STATE OF INDIANA
Board of Tax Review

In the matter of the Petition for Review)
of Assessment, Form 131) Petition No.: 19-018-98-1-5-00001

Parcel No.: 0180678018

Assessment Year: 1998

Petitioner: Roger L and Michele M Seger
3191 Bittersweet Drive
Jasper, IN 47546

Petitioner Representative: Henry C. Hamilton, IV
McHale, Cook & Welch
320 N. Meridian Street, Suite 1100
Indianapolis, IN 46204

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 Form 131 petition was filed with the State within the statutory time limitations.
2. Whether the grade is correct.

3. Whether the square footage is correct.
4. Whether the land value 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, McHale Cook & Welch, on behalf of Roger and Michele Seger, the Petitioners, filed a petition requesting a review by the State. The Form 131, petition was filed on January 28, 1999. The County's determination on the underlying Form 130 petition was issued December 28, 1998.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on April 13, 2000, before Hearing Officer Betsy Brand. Henry C. Hamilton, IV and Jeffrey T. Bennett represented the petitioners. Raymond Lueken and Gail Gramelspacher represented Dubois County. James Pee represented Bainbridge Township.

4. 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:
   Petitioner's Exhibit 1 – Summary of Issues
   a. Information relating to actual material used in the construction process.
   b. Grade Specification Table Rule7 – Page 12 *Indiana Real Property Assessment Manual.*
   c. Copy of *Garcia vs. State Board of Tax Commissioners,* 694 N.E.2d 794.
   d. Timber Ridge Estates, Dubois County Land Order page 128.
   e. Residential Land Pricing – Rule 4 – Page 19 Paragraph (d) of the *Indiana Real Property Assessment Manual.*
   f. Copy of Builders Plans.

g. Residential Pricing Schedule A form Rule 7 – Page 70-72 of the *Indiana Real Property Assessment Manual.*

Respondent's Exhibit 1 – Property Record Cards for Lots 6, 9, 10, 11, 12, 13, 14, and 17 Timber Ridge Estates.

Respondent's Exhibit 2 – Land Order for Timber Ridge Estates and Land Order for College View Estates.

5. The Hearing Officer requested information from the Petitioner regarding the issue of timely filing. The information was received from the Petitioner in the specified time and entered into evidence as Petitioner's Exhibit 2. The Hearing Officer also requested information regarding the construction cost of the improvement. However, this information was not received. The Hearing Officer made a second request for the construction cost information in a letter dated May 15, 2000. There was no response to the letter. The letter is labeled Board Exhibit C and entered as evidence.

6. The Hearing Officer requested information from the Respondent regarding the year Timber Ridge Estates was platted and copies of Township work sheets. This information was received in the specified time and was entered into evidence as Respondent's Exhibit 3.

7. The subject residential property is located 31191 Bittersweet Drive, Jasper, Bainbridge Township, Dubois County, Indiana. The Hearing Officer did not view the subject property.

Testimony Regarding Credibility of Witness

8. Mr. Jeffrey Bennett introduced Mr. Henry Hamilton, IV who is a tax analyst for McHale, Cook and Welch. Referencing Mr. Hamilton, Mr. Bennett testified:

a. He has ten (10) years assessing experience with the office of the Pike Township Assessor in Marion County.
b. He has experience with both commercial and residential structures.
c. He has all the requisite credentials.
d. He has done an extensive review of the assessment of the subject property.

9. Mr. Bennett testified that while it is customary for their law firm to contract on an hourly basis for tax consultation, this case is contracted on a contingency basis.

Testimony and Documents Regarding
Whether the Form 131 was filed Within the Statutory Time Limitations

10. The Hearing Officer raised the question of whether the Form 131 was filed within the limitations set forth in statute. Mr. Bennett asserts that if this was going to be an issue the petitioner should have received a notice of defect.

11. Mr. Bennett contends that if the petition was mailed the postmark date is considered the filing date. Mr. Bennett offered testimony about a Trial Rule that states whenever a litigant is presented with a deadline through a document or notice that arrives by mail, three days are added to the time period prescribed by statute. In addition, he contends there is case law from Indiana Tax Court to that effect.

