edition). *Respondent's Exhibits D and E (Brian McHenry).*

20. Pike Township also submitted photographs and brief field inspection notes of the subject property. *Respondent's Exhibits C and H.*

Conclusions of Law

1. The Petitioner is 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. 50 IAC 17-5-3. See also the Forms 130 and 131 petitions authorized under Ind. Codes §§ 6-1.1-15-1, -2.1, and –4. 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.

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. One manner for the taxpayer to meet its burden in the State's administrative proceedings is to: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners,* 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). 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 merely because 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 - Land

18. Indiana's approximately 3 million land properties are valued on a mass appraisal basis.

19. The General Assembly has recognized that assessing officials cannot provide a fee appraisal for every parcel in the State, but must instead rely on mass appraisal techniques commonly used by tax assessors throughout the United States. Ind. Code § 6-1.1-31-3(4) permits the use of "generally accepted practices of appraisers, including generally accepted property assessment valuation and mass appraisal principles and practices."

20. Land valuation – through land order – is the one part of Indiana's assessment system that actually approximates fair market valuation through the use of sales data.

21. For the 1995 reassessment, each county shall establish a county land valuation commission to determine the value of all classes of residential, commercial, industrial and agricultural homesites by using the rules, appraisal manuals and the like adopted by the State. 50 IAC 2.2-2-1 and 50 IAC 2.2-4-2. *See also* Ind. Code §§ 6-1.1-4-13.6 (West 1989) and –31-5 (West 1989). By rule, the State decided the principal that sales data could serve as proxy for the statutory factors in Ind. Code § 6-1.1-31-6. Accordingly, each county land commission collected sales data and land value estimates and, on the basis of that information, determined the value of land within the County. 50 IAC 2.2-4-4 and –5.

22. The county land valuation commissions shall delineate general geographic areas, subdivisions, or neighborhoods areas from the surrounding areas based on characteristics that distinguish one subdivision or neighborhood from another. 50 IAC 2.2-4-4(c).

23. The land valuation commissions shall establish base rates that reflect the January 1, 1991, value of residential, agricultural homesite, commercial and industrial land.

24. For many years, it was generally assumed, that once local officials held a public hearing regarding values contained within the county land order, the only statutory means to challenge a land order was an administrative appeal to the State by the county and township assessors. Ind. Code § 6-1.1-4-13.6(e) and (g)(West 1989); *Poracky v. State Board of Tax Commissioners,* 635 N.E. 2d 235, 238- 39 (Ind. Tax 1994). Taxpayers did not have the right to challenge the values established by the county land orders after the county land commission made a determination on them.

25. The State is aware of Tax Court decisions that go against limiting taxpayer's rights to challenge land order values at the State administrative level. *Zakutansky v. State Board of Tax Commissioners,* 691 N.E. 2d 1365 (Ind. Tax 1998).

26. The State respectfully concludes that *Town of St. John V* changed the landscape regarding the issue of taxpayers' entitlement to challenge land order values.

27. Article X, § 1, of the Indiana Constitution was the basis of the Tax Court's ruling that a taxpayer may challenge his land order valuation in an individual appeal. *Zakutansky,* 691 N.E. 2d at 1368.

28. The Tax Court's basis for its finding was reversed by the Supreme Court in *Town of St. John V.* The Property Taxation Clause (Article X, § 1, of the Indiana Constitution) "[R]equires . . . a system of assessment and taxation characterized by uniformity, equality, and just valuation, but the Clause does not require absolute and precise exactitude as to the uniformity and equality of each individual assessment. *The tax system must also assure that individual taxpayers have a reasonable opportunity to challenge whether the system prescribed by the statute and regulations was properly applied to individual assessments, but the Clause does not create a personal, substantive right of uniformity and equality." Town of St. John V,* 702 N.E. 2d at 1040. (Emphasis added).

29. Accordingly, a taxpayer is not constitutionally entitled to file an appeal to the State challenging the values established by a promulgated land order on an individual appeal basis. Taxpayers may, however, administratively appeal the application of the land order to his assessment (i.e., the taxpayer's property should have been valued from one section of the land order rather than another).

30. Once a land order is promulgated, every parcel of property in the county is assessed according to it. Such "across the board" application results in uniform

land value. If individual taxpayers are able to question valuation on an individual basis, uniformity ceases to exist. The State has an obligation to ensure uniform assessments on a *mass appraisal* basis.

31. Though taxpayers are not entitled to challenge land order values, they are entitled to receive adjustments to land values if their properties possess peculiar attributes that do not allow them to be lumped with surrounding properties for land value purposes. Such adjustments, either upward or downward adjustments, can be made by way of influence factors applied to the property. *Phelps Dodge v. State Board of Tax Commissioners,* 705 N.E. 2d 1099, 1105 (Ind. Tax 1999).

