

**STATE OF INDIANA
Board of Tax Review**

SAMUEL AND CYNTHIA BIANCHI,)	On Appeal from the Porter County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petition for Review of Assessment, Form 131
)	Petition No. 64-023-01-1-5-00003
PORTER COUNTY PROPERTY TAX)	Parcel No. 10-000017158
ASSESSMENT BOARD OF APPEALS)	
And CHESTERTON TWP 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 subject dwelling should be reduced from an "A+2" to an "A" according to recent Tax Court decisions.

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, Rex Hume of Uzelac & Associates, Inc., on behalf of Samuel F. and Cynthia Bianchi (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 was timely filed on August 29, 2001. The Porter County PTABOA's Final Determination on the underlying Form 130 petition is dated August 8, 2001.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on January 3, 2002, before Hearing Officer Patti Kindler. Testimony and exhibits were received into evidence. Rex Hume represented the Petitioner. Shirley LaFever and Lindy Wilson represented the Porter County PTABOA. Candy Crone and Nancy Kolasa represented Chesterton Township.

4. At the hearing, the subject Form 131 petition with attachments (copies of the subject PRC, copies of the *Garcia I* and *Garcia II* decisions from the Tax Court of Indiana, and the subject disclosure statement) was made part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition was labeled Board Exhibit B. In addition, the following exhibits were submitted to the State:

Respondent's Exhibit 1 – Grade Factor Analysis Report prepared by Chesterton Township with PRC, summary of features, copies of pages 11, 12, and 14 from 50 IAC 2.2-17, photographs of the subject with written explanation, and building permits for the dwelling and swimming pool.

Respondent's Exhibit 2 – Copy of the sales disclosure with attached PRC and photograph for the dwelling located next door, a.k.a.

Petitioner contends that in the Garcia cases, the Tax Court has invalidated grades above an “A.”

9. The Township defended the grade factor of “A+2” assigned to the dwelling with a nine (9) page analysis including subject photographs, architectural design, interior components, building permits, and copies of 50 IAC 2.2-7, pages, 11, 12, and 14 regarding grade specifications. *Respondent’s Ex. 1*. In addition, three (3) sales disclosures with photographs and the PRCs of neighboring dwellings were submitted and evaluated. *Respondent’s Ex. 2-4; Crone Testimony*.
10. The Petitioner claims that he is not arguing that the dwelling should be graded anything other than an “A.” *Hume Testimony*. The argument with the “A+2” grade is that the Tax Court has said that assessment regulations provide no standards for distinguishing among grades above an “A.” *Id.*

Conclusions of Law

1. The Petitioner is statutorily 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. Ind. Code §§ 6-1.1-15-1, -2.1, and –4. See also the Forms 130 and 131 petitions. 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. “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. 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 even though 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.

Conclusions on Grade

A. Regulatory and Case Law

18. On February 5, 2002, the Indiana Tax Court stayed the effect of judgment in the case of *Garcia v. State Board of Tax Commissioners*, 743 N.E. 2d 817 (Ind. Tax 2001)(*Garcia II*), pending the decision of the Indiana Supreme Court (the *Garcia Stay*). Therefore, the Indiana Board of Tax Review has based this determination on the state of the law prior to the Tax Court’s ruling in *Garcia II*. A copy of the *Garcia Stay* is attached hereto.

19. 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.*

20. “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.

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). For homes with a grade in excess of an A grade, each intermediate level (+1 through +10) represents an increase of 20%. 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 represents a composite judgment of overall quality and design. *Mahan*, 622 N.E. 2d at 1064; 50 IAC 2.2-7-6(d)), the grade specification table (50 IAC 2.2-7-6(b)), and graded photographs (50 IAC 2.2-7-10) all provide guides for establishing grade.
24. 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.

B. Administration of the Existing System

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*, 690 N.E. 2d 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*, 690 N.E. 2d at 398 & 99; *Whitley*, 704 N.E. 2d at 1121. Instead the property tax system is currently administered in accordance with the true tax value system and existing law.

26. 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. 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 represents a composite judgment of overall quality and design. *Mahan*, 622 N.E. 2d at 1064; 50 IAC 2.2-7 (f).

C. Regulatory and Case Law – Post *Garcia I* and *Garcia II*

28. The Tax Court ruled in *Garcia I* that the Regulations offer no guidance as to any grade above an “A.” *Garcia v. State Board of Tax Commissioners*, 694 N.E. 2d at 789 (Ind. Tax 1998)(*Garcia I*). Because there are no guidelines or definitions to follow, the Tax Court recognizes the difficulty in differentiation whether a home should be graded an “A” or an “A+10.” *Id.*
29. Neither the Regulations nor generally accepted appraisal standards provide for setting a grade of a dwelling above an “A.” *Garcia v. State Board of Tax Commissioners*, 743 N.E. 2d 817 (Ind. Tax 2001) (*Garcia II*). However, 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 v. State Board of Tax Commissioners*, 704 N.E. 2d at 1119.

30. The Petitioner claims that the grade for the subject dwelling should be reduced from an “A+2” to an “A.” This conclusion is based solely on the *Garcia I* and *Garcia II* Tax Court decisions, which are currently under appeal in the Indiana Supreme Court. No other evidence was submitted and no testimony was presented to indicate that the requested “A” grade was justified for the subject property.
31. The taxpayer’s burden in the State Board’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.
32. The Petitioner failed to address its burden of proof that an “A” is the appropriate grade for the subject property. The Petitioner did not submit any comparable properties. Nor, did the Petitioner establish any disparate treatment between the subject property and any similarly situated comparables.
33. The taxpayer’s two-fold burden simply cannot be met by submitting determinations from two Tax Court cases, with no explanation of how the *Garcia* property and the subject property are related or comparable.

34. The Petitioners in the Garcia case submitted extensive evidence regarding comparable properties with elaborate testimony regarding disparate treatment and upon request, the construction costs for the dwelling. No such evidence or testimony was submitted for the subject property, nor was any disparate treatment within the subject's neighborhood brought forth. In contrast, the Respondents submitted two comparables located in the immediate neighborhood of the subject property with "A+3" and "A+4" grades. In addition, the Respondents submitted a comparable property located down the street from the subject that is graded "B+2." The Petitioner could have chosen these neighboring comparables as a base to establish disparate treatment between the subject property and the comparables, but failed to establish such a comparison.
35. To repeat, when contesting the grade assigned an improvement, a taxpayer must offer probative evidence proving the inaccuracy of the State Board's assessment. *Kemp V. State Board of Tax Commissioners*, 726 N.E. 2d 395, 400 (Ind. Tax 2000). The Petitioner did not submit probative evidence of an erroneous grade application. Although the Petitioner submitted copies of the *Garcia* Tax Court cases, the amount of information not provided by the Petitioner is immense as it relates to the grade issue.
36. Application of the proper grade factor is based on many specific features that are *particular* to the home in question. *Cory v State Board of Tax Commissioners*, 674 N.E. 2d 1062, 1064 (Ind. Tax 1997). The Petitioner has presented no evidentiary foundation for applying an "A" grade specifically to the subject dwelling. Without further explanation provided to the Indiana Board of Tax Review, the submission of Tax Court cases currently under appeal are insufficient as evidence relative to the subject property.
37. For all the reasons above, the Petitioner did not submit probative evidence of a misapplication of grade for the subject property. 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