

**STATE OF INDIANA  
Board of Tax Review**

In the Matter of Petition for Review        )  
of Assessment, Form 131                    )        Petition No: 29-018-95-1-5-00843

Parcel No: 1610330015006000

Assessment Year: 1995

Petitioner:    John R. Price  
                  12400 Bayhill Drive  
                  Carmel, Indiana 46033

Petitioner Representative:            Warren, Warren and Associates, Inc.  
  By: Messrs. Joseph Geeslin, Jr. & George Spenos  
  One Indiana Square  
  Suite 2530  
  Indianapolis, Indiana 46204

**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:

The taxpayer asserts that certain information submitted to the State Board and identified in these Findings constitute trade secrets under Ind. Code §§ 24-2-3-2 and 6-1.1-35-9. The State Board will treat this information as trade secret information.

## Issue

1. Whether the grade of the dwelling should be reduced from “A+2” to “A-2”.

## 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, Messrs. George Spenos and Joseph Geeslin, Jr., Geeslin & Associates filed a Form 131 petition on behalf of John R. Price (the Petitioner). The Form 131 petition was filed on May 23, 1997. The Hamilton County Board of Review (County Board) issued the determination on the underlying Form 130 petition on May 6, 1997.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on March 9, 2000 before Hearing Officer Dalene McMillen. Testimony and exhibits were received into evidence. Messrs. Geeslin and Spenos represented the Petitioner. Mr. Jim Pee represented Hamilton County (County Board). Ms. Dixie Packard represented Clay Township.
4. At the hearing, the following documents were made part of the record and labeled Board Exhibits:
  - Board Exhibit A-copy of the 131 petition
  - Board Exhibit B-Form 117, Notice of Hearing on Petition
  - Board Exhibit C-Request for additional evidence from the Petitioner and Respondent, dated March 9, 2000.

The taxpayer asserts that certain information submitted to the State Board and identified in these Findings constitute trade secrets under Ind. Code §§ 24-2-3-2 and 6-1.1-35-9. The State Board will treat this information as trade secret information.

5. In addition, the following documents were submitted to the State Board:  
Petitioner's Exhibit 1-brief" containing the following documents: (a) copy of 50 IAC 2.2-7-6 "grade" rule 7 page 11 –14; (b) comparative analysis of grade specification table for the Price residence; (c) analysis of the Price residence to major grade classifications (two pages); (d) a copy of the decision issued by the Tax Court in *Garcia v. State Board of Tax Commissioners*, 694 N.E. 2d 794 (Ind. Tax 1998); (e) Mr. Geeslin's analysis of *Garcia*; (f) eight photographs of the Price home; (g) a copy of 50 IAC 2.1, 1989 State Board Regulation for residential grade specifications;( h) a copy of 50 IAC 2.2-7-6, 1995 State Board Regulation for residential grade specifications; (i) a copy of the State Board's Final Determination (Form 118) on the Paul Shoopman property tax appeal for tax year 1994; (j) a color-coded grade factor map of the subject area; (k) Geeslin & Associates' proposed property record card; (l) copy of the market listing for the subject property, dated 7-28-98; (m) a copy of the listing and sale for 12146 Bayhill Drive, dated 1-2-99; (n) copy of the property record card for 12146 Bayhill Drive; (o) copy of the listing and sale for 12433 Heatherstone Place, dated 7-9-99; and (p) copy of the property record card for 12433 Heatherstone Place.

Petitioner's Exhibit 2- piece of wood trim from the subject structure.

Respondent's Exhibit 1-the Hamilton County Assessor's response to the Form 131 petition and two photograph of the exterior of the home under appeal.

6. The Petitioner's property is located at 12400 Bayhill Drive, Carmel, Indiana 46033, in Clay Township in Hamilton County.

The taxpayer asserts that certain information submitted to the State Board and identified in these Findings constitute trade secrets under Ind. Code §§ 24-2-3-2 and 6-1.1-35-9. The State Board will treat this information as trade secret information.

7. The Hearing Officer did not inspect the home under appeal.
8. At the hearing, Mr. Spenos was asked to provide the State with a copy of the videotape of the interior and exterior of the subject structure, and a copy of the Form 130 petition filed to the County Board on the home under appeal. March 19, 2000 was established as the deadline date for the submission of this information.
9. By letter dated March 14, 2000, Mr. Spenos provided the requested information. Mr. Spenos' letter and Form 130 petition has been entered into the record and labeled Petitioner's Exhibit 3. The videotape of the subject structure has been entered into the record and labeled Petitioner's Exhibit 4.
10. At the hearing, Mr. Pee requested permission to respond to the evidence submitted by the Petitioner at the State's hearing. March 19, 2000 was established as the deadline for the submission of the information.
11. By letter dated March 19, 2000, Mr. Pee provided a response to the Petitioner's evidence; it has been entered into the record and labeled Respondent's Exhibit 2.
12. By phone on March 21, 2000, Mr. Spenos requested permission to respond to the evidence submitted by the Respondent on March 19, 2000. March 27, 2000 was established as the deadline for the submission of the information.
13. By letter dated March 23, Mr. Spenos provided a response to the Respondent's evidence, dated March 19, 2000. Mr. Spenos response has been entered into the record and labeled Petitioner's Exhibit 5.