32. An influence factor is defined in 50 IAC 2.2-4-10 as "a condition peculiar to the lot that dictates an adjustment to the extended value to account for variations from the norm." Influence factors may be applied for the following conditions: topography; under improved property; excess frontage; shape and size; a misimprovemenmt to the land; restrictions; and other influences not listed elsewhere.

33. It is the Petitioner's contention that the subject's land value is excessive. To support this position the Petitioner submitted into evidence a Settlement Statement dated April 30, 1998 for the subject parcel (Petitioner's Exhibit B). This statement shows the purchase price for the subject parcel was $56,500. The True Tax Value shown on the PRC is $63,700.

34. The Petitioner opines that the subject parcel is atypical, odd shaped, sloping with a creek running through the middle of the lot and was very difficult to build on.

35. The Respondent contends that the subject parcel is valued correctly per the Land Order for Pike Township. In addition, the County applied a negative influence factor to the property of 10% for shape and size.

36. Before applying the evidence to reduce the contested assessment, the State must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.

37. The Petitioner's evidence consists solely of a Settlement Statement pertaining to the sale of the subject parcel. The Settlement Statement indicates the settlement costs and is not indicative of what the actual sale conditions consisted of. Although the Settlement Statement shows that the land was sold for less than the True Tax Value placed on it, the Petitioner did not submit into evidence the actual purchase agreement for the subject property. The actual purchase agreement may have shed additional light on the conditions of the sale of that parcel as well as whether mitigating circumstances may have decreased the sale price of the parcel (when compared to other sales).

38. The sale price of the subject parcel may have been lower for the same reasons the Petitioner points to: shape and size, difficulty to build on, and the existence a creek. One does not know the history of the subject lot and whether the concerns stated by the Petitioner were the same reasons that the subject parcel may have been valued less than other more desirable lots within this subdivision. However, the Petitioner on the Form 131 petition states that the subject lot was "the last lot available in the subdivision." See Board Exhibit A.

39. A review of the County PRC and that portion of the Land Order dealing with Traders Hollow subdivision in Pike Township, shows that the local assessing officials used the low end of the value range ($65,000 to $74,800 per acre) to assess the first acre at $65,000 and the remaining acreage (.444 acres) being valued as "undeveloped". To each of these assessments the local assessing officials applied negative influence factors of 10%.

40. The Petitioner did not submit any market analysis to demonstrate that the land value is incorrect. The Petitioner did not provide any comparisons with other lots in the subdivision showing that the subject lot was being treated any differently

than any other lot within this subdivision. Nor did the Petitioner attempt to show that the subject subdivision was more like another subdivision and therefore should have been valued from one section of the land order rather than another.

41. It is not enough for the Petitioner to show what he may have paid for the subject parcel as probative evidence without submitting additional documentation that would have supported his contention of an incorrect value for the land. "With respect to the assessment of real property, true tax value does not mean fair market value. True tax value is the value determined under the rules of the state board of tax commissioners." Ind. Code § 6-1.1-31-6(c).

42. As previously stated, the land value is based on a mass appraisal system. Individuals cannot argue that their assessment is wrong because the value is not an exact and precise value for their particular parcel of land. Again, the Petitioner has not identified properties that are similarly situated to the subject property. In addition, the Petitioner has not established disparate treatment between the subject property and other similarly situated property. *Town of St. John V*, 702 N.E. 2d at 1040.

43. For all reasons set forth above, the Petitioner failed to establish that the land value attributed to the subject parcel is incorrect. Accordingly, no change is made in the assessment as a result of this issue.

Issue No. 2 - Grade

A. Regulatory and Case Law

44. 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 to 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.*

45. "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.

46. 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).

47. 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).

48. 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).

49. 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 Analysis

50. 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. *Id.*

51. 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.*

52. True Tax value does not equal market value. Ind. Code δ 6-1.1-31-6. True tax value does not attempt to determine the actual market value for which a property would sell if it were offered on the open market. Nevertheless, true tax value's

method for valuing structures is the same as one of the well-accepted methods for determining fair market value – reproduction cost less depreciation. Common appraisal techniques are permissible in assessing property under the current true tax value system even when such appraisal techniques are rooted in market value. *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801 (Ind. Tax 1998).

