

**STATE OF INDIANA
Board of Tax Review**

In the matter of the Petition for Review)
of Assessment, Form 131) Petition No.: 82-030-95-1-5-00024

Parcel No.: 0709009212007

Assessment Year: 1995

Petitioner: Robert and Rose Zigenfus
 14720 Nora Drive
 Evansville, IN 47711

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 "A" assigned to the dwelling by the local assessing officials is incorrect.

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, James Angermeier, on behalf of Robert and Rose Zigenfus (Petitioners), filed a petition requesting a review by the State Board. The Form 131, petition was filed on May 21, 1997. The County's determination on the underlying Form 130 petition was issued April 23, 1997.

3. At approximately 10:00 a.m. on June 8, 2000, James Angermeier, acting on behalf of his clients signed an agreement to withdraw petition 82-030-95-1-5-00024. The Withdrawal Agreement is labeled Board Exhibit C and entered as evidence. Mrs. Rose Zigenfus arrived for the scheduled hearing and submitted documentation indicating that James Angermeier no longer represented the Petitioners in this appeal. The document submitted by Mrs. Zigenfus is labeled Board Exhibit D and entered as evidence.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on June 8, 2000, before Hearing Officer Betsy Brand. Rose Zigenfus, the Petitioner, was present. Khris Seger represented Vanderburgh County. There was no one present to represent Scott Township.

5. At the hearing the Form 131 was entered as evidence and labeled Board Exhibit A. The Notice of Hearing was labeled Board Exhibit B and entered as evidence. In addition the following exhibits were submitted to the State:

Respondent's Exhibit 1 – Summary of Issues and Response with attachments:

- a. A copy of Board of Review minutes.
- b. A copy of the final determination.
- c. A property record card.

- d. A copy of *Corey v. State Board of Tax Commissioners*.
 - e. A plat map for the subject property.
 - f. Photographs of the subject property.
6. At the hearing a request for additional evidence was made by the Hearing Officer. The Petitioner was asked to provide interior and exterior photographs of the dwelling along with construction cost information. The Petitioner complied with the request within the required time limit as follows:

Petitioner's Exhibit 1 – Letter of response with statement of construction costs.

Petitioner's Exhibit 2 - Interior and Exterior photographs of the subject residence taken on June 10, 2000.

7. The subject property is a one-story brick home located at 14720 Nora Drive, Evansville, Scott Township, Vanderburgh County, Indiana. The Hearing Officer did not view the subject property.

Testimony and Documents Regarding Grade

8. Mrs. Zigenfus requests a grade of "B" applied to the subject residence. She offered the following testimony:
- a. The original grade applied to the dwelling was ("A") one hundred sixty percent (160%).
 - b. An appeal (1993) was filed and the Board of Review lowered the grade to ("A-1") one hundred fifty percent (150%).
 - c. Compared to homes in the surrounding area that are graded at "B" or "B+" the subject dwelling is graded too high.
 - d. Mr. Angermeier was the tax consultant in this (1995) appeal.
 - e. The Board of Review minutes indicate the grade was returned to "A" (160%) because the hearing officer was not allowed into the residence.
 - f. The Board of Review was allowed in the residence in 1993.

13. Responding to the Hearing Officer's request, Mrs. Zigenfus submitted Petitioner's Exhibit 1, which shows the construction cost of the structure was \$437,311.95. Petitioner's Exhibit 1 also shows the construction time frame was November, 1991 through August, 1992.

14. Petitioner's Exhibit 2 consists of exterior and interior photographs of the subject dwelling. Referencing the photographs in her letter (Petitioner's Exhibit 1), Mrs. Zigenfus offers the following information as evidence:
 - a. The photographs were taken on June 10, 2000.
 - b. All the interior walls in the home are painted.
 - c. The master bedroom does not have vaulted or tray ceiling.
 - d. The kitchen has standard cabinets with basic hardware.
 - e. There is tile floor in the kitchen.
 - f. The Great Room has a built-in to house the electronic equipment.
 - g. Light fixtures are included in the construction costs.

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.

C. Conclusion 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.

20. Not all residences in the State are average or C grade homes. Therefore, grade factors are applied to account for differences in construction specifications and quality of materials and workmanship between the models in the Regulation and the home being assessed. *Clark, 94 N.E. 2d at 1236, N. 6*. The major grade classifications are A through E. 50 IAC 2.2-7-6(d)(1). The cost schedules in the Regulation reflect the C grade standards of quality and design. The following grade factors (or multipliers) are assigned to each major grade classification:

A grade	160%
B grade	120%
C grade	100%
D grade	80%
E grade	40%

50 IAC 2.2-7-6(e)

21. Intermediate grade levels ranging from A+10 through E-1 are also provided for in the Regulation to adequately account for quality and design features between major grade classifications. 50 IAC 2.2-7-6(g).

22. The determination of the proper grade factor requires assessors to make a variety of subjective judgments regarding variations in the quality of materials and workmanship and the quality of style and design. *Whitley*, slip. Op.at 6; *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 212-7(f).

23. Subjectivity is used in the grading process. For assessing officials and taxpayers alike, however, the Regulation provides indicators for establishing grade. The

text of the Regulation (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.