The taxpayer asserts that certain information submitted to the State Board and identified in these Findings constitute trade secrets under Ind. Code §§ 24-2-3-2 and 6-1.1-35-9. The State Board will treat this information as trade secret information.

14. Mr. Spenos asserted that the videotape, marketing and sales listings for the subject property, 12146 Bayhill Drive and 12433 Heatherstone Place contained in Petitioner's Exhibits 1 and 4 constitute trade secrets as defined by Indiana Code §§ 24-2-3-2 and 6-1.1-35-9.
15. Mr. Geeslin testified that Mr. Spenos is paid on a salary basis with Geeslin and Associates.

### **Issue-Grade**

- 16 Mr. Spenos testified to the following:
  - (a) The Petitioner is seeking an "A-2" grade; they quantified grade by using the Regulation.
  - (b) Copies of the 1989 Regulation, 50 IAC 2.1-3-4, for residential grade specification (Petitioner's Exhibit 1(g)) and the 1995 Regulation, 50 IAC 2.2-7-6, for residential grade specification (Petitioner's Exhibit 1(h)) demonstrate that the rules and regulations regarding the grading of dwellings are identical for 1989 and 1995 assessments.
  - (c) A grade specification table plus an additional column showing the components of the home under appeal was submitted for purposes of quantifying grade. A weighted average was determined for each component contained on the grade specification table and the Price residence. For example, the Price residence has a concrete foundation, which is a feature of a "B", "C", "D", and "E" grade dwellings on the grade specification table. Therefore, the weighted average for that feature is  $120\%(\text{"B"}) + 100\%(\text{"C"}) + 80\%(\text{"D"}) + 40\%(\text{"E"}) = 340$  divided by 4 = 85% weighted grade. (Petitioner's Exhibit 1(b)). The overall, weighted

The taxpayer asserts that certain information submitted to the State Board and identified in these Findings constitute trade secrets under Ind. Code §§ 24-2-3-2 and 6-1.1-35-9. The State Board will treat this information as trade secret information.

average for the home under appeal is 3,643% divided by 28 components = 130.11% rounded to 130% or “B+1” grade.

- (d) Further analysis was made by major grade classifications using a weighted average on the home under appeal. The weighted average on the subject property is 1,137% divided by 9 components = 126.3% rounded to 130% or “B+1” grade.
- (e) Eight photographs and a videotape of the home under appeal demonstrate the components of the subject dwelling. (Petitioner’s Exhibits 1(f) and 4).
- (f) Paul Shoopman’s residence is superior to the Price residence based on materials used and the type of construction. Mr. Spenos did not inspect the Shoopman residence; however, the opinion that the Shoopman home is superior to the Price home is based upon the State Board final determination for the Shoopman residence for tax year 1994. The Shoopman property is currently under appeal for another tax year and Mr. McDonald is the Shoopman’s taxpayer representative in the appeal.
- (g) A color-coded map of the subject area was submitted to demonstrate that of forty-two parcels, one parcel is graded “A+2”, one parcel is graded “A+1”, ten parcels are graded “A-1”, twenty-six parcels are graded “A-2” or “B+2”, and four parcels are graded “B+1”. The weighted average of the subject area is 6,040% divided by 42 parcels = 143.8% rounded to 140% or “A-2” or “B+2” grade. (Petitioner’s Exhibit 1(j)).

17 At the hearing, Mr. Pee testified to the following:

- (a) The Petitioner has failed to provide any evidence to indicate the County Board’s grade of “A+2” is incorrect.
- (b) Petitioner’s Exhibit 1(l) indicates the Metropolitan Indianapolis Board of Realtors (MIBOR) listing sheet on the subject property indicated the list

The taxpayer asserts that certain information submitted to the State Board and identified in these Findings constitute trade secrets under Ind. Code §§ 24-2-3-2 and 6-1.1-35-9. The State Board will treat this information as trade secret information.

price on the subject property was \$695,000 in July 1998. This supports the current true tax value on the dwelling. Without direct evidence to the contrary, any grade change is unwarranted.

