

**STATE OF INDIANA
Board of Tax Review**

MICHAEL D. & KIMBERLY M. MCCRACKEN)	
)	On Appeal from the County Property
)	Tax Assessment Board of Appeals
)	
Petitioner,)	
)	Petition for Review of Assessment, Form 131
)	Petition No. 59-010-01-1-5-00002
)	
v.)	
)	Parcel No. 010013076000
)	
)	
ORANGE COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS)	
And ORLEANS 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:

Issue

1. Whether the grade of the subject dwelling 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. Timothy J. Boyce of Review Corporation, filed a Form 131 petition on behalf of Michael and Kimberly McCracken (Petitioners), requesting a review by the State. The Form 131 petition was filed on November 1, 2001. The Floyd County Property Tax Assessment Board of Appeals (PTABOA) Notification of Final Assessment Determination on the underlying Form 130 is dated October 18, 2001.

3. Pursuant to Indiana Code § 6-1.1-15-4, a hearing was held on March 21, 2002, before Hearing Officer Jennifer Bippus. Testimony and exhibits were received into evidence. Mr. Boyce and Mr. McCracken (owner) represented the Petitioner. Ms. Linda Reynolds, Orange County Assessor, represented Orange County. No one appeared to represent Orleans Township.

4. At the hearing, the subject Form 131 petition was made part of the record and labeled as Board's Exhibit A. Notice of Hearing on Petition is labeled as Board's Exhibit B. In addition, the following exhibits were submitted to the State:
Petitioner's Exhibit A – A copy of the issue prepared and presented by Mr.
Boyce
Petitioner's Exhibit B – A copy of the subject's property record card (PRC)
Petitioner's Exhibit C - A copy of photographs of the subject property
Petitioner's Exhibit D – A copy of the Form 131 petition
Petitioner's Exhibit E – A copy of Regulation 17, Schedule F, 50 IAC 2.2-7-11
Petitioner's Exhibit F – A copy of the construction specifications and cost of the
subject structure
Petitioner's Exhibit G – A copy of the highlighted Grade Specification Table, 50
IAC 2.2-7-6

Petitioner's Exhibit H – A copy of 50 IAC 2.2-7-6, Definition of Grade

Petitioner's Exhibit I – (A thru E) Copies of comparable properties in
Indianapolis, Indiana (the Geist Reservoir area)

Petitioner's Exhibit J – (A thru D) Copies of comparable properties in Fort Wayne,
Indiana (Sycamore Hills area)

Petitioner's Exhibit K – A ratio study of the comparable properties presented

Petitioner's Exhibit L – (A thru F) Copies of photographs with assigned grades
from the Regulation 17

Petitioner's Exhibit M – A copy of the qualifications of Mr. Boyce

Petitioner's Exhibit N – A copy of a certification stating that no compensation has
been given to Mr. Boyce for this 131 appeal

5. The subject property is a residential home located at 1001 S. Roosevelt, Orleans, Orange County.
7. The Hearing Officer did not view the subject property.
8. The assessed values as determined by the Orange County PTABOA is:
Land: \$8500 Improvements: \$201,600 Total: \$210,100
9. The year under appeal is 2001.

Whether the grade of the subject dwelling is excessive.

10. The Petitioner argued that the subject dwelling does not have outstanding architectural design, large extended overhangs, copper downspouts or flashing. The features of the home are not "A" grade quality. *Boyce testimony & Petitioner's Exhibit A.*
11. The Petitioner testified that the base cost of the dwelling is \$206, 800. *Petitioner's Exhibit F, Boyce and*

McCracken testimony.

