

REPRESENTATIVES FOR PETITIONER:
Vicki L. Norman, Baker & Daniels

REPRESENTATIVES FOR RESPONDENT:
Karen Hatter, White County Assessor
Scott Potts, County Vendor Representative

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

ROSE ACRE FARMS,)	
)	
Petitioner)	
)	
v.)	Petition Nos.: 91-010-98-3-4-00001
)	91-010-99-3-4-00001
)	91-010-00-3-4-00001
)	91-010-01-3-4-00001
)	County: White
MONON TOWNSHIP ASSESSOR,)	Township: Monon
)	Parcel No.: 0103304000
)	Assessment Years: 1998, 1999, 2000 & 2001
Respondent)	
)	

Appeal from the Final Determination of
White County Property Tax Assessment Board of Appeals

[March 4, 2003]

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 entity is without distinction hereafter referred to as the "Board".

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. The issue presented for consideration by the Board was:

Whether the application of a grade multiplier was legal as a matter of law.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-12, Vicki L. Norman, attorney with Baker and Daniels, filed Form 133s on behalf of Rose Acres Farms (Petitioner) petitioning the Board to conduct administrative reviews of the above petitions. The Form 133s were filed on June 19, 2002. The White County Property Tax Assessment Board of Appeals (PTABOA) notification of its determinations, are dated May 28, 2002.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on December 5, 2002 in Monticello, Indiana before Jennifer Bippus, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-5-2.

4. The following persons were present at the hearing:

For the Petitioner:

Ms. Vicki Norman, Baker and Daniels

For the Respondent:

Ms. Karen Hatter, White County Assessor

Mr. Scott Potts, County Vendor Representative

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Ms. Vicki Norman

For the Respondent:

Ms. Karen Hatter

Mr. Scott Potts

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit A – A brief received by the Board on November 26, 2002, containing the following:

- (1) A copy of the property record cards (PRC) for the subject property
- (2) A copy of 50 IAC 2.2-9-6, page 29
- (3) A copy of 50 IAC 2.2-9-6, page 28
- (4) A copy of *Garcia v. State Board of Tax Commissioners, 694 N.E. 2d 794 (Ind. Tax 1998)* Indiana Tax Court case
- (5) A copy of the Board's Final Determination for Rose Acre Farms from Jackson County dated December 12, 2001
- (6) A copy of the PRC for the subject property with the Petitioner's proposed values

For the Respondent:

Respondent's Exhibit A - A copy of the County's position on the issue

Respondent's Exhibit B - Copy of photographs from 50 IAC 2.2-9-5, page 18

Respondent's Exhibit C - Cost schedules from 50 IAC 2.2-9-6, pages 30 and 32

Respondent's Exhibit D - Copy of 50 IAC 2.2-9-1, page 2

Respondent's Exhibit E - Copy of 50 IAC 2.2-9-6, page 29

Respondent's Exhibit F - PRC with comparison justifying A+2 grade on poultry confinement building

7. The following additional items are officially recognized as part of the record of proceedings:

For the Board:

Board's Exhibit A - Copies of the Form 133 petitions

Board's Exhibit B - Copies of the Notice of Hearing on Petitions, dated October 28, 2002

Board's Exhibit C - A letter from Baker & Daniels, designating Vicki L. Norman as representative for the Petitioner

Board's Exhibit D - A copy of the list of witnesses and exhibits provided by Baker & Daniels on November 13, 2002

8. At the hearing, Ms. Norman stated for the record, that the evidence provided by the Respondent at this hearing was new evidence. However, she did not request a continuance nor did she ask for additional time to review the new evidence submitted.

9. The assessed values under review for the March 1, 1998, March 1, 1999, and March 1, 2000 assessment dates as indicated on the Form 133 petitions are:

Land	\$ 47,830
Improvements	1,163,430

10. The assessed values under review for the March 1, 2001 assessment date as indicated by the Form 133 petition are:

Land	\$ 143,500
Improvements	3,490,300

11. The subject property is an egg farm located at State Road 16, Monon, Monon Township, White County.

12. The ALJ did not conduct an on-site inspection of the subject property.

Jurisdictional Framework

13. The provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process govern this matter.
14. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-12.

Indiana's Property Tax System

15. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
16. Indiana has established a mass assessment system through statutes and regulations designed to assess property according to what is termed "True Tax Value." See Ind. Code § 6-1.1-31, and 50 Ind. Admin. Code 2.2.
17. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
18. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property's market value. See *Town of St. John V*, 702 N.E. 2d.
19. The Indiana Supreme Court has said that the Indiana Constitution "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", nor does it "mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant", but that the proper inquiry in tax appeals is "whether the system prescribed by statute and regulations was properly applied to individual assessments." See *Town of St. John V*, 702 N.E. 2d.