- (c) The grade specification table, text and graded photographs in 50 IAC 2.2-7-6, are sources used to provide an indication of the grade factor, not a determinations of the actual grade of a structure.
- (d) The grade specification table (50 IAC 2.2-7-6) does not assign or allocate weight to the different components within the table. At no point, is it stated or implied through example, that a weighted average is shown or explained in determining the grade factor of a structure.
- (e) The Petitioner's representative testified that there is only one dwelling graded at an "A+2" in the subject area, however, the map submitted by the Petitioner indicates there are three homes in the area graded at "A+2" (Petitioner's Exhibit 1(j)).

### **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

The taxpayer asserts that certain information submitted to the State Board and identified in these Findings constitute trade secrets under Ind. Code §§ 24-2-3-2 and 6-1.1-35-9. The State Board will treat this information as trade secret information.

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

The taxpayer asserts that certain information submitted to the State Board and identified in these Findings constitute trade secrets under Ind. Code §§ 24-2-3-2 and 6-1.1-35-9. The State Board will treat this information as trade secret information.



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

The taxpayer asserts that certain information submitted to the State Board and identified in these Findings constitute trade secrets under Ind. Code §§ 24-2-3-2 and 6-1.1-35-9. The State Board will treat this information as trade secret information.

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.

The taxpayer asserts that certain information submitted to the State Board and identified in these Findings constitute trade secrets under Ind. Code §§ 24-2-3-2 and 6-1.1-35-9. The State Board will treat this information as trade secret information.

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.

The taxpayer asserts that certain information submitted to the State Board and identified in these Findings constitute trade secrets under Ind. Code §§ 24-2-3-2 and 6-1.1-35-9. The State Board will treat this information as trade secret information.

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.

### **Grade**

#### 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

The taxpayer asserts that certain information submitted to the State Board and identified in these Findings constitute trade secrets under Ind. Code §§ 24-2-3-2 and 6-1.1-35-9. The State Board will treat this information as trade secret information.

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

The taxpayer asserts that certain information submitted to the State Board and identified in these Findings constitute trade secrets under Ind. Code §§ 24-2-3-2 and 6-1.1-35-9. The State Board will treat this information as trade secret information.

(b)), and graded photographs (50 IAC 2.2-7-10) all provide guides for establishing grade.

B. Administration of the Existing System  
and the Request for 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* 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*, at 398 & 99; *Whitley*, 704 N.E. 2d at 1121. Instead, the property tax system is now administered in accordance with the current, true tax value system and existing law. *Id.*
25. Regarding grade issues, 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*.

C. Discussion of Petitioner’s Evidence

26. The Petitioner’s representatives used other “methods” of “quantifying” grade – their “weighted average calculation” and their “major grade classification analysis”. Both “methods” are flawed and do not constitute probative evidence of error.

The taxpayer asserts that certain information submitted to the State Board and identified in these Findings constitute trade secrets under Ind. Code §§ 24-2-3-2 and 6-1.1-35-9. The State Board will treat this information as trade secret information.

27. An important element of the “weighted average calculation” is identifying the features of the home under appeal and “matching” those features to a grade column in the grade specification table. Likewise, the same element appears in the “major grade classification analysis” because features in the home are identified and “matched” to the text found at 50 IAC 2.2-7-6(d). For example, the home was alleged to have high and good grade plumbing fixtures (grade “A” & “B”) and high and good quality cabinets (grade “A” & “B”). Petitioner’s Exhibits 1(b) and (c). Conclusory statements such as the home has “ high and good grade plumbing fixtures” are not evidence demonstrating that the home has these characteristics. *Whitley*, 704 N.E. 2d at 1120. With no probative evidence presented, the burden of proof is not met. *Bernacchi* , 727 N.E. 2d at 1133.
28. Further, neither the grade specification table nor the descriptive text of the Regulation lists or identifies every conceivable feature of every home in the State. It would be impossible for the State Board to make such a list. For example, neither the grade specification table nor the text lists skylights or built-in bookcases. Yet, the “methods” used to “quantify” grade in this appeal do not provide for features not specifically listed in the Regulation.
29. Also, the “methods” used in this appeal give equal weight to the cost of each feature listed in the grade specification table and descriptive text and allegedly present in the contested home.
30. Finally, there is a nagging question about why the Petitioner seeks an “A-2” grade when both “methods” result in a “B+1” grade.

The taxpayer asserts that certain information submitted to the State Board and identified in these Findings constitute trade secrets under Ind. Code §§ 24-2-3-2 and 6-1.1-35-9. The State Board will treat this information as trade secret information.

