STATE OF INDIANA
Board of Tax Review

PAUL SHOOPMAN, Petitioner, v. HAMILTON COUNTY BOARD OF REVIEW and CLAY TOWNSHIP ASSESSOR, Respondents.	) On Appeal from the Hamilton County Board of Review)) Petition for Review of Assessment, Form 131) Petition No. 29-003-95-1-5-00051) Parcel No. 1709310000026001)))))

Findings of Fact and Conclusions of Law

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

Issues

1. Whether the grade of the dwelling is correct.
2. Whether the neighborhood classification is excessive.
3. Whether the home site category is excessive.
4. Whether the land classification of the residual land in excess of 1 acre is correct.

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, Matthew R. Clark of Clark, Quinn, Moses & Clark, on behalf of Paul Shoopman (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 was filed on March 31, 1997. The Hamilton County Board of Review's (County Board) Final Assessment Determination on the underlying Form 130 petition is dated March 7, 1997.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on March 11, 1998, before Hearing Officer Leon Lane. Testimony and exhibits were received into evidence. Matthew R. Clark, Thomas McDonald, and Brian Murphy represented the Petitioner. Lori Harmon represented Hamilton County. Clay Township was also represented.

4. At the hearing, the subject Form 131 was made a part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition was labeled Board Exhibit B. In addition, the following exhibits were submitted to the State:

   Petitioner Exhibit A - Summary of Issues / Brief;
   Petitioner Exhibit B - State Final Determination of 1994 Shoopman appeal;
   Petitioner Exhibit C - Grade Specification Chart (highlighted);
   Petitioner Exhibit D - 1995 Property Record Card (PRC) for the subject;
   Petitioner Exhibit E - Proposed Land Valuation;
   Petitioner Exhibit F - Brief prepared by Midwest Governmental Services;
   Petitioner Exhibit G - Photos;
   Petitioner Exhibit H - Aerial maps showing home site and land values for properties near the subject; and
   Respondent Exhibit A - Copy of the County Board's determination of the 1995 Form 130 petition.

5. The subject property is a residence located at 4550 West 116th Street, Zionsville, Indiana (Hamilton County, Clay Township).

6. The dwelling was viewed from the exterior only. The dwelling was sold prior to the hearing with the State.

Issue No. 1 - Whether the grade of the dwelling is correct.

7. At the hearing, Mr. Clark testified that the subject is currently graded an A+6, and that the Petitioner feels it should be graded A+1. The Petitioner contends that a State Final Determination for the March 1, 1994 assessment should be given great weight in reaching the determination of grade for 1995. The State Final Determination for 1994 did assign a grade of A+1. *Clark Testimony.*

8. The Petitioner also presented a highlighted Grade Specification table, alleging that most of the materials used in the subject are of the B or C quality. The Petitioner also contended that the materials used in the construction of the subject dwelling are identical to the materials used in constructing $130,000 Dura Builder homes.[1] *Clark Testimony; Murphy Testimony; & McDonald Testimony.*

9. Respondent testified that the 1994 assessment was based on different guidelines than the 1995. Ms. Harmon also stated that the County Board had requested cost information but the Petitioner provided none. *Harmon Testimony.*

10. Respondent further stated that the materials may be the same, but no evidence was provided to substantiate this claim. She also contended that no information was provided regarding the workmanship or architectural design. *Harmon Testimony*

[1] Mr. Shoopman was either the owner of, or part owner of Dura Builders at the time of this appeal.

11. Respondent also stated that the subject home has several expensive features not normally found in most homes, including a built in multi-story aquarium, a full movie theater, a bowling alley, and an enclosed pool with underwater viewing windows. *Harmon Testimony.*

Issue No. 2 - Whether the neighborhood classification is excessive.

12. The Petitioner testified that the 1994 State Final Determination approved the classification of the neighborhood as "average." For the 1995 assessment, the local officials classified the neighborhood as "excellent." *Clark Testimony.*

13. The Petitioner testified that the local officials rate all abutting properties as "good". The Petitioner contends the county seems to take the subject parcel as a neighborhood unto itself. *Clark Testimony.*

14. The Petitioner further contended that all but one of the surrounding properties are classified as "good." The Petitioner contends this contradicts 50 IAC 2.2-4-13(c). *Murphy Testimony.*

15. The Respondent testified that the county considers the Petitioner's property as a neighborhood unto itself. Ms. Harmon further stated the subject property has a man made lake, estate setting, and is different from the surrounding properties. *Harmon Testimony.*

16. The County Board denied a change in neighborhood classification because "the subject property has been classified as an "estate" and as such is not necessarily comparable to abutting properties in that they are generally comprised of large secluded and self-contained tracts of land. It is the Board's opinion that the subject indeed qualifies as an "estate" and the neighborhood rating applied to the subject is consistent with the rating applied to comparable "estates" in the subject area, even though they are not contiguous to the subject." *Respondent Exhibit A*.