53. The cost schedules in the Regulation, 50 IAC 2.2-7-11, are at the heart of true tax value's method for determining values. The cost schedules effective for the 1995 general reassessment, 50 IAC 2.2, reflect 1991 reproduction costs based on market information derived from *Marshall Valuation Service* price tables. 50 IAC 2.2 Forward at I; *Town of St. John III,* 690 N.E. 2d at 373, n. 5. The overall purpose of these cost schedules was to approximate prevailing construction costs in 1991 less fifteen percent (15%).

54. The State uses construction cost information provided by taxpayers as a tool for quantifying grade by comparing adjusted cost to the cost schedule found in the Regulation. *Garcia v. State Board of Tax Commissioners,* 743 N.E. 2d 817 (Ind. Tax 2001)(*Garcia II).* In very general terms, the taxpayer's construction cost information is trended up or down to arrive at a comparison between the adjusted construction cost of the home under appeal and construction cost in the Regulation.

55. The Tax Court demanded quantification techniques for grade application and the State reasonably decided that using adjusted construction cost calculations are appropriate when grade issues are raised in property tax appeals. *Garcia,* 694 N.E. 2d 794 (Ind. Tax 1998)(*Garcia I)*. These calculations were then affirmed by the Indiana Supreme Court in *Garcia v. State Board of Tax Commissioners,* 766 N.E. 2d 341 (Ind. Tax 2002)(*Garcia III).*

C. Analysis of evidence submitted.

56. The Petitioner contends that the grade factor applied to the subject residence is excessive. The home was built in 1999 and the County applied a grade factor of "A+3" to the home.

57. The Petitioner submitted into evidence what is purported to be construction cost information (Petitioner's Exhibit C) and a Uniform Residential Appraisal Report (Petitioner's Exhibit D) for the subject home.

58. Petitioner's Exhibit C (and Board Exhibit A, Form 130 petition) indicates that the contested home was purchased/constructed for $546,926 (including $43,321 in cost overruns). Petitioner's Exhibit D used both the Cost Approach ($574,512) and Sales Approach ($650,000) to determine the value of the subject property.

59. Before applying the evidence to reduce the contested assessment, the State must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.

60. A review of Petitioner's Exhibit C, "cost of construction", shows that the document does not indicated from whom or from where the information was obtained. The document is not on a builder's or construction company's letterhead nor is it attached to any type of construction agreement. There are no supporting documents such as invoices or receipts that would substantiate any of the dollar amounts shown. In addition, the columns on the spreadsheet are entitled: "What?"; "Initial Guess"; "Estimate"; "Another Estimate"; "Final Estimate"; and "Notes". None of the titles lend themselves to factual or actual conclusions of values.

61. Petitioner's Exhibit D is entitled Uniform Residential Appraisal Report. Within this document an appraiser uses two (2) of the three (3) approaches to value - the Cost Approach and Sales Approach and determines that the third approach, the

Income Approach, would not be applicable. In his final analysis the appraiser then determines that "the most weight was given to the Sales Approach" ($650,000).

62. The sales comparison approach to value compares the property being appraised with similar properties sold in the recent past. The characteristics of the sold properties are analyzed for their similarity to those of the subject of appraisal. Value indications derived from the sales comparison approach are usually considered particularly significant because they express the reactions of buyers and sellers in the real estate market. IAAO Property Assessment Valuation, 45 (2nd ed. 1996).

63. Such an analysis as described above, is one acceptable method for the taxpayer to meet its burden in the State's administrative proceedings (See Conclusions of Law ¶11).

64. As stated in Conclusions of Law ¶53 through 55 and in light of the appraisal submitted by the Petitioner, the State will compare the value determined by the appraisal (Sales Approach) to the Regulation's cost schedules for purposes of the grade issue in this appeal. The State cannot compare the determined market value with construction cost information based on 1991 dollars (cost schedules in the Regulation). Accordingly, the State will deflate the 1999 information to the 1991 true tax value.

65. To calculate the deflator factor, the State will use the Marshall and Swift 1999 Residential Cost Handbook, a nationally recognized publication of assessment/appraisal theory and cost data, that provides comparative cost multipliers by region and that provides a formula to take an established cost of a home to a historical date. By using the Marshall and Swift cost multipliers for the State of Indiana (green cost sheet) and their cost formula, the home under appeal constructed in 1999 can be trended back in time to equal 1991 home construction costs.

