

STATE OF INDIANA
Board of Tax Review

THOMAS DANIEL and VICKIE RENNE)	On Appeal from the St. Joseph County
PANTING)	Property Tax Assessment Board of Appeals
))	
Petitioner,)	
))	Petition for Review of Assessment, Form 131
v.)	Petition No. 71-006-98-1-5-00908
))	Parcel No. 061016021139
ST. JOSEPH COUNTY PROPERTY)	
TAX ASSESSMENT BOARD OF)	
APPEALS And HARRIS 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 subject dwelling should be a "B-2."

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, Thomas D. and Vickie R. Panting (Petitioners) filed a Form 131 petition requesting a review by the State. The Form 131 petition was filed on March 10, 1999. The St. Joseph County Board of Review's (County Board) Assessment Determination on the underlying Form 130 is dated February 10, 1999.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on November 26, 2001, before Hearing Officer Patti Kindler. Testimony and exhibits were received into evidence. Thomas D. Panting was self-represented. Kevin Klaybor appeared on behalf of St. Joseph County. No one appeared to represent Harris Township.

4. At the hearing, the subject Form 131 petition was made a part of the record and labeled as 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 – Poster with exterior photographs of subject improvement and grade factor, as well as comparable exterior photographs and grade factors
Petitioner's Exhibit 2 – Poster with exterior photographs and grade factors of similar comparable properties
Petitioner's Exhibit 3 – Taxpayer's Grounds for Appeal, including plat map, Form 130 petition, and neighboring grade factors

5. The subject property is a residence located at 51178 Ashley Drive, Granger, Harris Township, St. Joseph County.

6. The Hearing Officer did not inspect the subject property.
7. At the hearing, the parties to this appeal agreed that the assessed values of record are:
Land - \$5,730
Improvements - \$37,930

Whether the grade factor assigned to the subject dwelling should be a “B-2”.

8. The subject dwelling was assigned a grade factor of “B+1” for the 1995 reassessment. The County Board amended the grade factor (along with other changes) from the “B+1” to a “B” on February 10, 1999, as a result of the Petitioner filing a Form 130 petition.
9. The Petitioner contends the reduction in the grade factor made by the County Board was not sufficient enough of a change to cover the overage in taxes paid for several years due to the excessive grade. The Petitioner is requesting a grade factor of “B-2” be applied to the subject structure. *Panting testimony.*
10. The Petitioner submitted photographs of comparable dwellings located near the subject property, as well as a plat map of Terri Brooke Estates, Phases II and III in Harris Township. *Petitioners’ Exhibits 1, 2 and 3.*
11. The photographs and grade factors submitted by the Petitioner indicate grade factors that range from “B+2” to “B-2”. The Petitioner testified that several of the dwellings are similar to the subject structure but have grade factors of “B-2”, while the subject is graded a “B”. *Panting testimony.*
12. The subject residence was built after the Petitioner made a few revisions to the building plans of a dwelling located at 10273 Shadowood. The two houses look

the same, but a third garage stall was added to the subject home. Both the subject property and the comparable property located at 10273 Shadowood are graded "B". *Panting testimony.*

13. The Petitioner opines there are a lot of inconsistencies with grade in a very small area even though eighty percent (80%) of the homes are two-story dwellings with 3-car garages. A dwelling located just 1,056 feet (See Petitioner's Exhibit 1) from the subject property that was constructed by the same builder and has a 3-car garage and an in-ground pool, is graded a "B-2". *Panting testimony & Petitioner's Exhibit 1.*
14. The predominant grade in the subject neighborhood is a "B". All the properties *immediately* surrounding the subject property have "B" grades (Petitioner's Exhibits 1 and 3). After the Township Assessor's Office did an inspection of the interior and exterior components of the dwelling the County Board reduced the grade factor from a "B+1" to a "B". *Klaybor testimony & Board Exhibit A.*
15. The Petitioner testified that the interior components of a residence should not have a bearing on the grade of a dwelling. Since filing a petition for review of the assessment, several assessing officials have viewed the interior of the subject property. This action taken by the assessing officials leads to an unfair assessment because most dwellings are graded from exterior inspections. When the "B+1" grade was originally applied in 1995, the subject dwelling had contractor's grade interior components and none of the interior upgrades were completed. Further, upon exterior inspection, there is no brick or stone on the exterior of the subject dwelling. There are larger homes in the neighborhood that have grades of "B" to "B-2".
16. The Petitioner further testified the dwelling was assessed at an unfair rate due to the "B+1" grading error for six (6) years. Some type of reimbursement for unfair taxation is warranted, "even if it means getting the "B-2" grade for the next three