Issue No. 3 - Whether the home site category is excessive.

17. The Petitioner contends that the value placed on the 1-acre home site is excessive when compared to surrounding properties. The home site is classified as excellent and is valued at $115,000 per acre. The Petitioner contends that other properties in the area are classified as good and have a value of $30,000 per acre. *Clark Testimony.*

18. The Petitioner also stated that all the properties abutting the subject are classified as good and have a home site value of $30,000 per acre. The Petitioner continued by stating surrounding property also had a value of $30,000 per acre, except one other property with a value of $115,000 like the subject. *Murphy Testimony.*

19. The Respondent testified that the subject property has man made lakes estate setting, and is different from the surrounding properties. *Harmon Testimony.*

20. The County Board denied a change in home site category because "the rate is consistent with applicable rates for estate home sites established by the Hamilton County Land Commission; that the land, cited by petitioner as comparable to the subject is not comparable, and that, to the contrary, the assessor has applied the $115,000 home site rate to comparable estate home sites in the area." *Respondent Exhibit A, page 3.*

Issue No. 4 - Whether the land classification of the residual land in excess of 1 acre is correct.

21. The Petitioner contends that the residual land, after the one acre home site, should be valued as agricultural land. The Petitioner states that the land is classified as agricultural, and was last used as agricultural land. The Petitioner

further states that in 1994, the land was priced as agricultural land. *Clark Testimony.*

22. The Petitioner testified that the owner owns another forty acres of land abutting the property that is classified and priced as agricultural land. The Petitioner stated that most of the residual land is uncut prairie grass. *Clark Testimony.*

23. The Petitioner also states that surrounding properties have residual home site land valued at $2,500 per acre, whereas the subject has such land valued at $10,000 per acre.

24. The Respondent testified that the subject land is not being used as agricultural land, and therefore, cannot be classified or priced as agricultural land. Respondent further stated that surrounding properties may have been used as agricultural land in 1995, or received some type of CRP or other agricultural subsidy program.[2] Respondent further stated that the land should be valued on market worth as of 1991 values. *Harmon 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,

[2] The term CRP was never explained at the hearing, it is assumed that it refers to some sort of agricultural subsidy program.

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. See 50 IAC 17-6-3. "Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies." *Bell v. State Board of Tax Commissioners,* 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.

9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice,* § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.

10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." *Id* (citing *Herb v. State Board of Tax Commissioners,* 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley,* 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners,* 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).

11. One manner for the taxpayer to meet its burden in the State's administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners,* 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V,* 702 N.E. 2d at 1040.

12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.

13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark,* 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners,* 634 N.E. 2d 882, 887 (Ind. Tax 1994).

14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. *See Whitley,* 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not "triggered" if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State's final determination merely because the taxpayer demonstrates flaws in it).

C. Review of Assessments After *Town of St. John V*

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property's market value will fail.

16. Although the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V,* 702 N.E. 2d at 1043; *Whitley,* 704 N.E. 2d at 1121.

17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

Conclusions Regarding Grade

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.

28. 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).

20. 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).

21. 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 grade

selected represents a composite judgment of the overall quality and design. *Mahan*, 622 N.E. 2d at 1064; 50 IAC 2.2-7 (f).

22. 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.

23. Though it may be difficult to establish whether a home has a "cheap quality interior finish with minimal built-in features" or is "devoid of architectural treatment", this does not mean that a taxpayer is precluded from offering evidence tending to demonstrate that the home has these characteristics. *Whitley,* 704 N.E. 2d at 1119.

24. In property tax appeals, the petitioner has the responsibility to provide probative and meaningful evidence to support a claim that the grade factor assigned by the local officials is incorrect.

25. One manner for the taxpayer to meet its burden in the State's administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners,* 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V,* 702 N.E. 2d at 1040.

26. The Petitioners did not identify properties that are similarly situated to the property under appeal and did not credibly establish disparate treatment between

the subject property and others similarly situated. The attempted grade reduction must fail for this reason.

