

**STATE OF INDIANA  
Board of Tax Review**

In The Matter Of Petition for Review )  
of Assessment, Form 131 )

Petition No: 34-004-98-1-5-00003

Parcel No: HA251049

Assessment Year: 1998

Petitioner: Steven & Patricia Johnson  
3122 Emerald Lake Drive  
Kokomo, Indiana 46902

Petitioner Representative: Accurate Tax Management Corp.  
By: Ms. Denise Praul  
P.O. Box 332  
Carmel, Indiana 46032

**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**

1. Whether the grade of the dwelling should be reduced from "A+1" to "A".

## 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 be considered a finding of fact.
  
2. Pursuant to Ind. Code § 6-1.1-15-3, Ms. Denise Praul, Accurate Tax Management Corp., on behalf of Steven and Patricia Johnson (Petitioner), filed a Form 131 petition requesting review by the State. The Form 131 was filed on August 4, 1998. The Howard County Board of Review's (County Board) Assessment Determination on the underlying Form 130 petition is dated July 22, 1998.
  
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on April 19, 2000, before Hearing Officer Dalene McMillen. Testimony and exhibits were received into evidence. Ms. Denise Praul represented the Petitioners. Ms. Ann Harrigan represented Howard County. Mr. James Morris II represented Harrison Township.
  
4. At the hearing, the 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 Board:  
Petitioner Exhibit 1 – A photograph of the subject property  
Petitioner Exhibit 2 – A photograph of the subject property  
Petitioner Exhibit 3 – A copy of a grade specification table circled by Steven Johnson  
Petitioner Exhibit 4 – A copy of the Indiana Tax Court case of *Juan and Maria Garcia vs. State Board of Tax Commissioners*, 694 N.E. 2d 794 (Ind. Tax 1998)

5. Respondent Exhibit 1 – Two photographs of the subject property.  
Respondent Exhibit 2 – A copy of Howard County’s response to the issue, a copy of the grade specification table, a copy of Charles Hinders’ property record card (PRC) and two (2) photographs, a copy of Merrell Owen’s PRC and one (1) photograph, and a copy of Steven Johnson’s PRC and two (2) photographs  
Respondent Exhibit 3 – Three (3) photographs of comparable properties  
Respondent Exhibit 4 – A copy of the building permit on the Charles Hinders property, dated March 14, 1993  
Respondent Exhibit 5 – A copy of the building permit on the Steven Johnson property, dated November 15, 1995
6. The subject property is a residence located at 3122 Emerald Lake Drive, Kokomo, Harrison Township, Howard County.
7. The Hearing Officer did not inspect the home under appeal.
8. Ms. Praul testified that she is paid on a contingency fee basis.
9. Mr. Morris testified that he is paid on a contractual daily fee basis.

**Issue No. 1 – Grade**

10. At the hearing, Ms. Praul testified to the following:
  - a. The Petitioners are seeking an “A” grade;

- b. Two (2) photographs of the exterior of the home under appeal demonstrate the components of the subject dwelling (Petitioner Exhibit 1 & Exhibit 2);
  - c. A circled grade specification table showing the components of the home under appeal was submitted for the purposes of quantifying grade;
  - d. In *Garcia vs. State Board of Tax Commissioner*, it states, “Unlike the definitions of the major grade classifications, there is no guidance in the regulations differentiating an “A” grade dwelling from an “A+10” dwelling.” “The State Board’s regulations make no effort to say why a grade of “A+4” is more appropriate for a dwelling than an “A” grade. Instead, assessors are left with little more than guess work when applying grade factors to homes”; and
  - e. *Garcia*, also states, “Although the State Board’s regulations offer some guidance regarding characteristics of the basic grades, those definitions are vague. More importantly, for purposes of this case, there are absolutely no definitions or guidelines that allow an assessor, this Court, or the taxpayer the ability to differentiate between an “A+10” or an “A” grade dwelling.”
12. At the hearing, Mr. Morris testified to the following:
- a. The County Board has assessed the Johnson residence uniformly and equitably with properties in the surrounding area;
  - b. The Petitioner was issued a building permit on the subject property for \$500,000;
  - c. In the narrative of the grade specification table it reads as follows; “In establishing the grade of a dwelling, the quality of materials and design are the most significant factors.” The County considered the quality of materials in the subject dwelling such as; abundance of windows,

excessive wall heights, the outstanding architectural style and the walk out basement in establishing the “A+1” grade;

- d. The County submitted photographs and property record cards of neighboring properties to show the difference in the quality of construction between the subject dwelling and the neighboring properties; and
- e. The County is submitting a calculation using the cost of the subject property according to the building permit issued in November 15, 1995 and applying Marshall Valuation Services (Marshall) cost multiplier to show the “A+1” grade factor is fair and equitable for the subject dwelling.