66. The Marshall and Swift cost multiplier for first quarter 1999 is 1.000 and for first quarter 1991 is 1.261 for a masonry home. To calculate the deflator factor needed to trend the 1999 value back to 1991 construction dollars, the 1999 multiplier must be divided by the 1991 multiplier. The calculation is as follows:

First quarter 1999 multiplier	1.000
First quarter 1991 multiplier	1.261
1.000 divided by 1.261 equals	.7930

67. By taking the Petitioner's value determined by the Sales Approach ($650,000) less the True Tax Value for the land ($63,700) and multiplying the remainder by the deflator factor of .7930, the remainder value would be the subject home's construction cost in 1991. The 1991 construction cost is $650,000 – 63,700 = 586,300 x .7930 = $464,935.90. Trending the construction cost downward still does not end the calculation because the 1991 cost schedules found in the Regulation were reduced by fifteen percent (15%) across the board. Accordingly, the Petitioner's deflated construction costs must be further reduced by fifteen percent (15%) for the proper comparison. This adjustment yields the following result: $464,935.90 x .85 = $395,195.51. This figure is then divided by the reproduction cost per the Regulation shown on the PRC prior to the application of the grade factor.

68. The PRC for the home under appeal reflects that the home's reproduction cost (prior to a grade adjustment) is $210,100. The deflated reproduction cost of the subject dwelling for the 1995 reassessment is $395,195.51. $395,195.51 divided by $210,100 = 1.881.

69. Comparing the Petitioner's value to the Regulation cost schedules establishes a grade factor of 188%, rounded to 180% (180% is a grade of A+1, 200% would be a grade of A+2, thus 188% is rounded to the nearest grade, 180%, A+1). This

percentage equates to a grade factor of "A+1". 50 IAC 2.2-7-6(g) and –11, Schedule F.

70. Again, the Petitioner's issue under review in this appeal is whether the grade of the subject residence is excessive at "A+3". Based on the evidence submitted by the Petitioner, specifically the appraisal, the Petitioner was able to cast some doubt on the grade factor presently applied to the structure. 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.

71. The Respondent's calculations (Respondent's Exhibit E) used the same $650,000 determined in the appraisal (Petitioner's Exhibit D). The Respondent subtracted the True Tax Value for the land shown on the PRC ($63,700) from the appraisal value and arrived at an appraised value for the improvement of $586,300. The Respondent used the Marshall & Swift Trend Factor (.793) and the RS Means Trend Factor (.823) to obtain values of $464,935.90 and $482,524.90 respectively. The True Tax Value on the PRC for the improvements is $462,200. Using this method the Respondent claims to support the "A+3" grade determined by the local assessing officials for the subject residence.

72. However, the Respondent's calculations are flawed for several reasons. The Respondent did not apply the fifteen percent (15%) reduction used for the cost schedules in the 1995 Regulation. The Respondent also did not just use the reproduction cost of the home (prior to the application of grade), but instead used the total reproduction cost of the improvement after the grade factor of "A+3" was applied. Based on the Respondent's calculations after applying the trend factors to the appraised value, the Respondent then attempted to support the grade factor by way of the following comparison (Respondent's Exhibit E):

Marshall & Swift	$464,935.90
RSMeans	$482,524.90
PRC	$462,200

73. When the Respondent's calculations are corrected by applying the fifteen percent (15%) cost schedule adjustment in the 1995 Regulation that was omitted, the following are determined:

Marshall & Swift	$464,936 x 85% (Regulation adjustment) = $395,196 $395,196 divided by $210,000 = 188% or rounded to the nearest grade factor is 180%. The 180% then equates to an "A+1".
RSMeans	$482,525 x 85% (Regulation adjustment) = $410,150 $410,150 divided by $210,000 = 195% or rounded to the nearest grade factor is 200%. The 200% then equates to an "A+2".

74. After making these corrections to the Respondent's calculations (Marshall & Swift and RSMeans) the grade of "A+3" is not obtained. Therefore, the Respondent has not substantiated that the "A+3" grade applied to the subject residence is correct.

75. In summary, the Petitioner has provided evidence necessary to establish that the grade of the subject residence is incorrect. Having the burden then shifted to the local taxing officials to justify their decision to apply an "A+3" grade to the subject home, the local officials failed to substantiate their position on grade. As previously discussed, the calculations used by the Respondent were flawed and fail to quantify the grade of "A+3".

76. For all the reasons set forth above, the Petitioner submitted evidence probative enough to make a prima facie case and thus shifted the burden of proof to the Respondent. When the burden shifted to the Respondent to substantiate the grade factor of "A+3", they failed to do so. Therefore, the State will make a change in the grade factor from an "A +3" to "A+1" as established by the

evidence provided by the Petitioner. A change in the assessment is made as a result of this issue.

SUMMARY OF STATE DETERMINATIONS

Issue No. 1 – Land – No change.

Issue No. 2 – Grade – Change the grade factor from "A+3" to "A+1".

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 this by the Indiana Board of Tax Review this ____ day of_____, 2002.

_____

Chairman, Indiana Board of Tax Review