years". *Panting testimony.*

Conclusions of Law

1. The Petitioner is limited to the issues raised on the Form 130 petition filed with the County Board or issues that are raised as a result of the County Board'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 County Board. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the County Board disagree with the County Board'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 County Board 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 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. One manner for the taxpayer to meet its burden in the State administrative proceedings is to: (1) the taxpayer must 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 Board’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 Board'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 Issue

D. Regulatory and Case Law

18. The approach to valuing residential homes is found primarily 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	60%

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 grade factor represents a composite judgment of the overall quality and design. *Mahan*, 622 N.E. 2d at 1064; 50 IAC 2.2-7 (f).
23. 50 IAC 2.2-7-6(f) states, “In order to properly assign the correct grade, the assessor must weigh the components of each represented major grade classification and determine an overall *composite* grade. This is accomplished by first determining the major grade classification that best represents the structure. Once the classification has been established, the assessor must weigh the various components against the determined classification.”

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 (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.

E. 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 1121. Instead, the property tax system is currently administered in accordance with the 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. The Petitioner claims that the grade and design factor of “B” assigned by the County Board for the subject residence is excessive. The Petitioner’s claim is based on what he perceives as a disparity of grade factors ranging from “B+1” to “B-2” within the subject’s immediate neighborhood.
28. The Petitioner argues that the appropriate grade factor for the subject structure should be a “B-2”. This conclusion is based upon several factors: (1) a grade

factor of “B-2” was applied to several neighboring homes, one of which the Petitioner contends has an in-ground pool, a 3-car garage, and more amenities than the subject dwelling, (2) the County Board set a precedent in 1997 by lowering the grade for a neighboring home built by the same contractor and located at 10185 Hunters Crossing Drive from a “B+1” to a “B-2”, and (3) the Petitioner claims that the subject grade should be reduced to a “B-2” for the “sole purpose that he has been overtaxed” for several years.

29. In support of the grade issue, the Petitioner submitted and identified other residences that he asserts are “comparable” in grade and design to the subject property. All the “comparables” submitted are in close proximity to the subject (Terry Brooke Estates) and the Petitioner claims that many of the “comparable” residences submitted were constructed by the same contractor and have amenities similar to that of the subject. The Petitioner contends that his home should be graded a “B-2” because some of the dwellings with similar amenities have grades of “B-2”.
30. In response to the Petitioner’s position on this issue, the Respondent testified that the County Board lowered the grade of the subject dwelling from a “B+1” to a “B” as a result of the Petitioner filing a Form 130 petition. The Respondent asserts that the predominant grade in the neighborhood is a “B” and that the change made by the County Board was subsequent to an on-site interior and exterior inspection of the subject dwelling by the Township Assessor’s Office.
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.

F. Analysis of Evidence Submitted

32. As stated in Conclusions of Law ¶11, one manner for the taxpayer to meet his burden in the State's administrative proceedings is to identify properties that are similarly situated to the contested property, and then to 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."
33. The Petitioner identifies several other residences as "comparables" within the subject's immediate area. As stated by the Petitioner and indicated on Petitioner's Exhibits 1 and 2, the grade factors of these homes range from "B+2" to "B-2". However, other than presenting this information the Petitioner fails to make any detailed analysis as to how these "comparables" are truly comparable to the subject structure. Nor did the Petitioner submit property record cards of the purported comparables to show that the grade factors shown on the Petitioner's exhibits were correct.
34. Assuming *arguendo* that the information submitted by the Petitioner is reliable, the fact that exterior photographs of other similar residences were submitted along with an indication of the grade factors of those residences, is insufficient evidence to show that the local assessing officials applied an incorrect grade to the subject. 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).
35. It should be noted, that the purported comparable dwellings submitted by the Petitioner with addresses on the same street (Ashley Drive) as the subject, all have a grade factor of "B" assigned to them. See Petitioner's Exhibits 1 and 3.