27. In addition, Petitioner's Exhibit C (grade specification table with highlighted features) does not establish that the local taxing officials misapplied the tax system in this case. Numerous features set forth on the grade specification table appear in more than one grade category. For example, gutters and conductors appear in grade categories A through C. There are also features on the grade specification table that do not appear in multiple grade categories. For example, a tiled bath is a feature of a B grade home while a ceramic tiled bath is a feature of an A grade home. Further, the grade specification table does not include features that are present in the subject. For example, the specification table does not include features such as multi-story aquariums, bowling alleys, or movie theaters. Standing alone, this Exhibit does not establish an incorrect grade application.

28. The Petitioners failed to provide construction cost information that the State Board could have dealt with in a meaningful manner. The Tax Court demands quantification techniques for grade application and the State Board reasonably decides that using construction cost information is appropriate when grade issues are raised in property tax appeals. *Garcia v. State Board of Tax Commissioners,* 694 N.E. 2d 794 (Ind. Tax 1998).

29. Construction costs were requested by the County Board during their hearing with the Petitioner, and the Petitioner decided not to present them as evidence. See *Respondent's Exhibit A, page 2.* Instead, the Petitioner merely states that the materials used are the same used in Dura Builder's $130,000 homes.

30. The Supreme Court held that "the State Board acted within its statutory authority and assessed the Garcia' residence using a methodology that was neither arbitrary nor capricious. The Garcias' home was properly graded at 'A+6.'" *State Board of Tax Commissioners v. Garcia,* 766 N.E. 2d 341 (Ind. 2002). In so

holding, the Court in *Garcia* also upheld the assignment of grades in excess of "A."

31. The State used construction costs as a way to arrive at the grade in the *Garcia* case, and the Supreme Court stated it was with the State's statutory authority to do so. In this case, the construction costs were requested at the County Board level, however, the Petitioner did not present them to the County Board or the State. Petitioner has therefore prevented the local assessing official from applying the methodology endorsed in *Garcia* and has failed to provide evidence that refutes the assignment of an "A+6" grade.

32. The Petitioner relies heavily on the State's Final Determination from the March 1, 1994 assessment date. The Petitioner states that because this decision was issued in October of 1995, that the March 1, 1995 assessment should be identical. However, in Indiana each tax year is separate and distinct. *See Williams Industries v. State Board of Tax Commissioners,* 648 N.E. 2d 713 (Ind. Tax 1995).

33. In addition, the rules governing the assessment of real property changed in 1995. In 1994, the rule governing the assessment of real property was 50 IAC 2.1. In 1995, a new rule promulgated by the State Board of Tax Commissioners to govern the assessment of real property took effect, 50 IAC 2.2.

34. For both these reasons, the decision issued regarding the March 1, 1994 assessment has no bearing on the outcome of the March 1, 1995 assessment.

35. As previously stated, the local officials assigned an A+6 (280%) grade factor to the home under appeal. For all reasons set forth above, the Petitioners failed to meet their burden of proof regarding the alleged impropriety of the grade factor assigned. Accordingly, no change is made in the assessment as a result of this issue.

Conclusions Regarding Neighborhood

36. The approach to selecting a neighborhood is found in 50 IAC 2.2-7-7(f)(7) and in the land orders for each county. Not all neighborhoods are Average. Therefore, there are other classifications that account for deviations from the average area. The neighborhood desirability classifications range from Excellent to Very Poor. The neighborhood is determined after a judgment of the overall desirability of the "condition of agreeable living" is made.

37. The determination of the proper neighborhood desirability classification requires the assessing officials to make a variety of subjective decisions regarding variations and similarities in areas. At times it will be found that a small area, even though it is located within a larger geographic area, will stand apart as being either superior or inferior to the overall geographic area. It would not be fair to assume that simply because one tract of land lies next to another that the tracts are similar in all respects and should be considered as equals. The fact that one tract may stand out as being different could put that tract into a group of other similar tracts.

38. The petitioner errs in that he is assuming the home site category and the neighborhood desirability classification are synomyous. The petitioner in his discussion of neighborhood cites 50 IAC 2.2-4-13(c), which refers to home site categories, not to neighborhood desirability categories. Therefore, the petitioner has relied on a section of the Regulation that is not applicable to this specific issue.