12. The Petitioners were given until April 20, 2000, to provide evidence in support of the timely issue. On April 20, 2000 the Hearing Officer received the following: Petitioner's Exhibit 2 – Letter referencing timely filing.
    a. Copy of 50 IAC 17-4-1.
    b. Copy of *State Board of Tax Commissioners v. LESEA Broadcasting Corporation.*
    c. Copy of *Indiana Model Co., Inc. v State Board of Tax Commissioners.*

13. Mr. Luekin testified the Form 115 notice is mailed on the same day as the notice is dated. Mr. Lueken testified a member of the Assessor's staff deposits the mail in a postal box.

Testimony and Documents Regarding Grade

14. The Petitioners contend the grade of A+2 applied by the local officials is excessive. The Petitioners assert the maximum grade which should be applied is an A grade or 160% above average. Referencing Petitioner's Exhibit 1a, Mr. Hamilton testified Mr. David Hurm of Hurm Construction compared items of the subject property to the Grade Specification Table of the Indiana Real Property Assessment Manual. Mr. Hamilton testified that Petitioner's Exhibit 1a indicates four items in the B grade category, four items fall under the A grade category, and two items contain both A and B grade traits.

15. Referencing Petitioner's Exhibit 1c, Mr. Bennett asserted that *Garcia v State Board* is the binding authority with respect to the issue of grade. He contended the case holds, in essence, that there are no subjective factors that would guide an assessor or a member of the public to determine whether a house should be A+1, +2, +10, or +20. Mr. Bennett contended until the State comes up with better guidance in this area, it is a venture into arbitrary and capricious territory to go above an A grade. Mr. Bennett asserted the features in the house compared to the grade specification table indicate a grade of A.

16. During the hearing the Hearing Officer requested construction cost information for the subject improvement. Mr. Hamilton asserted the homeowner may not want the cost of his home to be public record. Mr. Bennett asserted the State has repeatedly argued that market value has no place in the calculation of an assessment because Indiana is not a market value state. Mr. Bennett contended the information requested is market value in nature and is not relevant.

17. A description of the subject property prepared by Ed Hollinde, Real Estate Deputy for Bainbridge Township is found in Respondent's Exhibit 3.

18. The Dubois County Board of Review lowered the grade of the subject property from A+4 to A+2. (See Board Exhibit A, Form 115 and Form 11.)

Testimony and Documents Regarding Land Value

19. On the Form 131 the Petitioner contends: "A negative influence factor should be applied in calculating the value of the land to account for the undeveloped nature of a large portion of this parcel."

20. The Petitioners' Summary of Issues presented at the hearing contends the correct way to price the lot is as an acreage tract with a base rate of $25,000 per acre. (See Petitioner's Exhibit 1d.) The Petitioners contend the first acre should be priced at $25,000 and the remaining 1.7 acres should be priced as excess residential acreage at $1000 per acre. (See Petitioner's Exhibit 1e.) Mr. Hamilton testified that during a telephone conversation with the County Assessor he learned excess acreage is priced at $1000.00 per acre.

21. The Petitioners Summary of Issues also states ".... if indeed the pricing were to stay as front foot this equals to a 32% negative influence factor and should be applied to the land value calculation for size and shape."

22. Mr. Lueken testified the taxpayer owns two lots that angle together. He contends the improvement straddles the property line and actually sits on both lots. He contends it is difficult to price an improvement that sits on two parcels, therefore, the improvement is assessed totally on one parcel and the other lot is priced as vacant and given a thirty percent (30%) negative influence factor.

23. Mr. Lueken testified the Land Value Order was established in 1992 for the 1995 reassessment. He testified that because Timber Ridge was being developed

when CLT did the reassessing for Dubois County, they valued the platted lots with a front foot price. Mr. Lueken contends the platted lots were valued with front foot pricing in order to be uniform with College View Estates that lies directly to the West of Timber Ridge Estates. (See Respondent's Exhibit 2.)

24. Referencing Respondent's Exhibit 1, Mr. Lueken testified the property record cards for properties in Timber Ridge indicate that all lots in the subdivision were priced using the front foot method.

25. Mr. Lueken asserts platted lots are not valued using the method described by the Petitioner. He contends that if the subject lot is valued at $25,000 per acre the assessment will be higher than if the front foot method is used.

Testimony and Documents Regarding Square Feet

26. The Petitioners contend the County has erred by pricing 3088 square feet of area for the second floor. The property record card shows finished living area for the second floor as 1785 square feet. The Petitioners contend the actual finished living area for the second floor is 1474 square feet.

