

REPRESENTATIVES FOR PETITIONER: Mark Roesler, Taxpayer, Gary Nance, President, Weston Development, Inc., Sandra Bickel, Attorney, Ice, Miller, Donadio & Ryan

REPRESENTATIVES FOR RESPONDENT: Jim Pee, Deputy Assessor Hamilton County, James Tex, Fall Creek Township.

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

	)	Petition No.: 29-007-95-1-5-00077
	)	
MARK and AMY ROESLER	)	County: Hamilton
CMG WORLDWIDE, INC.,	)	
	)	Township: Fall Creek
Petitioner	)	
	)	Parcel No.: 13-15-10-00-00-026.000
v.	)	
	)	Assessment Year: 1995
FALL CREEK TOWNSHIP	)	
ASSESSOR,	)	
	)	
Respondent.	)	

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Appeal from the Final Determination of  
Hamilton County Board of Review

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**September 30, 2003**

**FINAL DETERMINATION**

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

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

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **Issue**

1. The issue presented for consideration by the Board was:  
*Whether the grade of the dwelling should be reduced from "A+6" to "B+2".*

### **Procedural History**

2. Pursuant to Ind. Code § 6-1.1-15-3, Sandra Bickel of Ice, Miller, Donadio & Ryan filed a Form 131 on behalf of Mark and Amy Roesler (Petitioners) petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on March 31, 1997. The determination of the Hamilton County Board of Review (BOR) was issued on March 7, 1997.

### **Hearing Facts and Other Matters of Record**

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on March 9, 2000 at the Hamilton County Judicial Center before Hearing Officer Dalene McMillen.
4. The following persons were present at the hearing:  
For the Petitioner:  
Mark Roesler, Taxpayer  
Gary Nance, Witness and President of Weston Development, Inc.  
Sandra Bickel, Attorney, Ice, Miller, Donadio & Ryan  
For the Respondent:  
Jim Pee, Deputy Assessor Hamilton County

James Tex, Fall Creek Township

5. The following exhibits were presented:

For the Petitioner:

Petitioner Exhibit 1 – A copy of 50 IAC 2.2-7-6 “grade”, a copy of the grade specification table, a copy of the major grade classifications, and three pages of the graded photographs

Petitioner Exhibit 2 – Copies of estimates of repairs to the subject structure (6 pages)

Petitioner Exhibit 3 – A copy of a letter from Ice, Miller to County Board, a copy of a letter from Mr. Roesler to Ice, Miller, and a copy of two letters from Mr. Nance to Mr. Roesler

Petitioner Exhibit 4 – A copy of the *Mark and Amy Roesler vs. State Board of Tax Commissioners* court case, #49T10-9707-TA-00169.

Petitioner Exhibit 5 – A copy of a letter from Jane Duzan and Don Hale to Gordon McIntyre, State Board, dated June 5, 1997

Petitioner Exhibit 6 – A copy of *Garcia v. State Board of Tax Commissioners*, 694 N.E. 2d 794 (Ind. Tax 1998)

Petitioner Exhibit 7 – A copy of 50 IAC 2.1-3-2, “grade”, a copy of the grade specification table, and three pages of graded photographs

Petitioner Exhibit 8 – A copy of Bahjat Chabenne’s 1995 property record card (PRC)

Petitioner Exhibit 9 – A copy of Ronald Allen’s 1995 PRC

Petitioner Exhibit 10 – A copy of Frank Troiano’s 1995 PRC

Petitioner Exhibit 11 – Four (4) pages on the bases for the appeal

Petitioner Exhibit 12 – Eighteen (18) photographs of the interior and exterior of the subject structure

For the Respondent

Respondent Exhibit 1 – Hamilton County Assessor’s response to the 131

petition and two (2) photograph of the exterior of the home under appeal

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

Board Exhibit A- Form 131 petition

Board Exhibit B- Notice of Hearing

Board Exhibit C – Request for Additional Evidence from the Petitioner and Respondent, dated March 9, 2000

Board Exhibit D – Letter from Hearing Officer to Ms. Bickel.

7. The subject property is a residence located at 10582 Brooks School Road, Fishers, Fall Creek Township, Hamilton County. The Hearing Officer did not inspect the property.
8. At the hearing, Ms. Bickel requested the opportunity to provide the State with copies of pictures and property record cards for properties that are comparable to the subject structure. March 19, 2000 was established as the due date for the submission of this information.
9. At the hearing, Ms. Bickel and Mr. Pee requested an opportunity to inspect the interior and exterior of the subject structure and submit to the State a recommendation on the grade factor. March 19, 2000 was established as the due date for the submission of this information.
10. The Request for Additional Evidence as stated in ¶ 6 has been labeled Board Exhibit C.
11. By letter dated March 17, 2000, Ms. Bickel provided PRCs and photographs of four (4) comparable properties and six (6) photographs of the interior of the subject structure. Ms. Bickel's letter, the four (4) PRCs with photographs for comparable properties, and

six (6) photographs of the subject structure have been entered into the record and labeled Petitioner Exhibit 13.