12. The Petitioner testified that the photographs of the home show brick veneer siding, aluminum downspouts and gutters, some vinyl siding, Pella windows, Berber carpet, marble entryway, ceramic tile in kitchen, pine finish – stained or painted, and pine crown molding on the first floor only. *Boyce and McCracken testimony, Petitioner's Exhibit C.*

12. The Petitioner testified that most of the subject dwelling's grade specifications fall within the "C" and "B" grades listed under grade specifications in the Regulation 17, 50 IAC 2.2-7-6. *Boyce testimony & Petitioner's Exhibit G.*

13. The Petitioner testified that the comparables from Ft. Wayne and Indianapolis show grades between "B+1" and "A". The subject property is over-graded compared to the comparables. The comparable homes have superior features. Photographs and sales disclosures are provided for each of the properties. *Boyce testimony & Petitioner's Exhibits I and J.*

14. The Petitioner testified that when the "A" grade home in Ft. Wayne (built by Mr. Boyce) and the subject dwelling are compared, it shows that the subject is not built with the same quality as that of the "A" grade home. The "A" grade home has copper flashing, a \$22,000 bar, \$26.00 a yard carpeting, a steam room, thermostats in every room, the best Anderson windows, a \$26,000 fireplace that runs from the basement to the upper level, white oak woodwork throughout, a roof line of 29 feet high, and is architecturally designed. The home was built for \$400,000 in 1988. *Boyce testimony.*

15. The Petitioner testified that the photographs in Regulation 17 can be used as an aid to grading residential properties. The photographs have not been updated since the last reassessment and the difficulty of determining what the interior components are of a dwelling diminish the reliance one can place on the use of this assessment tool. If the photos from the current Regulation 17 are used, the

dwellings shown in the “C+2” to “B-2” grade range would be comparable to the subject dwelling. *Boyce testimony & Petitioner’s Exhibit L.*

16. The Respondent testified that the PTABOA inspected the subject dwelling and felt the majority of the features, listed under the “A” grade specifications in the Regulation, fit the subject property. Everything in the subject dwelling is above average. There are an excessive amount of windows, built-ins in the kitchen, marble in the foyer, and many cuts and angles to the structure. The PTABOA tried to be fair and compared the subject structure to others in Orange County. The PTABOA started with “C” grades and used the Regulation as the guideline to determine the differences in the norm or “C” grade residence and an “A” grade residence. *Reynolds Testimony.*

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. Code §§ 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. The taxpayer's burden in the State's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V*, 702 N.E. 2d at 1040.
12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at § 5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not "triggered" if the taxpayer does not present any probative evidence concerning

the error raised. Accordingly, the Tax Court will not reverse the State's final determination 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.

Whether the grade of the subject dwelling is excessive.

Credibility of Witness – Contingent Fee

18. The contingent fee agreement between the taxpayer and the taxpayer representative calls into question the credibility of the testimony and certain evidence presented. Courts agree that an expert witness whose fee is contingent upon the outcome of a case is improperly motivated and can not objectively inform the court on an issue before it. "It is the potentially adverse influence of the motivation to enhance his compensation that makes a contingent fee arrangement for an expert witness inappropriate." *City & County of Denver v.*

Board of Assessment, 947 P.2d 1373, 1379 (Colo. 1997)(citing *New England Tel. & Tel. Co v. Board of Assessors of Boston*, 392 Mass. 865, 468 N.E. 2d 263, 265 (1984)). “[A] bargain to pay compensation to an expert witness for the purpose of ‘forming an opinion’ is lawful ‘provided that payment is not contingent on success in litigation affected by the evidence.” *Id* (citing Arthur Linton Corbin, *Corbin on Contracts*, §1430 (1962 & Supp. 1997)). Moreover, the Uniform Standards of Professional Appraisal Practice (USPAP) state that it is “unethical” to accept compensation that is contingent upon reporting “a direction in value that favors the cause of the client . . . [or] the attainment of a desired result.” *Denver*, 947 P.2d at 1378 (citing USPAP at 2 (1996)). See also *Wirth v. State Board of Tax Commissioners*, 613 N.E. 2d 874 (Ind. Tax 1993)(The contingent fee nature of the representative’s agreement goes to the weight of the testimony).

19. Mr. Boyce submits a document (Petitioner’s Exhibit N – Certification) in which it states in part, “I certify that, to the best of my knowledge and belief: I am not receiving any compensation or financial remuneration or other consideration for writing this report and attending the 131 hearing.”
20. However, this document does not state who is certifying to these stated facts nor is the document signed by any party or notarized.

Regulatory and Case Law

21. 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.*

22. “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.
23. 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).

24. 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).
25. 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).

