

REPRESENTATIVES FOR THE PETITIONER: Ronald D. Romain, Taxpayer

REPRESENTATIVES FOR THE RESPONDENT: J. F. Rick Barter, Hearing Officer,  
Vanderburgh County Assessor's Office

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

RONALD D. & CONNIE S. ROMAIN	)	
	)	
	)	
Petitioners,	)	
	)	Petition No: 82-019-96-1-5-00002
v.	)	County: Vanderburgh
	)	Township: Center
	)	Property Parcel # 02-180-02-538-011
	)	Assessment year: 1996
	)	
VANDERBURGH COUNTY BOARD	)	
Of REVIEW And CENTER TOWNSHIP	)	
ASSESSOR	)	
	)	
Respondents.	)	

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Appeal from the Final Determination of  
Vanderburgh County Board of Review

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**August \_\_\_\_, 2002**

**FINAL DETERMINATION**

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners and the Appeals Division of the State

Board of Tax Commissioners. For convenience of reference, each is, without distinction, referred to as the "Board".

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

### **Issue**

Whether the grade and design factor 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, James L. Angermeier on behalf of Ronald D. & Connie S. Romain, Petitioners, filed a petition requesting a review by the State. The Form 131 was filed on November 6, 1997. The Vanderburgh County Board of Review's Assessment Determination on the underlying Form 130 is dated October 10, 1997.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on May 21, 2002 before Administrative Law Judge, Joan L. Rennick. Testimony and exhibits were received into evidence. Mr. Ronald Romain, Petitioner, was self-represented. Center Township was not represented. Mr. J. F. Rick Barter, Hearing Officer for Vanderburgh County Assessor's office, represented the County.
4. At the hearing, the subject Form 131 petition 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 documents were submitted to the State:

Petitioner's Exhibit 1 – Letter dated August 26, 1998 with a list of construction material used in the subject property as compared to the Grade Specification Table in 50 IAC 2.2-7-6 Grade.

Petitioner's Exhibits from previous hearing on August 28, 1998:

Property record cards (PRC's) of comparable properties previously labeled as Exhibit A

List of comparable dwellings in the same subdivision previously labeled as Exhibit B

1992 State Tax Board Determination previously labeled as Exhibit C

Respondent's Exhibits from previous hearing and labeled Respondent Exhibit A-  
Brief in support of assessor's documentation of taxation containing the following:

Reason for denial of 130 petition by the Board of Review

Photographs of the subject property

Photographs of comparable properties stated by the taxpayer

Copy of the final determination dated October 10, 1997

Plat map for the subject property

Minutes from the October 2, 1997 Board of Review hearing

Summary of evidence submitted by the taxpayer to the Board of Review as follows: Verbal testimony at the Board of Review hearing, copy of correspondence between the taxpayer and his representative regarding the assessment of his residence, and copy of the names, addresses, and grade and designs of each residence in Bentwood Estates (four properties are highlighted which represent the properties most similar to the subject property).

5. The subject property is located at 10500 Wilmington Drive, Evansville, Center Township in Vanderburgh County. The Administrative Law Judge did not view the property.

Background: Mr. James Angermeier, tax representative, is recuperating from a serious illness and is unable to attend the hearing on behalf of the taxpayer. A previous hearing was held August 28, 1998.

**Issue**

**Whether the grade and design factor is correct.**

6. Petitioner testified that he purchased his property in Bentwood Estates several years before building his home. Several other homes were being constructed in the area around the same time period and over the years he has been in many of them. Several of the homes are equal to or greater than our home. He compared his assessment to others in the neighborhood and found his home was graded as one of the highest at A+1 or 180%. He contends his home is not of that quality. *Romain Testimony.*
  