12. By letter dated March 18, 2000, Mr. Pee provided interior and exterior inspection notes, a sketch and the PRC for the subject structure, the 1990 building permit, the County's recommended grade factor of "A+6" and a request that 25% obsolescence depreciation be applied to the subject structure. Mr. Pee's letter and the information stated above has been entered into the record and labeled Respondent Exhibit 2.
13. By letter dated March 22, 2000, the State informed Ms. Bickel that it is the responsibility of the Petitioners to provide the documentation and evidence from the 1992 State appeal that the Petitioner wished to be considered in the 1995 State appeal. April 3, 2000 was established as the due date for the submission of this information. The State's letter has been entered into the record and labeled as Board Exhibit D.
14. By phone on March 23, 2000, Ms. Bickel requested an opportunity to respond to the evidence submitted by the Respondent on March 18, 2000 (Respondent Exhibit 2). April 3, 2000 was established as the due date for the submission of the information.
15. By letter dated March 31, 2000, Ms. Bickel provided a response to Respondent Exhibit 2 regarding the grade factor and the 25% obsolescence depreciation and provided a copy of *Dawkins v. State Board of Tax Commissioners*, 659 N.E. 2d 706. Ms. Bickel also indicated that the documentation and evidence from the 1992 State appeal could not be located, therefore the Petitioners were unable to supply the information to the State for the 1995 appeal. Ms. Bickel's letter has been entered into the record and labeled Petitioner Exhibit 14.
16. By phone on April 4, 2000, Ms. Bickel requested the opportunity to submit written estimates of repairs on the subject structure. April 10, 2000 was established as the due date for the submission of the information.

17. The Hearing Officer received written estimates of repairs on the subject structure which have been entered into the record and labeled Petitioner Exhibit 15.
18. The following matters or facts were stipulated and agreed to by the parties:  
That 25% obsolescence depreciation should be applied to the subject property.

### **Jurisdictional Framework**

19. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
20. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

### **Indiana's Property Tax System**

21. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
22. Indiana has established a mass assessment system through statutes and regulations designed to assess property according to what is termed "True Tax Value." See Ind. Code § 6-1.1-31, and 50 Ind. Admin. Code 2.2.
23. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
24. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property's market value. See *Town of St. John V*, 702 N.E. 2d.

25. The Indiana Supreme Court has said that the Indiana Constitution “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”, nor does it “mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant”, but that the proper inquiry in tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” See *Town of St. John V*, 702 N.E. 2d.
26. Although the Supreme Court in the *St. John* case did declare the cost tables and certain subjective elements of the State’s regulations constitutionally infirm, it went on to make clear that assessment and appeals must continue to be determined under the existing rules until new regulations are in effect.
27. New assessment regulations have been promulgated, but are not effective for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

### **State Review and Petitioner’s Burden**

28. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
29. The petitioner must submit ‘probative evidence’ that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm’rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]

30. The petitioner has a burden to present more than just ‘de minimis’ evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm’rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]
31. The petitioner must sufficiently explain the connection between the evidence and petitioner’s assertions in order for it to be considered material to the facts. ‘Conclusory statements’ are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm’rs*, 714 N.E. 2d 329 (Ind. Tax 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
32. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm’rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).
33. The State will not change the determination of the County Board of Review unless the petitioner has established a ‘prima facie case’ and, by a ‘preponderance of the evidence’ proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm’rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm’rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A ‘prima facie case’ is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner’s position is correct. The petitioner has proven his position by a ‘preponderance of the evidence’ when the petitioner’s evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]



## Discussion of Issue

ISSUE: *Whether the grade of the dwelling should be reduced from “A+6” to “B+2”.*

34. The Petitioner contends the subject dwelling should be graded B+2.

35. The Respondent contends the grade of A+6 is correct.

36. The applicable rule(s) governing this issue are:

**50 IAC 2.2-1-30**

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

**50 IAC 2.2-7-6(a)**

Grade is a concept used in the cost approach to account for deviations from the norm or “C” grade. The quality and design of a building are the most significant variables in establishing grade.

**50 IAC 2.2-7-6(b)**

Grade specification table

**50 IAC 2.2-7-6 (d)**

Characteristics of the major grade classifications, “A” through “E”

**50 IAC 2.2-6(e)**

The grade factors (or multipliers) assigned to each major grade classification.