13. Mr. Morris further testified that by using Marshall and the building permit cost the grade factor of the subject dwelling is determined as follows:

Dwelling Cost (per building permit)	\$500,000
X Marshall multiplier	
(1996 – 1.084 divided by 1991 – 1.261)	x <u>.859</u>
	\$429,500
X Regulation 17 adjustment	x <u>.85</u>
Adjusted cost	\$365,075
True tax value of improvements	
Before grade and depreciation	<u>\$170,400</u>
Equals a grade factor	214%

The above calculation would indicate that the grade of the subject dwelling should fall between “A+2” and “A+3”. However, the County is requesting that in order to keep equalization throughout the subject neighborhood that the grade factor of the subject dwelling should remain “A+1”.

## 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.

### **Grade**

#### **A. 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. 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).

21. 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).

22. 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 the overall quality and design. *Mahan*, 622 N.E. 2d at 1064; 50 IAC 2.2-7 (f).

23. 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  
and the Request for Cost Information

24. 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. *Id.*
25. 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*.

26. 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 (2<sup>nd</sup> 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).
27. 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.
28. The State uses cost information provided by taxpayers as a tool for quantifying grade level by comparing adjusted cost to the cost schedule in the Regulation. See *Garcia Remand* Findings and Conclusions, Petition No. 71-026-93-1-5-00021 (State Board of Tax Commissioners July 22, 1998). In general terms, the taxpayer's cost information is trended up or down to arrive at a comparison between the adjusted construction cost of the home under appeal and construction cost in the Regulation.
29. Had the actual construction cost information been provided, the State would have used an adjusted cost calculation in this appeal just like it has done in other appeals.

30. The Supreme Court held that “the State Board acted within its statutory authority and assessed the Garcia’ residence using a methodology that was neither arbitrary nor capricious. The Garcias’ home was properly graded at ‘A+6.’” *State Board of Tax Commissioners v. Garcia*, 766 N.E. 2d 341 (Ind. 2002). In so holding, the Court in *Garcia* also upheld the assignment of grades in excess of “A.”
31. The State used construction costs as a way to arrive at the grade in the *Garcia* case, and the Supreme Court stated it was with the State’s statutory authority to do so. In this case, the construction costs were requested, however, the Petitioner did not present them to the State. Petitioner has therefore prevented the local assessing official from applying the methodology endorsed in *Garcia* and has failed to provide evidence that refutes the assignment of an “A+1” grade.

### C. Discussion of Petitioner’s Evidence

32. Petitioner’s representative used a circled grade specification table to quantify grade. This “method” is flawed and does not constitute probative evidence of error.
33. An important element of the “circled 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 good grade electric fixtures (grade “B”) and high quality cabinets (grade “A”). Petitioner’s Exhibit 3. Conclusory statements such as the home has “good 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 the 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, neither the grade specification table nor the text lists walk out basement, skylights or built-in bookcases. Yet, the “methods” used to “quantify” grade in this appeal do not provide for features not specifically listed in the Regulation.
35. In summary, the “method” of “quantification” is fundamentally flawed and does not present the State with probative evidence in this appeal.
36. Also, pictures of the home were submitted to the State; namely: (1) a single photograph of the front of the house, and 2) a single photograph of the side of the house. Presenting such photographs and only telling the State that they demonstrate components of the home does not develop a case for the Petitioners, but are conclusory statements.
37. Mere references to photographs or regulations, without explanation, do not qualify as probative evidence. *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329, 333 (Ind. Tax Ct. 1999).
38. Lastly, identifying comparable properties and demonstrating that the property under appeal has been treated differently for property tax purposes can show error in assessment. The Petitioners, though, did not present any analysis as to how the purported “comparable” properties were in fact comparable. The Petitioners failed to credibly identify properties that are similarly situated to the property under appeal and do not credibly establish disparate tax treatment between the subject property and other similarly situated.

39. In the event the Petitioners make a prima facie case (submits probative evidence regarding the alleged error in assessment), the burden then shifts to the local officials to rebut the Petitioner's evidence and justify the official's decision with substantial evidence. The Petitioners failed to meet their burden in this appeal, however, the Township's representative presented an "adjusted dwelling cost" using Marshall based on the subject's building permit (Respondent Exhibit 5). The State will briefly address this exhibit.
40. The State has recognized the use of Marshall to trend back the "actual dwelling construction cost" to 1991 home construction cost, then equating the 1991 home construction cost into the appropriate grade factor, as found in the Regulation. Even though the method is recognized, the calculations used in a specific appeal must be valid too. The Township's calculation is flawed because it does not represent the "actual" construction cost of the subject dwelling and in turn is not a valid basis for any change in the assessment. No change is made in 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