Again, the subject residence is also graded “B”. The Petitioner, however, seeks a grade of “B-2”.

36. The Petitioner does not attempt to explain how the purported comparables located in the subject’s *immediate* neighborhood with grade factors of “B”, are superior to the subject in grade and design. Even though the Petitioner submitted exterior photographs of purported comparable residences and indicated the various grade factors for those residences, he did not submit any analysis of how the subject residence is inferior to the “comparable” residences that are graded “B” or how the subject residence is equivalent to those “comparable” residences that are graded “B-2”.
37. In addition, the Petitioner did not submit any interior photographs or documentation of either the subject home or the purported comparables in an attempt to compare the features and amenities of those structures.
38. The Petitioner also claims that the interior components of a dwelling should have no bearing on the grade. This statement is incorrect. In establishing the grade of a dwelling, the quality of materials and design are the most significant factors. 50 IAC 2.2-7-6 (c). As stated in Conclusions of Law ¶123, in order to properly assign the correct grade, the assessor must weigh the components of each represented major grade classification and determine an overall *composite* grade. All grade classifications include not only exterior features of the home such as roof lines or angles, overhangs, numerous cuts or angles in the wall lines, but also interior finish as well. Some examples of interior finish are flooring, wall coverings, doors, windows, woodwork, electric service, heating and cabinetry. 50 IAC 2.2-7-6(b) and (d).
39. As per the Grade Specification Tables, 50 IAC 2.2-7-6(b), the basic interior finish of a “B” grade dwelling includes oak flooring or good quality carpeting, good quality cabinets, drywall with good grade cover, tiled bath, formica vanity tops,

ample electrical service, abundant outlets, good grade fixtures, a central forced air heating system, automatic fired thermostat control and good grade fixtures. The Petitioner does not make any attempt to argue that the subject residence under review is devoid of any or all of the “B” grade specification features.

40. Though a residential property may have a swimming pool or additional garage space added, this would have no bearing on the grade factor of that residence. The additional garage area is included in the total garage square footage shown in the pricing ladder for the residence on the property record card and valued from 50 IAC 2.2-7-11, Schedule E.2 and is depreciated from 50 IAC 2.2-7-12, Residential Dwelling Depreciation Table. A swimming pool, whether it be in-ground or above ground, is valued as a line item in the Summary of Improvements on the property record card from 50 IAC 2.2-9-6, Schedule G.1 and depreciated from 50 IAC 2.2-9-7, Residential Yard and Agricultural Improvement Depreciation Tables.
41. In light of all the Petitioner’s claims, the most notable statement made by the Petitioner regarding the comparability between the subject and the purported comparables, is that the subject is “basically identical” to the dwelling located at 10273 Shadowood (built by the same builder) with the exception of the addition of a third garage stall to the subject property. The “basically identical” dwelling located at 10273 Shadowood is graded a “B”.
42. The Petitioner has made a number of conclusory statements that the grade applied to the subject residence should be a “B-2”. The Petitioner’s reasoning that the grade should be reduced because a few dwellings in his neighborhood have grade factors assigned to them below a “B” and to “make up for the overage” he has paid in taxes due to an unfair assignment of a “B+1” grade factor to his home, does not constitute probative evidence in establishing disparate treatment of the subject property. Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.

43. It is the Petitioner’s burden to establish true comparability and disparate treatment of the subject property. “The elements of comparison (property characteristics) for improvements include the following:
- overall quality
 - architectural attractiveness
 - age
 - size (for example, square footage, stories, number of units, and number of bedrooms and baths)
 - amenities
 - functional utility (for example, architecture and appearance, layout, and equipment)
 - physical condition (for example, physical deterioration, maintenance, and modernization, including remodeling and additions)”.
IAAO Property Assessment Valuation, 98 (2nd ed. 1996).

44. In the case at bar, the Petitioner failed to establish the comparability of the properties and thus failed to establish disparate treatment of the subject residence.

45. For all the reasons set forth above, the Petitioner has failed to meet his burden in this appeal. Therefore, no change in the assessment is made as a result of this issue.

SUMMARY OF STATE DETERMINATIONS

Issue - Whether the grade factor assigned to the subject dwelling should be a “B-2.”

No change is made in the grade factor assigned by the County Board.

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