**50 IAC 2.2-7-6 (g)**

Intermediate grade levels ranging from A+10 through E-1 account for quality and design features between major grade classifications.

**50 IAC 2.2-7-10**

Graded residential photographs.

***Mahan v. State Board of Tax Commissioners, 622 N.E. 2d 1058, 1064 (Ind. Tax 1993)*** The determination of the proper grade requires assessors to make a

variety of subjective judgments regarding variations in the quality of materials and workmanship and the quality of style and design.

***State Board of Tax Commissioners v. Garcia***, 776 N.E. 2d 341(Ind.2002)

The State used construction costs as a way to arrive at the grade in the *Garcia* case, and the Supreme Court stated it was within the State's statutory authority to do so.

37. Evidence and testimony considered particularly relevant to this determination include the following:

- A. The subject home was built in 1992 for approximately \$900,000. The home is insured for just under \$1,000,000. *Roesler testimony*.
- B. Based on a comparison of the grade specification table (50 IAC 2.2-7-6), the photographs of the subject dwelling, the construction materials used in other properties graded in the range of "A+1" to "A+5", and photographs found in 50 IAC 2.2-7-10, the components of the subject dwelling are equivalent to a grade of "B+2". *Bickel/Nance testimony and Petitioner Exhibits 7, 12 and 13*.
- C. On December 16, 1997, the Petitioners and the State filed with the Indiana Tax Court a "Stipulation for Entry of Agreed Order", by which the parties, due to the settlement of pending litigation, agreed to grade the subject structure at "A+1". This agreed to settlement was for the assessment of the subject property as of March 1, 1992. *Bickel/Nance testimony & Petitioner Exhibit 4*.
- D. In *Garcia v. State Board of Tax Commissioners*, 694 N.E. 2d 794 (Ind. Tax 1998)(*Garcia I*) the Tax Court determined the State had no ascertainable standards to differentiate between an "A+10" and "A" grade. *Bickel/Nance testimony and Petitioner Exhibit 6*.
- E. The subject dwelling is in need of various repairs, such as, deteriorated exterior wood siding, front porch and window frames; leaking roof causing damage to ceiling and walls; and cracks in the marble entryway. *Bickel/Nance testimony*.
- F. The home has a living room with twenty (20) foot cathedral ceiling, kitchen with hardwood flooring, family room/eating area with a fireplace and built in cabinets/shelves on both sides, utility room with cabinets and sink, 2 half-baths,

Den with hardwood flooring and built in cabinets and shelves, play room with hardwood flooring and recessed lighting, master bedroom with hardwood flooring, double entry doors, and loft area, master bath with marble floor, walk in shower with marble seat, and a garden tub, a guest room with hardwood flooring, guest bath with marble floor and walk in shower, two (2) additional bedrooms with hardwood floor and full bath, and a playroom/bedroom with a full bath that is not finished. The subject also has an elevator. *Pee testimony & Respondent Exhibit 2.*

- G. The Application For Building Permit issued on November 29, 1990 indicates a valuation of \$1,600,000. This value supports the current true tax value of the dwelling. Photographs of the subject home and notes from the inspection of the structure indicate the home to be of unique design, composed of high quality materials and workmanship. The home is currently graded correctly at an “A+6”. *Pee testimony.*

#### Analysis of ISSUE

38. The home under appeal was built in 1992. Mr. Roesler testified that the contested home was constructed for approximately \$900,000 and that the insurance reproduction cost on the structure is just “under” one million dollars.
39. This brings the State to a point regarding written documentation (e.g. construction cost information). At the hearing, Ms. Bickel, when asked about the construction cost information stated that the documentation was located in the 1992 State’s appeal-hearing jacket. Ms. Bickel opined that the State should locate the 1992 appeal jacket and incorporate the evidence from that appeal into the 1995 State appeal under review. However, the Form 117, Notice of Hearing on Petition (Board Exhibit B) sent to the Petitioners on February 14, 2000 for this hearing, specifically states, “It is your (Petitioner, Respondent) responsibility to bring any evidence you wish to be considered to the hearing.”