24. 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*, slip. Op. At 12, n. 12.
25. 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.
26. The Petitioners argue for a grade reduction based upon allegedly comparable neighborhood properties. The Petitioners did not establish that these properties were, in fact, comparable. Characterizing properties as comparable is insufficient for appeal purposes. Petitioners did not identify properties that are similarly situated to the property under appeal and did not credibly establish disparate tax treatment between the subject property and others similarly situated.
27. In addition the Petitioner referenced the grade specification table. The grade specification table in the Regulation contains numerous features that appear in more than one grade category. For example, gutters and conductors appear in grade categories A through C. In addition, the specification table contains features that do not appear in multiple grade categories. For example, tiled bath is a feature of a B grade home while 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 sky lights and built-in bookcases. Such features often provide the basis to account for the selection of one grade category over another.

Indeed, these deviations from the norm accomplish the explicit reason for grade categories - - raising or lowering from the norm C grade to account for the higher or lower reproduction cost of the property. Standing alone, the testimony that referenced the grade specification table does not establish an incorrect grade application.

28. In response to the hearing officer's request the Petitioner submitted interior and exterior photographs of the subject dwelling. (See Petitioner's Exhibit 2.) Mrs. Zigenfus offered comments about the photographs in Petitioner's Exhibit 1. The photographs offered support for her testimony. However, this evidence falls short of establishing that the grade applied by the local officials is incorrect.
29. Petitioner's Exhibit 1 includes construction cost information and the State Board will deal with that evidence in a meaningful manner.
30. True tax value does not equal market value. Ind. Code § 6-1.1-31-6(e). True tax value does not attempt to determine the actual market value for which property would sell if it were offered on the open market. Nevertheless, true tax value's method for valuing is the same as one of the well-accepted methods for determining fair market value – reproduction cost less depreciation.
31. The cost schedules in the Regulation, 50 IAC 2.2-7-11, are at the heart of true tax value's method for determining value. The cost schedules effective for the 1995 general reassessment reflect 1991 reproduction costs (based on market information derived from Marshall Valuation Services price tables) that were then reduced across the board. The overall purpose of these cost schedules was to approximate prevailing construction costs in 1991 less 15%.
32. The home under appeal was completed in 1992. The Petitioners evidence shows the structure was constructed for \$437,311.95.

33. The State Board will compare the home construction cost information to the Regulation's cost schedules for purposes of the grade issue raised in this appeal. The State Board cannot compare 1992 construction cost information (Petitioners' evidence) with construction cost information based on 1991 dollars (cost schedules in the Regulation). Accordingly, the State Board will deflate the 1992 cost information to 1991 true tax value.

34. To calculate the deflator factor, the State Board will use the Marshall and Swift 1999 Residential Cost Handbook. This handbook is a national recognized publication of assessment/appraisal theory and cost data. It provides comparative cost multipliers by region and also provides a formula to take an established cost of a home to a historical date. By using the Marshall Swift cost multipliers for the Great Lake Region (Wisconsin, Illinois, Indiana, Michigan and Ohio) and their cost formula, the home under appeal that was 1992 can be trended back in time to equal 1991 home construction cost. By obtaining the subject home construction cost in 1991 dollars, a grade factor can be quantified.

35. The Marshall and Swift cost multiplier for 1992 is 1.240 and for 1991 is 1.261. To calculate the discount factor needed to trend the 1992 construction cost information back to 1991 construction cost 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	 .983

36. By taking the Petitioners' home construction cost in 1992 (\$437,311.95) and multiplying it by the deflator factor of .983, the remainder value would be the subject home's construction cost in 1991. The 1991 construction cost is $\$437,311.95 \times .983 = \$429,877.65$. Trending the construction cost downward still does not end the calculation because the 1991 cost schedules found in the

Regulation were reduced by 15%. Accordingly, the deflated construction costs must be further reduced by 15% for proper comparison. This adjustment yields the following results: $\$429,877.65 \times .85 = \$365,396.00$.

37. The property record card for the home under appeal reflects that the home's reproduction cost (prior to a grade adjustment) is \$147,700. The deflated reproduction cost of the subject dwelling for the 1995 reassessment is \$365,396.00. $\$365,396.00$ divided by $\$147,700 = 2.47$
38. Comparing the Zigenfus' construction cost to the Regulation's cost schedules establishes a grade factor of 247% rounded to 240% for a grade factor of A+4. The local officials assigned a grade of "A" (160%) based on an exterior inspection. The "A" grade is incorrect. The Petitioners own evidence shows the cost of the structure is 240% above the normal prevailing cost.
39. The grade assigned by the local officials was conservative. The evidence provided by the Petitioner indicates a grade of A+4 is more appropriate for the subject. However, the State will not increase the grade of the Petitioner's home in this appeal.
40. The State acknowledges that the Regulation does not explicitly identify the mathematical calculation detailed above, but this does not prohibit the State Board from using such a calculation for purposes of: (1) meaningfully dealing with the evidence presented, (2) reviewing the propriety of a grade factor that is challenged in this appeal, and (3) determining value according to the common law developed by the Tax Court.
41. The Supreme Court has upheld the methodology used in assigning grade to the subject property, as a suitable one for high quality homes, i.e. homes at grades above "A." "The State Board acted within its statutory authority and assessed the Garcia's residence using a methodology that was neither arbitrary nor capricious." *State Board of Tax Commissioners v. Garcia*, 766 N.E. 2d 341 (Ind.

2002)(“Garcia”). Therefore, we will follow both the methodology and the rationale adopted in *Garcia*.

42. As previously stated, the local officials conservatively assigned an “A” (160%) grade factor to the home under appeal. The Petitioners requested a grade factor of “B” (150%). For all reasons set forth above, the Petitioners failed to meet their burden of proof regarding the requested grade reduction. Accordingly, there is no change in the assessment 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