27. Referencing Petitioner's Exhibit 1g, Mr. Hamilton testified:
    a. The building plan indicates the second floor area is only 1474 square feet.
    b. To the best of his knowledge the subject home was built according to the plan submitted in Exhibit G.
    c. The difference between the first floor measurements on the property record card and those on the builder's plan may be attributed to rounding.
    d. Some discrepancy may be attributed to the builder using inside measurements.
    e. The second floor area may differ because of rounding, but not by 300 square feet.
    f. The area highlighted on Exhibit 1g is second floor living space.

28. Ms. Gramelspacher testified she is a deputy in the County Assessor's office. Referencing the property record card, she testified:
    a. The card shows a base area of 3088 square feet for the second floor.
    b. In the pricing ladder the 3088 square feet prices at $57,800.
    c. The card shows that second floor finished living area is 1785 square feet.
    d. Further down the pricing ladder a deduction in the amount of $11,700 is made for 1303 square feet of unfinished interior on the second floor.

29. Mr. Lueken testified the Township Assessor measured the subject home while the builder was still on site.

30. Mr. Bennett asserts there is no evidence to indicate that the subject home was built any different than the architect's plan. Therefore, he asserts, the actual square footage of the living area for the second floor is 1474 square feet as reflected on the plan.

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.

D. Witness Compensation

18. The State's position is that it has the right to make general inquiry regarding, and to consider, the method by which a witness is compensated. Information about the witness's fee can be relevant and necessary in order to evaluate the potential partiality of the witness. A contingent fee arrangement may be considered to inherently affect the objectivity of a witness. The State believes it appropriate to consider the potential of such an arrangement to improperly motivate the witness and adversely affect the reliability of the testimony. It is for these reasons that the State will consider the method of witness compensation in the process of

determining the credibility and weight to be given to testimony of a witness whose fee is contingent on the outcome of the issues that he or she is testifying about. This position is supported by the discussion in the case of *Wirth v. State Board of Tax Commissioners*, 613 N.E. 2d 874 (Ind. Tax 1993).

E. Conclusion Regarding Whether The Form 131 was filed Within the Statutory Time Limitations

19. Ind. Code § 6-1.1-15-3(c) provides that the Form 131 petition requesting the review of the County Board's decision must be filed within thirty (30) days after notice of the County Board's decision is given to the taxpayer.

20. 50 IAC 17-4-2(a) provides the postmark date on an appeal petition filed by United States mail will constitute prima facie proof of the date of filing.

21. Even though the Form 131 petition shows a date received stamp of January 28, 1999, the attached envelope shows a postmark date of January 27, 1999. The postmark date of January 27, 1999, constitutes prima facie proof of the date of filing. The postmark date was within thirty days of the Board of Review decision. Therefore, the Form 131 petition was filed within the statutory time limitations and the issues before the State will be considered.

F. Conclusion Regarding Grade

22. The County Board lowered the grade of the home under appeal from A+4 to A+2. The Petitioners seek a further grade reduction to a grade of A.

23. 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*.

24. "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.

25. 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).

26. 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).

27. 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 212-7(f).

28. 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.

29. Regarding grade issues, 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.*

30. The Petitioners' contention that the home does not exceed an A grade is supported primarily by testimony and documents that reference the Grade Specification Table found in 50 IAC 2.2-7-6(b). Numerous features are set forth on the grade specification table that 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 sky lights and built-in bookcases. While the grade specification table may be used as a guide it is only one indicator provided in the text of the Regulation.

31. The Petitioners present a comparison of features in the subject home to the grade specification table that they allege was prepared by the contractor, David Hurm. This comparison is the only descriptive evidence offered by the Petitioner. No exterior or interior photographs were presented. Neither Mr. Bennett nor Mr.

Hamilton offered testimony of a descriptive nature. Furthermore, there may be many features that are present in the subject home that are not identified on the grade specification table and are not identified in Mr. Hurm's comments.

32. In his work-papers, Mr. Hollinde, Real Estate Deputy for Bainbridge Township, identified features such as: (1) shaker shingles with several different roof angles with copper flashing; (2) Superior quality floors, doors, windows, wood trim & cabinetry; (3) High grade lighting and plumbing fixtures. Mr. Hollinde also cites a unique and attractive design and outstanding craftsmanship as major factors in establishing the grade. In addition, he acknowledged he considered homes of similar quality when making his decision. (See Respondent's Exhibit 2.)