39. The petitioner has alleged that because properties abutting his parcel are listed as Good that he should also be classified as Good. However, the petitioner has submitted no probative evidence to show how his tract of land falls within the same Good classification. The petitioner has not shown how his parcel is similar to the abutting parcels in any way other than geographic proximity.

40. In the case at hand, the county has determined there are numerous properties located within the county and township that are deemed to be “estates”. These “estates” are usually not like the parcels they adjoin. For example, the size of tract, type or size of dwelling etc. could vary dramatically. Instead, the “estates” resemble each other and stand out as being far superior to their neighbors. In essence they become a separate class to be judged together as a group of similar properties.

41. Taxpayers are expected to make detailed factual presentations to the State Board regarding alleged errors in assessment. *Id.* ”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)).

42. One manner for the taxpayer to meet its burden in the State’s administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners,* 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). In this way, the taxpayer properly frames the inquiry as to “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Town of St. John V,* 702 N.E. 2d at 1040.

43. In this case, the petitioner has not met the first part of his burden by proving that the properties he is attempting to compare with his property are so similar to his property that they should be treated in an identical manner. Neither has he attempted to prove that his property should not be classified as an “estate”.

44. The petitioner has not shown there is disparate treatment between his property and those other properties located within the “estate” class.

45. In addition, should the condition be changed to good, like all surrounding properties, the depreciation of the subject would not change. The neighborhood

rating would need to be reduced to average for there to be a change in the depreciation of the subject. The Petitioner did not support a neighborhood condition of average with probative evidence.

46. For all of the reasons set forth above, the challenge to change the neighborhood raised in this appeal is denied and there is no change in the assessment.

Conclusions Regarding Home Site Category

47. The approach for selecting a home site category is found in 50 IAC 2.2-4-13 (c)(1-7). Not all home sites fall into the Average category. The home site category designations range from Excellent to Very Poor. "The boundaries of the geographic area and the characteristics of the area determine the amount of variation in value." It is impossible to create a precise formula that measures every variable of location and convert those variables into a precise value.

48. The determination of the proper home site category is dependent upon a variety of objective and subjective decisions. There could be a small area within a larger area that is distinctly different than the area as a whole. This is the case of the subject's land. The county / township has recognized that some home sites within a large geographic area are more valuable than others and have assigned different home site categories to those special parcels depending on the estimations of value. For example, the Shoopman's parcel has a pond or lake in excess of twenty-six acres when none of the surrounding parcels have ponds or lakes. Therefore, if the average home site has no lake or pond, then a parcel having a lake or pond could be determined to have a home site category above average because of the added advantages of having the usage of the water. The assessor must determine which of the categories is correct.

49. One home site may be incongruous to the adjacent home sites and may be far superior to what is established as normal for the area. When the assessor finds a parcel is not like the rest of the properties in the area but is like certain other

property, the assessor groups the similar properties together as a class. The properties in this class are comparable to each other, even if they are not geographically close. The county and township designated certain properties as "estates". The "estates" are similar in most respects. Therefore, any property designated as an "estate" should be compared with others in the "estate" category and should not be solely compared to their geographic neighbors. In order to make a successful challenge of the home site category designation, evidence must be produced to show that a petitioner is being treated differently than others in the class, or that the petitioner's land does not belong in the class.

50. Primarily the basis for the attempted reduction in the home site category is Shoopman's reliance on comparing adjacent home site values with his home site. It is unrealistic to believe the "estate" properties would sell for the same amount as the average properties.

51. There is another "estate" property to the north of the Shoopman's parcel (Petitioner's Exhibit H) that is also in the "estate" category and has been assessed at $115,000 for the first acre of land. This property is comparable to the Shoopman property, however it is not comparable to its adjacent properties.

52. The petitioner has alleged his property should be categorized as Good. However, in support of the allegation no factual evidence has been submitted to show the value placed on the home site is excessive when the property is compared with other "estate" properties in Hamilton County. Nor has evidence been introduced which shows the petitioner is being treated differently than others in the "estate" class. No evidence has been submitted to show the value of the Shoopman home site is the same as those in the same geographic area.

53. One manner for the taxpayer to meet its burden in the State's administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of*

Tax Commissioners, 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V,* 702 N.E. 2d at 1040.

54. The Petitioner did not prove, with probative evidence, that the subject property is similar to surrounding or abutting properties. In fact, the Petitioner's land contains what appears to be a large private lake where the surrounding properties doe not have access to a lake.