7. The Petitioner testified that his brother, the contractor for the building, provided a list of items used in the construction of the house and compared them to the grade specification table in the assessment manual (Petitioner's Exhibit 1). Referencing the grade spec table, the Petitioner testified several features that are in his home and features that are not in his home. He contends most of the features are in the B category with a few in the A and C categories:
  - a. Foundation- Concrete with standard drain tile is in the B category.
  - b. Exterior walls-We do have a brick home that is painted, therefore, we bought the cheapest brick available; face brick is in the B category.
  - c. Windows-Double-hung casement in the B category.
  - d. We have 4" not 6" concrete on gravel base; that is in the B category.
  - e. We have 5/8" plywood sub-floors, which are in the B category, and 2'X8' wood joists that are in the C category.
  - f. The roof has 5/8" plywood sheathing, 2" X 8" rafters – 16" on center with galvanized flashing, B category.

- g. Last year we remodeled our basement, but as of 1996, it was just painted drywall.
- h. Our interior finish is drywall with good grade cover.
- i. Some bathrooms have some ceramic tile that is in the A category, but the rest are Formica vanity tops that are in the B category. It is about a fifty-fifty mix.
- j. Our electric is ample service with non-metallic cable and good grade fixtures that are in the B category.
- k. Our heating system is not zoned and the plumbing fixtures are a mixture of good and average with 1 bathroom with high-grade fixtures.
- l. Ours was a custom built home with generous roof overhangs, but not extensive roof overhangs.
- m. For cost purposes, we put poplar wood versus redwood on our front porch.

*Romain Testimony. Petitioner's Exhibit 1.*

- 8. The Petitioner testified the setting for his home is wooded, but the trees and grounds should not be considered in the grade. *Romain Testimony.*
- 9. Mr. Romain agreed to Mr. Barter's motion that previous evidence and testimony should be incorporated into the hearing today.
- 10. Mr. Angermeier, tax representative in a previous hearing, presented a list of comparable homes in the same subdivision as the subject property along with property record cards verifying names, addresses and grades.
- 11. The Vanderburgh County Assessor responded to the grade issue by attempting to make an interior inspection of the property, but could not gain access. The County Assessor presented photographs of the subject property located at 10500 Wilmington Drive (graded A+1), along with comparable properties located at 10421 Wilmington Drive (graded A), 10300 Wilmington Drive (graded A), 10632

Wilmington Drive (graded A), and 1414 Bentwood Drive (graded A). The taxpayer provided the comparable properties. *Barter Testimony. Respondent's Exhibit A.*

### **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. Issue- Whether the grade and design factor is correct**

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.

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)

24. 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".

25. The Petitioner pointed out the materials used in the construction of his home and how they relate to the grade specification table. Comparing the grade specification table in the Regulation with the various types of construction materials shown in Petitioner's Exhibit 1 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. Standing alone, the comparison does not establish incorrect grade application.
26. The petitioner must prove two things: (1) that the assessment is incorrect; and (2) that the specific assessment he seeks is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N. E. 2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF*, 765 N. E. 2d 711 (Ind. Tax 2002).
  27. The Petitioner identified similarly situated properties in previously presented evidence and attempted to establish disparate treatment between the contested property and other similarly situated properties in the same neighborhood. (Previously presented evidence labeled Petitioner Exhibits A and B). Hand written notes along the margin of the Bentwood Resident list does not represent facts, but rather conclusory statements of the person who prepared the list. The property record cards indicate the grades of the newer homes in the subdivision range from C+2 to A+1. Detailed information was not provided on how these properties compare to the subject property.
  28. The 1988 Final Determination of the State Board of Tax Commissioners presented by the Petitioner in a previous hearing is not relevant. In Indiana, each tax year is separate and distinct. *Williams Industries v. State Board of Tax Commissioners*, 648 N.E. 2d, 713 (Ind. Tax 1995).
  29. In property tax appeals, the Petitioner has the responsibility to provide probative and meaningful evidence to support the claim that the grade factor assigned by

the local officials is incorrect and to show what the correct assessment should be.

30. The Petitioner failed to meet the burden of proof on the issue of grade. No change is made to 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.

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Chairman, Indiana Board of Tax Review