33. The Petitioners should have identified properties that were similarly situated to the home under appeal and should have established that the home under appeal was treated differently than other similarly situated homes. *Town of St. John V,* 702 N.E. 2d at 1040. The record is devoid of such disparate treatment or similarly situated properties.

34. Referencing *Garcia v State Board of Tax Commissioners,* Mr. Bennett asserts there are no subjective factors that would guide an assessor to determine a house should be graded above an A. However, when the hearing officer requested construction cost information that might be used to quantify an assigned grade, Mr. Bennett seemed reluctant to comply. He argued that because Indiana is not a market value state the information is not relevant. In addition, Mr. Hamilton offered the excuse that the homeowner may not want the cost of his home to be public record.

35. 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."

36. 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, however, the Petitioner did not present them to 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+2" grade.

37. The construction cost information requested during the hearing was not received from the Petitioners. The Hearing Officer made a second attempt to acquire the information. A letter was sent to Mr. Bennett on May 16, 2000, restating the request. As of this date no response has been received. It appears that while the Petitioners claim the present grade is "arbitrary and capricious" they fail to submit evidence that could be used to quantify the assigned grade.

38. Not only did the Petitioners fail to submit information that would allow the State Board to quantify the assigned grade, they failed to offer any calculation in support of their contention that the grade should be lowered to an A.

39. As previously stated, the local officials assigned an A+2 grade factor to the home under appeal. For all the 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.

G. Conclusion Regarding Square Footage

40. 50 IAC 2.2-7-2(a) states, "Base area is determined by measuring the exterior of the residential dwelling unit for each full or partial floor. Base area does not include the measurements for exterior features such as porches and stoops."

41. According to 50 IAC 2.2-7-7.1(d), a pricing ladder is provided to compute the total base price and to adjust the base price to account for variations. The square foot area of unfinished areas is the difference between the finished living area entered in the "Finished Living Area" column of the property record card and the base area entered in the "Base Area" column for each of the floor levels.

42. According to the property record card the local officials have calculated the base area of the first floor as 3208 square feet. The finished living area for the first floor is also shown as 3208 square feet. The base area for the second floor is shown as 3088 square feet and the finished living area for the second floor is shown as 1785 square feet. The property record card shows a deduction for 1303 square feet of unfinished interior on the second floor.

43. The Petitioners contend the second floor living area is 1474 square feet. Their argument is based primarily on the fact that the builder's plans (Petitioner's Exhibit 1f) states "Main Floor 3073 square feet; Second Floor 1474 square feet."

44. In this appeal the Petitioners only question the finished living area of the second floor. Mr. Hamilton explained in his testimony that the difference between the first floor measurements on the property record card and those on the builder's plan may be attributed to rounding. If rounding explains a discrepancy in the amount of area on the first floor, it should also be taken into consideration on the second floor.

45. Mr. Hamilton also testified that a discrepancy may be attributed to the builder using inside measurements to arrive at the 1474 square feet of second floor finished living area. The regulation clearly states base area is determined by measuring the exterior. Furthermore, if the difference between interior measurements vs. exterior measurements is accepted for the first floor it should also be taken into consideration for the second floor.

46. The Petitioner submitted copies of builder sketches that are not legible or clearly labeled making it impossible for the hearing officer to calculate the square feet of the highlighted area. No additional calculations or other evidence were presented in support of the Petitioner's contention that the second floor finished living area is 1474 square feet.

47. If the taxpayer is not required to meet his burden of proof at the State administrative level, then the State would be forced to make a case for the taxpayer. Requiring the State to make such a case contradicts established case law. *Phelps Dodge v. State Board of Tax Commissioners,* 705 N.E. 2d 1099 (Ind. Tax 1999); *Whitley, supra;* and *Clark, supra.*

48. To meet his burden, the taxpayer must present probative evidence in order to make a prima facia case. In order to establish a prima facia 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).

49. As stated previously in these conclusions, in reviewing the actions of the County Board, 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).

50. For all the reasons stated above the Petitioner has failed to prove the local officials erred in the measurement of the second floor finished living area. The finished living area for the second floor as calculated by the local officials is 1785 square feet. Accordingly there is no change in the assessment as a result of this issue.