55. The taxpayer has failed to present sufficient evidence to show he is being treated differently than other similar parcels designated as "estates". Therefore, he has failed to meet the first part of his burden and for all of the reasons listed above the petitioner's claim is denied.

Conclusions Regarding Land Classification of Residual Land

56. The approach for selecting whether to use the residential acreage or agricultural acreage pricing is found in 50 IAC 2.2-4-13. "There is a fine line between residential acreage tracts and land valued using the agricultural soil productivity method." "The property's size does not determine the property classification or pricing method…"

57. In addition the 1995 Hamilton County Land Valuation Order states the following: "Rural residential acreage tracts over one acre and not used for agricultural purposes shall be assessed using the appropriate home site base rate for the first acre and the appropriate base rate for each additional acre. Agricultural parcels shall be assessed using the agricultural productivity method as explained in 50 IAC 2.2-5.

58. The 1989 Hamilton County Land Valuation Order stated the following: "Rural residential acreage tracts over one acre and **under five acres** (emphasis

added), and not used for agricultural purposes shall be assessed using the appropriate home site base rate for the first acre and $1,500 for each additional acre. Parcels over five acres shall be assessed as agricultural using the agricultural productivity method."

59. The rules and regulations in effect for the years 1989 through 1994 are not the same as those in effect for 1995 through the present.

60. The determination of whether the acreage in excess of the one-acre home site is residential or agricultural is at issue. The petitioner is primarily relying on a State Tax Board determination of a 1994 appeal when he is requesting the residual acreage in excess of one acre should be determined to be farmland.

61. The petitioner fails to recognize the language in the 1989 and the 1995 Hamilton County Land Valuation Orders differ. The 1989 order specifically said that all land over five acres was to be assessed as agricultural land. This language does not appear in the 1995 order. Therefore, while the assessment issued by the State Board for 1994 was correct in assessing residual land as agricultural land, the State Board is not bound by that decision for 1995. The County, Township and the State Board must follow the rules and regulations in effect for 1995.

62. "The property classification and pricing method are determined by the property's use or zoning. Land purchased and utilized for residential purposes is based on market worth as of January 1, 1991." 50 IAC 2.2-4-13.

63. Petitioner's Exhibit A states the excess acreage is "uncut prairie grass last used as farmland". The petitioner has submitted no evidence to document the usage of the land in 1995. The Petitioner did not present any evidence indicating that the subject was being used in an agricultural manner on March 1, 1995. Nor has the petitioner submitted any evidence to show that the tract was purchased for any use other than residential. The petitioner has submitted no evidence to determine the zoning of the parcel.

64. Petitioner's Exhibit A states the Shoopman's excess acreage is not being assessed at the same rate as his neighbors. The determination of the base rate to use when pricing excess acreage is dependent on which home site category is used. Therefore, if the Shoopman's home site were designated as Excellent, the excess acreage base rate would be at the high end of the value range listed in the Hamilton County Land Valuation order. Considering that the Shoopman property falls under the county and township's "estate" category and the neighboring properties are not listed as "estates", the base rates used for the excess acreage will not be the same for the Shoopman's as for their adjacent neighbors.

65. The petitioner appears to question the amount of excess acreage assessed as a "residual home site category (Category 91)." However, the petitioner fails to delineate the amount of acreage he feels should be assessed as any land type other than the first acre.

66. Taxpayers are expected to make detailed factual presentations to the State Board regarding alleged errors in assessment. *Id.* "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)).

67. One manner for the taxpayer to meet its burden in the State's administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners,* 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V,* 702 N.E. 2d at 1040.

68. The petitioner has not provided evidence to show that he is being treated differently than other properties designated as “estates”. Nor has the petitioner provided evidence to show that his property has been designated as an “estate” in error.

69. For all of the reasons set forth above, the challenge to price the excess acreage as agricultural land in this appeal is denied and there is no change in the assessment.

Summary of Final Determination

Determination of Issue 1 –*Whether the grade of the dwelling is correct.*

70. There was no change as a result of this issue.

Determination of Issue 2 – *Whether the neighborhood classification is excessive.*

71. There was no change as a result of this issue.

Determination of Issue 3 – *Whether the home site category is excessive.*

72. There was no change as a result of this issue.

Determination of Issue 4 – *Whether the land classification of the residual land in excess of 1 acre is correct.*

73. There was no change 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 by the Indiana Board of Tax Review this ____ day of_____, 2002.

_____

Chairman, Indiana Board of Tax Review