

**STATE OF INDIANA
Board of Tax Review**

In the matter of the Petition for Review)
of Assessment, Form 131) Petition No. : 03-006-95-1-5-00001

Parcel No. : 06840131400

Assessment Year:1995

Petitioner: RK & Cheryl Fitzpatrick
 10801 W. Grandview Drive
 Columbus, IN

Petitioner Representative: Tax Consultants, Inc.
 331 Franklin Street
 Columbus, IN 47201

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 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, Tax Consultants, Inc., on behalf of RK and Cheryl Fitzpatrick, filed a petition requesting a review by the State. The Form 131 was filed on May 16, 1997. The Bartholomew County Board of Review's (County Board) Final Determination was dated April 18, 1997.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on June 25, 1998, before Hearing Officer Leon Lane. Testimony and exhibits were received into evidence. Mr. Milo Smith represented the Petitioner. Ms. June Howell, Chief Deputy Assessor, represented Bartholomew County. Harrison Township was not represented.

4. At the hearing, the subject Form 131 petition was made a part of the record and labeled Board's Exhibit A. In addition, the following exhibits were submitted to the State:
 - Petitioner's Exhibit A – Grade Specification Table from 50 IAC 2.2

 - Respondent's Exhibit A – Copy of Petition
 - Copy of Form 130 Petition
 - Sketch of dwelling
 - Newspaper article written about dwelling
 - B&W Photographs of dwelling
 - Property Record Card (PRC) for subject property

5. The structure is located at 10801 W. Grandview Drive, Columbus, Harrison Township in Bartholomew County.

6. The Hearing Officer did not conduct an on-site inspection of the subject property.

Issue No. 1—Whether the grade is excessive.

7. Mr. Smith testified the State Tax Manual gives very little instruction on how to grade a house. He recited 50 IAC 2.2-10-3 (1) the classification for an "A" grade dwelling. He further testified that based on the guidelines given in the manual, you couldn't grade above an "A". His example was the definition of an "A" grade building being constructed with the finest quality materials. He asked, "How can you get better than using the finest quality materials?"
8. Mr. Smith testified that the Grade Specification Table (50 IAC 2.2-7-6 (b)) has only the major classifications for grade. Mr. Smith further testified that he has highlighted the features of the subject property and these features span three categories from A to C. Mr. Smith contends there should be another column for grading houses to a "A+10" with specific instructions.
9. Mr. Smith contends that if an "A" house has the finest quality materials according to the definition, then how do you ever grade a house above an "A"?
10. Ms. Howell testified the County Board on the same issue denied the 130 petition and the evidence presented by the Respondent speaks for itself.

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. 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.

Issue No. 1

Whether the grade is excessive.

18. "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.
19. "Design factor" means a factor or multiplier applied to computed reproduction cost as an adjustment to account for cost variations attributable to the particular design of the subject property that were not accounted for in the particular pricing schedule used. 50 IAC 2.2-1-22.
20. "Grade factor" means a factor or multiplier applied to a base grade level for the purpose of interpolating between grades or establishing an intermediate grade. 50 IAC 2.2-1-31.
21. Subjectivity is used in grading property. For assessing officials and taxpayers alike, however, the Manual provides indicators for establishing grade. The text of the Manual (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.
22. 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.*

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	60%

50 IAC 2.2-7-6(e)

27. 50 IAC 2.2-7-6(g) Because dwellings sometimes fall between major classifications, or at intermediate grade levels a method of interpolation is built into the system. Intermediate grade levels are indicated by suffixing the letter symbol "A" through "E" of the major classification with one (1) of the following:
- (1) Plus or minus two (+/- 2) indicates that the grade falls halfway between the assigned grade classification and the grade immediately above or below it. For example, a grade of "C+2" indicates that the quality and design grade classification is halfway between "C" and "B" or average to good construction. The applicable percentage is one hundred percent (110%).
 - (2) Plus or minus one (+/-1) indicates that the grade is slightly above or below the major grade classification or at a point approximately twenty-five percent (25%) of the interval between the assigned grade classification and the

grade immediately above or below it. For example, a grade of "C+1" indicates that the quality and design grade classification is slightly better than average or approximately halfway between a "C" grade and a "C+2" grade. The applicable percentage is one hundred five percent (105%).

- (3) There is only one (1) level below "E" grade. It is indicated by a minus one (-1) and represents a reduction of ten percent (10%).
- (4) Grades that fall above "A" are indicated by "plus one (+1) through "plus ten (+10)". Each number represents an increase of twenty percent (20%). "A+10" equals a factor of three hundred sixty percent (360%). Grade A+4 may be designated as "AA", and grade "A+10" may be designated as "AAA".

- 28. 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).
- 29. Mr. Smith contends there is no standard to grade houses above a "A" grade. 50 IAC 2.2 clearly allows interpolation and the judgment of the local taxing officials to set the grade above an "A". When applying grade factors, quality of materials and workmanship and quality of style and design must be examined.
- 30. Characteristics of "A" grade dwellings are described in 50 IAC 2.2-7-6(1) and states:
"A" grade dwellings have an outstanding architectural style. The design, craftsmanship, and materials are of exceptionally high quality. The detail and ornamentation are aesthetically appealing.

31. In the case of *Garcia v. State Board of Tax Commissioners* (694 N.E. 2d 794 (Ind Tax 1998)) the Tax Court found the Manual did not adequately address the grade issue. *Id at 7*. The State Board needs a way to measure grade. 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*, No. 49T10-9608, slip op. (Ind Tax Ct. April 24, 1998). In the case, the Tax Court demands quantification techniques for grade application and the State Board reasonably decides that adjusted construction costs are the best way to answer that demand.
32. Mr. Smith did not present evidence that he had inspected the interior of the property or provide further evidence relating to the materials, design, and workmanship of the subject home.
33. Mr. Smith gave the Grade Specification Table (Petitioner's Exhibit 1) in evidence with some of the characteristics of the subject property in three (3) categories highlighted.
34. The grade specification table in the Regulation with checks marks or circles lacks credibility and does not establish that the local taxing officials misapplied the tax system. 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 many homes. For example, the specification table does not include features such as skylights and built-in bookcases.

35. 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. The inability to provide information identifying features and building specifications reveals that a claim for a grade change is purely speculative and is not supported by significant evidence.
36. Mr. Smith clearly did not identify any similarly situated properties or establish disparate treatment between the contested property and other similarly situated properties. No evidence was presented to show the statute or regulations were not properly applied to individual assessments. Mr. Smith did not make a prima facie case on the evidence presented.
37. The Supreme Court has upheld assessments that assign grades in excess of A. *State Board of Tax Commissioners v. Garcia*, 766 N.E. 2d 341 (Ind. 2002). Petitioner has failed to prove that the grade assigned by the local assessing official is incorrect.
38. For all the above reasons, the Petitioner has not met its burden of proof on this issue and there is no change in the assessment.

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