H. Conclusion Regarding Land Value

51. The property record card shows the local officials used the front foot method to establish the value of the land at $38,790. No influence factor was applied and the true tax value is $38,800.

52. The Petitioners land value argument raised on the Form 131 requests a negative influence factor because a large portion of the parcel is "undeveloped". In the Summary of Issues (Petitioner's Exhibit 1) the contention is that the land is incorrectly priced using the front foot method and should be valued as an acreage tract. Finally, in the Summary of Issues the Petitioners state, "if indeed the pricing were to stay as front foot this equals to a 32% negative influence factor and should be applied to the land value calculation for size and shape."

53. According to 50 IAC 2.2-4-2 (a) each county shall establish a county land valuation commission to determine the value of all classes of residential, commercial, industrial, and agricultural homesites. 50 IAC 2.2-4-3(a) states, "the state board shall review the values submitted by the county commissions and make any modifications it considers necessary to promote uniform and equitable assessments." 50 IAC 2.2-4-3(d) states, "in making land assessments, the township assessors shall use the values as finally determined by the state board."

54. The Petitioners assert the land order (Petitioners' Exhibit 1d) clearly states the subject should be priced as an acreage tract with the first acre priced as $25,000 and the remaining acres priced as excess residential at $1,000 per acre. Petitioner's Exhibit 1e taken from 50 IAC 2.2-4-13(d) was offered as support for this contention.

55. 50 IAC 2.2-4-13(d) gives guidance for valuing "residential acreage parcels". It states, "The acreage in excess of the one (1) acre homesite is valued using the excess acreage rate established by the commission."

56. The Dubois County Land Order for Timber Ridge Estates describes the geographic area as “platted lots”. The base rate is $25,000 per acre. The land order does not indicate any other pricing information. The land order supports the Petitioners’ contention that front foot pricing is incorrect for the subject parcel. However, the Petitioners contention that one (1) acre should be priced as $25,000 and the remaining acres priced as excess residential at $1,000 per acre is not supported by the land order (or portion thereof) that has been admitted into evidence.

57. The land order dictates the platted lots shall be valued at $25,000 per acre without reference to the application of an excess acreage rate. Furthermore, although respondent acknowledges that the excess acreage rate applies to certain types of parcels, Mr. Lukens states that the land order does not apply to parcels of the type Petitioner owns. Petitioner has failed to show an error in the land assessment. Therefore, there is no change as a result of this issue.

58. Finally, Petitioners assert that 32% negative influence factor should be applied because of the size and shape of the subject lot and that the land is “undeveloped.”

59. Land Order values may be adjusted by the application of influence factors. Influence Factor refers to a condition peculiar to the lot that dictates an adjustment to the extended value to account for variations from the norm. Influence factors may be used for various reasons: (a) adverse topographical features; (b) the absence of a water or sewage disposal system; (c) excess frontage; and/or (d) irregularity in shape or inadequacy of size that limits the use of the parcel. 50 IAC 2.2-4-10.

60. To prevail in an appeal for the application of a negative influence factor, the Petitioner must present both “probative evidence that would support an application of a negative influence factor and a quantification of that influence

factor at the administrative level". *Phelps Dodge v. State Board of Tax Commissioners,* 705 N.E. 2d 1099 (Ind. Tax 1999).

61. Petitioners have failed to present probative evidence to support the application of a negative influence factor. While the size of the lot (2.7 acres) was attested to, no reference was made to the shape or why the shape limits the use of the land. The Petitioners have not established that the subject property has suffered any decline in value as a result of the topography of the land, misimprovement, or a lack of market acceptance.

62. Whether or not the land is undeveloped is not in itself reason for the application of a negative influence factor. Accordingly, the first prong of the two-prong burden was not met. Having failed to provide probative evidence that would support the application of a negative influence factor, the Petitioners have also failed to present probative evidence to quantify a negative influence factor.

63. For all the reasons stated above, the Petitioners failed to meet their burden regarding the issue of negative influence factor. Accordingly, no change is made to the assessment as a result of this issue.

Summary of Conclusion:

Issue No. 1 –Timeliness: The Petition was filed within the timeframes of the Statute.

Issue No. 2 –Grade: No change in the Grade of the dwelling.

Issue No. 3—Square Footage: No change in the Square Footage of the Dwelling.

Issue No. 4—Land: No change in the Land Value.

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