20. Although the Supreme Court in the *St. John* case did declare the cost tables and certain subjective elements of the State's regulations constitutionally infirm, it went on to make clear that assessment and appeals must continue to be determined under the existing rules until new regulations are in effect.
21. New assessment regulations have been promulgated, but are not effective for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

State Review and Petitioner's Burden

22. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
23. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
24. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
25. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]

26. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove 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 State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case' and, by a 'preponderance of the evidence' proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of Issue

Whether the application of a grade multiplier to the poultry confinement building was legal as a matter of law.

28. The Petitioner contends the grade factor applied to the poultry confinement buildings is contrary to the Indiana assessment regulations and Indiana law and that this position is supported by the Tax Courts' decision in *Garcia I*. The Petitioner further contends that the grade of "A+2", applied to the subject structure by the County, should be removed and a "C" grade applied.

29. The Respondent contends that the subject improvements should receive a grade factor adjustment because the subject buildings vary from the model provided in the Regulation.

30. The applicable rules and law governing this issue are:

Ind. Code § 6-1.1-15-12 - Use of the Form 133

This form may be used to correct the following types of errors:

- a. The taxes are illegal as a matter of law
- b. There is a math error in the assessment
- c. Through error of omission by any state or county officer, the taxpayer was not given credit for an exemption or deduction permitted by law

Garcia v. State Board of Tax Commissioners, 694 N.E. 2d 794 (Ind. Tax 1998)(Garcia I)

Whether a grade multiplier can be used when its use is not specifically designated within the pricing schedule under review.

50 IAC 2.2-9-1 Concepts:

(a) The approach to valuation used in this article is the application of various models to represent typical types of construction. A model is a conceptual tool used to replicate reproduction cost of a given structure using typical construction materials. The model assumes that there are certain elements of construction, which can be defined as specifications. These specifications create the average of “C” grade. Grade is a concept used in the cost approach to account for deviations from the norm.

(b) The quality of materials and design of the structure are the most significant variables to be considered in establishing grade. Unlike the application of the schedules, the selection of the proper grade requires the judgment of the assessor. Graded photographs of representative residential yard and agricultural improvements are included in section 5 of this rule. The pricing schedules contained in section 6 of this rule reflect the “C” grade standards of quality grade and design unless otherwise noted on the schedule.

31. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The County increased the grade for the poultry confinement buildings (50 IAC 2.2-9-6, Schedule G.2, page 29); however, Regulation 17 does not indicate that a grade adjustment should be made. *Petitioner's Exhibit A – 1.*
 - b. The Petitioner presented a copy of the pricing schedule for poultry confinement buildings showing that the schedule does not make any reference to include an adjustment for grade. In addition, the Petitioner presented a copy of the pricing schedule for pole framed buildings and turkey barns (Schedule G.2, page 28) showing that these schedules specifically state, “Adjust for quality grade from Schedule F”. *Petitioner's Exhibit A – 2 and – 3.*
 - c. The Petitioner contends that, “Clearly, the drafters of Regulation 17 did not believe that poultry, veal and hog confinement buildings required the application of a grade factor.” *Petitioner's Exhibit A.*
 - d. The Petitioner placed into evidence a copy of the Indiana Tax Court decision *Garcia v. State Board of Tax Commissioners*, 694 N.E. 2d 794 (Ind. Tax 1998)(*Garcia I*). *Petitioner's Exhibit A – 4.*
 - e. The Respondent provided photographs representing grades of various buildings from Regulation 17. The Respondent pointed to a quonset building and drive-thru corn crib where a grade factor was applied. *Respondent Exhibit B.*
 - f. In 50 IAC 2.2-9-6, pages 30 and 32, grade adjustments are not indicated in the cost schedules for these buildings, yet the photographs provided indicate grade changes are allowed. *Respondent's Exhibit C.*
 - g. The Respondent contends that the implication is that the requirement to adjust grades “to account for deviations from the norm” in 50 IAC 2.2-9-1(1)(a) supercedes the omission of wording related to grade in the cost schedules.
 - h. The Respondent based its decision that a grade adjustment is warranted for the poultry confinement buildings in question, due to the structures deviation from the models listed in the poultry confinement building schedule in 50 IAC 2.2-9-6, Schedule G.2.