26. 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.

Administration of the Existing System and Cost Information Analysis

27. The Tax Court invalidated subjective elements of the Regulation, e.g., grade, holding that the Regulation did not contain ascertainable standards. *Town of St. John III*, 690 N.E. 2d at 388. Nevertheless, the Indiana Supreme Court and the Tax Court did not throw out the whole system immediately. *Town of St. John V*, 702 N.E. 2d at 1043; *Town of St. John III*, 690 N.E. 2d at 398 & 99; *Whitley*, 704 N.E. 2d at 1121. Instead, the property tax system is currently administered in accordance with the true tax value system and existing law.
28. 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*.
29. True Tax value does not equal market value. Ind. Code § 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. IAAO Property Assessment Valuation, 127 (2nd ed. 1996). 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).

30. The cost tables in the Regulation are at the heart of true tax value's method for determining values. The cost schedules contained in the Regulation used 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.
31. The Board 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. In very general terms, the taxpayer's construction cost information is trended to arrive at a comparison between the adjusted construction cost of the home under appeal and construction cost in the Regulation.
32. The Tax Court demands quantification techniques for grade application. *Garcia v. State Board of Tax Commissioners*, 694 N.E. 2d 794 (Ind. Tax 1998). The State reasonably decided that adjusted construction cost calculations, are a good way to answer that demand.
33. The home under appeal was built in 1992 and is presently assigned a grade and design factor of "A". The Petitioner contends the grade and design factor should be either "C+2" or "B-2".
34. Petitioner's Exhibit F (Proposal and Specification Sheet) indicates the contested home was constructed for \$206,000. Mr. Boyce testified there was another \$800 in cost overruns that need to be added to this figure (Petitioner's Exhibit A - Statement of Issues) making a total construction cost of \$206,800.
35. Petitioner's Exhibit F does not specifically show this total cost to be just that, the

total cost or finalized construction cost agreed to by the Petitioner and the contractor. This “proposal” is signed by the contractor but is not signed by the purchasers (the Petitioners). However, at the hearing the Respondent did not object to this document being submitted nor did the Respondent object to the stated amount as being the construction cost of the Petitioner’s dwelling. One would have reasonably assumed that if the building permit indicated a different amount (more dollars) the Respondent would have objected or made a statement in regards to a different value.

- 36. In summary, the State will accept the \$206,800 construction cost and compare this construction cost information to the Regulation cost schedules for purposes of the grade issue in this appeal. One cannot compare 1992 construction cost information (Petitioner’s Exhibit F) with construction cost information based on 1991 dollars (cost schedules in the Regulation). Accordingly, the Board will deflate the 1992 information to the 1991 true tax value.

- 37. To calculate the deflator factor, the Board 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 1992 can be trended back in time to equal 1991 home construction cost.

- 38. The Marshall and Swift cost multipliers for first quarter 1992 is 1.240 and for first quarter 1991 is 1.261. To calculate the deflator factor needed to trend the 1992 construction cost back to 1991 construction dollars, the 1992 multiplier must be divided by the 1991 multiplier. The calculation is as follows:

First quarter 1992 multiplier	1.240
First quarter 1991 multiplier	1.261

1.240 divided by 1.261 equals .9833

39. By taking the Petitioner's construction cost in 1992 (\$206,800) and multiplying it by the deflator factor of .9833, the remainder value would be the subject home's construction cost in 1991. The 1991 construction cost is $\$206,800 \times .9833 = \$203,346$. 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 Petitioner's construction costs must be further reduced by fifteen percent (15%) for the proper comparison. This adjustment yields the following results: $\$203,346 \times .85 = \$172,844$. This figure is then divided by the reproduction cost per the Regulation to review the grade that is challenged in this appeal.
40. The PRC for the home under appeal reflects that the home's reproduction cost (prior to a grade adjustment) is \$127,200. The deflated reproduction cost of the subject dwelling for the 1995 reassessment is \$172,844. $\$172,844$ divided by $\$127,200 = 1.3588$.
41. Comparing the Petitioner's construction cost to the Regulation cost schedules establishes a grade factor of 136% or rounded to 140%. This percentage equates to an "A-2" grade factor. 50 IAC 2.2-7-6(g) and -11, Schedule F.

