

**STATE OF INDIANA
Board of Tax Review**

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| RUSSELL R. ZIMMERMAN, |) | On Appeal from the Hamilton County |
| |) | Property Tax Assessment Board |
| Petitioner, |) | of Appeals |
| |) | |
| v. |) | Petition for Review of Assessment, Form 131 |
| |) | Petition No. 29-014-01-1-5-00002 |
| HAMILTON COUTY PROPERTY |) | Parcel No. 080528000002401 |
| TAX ASSESSMENT BOARD OF |) | |
| APPEALS and WASHINGTON |) | |
| TOWNSHIP ASSESSOR |) | |
| |) | |
| Respondents. |) | |
| |) | |

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

Whether the grade factor assigned to the dwelling is excessive.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-3, Mr. John L. Johantges of Property Tax Group I, Inc. filed a Form 131 petition on behalf of Russel R. Zimmerman (Petitioner) requesting a review by the State. The Form 131 petition was filed on August 24, 2001. The Hamilton County Property Tax Assessment Board of Appeals (PTABOA) Notification of Final Assessment Determination on the underlying Form 130 is dated July 25, 2001.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on January 8, 2002, before Hearing Officer Dalene McMillen. Testimony and exhibits were received into evidence. Mr. John L. Johantges represented the Petitioner. Ms. Debbie Folkert represented Hamilton County. Mr. Thomas M. Thomas represented Washington Township.

4. At the hearing, the subject Form 131 petition was made a part of the record and labeled Board Exhibit A. Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following exhibits were submitted to the State:
 - Petitioner's Exhibit 1 – The disclosure form as required by 50 IAC 15-5-5
 - Petitioner's Exhibit 2 – A highlighted copy of 50 IAC 2.2-7-6 (b) "grade specification table"

- Petitioner's Exhibit 3 – A copy of 50 IAC 2.2-7-6 (d) “grade classifications”
- Petitioner's Exhibit 4 – A copy of 50 IAC 2.2-7-10 “graded photographs”
- Petitioner's Exhibit 5 – Five (5) photographs of the exterior of the subject property
- Petitioner's Exhibit 6 – Six (6) photographs of the exterior of the Michael Gadus residence
- Petitioner's Exhibit 7 – A copy of the State's Final Determination on Michael Gadus appeal dated September 10, 2001
- Petitioner's Exhibit 8 – A letter from Property Tax Group I outlining deficiencies and problems with the subject home
- Petitioner's Exhibit 9 – Four (4) photographs of the family room and one (1) photograph of the bathroom shower
- Petitioner's Exhibit 10 – Three (3) photographs of the kitchen area
- Petitioner's Exhibit 11 – Two (2) photographs of the basement area
- Petitioner's Exhibit 12 – Two (2) photographs of the bathrooms
- Petitioner's Exhibit 13 – One (1) photograph of the entryway
- Petitioner's Exhibit 14 – One (1) photograph of the master bedroom and one (1) photograph of the study
- Petitioner's Exhibit 15 – Issues presented by the Petitioner's representative at the Michael Gadus appeal hearing
- Petitioner's Exhibit 16 – A copy of the State's Final Determination on James Titak, dated April 27, 1999
- Petitioner's Exhibit 17 – A copy of “Indiana's Property Tax Assessment Dilemma” by Larry DeBoer, dated Spring 2000
- Petitioner's Exhibit 18 – A copy of a summary on *Dawkins vs. State Board of Tax Commissioners*, 659 N.E. 2d 706
- Respondent's Exhibit 1 – A copy of the Township's write-up to the PTABOA

on the Form 130 on the subject property

Respondent's Exhibit 2 – Five (5) photographs of the exterior of the subject property

Respondent's Exhibit 3 – A copy of the multi-jurisdiction Improvement location permit application (building permit) issued on the subject dwelling, dated November 29, 1995

5. The assessed value of the property as determined by the PTABOA is:
Land: \$23,900 Improvements: \$156,900 Total: \$180,800
6. The subject property is a residence located at 2345 West 193rd Street, Westfield, Washington Township, Hamilton County.
7. The Hearing Officer did not conduct an on-site inspection of the subject property.