40. In Petitioner Exhibit 14, Ms. Bickel indicated the documentation and evidence from the 1992 appeal could not be found. Hence, the Petitioner would not be able to supply that information to the State for the 1995 appeal.
41. The State uses cost information provided by taxpayers as a tool for quantifying grade level by comparing adjusted cost to the cost schedule in the Regulation. In very general terms, the taxpayer's 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, which, for the 1995 general reassessment, reflect 1991 reproduction costs based on market information derived from Marshall Valuation Services price tables. 50 IAC 2.2, Forward at i; *Town of St. John III* at 373, n. 5.
42. In lieu of the lack of the Petitioner's construction cost information, the State will review and calculate the grade issue based on the \$900,000, the lower of the two (2) figures testified to by Mr. Roesler. After all, the taxpayers are the ones who best know their property and it is the taxpayers who seek to have the grade of their dwelling reduced.
43. The State will compare the "construction cost" information testified to by Mr. Roesler to the Regulation cost schedules for purposes of the grade issue in this appeal. One cannot compare 1992 "construction cost" information (Petitioner's testimony) with construction cost information based on 1991 dollars (cost schedules in the Regulation). Accordingly, the State will trend back the 1992 information to 1991 true tax value.
44. To calculate the deflation factor, the State will use the Marshall and Swift 1999 Residential Cost Handbook, a nationally recognized publication of assessment/appraisal theory and cost data. This handbook provides Comparative Cost Multipliers for Indiana as well as a formula that takes an established cost of a home to a historical date. By using the Marshall and Swift Comparative Cost Multipliers for Indiana and their cost formula, the home under appeal constructed in 1992 can be trended back in time to equal 1991 home construction cost.

45. The Marshall and Swift's Indiana Comparative Cost Multipliers for a wood frame structure built in 1992 is 1.219 and for 1991 is 1.245. To calculate the deflation factor needed to trend the 1992 construction cost back to 1991 construction cost dollars, the 1992 multiplier must be divided by the 1991 multiplier. The calculation is as follows:

1992 multiplier	1.219	
1991 multiplier	1.245	
1.219 divided by 1.245 equals		.9791

46. By taking the Petitioners' "construction cost" in 1992 (\$900,000) and multiplying it by the deflator factor of .9791, the remainder value would be the subject home's construction cost in 1991. The 1991 construction cost is  $\$900,000 \times .9791 = \$881,190$ . 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%). Accordingly, the deflated Roesler construction cost must be further reduced by fifteen percent (15%) for the proper comparison. This adjustment yields the following results:  $\$881,190 \times .85 = \$749,012$ . This figure is then divided by the reproduction cost per the Regulation to review the grade that is challenged in this appeal.
47. The property record card for the home under appeal reflects that the home's reproduction cost (prior to a grade adjustment) as \$283,200. The deflated reproduction cost of the subject dwelling for the 1995 reassessment is \$749,012 ( $\$881,190 \times .85$ ).  $\$749,012$  divided by  $\$283,200 = 2.6448$ .
48. Comparing the Roeslers' "construction cost" to the Regulation cost schedules establishes a grade factor of 264% or rounded to 260%. This percentage equals an "A+5" grade factor. 50 IAC 2.2-7-6 (g) and – 11, Schedule F.
49. The State acknowledges that the Regulation does not explicitly identify the mathematical calculation detailed above, but this does not prohibit the State from using such a

calculation for the purposes of: (1) meaningfully dealing with the evidence presented, (2) reviewing the propriety of a grade factor that is challenged in this appeal, and (3) determining value according to the common law developed by the Tax Court.

50. The grade factor being sought by the Petitioners is a “B+2”, but based on Mr. Roesler’s testimony of the “construction cost” the grade factor equates to an “A+5” grade factor. However, because the Petitioner’s \$900,000 “construction cost” on the contested home is unsupported by actual cost documentation, the State will not change the current grade factor of “A+6” established by the local assessing officials. “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)).
51. Petitioner’s representatives compared the components on the subject structure to the grade specification table and to the major grade classification list (50 IAC 2.2-7-6 (b) (d)). (Petitioner Exhibit 11). Based on this testimony, the Petitioner’s representatives determined the grade of the subject structure to fall between “B” and “C” grade category. This does not establish that the local taxing officials misapplied the tax system in this case.
52. An important element of the Petitioners’ testimony 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 table” 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 average grade plumbing fixtures (grade “C”) and good and average quality cabinets (grade “B” & “C”). Petitioner Exhibit 11. Conclusory statements such as the home has “average 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.