31. In sum, the “methods” of “quantification” are fundamentally flawed and do not present the State Board with probative evidence in this appeal.
32. Also, pictures and videotape of the home were submitted to the State Board; namely: (1) a photograph of the front of the house; (2) a photograph of the rear of the house; (3) a photograph of the rafter in the roof; and (4) interior photographs showing a portion of the kitchen, a portion of the living room, the entryway, and portions of the dining room. The videotape contained photographs of the following; exterior features such as roof, stucco walls, and windows and interior features such as pre-fabricated fireplace, kitchen area, master bathroom with angled shower, doors, standard wiring and poured 7 ½ “ inch thick concrete walls in the basement. Presenting such photographs and videotape and only telling the State Board that they demonstrate components of the home does not develop a case for the Petitioner, but are conclusory statements.
33. Lastly, identifying comparable properties and demonstrating that the property under appeal has been treated differently for property tax purposes can show error in assessment. The Petitioner’s representatives attempted to make such a case by arguing that the Shoopman home is “superior” to the Price home and, therefore, the Price home should receive a grade reduction.
34. Labeling the Shoopman home “superior” does not establish that it is superior.
35. Telling the State Board that your conclusions about the “superiority” of the Shoopman house are based on conversations with Mr. McDonald, Shoopman’s tax representative in his current State Board appeal, is nothing but hearsay and adds nothing to the label of “superiority”.

The taxpayer asserts that certain information submitted to the State Board and identified in these Findings constitute trade secrets under Ind. Code §§ 24-2-3-2 and 6-1.1-35-9. The State Board will treat this information as trade secret information.



36. The fact that the State Board issued a final determination for tax year 1994 deciding that the Shoopman home should be graded “A+1” does not constitute evidence of the superiority of the Shoopman home. Handing the State Board a copy of its Shoopman determination does not constitute meaningful evidence that the Shoopman home is superior or that an inappropriate grade factor was applied to the home under appeal.
37. The Petitioner presented a “weighted neighborhood grade analysis”. This “method” is flawed and does not constitute probative evidence of error.
38. An important element of the “weighted neighborhood grade analysis” is identifying the grade of each home within the neighborhood and averaging each grade category to establish a composite grade for the neighborhood. However, the grade of a structure is established based on each individual structure’s quality of materials, design and workmanship. The Petitioner failed to establish that the homes in the neighborhood possess the same characteristics. “Allegations, unsupported by factual evidence, remain mere allegations.” *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d. 890, 893 (Ind. Tax 1995).
39. Finally, the Petitioner’s representative submitted the market listing price for the subject property and the listing and sale price of two comparable properties. The first comparable located at 12146 Bayhill Drive sold in January 1999 for \$705,000. It is important to note that on the market listing sheet for 12146 Bayhill Drive the list price of the home was \$659,000; the home sold for more than the list price. The second comparable located at 12433 Heatherstone Place sold in July 1999 for \$750,000.

The taxpayer asserts that certain information submitted to the State Board and identified in these Findings constitute trade secrets under Ind. Code §§ 24-2-3-2 and 6-1.1-35-9. The State Board will treat this information as trade secret information.

40. The Petitioner argues for a grade reduction based upon allegedly comparable neighborhood properties. The Petitioner did not establish that these properties were, in fact, comparable. Characterizing properties as comparable is insufficient for appeal purposes. The Petitioner did not credibly establish disparate tax treatment between the subject property and other similarly situated properties.
41. The Petitioner also argues that any grade above an A is arbitrary and capricious because of the decision issued by the Tax Court, *Garcia v. State Board of Tax Commissioners*, 694 N.E. 2d 794 (Ind. Tax 1998). Recently, the Supreme Court addressed that particular issue. In *State Board of Tax Commissioners v. Garcia*, \_\_\_ N.E. 2d \_\_\_ (Ind. 2002), 2002 WL 550985, the Supreme Court held that the “Tax Court’s conclusion, therefore, flies in the face of the regulations.”
42. The Supreme Court went on to uphold the A+6 grade assigned to the Garcia’s home in the case. Therefore, the Petitioner’s argument that there can be no grade above an A must fail.
43. For all reasons set forth above, the Petitioner failed to meet the burden of proof in this appeal. Accordingly, no change is made in the assessment as a result of this issue.

The taxpayer asserts that certain information submitted to the State Board and identified in these Findings constitute trade secrets under Ind. Code §§ 24-2-3-2 and 6-1.1-35-9. The State Board will treat this information as trade secret information.

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

The taxpayer asserts that certain information submitted to the State Board and identified in these Findings constitute trade secrets under Ind. Code §§ 24-2-3-2 and 6-1.1-35-9. The State Board will treat this information as trade secret information.