Grade

8. The Petitioner is seeking a reduction in the grade factor from "B+2" to "B".
9. A highlighted copy of 50 IAC 2.2-7-6 (b) "grade specification table" of the home under appeal was submitted for the purpose of quantifying grade. *Petitioner's Exhibit 2.*
10. A State Final Determination and six (6) exterior photographs on the Michael Gadus property, a superior property to the subject, with a grade of "B+1", were submitted. *Johantges testimony & Petitioner's Exhibits 6 & 7.*

11. The Petitioner contends that the subject home has experienced numerous deficiencies and problems since its construction, including: doors that are “seconds”, rather than custom builder grade; family room windows and fireplace not centered; door jams installed incorrectly; the width of the home was shortened by one foot by the builder and the installation of cheap vinyl siding. *Petitioner’s Exhibits 8 - 14.*

12. The State issued a Final Determination on the James Titak property that stated on the issue of grade, “the subject property must be graded in accordance with 50 IAC 2.2-7-6, rather than comparing with other properties that may or may not be assessed correctly.” In *Dawkins vs. State Board of Tax Commissioners* 659 N.E. 2d 706, “the State Board’s rules and regulations does not refer to the actual cost of constructing an improvement.” *Petitioner’s Exhibits 19 & 18.*

13. The Respondent contends that the subject home is correctly graded because of numerous high quality features that including: an excellent window package; two (2) air conditioning units; a backup power generator, numerous cuts and angles to the house and garage; a roof pitch of 9/12 and 12/12; 9-foot ceiling heights in the basement and first floor and the generous roof overhangs, including one area with a 4-foot overhang. *Thomas testimony & Respondent’s Exhibits 1 & 2.*

14. On November 29, 1995, the Town of Westfield issued a building permit to the contractor in the amount of \$210,000 for the dwelling only. *Thomas testimony & Respondent’s Exhibit 3.*

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.

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.

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. “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. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).
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. The taxpayer's burden in the State's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. 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).

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.

Conclusion Regarding Grade

Regulatory and Case Law

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. Grade is an overall composite of the components that make up the structure under review. The assessor must weigh the contribution made by each component to the total and develop a composite judgment for the entire structure. 50 IAC 2.2-7-6(f).
21. 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 | 40% |

50 IAC 2.2-7-6 (e).

22. 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).

23. The determination of the proper grade factor requires assessors to make a variety of subjective judgments regarding variations in the quality of materials and workmanship and the quality of style and design. *Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d 1058, 1064 (Ind. Tax 1993). The selected grade represents a composite judgment of the overall quality and design. *Mahan*, 622 N.E. 2d at 1064; 50 IAC 2.2-7 (f).

24. 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 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.

Administration of the Existing System
And Cost Information

25. The Tax Court invalidated subjective elements of the Regulation, e.g., grade, holding that the Regulation did not contain ascertainable standards. *Town of St. John III* at 388. Nevertheless, the Indiana Supreme Court and the Tax Court did not throw out the whole system immediately. *Town of St. John V*, 702 N.E. 2d at 1043; *Town of St. John III*, at 398 & 99; *Whitley*, 704 N.E. 2d at 1121. Instead, the property tax system is now administered in accordance with the current, true tax value system and existing law.

26. 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*.

27. True tax value does not equal market value. Ind. Code §6-1.1-31-6. True tax value does not attempt to determine the actual market value for which a property would sell if it were offered on the open market. Nevertheless, true tax value’s *method* for valuing structures is the same as one of the well-accepted methods for determining fair market value – reproduction cost. IAAO Property Assessment Valuation, 127 (2nd ed. 1996). Common appraisal techniques are permissible in assessing property under the current property tax system even when such techniques are rooted in market value. *Canal Square Limited*

Partnership v. State Board of Tax Commissioners, 694 N.E. 2d 801 (Ind. Tax 1998).

28. The cost tables in the Regulation are at the heart of true tax value's method for determining values. The cost schedules effective for the 1995 general reassessment reflect 1991 reproduction costs based on market information derived from Marshall Valuation Services price tables. 50 IAC 2.2, Forward at I; *Town of St. John III* at 373, n.5.
29. The State uses cost information provided by taxpayers as a tool for quantifying grade by comparing adjusted cost to the cost schedules found in the Regulation. In very general terms, the taxpayer's construction cost information is trended to arrive at a comparison between the adjusted construction cost of the home under appeal and the construction cost in the Regulation.