53. 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 to make such a list. For example, neither the grade specification table nor the text lists skylights or built-in bookcases. Yet, the Petitioners in this appeal do not provide for features not specifically listed in the Regulation.
54. Also, the method used by the Petitioner gives equal weight to the cost of each feature listed in the grade specification table and descriptive text and allegedly present in the contested home.
55. The Petitioner's suggestion that the property falls between a "B" and "C" is not probative as to the grade of the subject dwelling.
56. In summation, the Petitioners' testimony and evidence are fundamentally flawed and do not present the State with probative evidence in this appeal.
57. The Petitioner submitted thirteen (13) photographs of the exterior of the house and eleven (11) photographs of the interior of the house (Petitioner Exhibit 12 & 13) to the State. The assertions that the features in the photographs are representative of a "B+2" grade property are conclusory and do not constitute probative evidence. *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329, 333 (Ind. Tax Ct. 1999).
58. The Petitioner's evidence also focused on the fact that the State issued a Final Determination (Form 118), assigning an "A+1" grade to this home as a result of an appeal for the assessment as of March 1, 1992.
59. The Form 118, at the center of the 1992 appeal, was the result of an agreement to settle pending litigation. An agreement made between the parties (for 1992) is not evidence probative of an error in the assessment. The Form 118, submitted as evidence of an erroneous assessment, was drafted pursuant to a settlement agreement mutually agreed

upon by all parties and was done so to avoid the expense of further litigation and is not to be construed as to the propriety of any determinations made in that matter. As such, it cannot be used for any other purpose that is evidentiary in nature. Therefore, the State will not consider the Form 118 (Petitioner Exhibit 4) submitted by the Petitioners in making this determination.

60. Lastly, identifying comparable properties and demonstrating that the property under appeal has been treated differently for property tax purposes can show error in assessment. In a round about way, Petitioners' representatives attempted to make such a case by arguing that four (4) neighboring homes are "superior" to the Roesler home and, therefore, the Roeslers should receive a grade reduction.
61. The Petitioner did not establish that these properties were, in fact, "superior" or "comparable". Characterizing properties as "superior" or "comparable" is insufficient for appeal purposes. Petitioner did not credibly establish disparate tax treatment between the subject property and other similarly situated properties.
62. For all reasons set forth above, the Petitioners failed to meet their burden of proof in this appeal. Accordingly, no change is made in the assessment as a result of this issue.

#### **Other Findings and Conclusion**

63. At the hearing, the parties requested to inspect the interior and exterior of the subject dwelling and to recommend a grade factor (Board Exhibit C). March 19, 2000 was established as the deadline for the submission of this information.
64. On March 18, 2000, Mr. Pee submitted a letter (Respondent Exhibit 2) indicating that the subject property was inspected on March 13, 2000, with the following persons in attendance: Mr. Roesler, Ms. Bickel and Mr. Nance representing the Petitioners; Mr.



James Tex and Ms. Pam Zagar representing Fall Creek Township and Mr. Pee representing Hamilton County.

65. As a result of the inspection of the subject dwelling, Mr. Pee brought forth additional issues. Those issues were as follows: (1) Obsolescence depreciation of twenty-five percent (25%) be applied to the dwelling to account for items in need of repair (replacing rotted siding, replacing roof & glass in windows); (2) correct fireplace openings; (3) added heat to upper floor area; (4) correct plumbing fixture count; (5) correct dwelling sketch on property record card; and (6) correct year of construction to 1991.
66. By phone on March 23, 2000, Ms. Bickel requested an opportunity to respond to the additional evidence and issues received presented in Respondent Exhibit 2. April 3, 2000 was established at the deadline for Ms. Bickel to submit her response.
67. On March 31, 2000, Ms. Bickel submitted a letter (Petitioner Exhibit 14) indicating that the Petitioners agreed with Hamilton County that the subject dwelling should receive twenty-five percent (25%) obsolescence depreciation for the abnormal deteriorated condition of some of the components of the subject structure. However, the Petitioner's representative did not offer any discussion or comments on the remaining five (5) issues stated by Hamilton County as a result of the inspection of the subject property.
68. The remaining five (5) issues (fireplace openings, upper floor heat, plumbing fixture count, sketch on property record card and year of construction) brought forth by Hamilton County in Respondent Exhibit 2, were not discussed, responded to or agreed upon by the Petitioner or their representative. These issues were not a part of the original filing of the Form 131. The State will not exercise its discretion to address any other issue not raised on the Form 131 petition.

### **Summary of Final Determination**

Determination of Issue: Whether the grade of the dwelling should be reduced from “A+6” to “B+2”.

69. The Petitioner failed to show that the grade assigned to the property is incorrect or that the requested grade of B+2 is proper. No change is made.

Determination of Issue: Whether the subject warrants an adjustment for obsolescence

70. The parties have stipulated to a 25% obsolescence adjustment for the residence. The IBTR accepts this agreement between the parties. This acceptance of the agreement should not be construed as a determination of the appropriateness of this agreement. There is a change in the assessment as a result of this issue.

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

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Commissioner, Indiana Board of Tax Review

## **IMPORTANT NOTICE**

### **- APPEAL RIGHTS -**

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