Analysis of the Issue

32. At its first reading one might interpret the issue for review in this appeal, as one that deals with grade. Such an issue would be a subjective matter and would fail to qualify for review via the Form 133 petitions. However, upon further review the issue is determined to be one of whether a multiplier (grade factor) can, as a matter of law, be applied to the subject structures (poultry confinement buildings) to establish a correct assessment of those structures. Therefore, the issue is not one of subjectivity but one of a math error in assessment, which does qualify for review via Form 133 petitions.
33. The Petitioner submits a copy of the *Garcia I* Tax Court decision and uses the same argument as that which was developed by the Garcia's. Though the *Garcia I* case did not deal with poultry confinement buildings and the application of a grade adjustment to account for deviations from the model, but dealt with a grade adjustment being made to a pool enclosure when the enclosure differed from the model, the argument in both cases is essentially the same – whether an adjustment for grade quality should be made from Schedule F to the structures in each appeal.
34. As stated in ¶28, the Petitioner contends that this type of application to poultry confinement structures is contrary to the Indiana assessment regulations and Indiana law. The Petitioner opines that its position is supported by the Tax Court decision in *Garcia I*.
35. The Respondent on the other hand, contends that the Regulation intended for a grade adjustment to be applied if a structure differed from that of the model. Per 50 IAC 2.2-9-1(a), “grade is a concept used in the cost approach to account for deviations from the norm.” Though there is no model described in 50 IAC 2.2-9 for poultry confinement buildings, the schedule (50 IAC 2.2-9-6, Schedule G.2) itself describes two (2) types of poultry confinement buildings.
36. To support its contention of the intent of the Regulation to use a grade multiplier, the Respondent submitted photographs from the Regulation of a framed drive-thru corn crib

(1 photograph) and quonset buildings (2 photographs). See 50 IAC 2.2-9-5. The photographs of these structures are graded “D” and “C” or “C+” respectively. In addition, the Respondent contends that 50 IAC 2.2-9-1(a) supercedes any lack of mentioning of the application of a grade factor in the poultry confinement building cost schedules.

37. To further understand the issue under review in this appeal, the *Garcia I* case will be reviewed due to the similarities of the issue in both appeals.
38. The issue under review in the *Garcia I* case was whether the application of a grade and design factor to the swimming pool enclosure was in error. The issue in the case at bar is whether a grade and design factor should be applied to a poultry confinement building.
39. The Garcias contended that the assessment of their pool enclosure should have ended with a simple multiplication of the square footage of the pool enclosure by the correct per square foot value. However, a grade and design factor was improperly applied to the pool enclosure thus increasing the assessment.
40. The Garcias argued that although the cost schedules applicable to most residential yard improvements (such as gazebos, car sheds, and detached garages) specifically instruct the assessor to adjust using a grade factor (“Adjust for quality grade from Schedule F”), the cost schedule applicable to swimming pool enclosures is silent with respect to the application of a grade factors. Therefore, the application of a grade factor is not authorized by the regulations.
41. The Board, in the *Garcia* appeal, argued that the regulation allowed for the application of a grade factor to account for variations in materials and costs associated with the construction of certain pool enclosures (The same position taken by the Respondent in the appeal under review). The Tax Court determined this to be incorrect and held in favor of the Garcias with respect to the pool enclosure.

42. Courts are not free to assume that the use of language in one section is applicable to a separate section. *See Jefferson Smurfit Corp. v. Department of State Revenue*, 681 N.E. 2d 806, 810 (Ind. Tax Ct. 1997). In construing Indiana statutes (or in this case regulations), the Tax Court has said that what a statute does not say is just as important as what it does say. *See LeSea Broad Corp. v. State Board of Tax Commissioners*, 525 N.E. 2d 637, 639 (Ind. Tax Ct. 1988).
43. The Tax Court pointed out that in the Garcia case, some of the cost schedules expressly require the use of grade factors. For instance, the cost schedules for use in valuing boathouses, gazebos, greenhouses, car sheds, and stables expressly require the assessor to “[a]djust for quality grade from Schedule F.” However, the cost schedule for pool enclosures contains no such instructions. The Board asked the Garcias and the Tax Court to believe that the regulations intended assessors to apply a grade factor, even in instances where the regulation was silent with respect to such as application. Such a reading of the regulation would make the express requirement of the use of grade factors with some cost schedules superfluous. This would be contrary to accepted principles of statutory construction. *See Guinn v. Light*, 558 N.E. 2d 821, 823 (Ind. 1990); *see also Sangralea Boys Fund*, 686 N.E. 2d at 958.
44. As with the pool enclosures, the regulations do not expressly provide that a grade factor is to be applied when using the cost schedule for poultry confinement buildings.
45. In summary, following the guidelines of case law, as noted in *Garcia I*, “Some of the cost schedules...expressly require the use of grade factors...However, the schedule for pool enclosures contains no such instruction...The regulations do not expressly provide that a grade factor is to be applied when using the cost schedule for pool enclosures...This leads to the conclusion that the regulations were drafted with the intent to specifically delineate which cost schedules required the application of a grade factor.”
46. For all the reasons set forth above, the poultry confinement buildings cost schedules do not specifically require the application of a quality grade factor in determining their assessment. The application of such an adjustment would result in an incorrect

assessment of the structures. As a result the “A+2” or 200% factor should be removed from the assessment of the poultry confinement buildings. A change in the assessment is made as a result of this issue.

Summary of Final Determination

Whether the application of a grade multiplier was legal as a matter law.

47. The poultry confinement building cost schedule (like the pool enclosure cost schedule in *Garcia I*) does not require an adjustment for quality grade.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.