Discussion of Petitioner's Evidence

30. In support of the request to lower the grade factor of the subject dwelling, the Petitioner submitted a "highlighted grade specification table" of the components of the home (Petitioner's Exhibit 2), photographs of the subject (Petitioner's Exhibits 5, and 9 – 14), a copy of a State Final Determination and photographs of a comparable property (Petitioner's Exhibits 6, 7 and 15), and State Final Determination on a second property (Petitioner's Exhibit 16).
31. Before applying the evidence to reduce the contested assessment, the State must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.

32. The Petitioner submitted a “highlighted grade specification table” (Petitioner’s Exhibit 2) to quantify grade. This “method” is flawed and does not constitute probative evidence of error.
33. An important element of the “highlighted grade specification table” is identifying the features of the home under appeal and “matching” those features to a grade column in the grade specification table. For example, the home was alleged to have average grade electric fixtures (grade “C”) and average quality cabinets (grade “C”)(Petitioner’s Exhibit 2). Conclusory statements such as the home has “average grade electric fixtures” are not evidence demonstrating that the home has these characteristics. *Whitley*, 704 N.E. 2d at 1120. With no probative evidence presented, the burden of proof is not met. *Bernacchi*, 727 N.E. 2d at 1133.
34. Further, neither grade specification table nor the descriptive text of the Regulation lists or identifies every conceivable feature of every home in the State. It would be impossible for the State to make such a list. For example, the grade specification table does not list skylights, tray ceiling or built-in bookcases. Yet, the “method” used to “quantify” grade in this appeal does not provide for features not specifically listed in the Regulation.
35. The method used by the Petitioner in this appeal gives equal weight to the cost of each feature listed in the grade specification table allegedly present in the contested home. In sum, the “method” of “quantification” is fundamentally flawed and does not present the State with probative evidence in this appeal.
36. The Petitioner submitted twenty (20) interior and exterior photographs of the home under appeal (Petitioner’s Exhibits 5, 9 – 14). Much of the Petitioner’s discussion of these photographs did not deal exclusively with the grade issue but

were more representative of issues existing between the Petitioner and their builder. In addition, the photographs did not refute evidence presented by the Respondent, namely; the existence of various pitches to the roof; a roof that is multi-gables and hipped; numerous cuts and angles to the subject structure's footprint; a 9 foot ceiling height in the basement; zoned cooling and heating with a back-up power generator; additional exterior brickwork and excessive roof overhang in one area.

37. Identifying comparable properties and demonstrating that the property under appeal has been treated differently for property tax purposes can show error in assessment. The Petitioner attempted to make such a case by arguing that Michael Gadus' property (Petitioner's Exhibits 6, 7, and 15) is "superior" to the Zimmerman home and, therefore, the Zimmerman home should receive a grade reduction.
38. Labeling the Gadus home "superior" does not establish that it is superior. The fact that the State issued a final determination for the tax year 1995 deciding that the Gadus home should have a grade factor of "A-1", does not constitute evidence of the "superiority" of the Gadus home nor does it show that an inappropriate grade factor was applied to the home under appeal.
39. The Petitioner's testimony, the submission of the Gadus home as a comparable, and the conclusion that the grade should be reduced, is considered mere speculation. When a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State can properly refuse to consider the evidence. *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)).

40. The Petitioner did not credibly identify properties that are similarly situated to the property under appeal. The Petitioner failed to submit any analysis of the comparable property to that of the subject property to show that the comparable is in fact a comparable to the subject. The Petitioner does not credibly establish disparate tax treatment between the subject property and other similarly situated. The State also notes that the Petitioner did not claim that any home (other than the Gadus home that is located in another Township) was “comparable”.
41. Lastly, the Petitioner submitted a State Final Determination for the James J. Titak property. The Petitioner specifically pointed to ¶12 in the Conclusions of Law, which stated, “The exterior inspections of comparable properties submitted by the Petitioner showed that the comparables appear to be similar in quality of construction, materials and workmanship to the subject property, but have been graded lower. This judgment was made without the benefit of an interior inspection of the comparable properties. In the final analysis, however, the subject property must be graded in accordance with 50 IAC 2.2-7-6, rather than comparing with other properties that may or may not be assessed correctly.”
42. The Petitioner emphasized that portion of the paragraph stating, “the subject property must be graded in accordance with 50 IAC 2.2-7-6, rather than comparing with other properties that may or may not be assessed correctly.”
43. The State determination the Petitioner points to was issued on April 27, 1999. The Petitioner fails to recognize since that date, Tax Court and Supreme Court decisions regarding the burden of the Petitioner in State administrative proceedings. Specifically, *Town of St. John V. State Board of Tax Commissioners*.