Analysis of Additional Evidence Presented

42. At the hearing, the Petitioner submitted the following as additional evidence:
- a. Photographs and PRCs of purported similarly featured homes in the Ft. Wayne and Indianapolis areas;
 - b. Copies of 50 IAC 2.2-7-10, Graded Residential Photographs; and
 - c. A highlighted Grade Specification Table.

43. 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.
44. The Petitioner presented several photographs and PRCs of purported similarly featured homes located in the Ft. Wayne and Indianapolis areas. These properties have Grade and Design Factors in the “A” to “B” range, with most falling into the “A - 2” category. The Petitioner opined that it was very difficult to find the same type home in the Orange County area (due to size of the County), therefore the Petitioner had to go outside the area to find comparables. However, the Petitioner has selected as comparable properties, properties not only outside of the subject county but also completely outside the same geographic area as the subject.
45. 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 has not shown that the comparables in these “exclusive housing areas” are in fact comparable to the subject. Nor has the Petitioner shown that the materials and workmanship in those dwellings are “superior”, as the Petitioner claims, to that of the subject. Labeling homes as being “superior” does not make establish that they are superior. Conclusory statements do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
46. The Petitioner submits only a single exterior photograph of each of the purported comparables and determines that they are comparable but fails to present any interior photographs or any analysis of these properties to that of the subject. Grade represents a composite judgment of the overall quality and design. *Mahan*, 622 N.E. 2d at 1064; 50 IAC 2.2-7 (f).
47. In addition, the Petitioner does not present any other homes built by the same contractor of the subject, possibly within the same immediate or geographic areas, which may have been more comparable than those the Petitioner

selected.

48. The Petitioner points to the photographs found in 50 IAC 2.2-7-10, on pages 47, 48, 51 – 53, and 55, and compare the subject property to these photographs. The Petitioner admits that the photographs can be used only as a guide and that the interior components of the homes depicted cannot be established. But after reviewing the photographs as a guide, the Petitioner determined the photographs on pages 51 thru 56 best portray the subject. These photographs indicate grades between “C+2” to “B+1”.
49. As the Petitioner has previously testified to and as stated in 50 IAC 2.2-7-10, “These photographs are only an indication of grade and not a determination of the actual grade of the structure shown. Grade must be based upon individual inspection of the type of materials and quality of workmanship of the subject parcel.”
50. Since these photographs are to be used as a guide only, the reliance on these photographs as the defining factor of the grade issue would be inappropriate. Again, it needs to be noted that the selected (grade) represents a composite judgment of the overall quality and design. *Mahan*, 622 N.E. 2d at 1064; 50 IAC 2.2-7 (f).
51. Lastly, the Petitioner uses another “method” of qualifying grade. The Petitioner submitted a highlighted copy of the Grade Specification Table (Petitioner’s Exhibit G) – “weighted average calculation”. For the reasons stated below, this method is flawed and does not constitute probative evidence of error.
52. 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 good grade plumbing fixtures (grade “B”) and good quality cabinets (grade “B”). Petitioner’s Exhibit G. Conclusory statements such as the home has “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 1113.

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 “method” used to “qualify” grade in this appeal do not provide for features not specifically listed in the Regulation.
54. Also, this method 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. In summary of the issue of grade, it is determined that based on the “construction cost” information alone presented by the Petitioner, the Petitioner sustain their burden. In doing so, the burden then shifted to the Respondent to rebut the taxpayer’s evidence and to justify their decision with evidence. The Respondent stated the PTABOA had viewed the subject dwelling and felt that the majority of the features found under the “A” grade in the Grade Specification Table, fit the property. The Respondent did not present any documentation that supported the application of an “A” grade nor did the Respondent rebut the construction cost information presented by the Petitioner.
56. For all the reasons set forth above, the PTABOA failed to meet its burden in this matter. Therefore, the Board will make a change in grade from “A” to “A-2” as established by the evidence provided by the Petitioner. See Conclusions of Law ¶¶34 thru 41. A change in the assessment is made as a result of this issue.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued this by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review