44. To repeat, the taxpayer's burden in the State's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. 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.

Construction Cost Analysis

45. The subject dwelling was built in 1996. The Petitioner did not submit into evidence the finalized construction cost information for the subject home. Had the actual construction cost information been provided, the State would have used an adjusted cost calculation in this appeal like it has done in other appeals. See Conclusions of Law ¶¶28 and 29.
46. The Petitioner on the other hand, argued about the difficulty in determining grade by way of the Regulation instead of providing the State with information necessary to perform an adjusted cost calculation. Using an adjusted cost calculation for the home under appeal may or may not have supported Petitioner's challenge in this appeal. Notions as to what such calculation would have revealed constitute mere speculation and do not, in any way, shape the decision made in these Findings and Conclusions.
47. Though the Petitioner did not present their construction cost information on the subject dwelling for comparison purposes, Mr. Thomas did submit into evidence the building permit (Respondent's Exhibit 3) for the subject structure. This permit, dated November 29, 1995, indicated a cost of construction was \$210,000.

48. As previously stated in Conclusions of Law ¶¶28, the reproduction cost tables, in the Regulation (50 IAC 2.2-7-11), are at the heart of the true tax value's method for determining value. The reproduction cost schedules in this Regulation are based upon costs prevailing throughout the State of Indiana as of January 1991 less 15%.
49. Assuming *arguendo*, that the building permit could be used in a cost analysis for comparison purposes, the State will compare this home construction cost information to the Regulation's cost schedules for purposes of the grade issue raised in the appeal.
50. The State cannot compare 1995 construction cost information (Respondent's Exhibit 3) with construction cost information based on 1991 dollars (cost schedules in the Regulation). Accordingly, the State will trend back the 1995 cost information to 1991 true tax value.
51. To calculate the deflation factor, the State will use the Marshall and Swift Residential Cost Handbook (January 1999). 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 Marshall Swift cost multipliers for the State of Indiana the home under appeal that was 1995 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.
52. The Marshall and Swift cost multipliers for first quarter 1995 is 1.093 and for first quarter 1991 is 1.245. To calculate the discount factor needed to trend the 1995 construction cost information back to 1991 construction cost dollars, the 1995 multiplier must be divided by the 1991 multiplier. The calculation is as follows:

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| First quarter 1995 multiplier | 1.093 |
| First quarter 1991 multiplier | 1.245 |
| 1.093 divided by 1.245 equals | .8779 |

53. By taking the home's adjusted construction cost in 1995 (\$210,000) and multiplying it by the deflator factor of .8779, the remainder value would be the subject home's construction cost in 1991. The 1991 construction cost is $\$210,000 \times .8779 = \$184,359$. Trending the construction cost downward 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. The adjustment yields the following results: $\$184,359 \times .85\% = \$156,705$.
54. The PRC for the home under appeal reflects the home's reproduction cost prior to the application of a grade factor, is \$111,400. The deflated reproduction cost of the subject dwelling for the 1995 reassessment is \$156,705. $\$156,705$ divided by $\$111,400 = 1.406$.
55. Comparing the construction cost to the Regulation's cost schedules establishes a grade factor of 140.6%, or rounded up to 141% for a grade factor of "B+2". This is the grade factor assigned to the home by the local assessing officials as shown on the County PRC.
56. The State acknowledges that the Regulation does not explicitly identify the mathematical calculation detailed above, but this does not prohibit the State 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.

57. Common appraisal techniques are permissible in assessing property under the current true tax value system – even when such appraisal techniques are rooted in market value. *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801 (Ind. Tax 1998).
58. As stated in Conclusions of Law ¶30, the Tax Court demands quantification techniques for grade application and the State reasonably decides that using construction cost information in the way in which such information was used herein is appropriate when grade issues are raised in property tax appeals.
59. For all reasons set forth above, the Petitioner failed to meet the burden of proof regarding the alleged impropriety of the grade factor assigned by the local assessing officials. Accordingly, no change in the assessment is made 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