

**STATE OF INDIANA
Board of Tax Review**

TIMOTHY W. PAUL,)	On Appeal from the Hamilton County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petition for Review of Assessment, Form 131
)	Petition No. 29-007-00-1-5-00013
HAMILTON COUTY PROPERTY)	
TAX ASSESSMENT BOARD OF)	
APPEALS and FALL CREEK)	Parcel No. 1315110006002000
TOWNSHIP ASSESSOR)	
)	
Respondents)	
)	

Petitioner Representative: Mr. John Johantges
 Property Tax Group I
 3041 West 126th Street
 Carmel, IN 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

Whether the grade and design factor 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 IC 6-1.1-15-3, Mr. John Johantges of Property Tax Group I, Inc. filed a Form 131 petition on behalf of Timothy W. Paul (the Petitioner) requesting a review by the State. The Form 131 was filed on March 21, 2001. The Property Tax Assessment Board of Appeals' (PTABOA) Final Determination on the underlying Form 130 petition was issued February 28, 2001

3. Pursuant to IC 6-1.1-15-4, a hearing was held on August 21, 2001 before Hearing Officer Dalene McMillen. Testimony and exhibits were received into evidence. Mr. John Johantges represented the Petitioner. Ms. Lori Harmon represented Hamilton County. Mr. James Tex represented Fall Creek Township.

4. At the hearing, the following documents were made part of the record and labeled State Exhibits:
 - State Exhibit A –Copy of the 131 petition filed by Property Tax Group I
 - State Exhibit B – Form 117, Notice of Hearing on Petition
 - State Exhibit C – Request for additional evidence from Mr. Johantges, dated August 21, 2001.

5. In addition, the following documents were submitted to the State:

Petitioner's Exhibit 1 – A highlighted copy of 50 IAC 2.2-7-6 (b) "grade specification table"

Petitioner's Exhibit 2 – A copy of Roger Casey's property record card and two exterior photographs of the Casey's home

Respondent's Exhibit 1 – Documents including; (a) A response to 131 petition by Hamilton County PTABOA; (b) a copy of the multiple listing sheet (MLS) on the subject property, dated July 21, 2000; (c) a copy of the sale disclosure form on the subject, dated March 31, 2000; (d) a copy of the purchaser's closing statement on the land, dated June 26, 1998; (e) a copy of the lot prices for Springs of Cambridge, dated February 1, 1998; (f) the comparative cost multipliers from Marshall Valuation Services, dated July 1999 (two pages).

6. The assessed value of the property as determined by the PTABOA is:
Land: \$38,700 Improvements: \$72,970 Total: \$111,670
7. The Petitioner's property is located at 13005 Rocky Pointe Road, McCordsville, Fall Creek Township, Hamilton County.
8. The Hearing Officer did not conduct an on-site inspection of the subject property.
9. At the hearing, Mr. Johantges was asked to supply the State with a copy of the disclosure form as required by 50 IAC 15-5-5 (State Exhibit C). August 26, 2001 was established as the deadline for the submission of this information. Mr. Johantges failed to provide the disclosure form as required by 50 IAC 15-5-5.
10. Ms. Harmon, Messrs. Johantges and Tex testified that they are certified Level II Indiana Assessor/Appraisers.

Grade

11. The Petitioner is seeking a reduction in grade from “A-1” to “B+2”. This request is based on an inspection of the interior and exterior of the property and a comparison of the characteristics of the home with the grade specification table. The comparable property submitted is superior to the subject and is graded “B+2”. *Johantges Testimony & Petitioner’s Exhibit 1 & 2.*

12. The Respondent contends the grade specification in the Regulation has many overlapping criteria and many subjective or undefined adjectives (for example ample, high, average, etc.). Furthermore the grade specification table does not refer to many of the current construction materials or design standards; it also lacks any reference to the quantity of items as an element in the relative reproduction cost. The home is correctly graded because of features such as excellent window package, cherry wood kitchen cabinets, Corian countertops, hardwood floors, 12” ceramic tile flooring, and coffered, tray and vaulted ceilings. *Harmon Testimony.*

13. In April 2000 the Petitioner purchased the subject home for \$613,062. The County verified that the grade was not overstated by the following calculation; purchase price of \$613,062 deflated 5% each year to 1998 equals \$553,100, the 1998 value \$553, 100 minus land selling price of \$127,000 equals a 1998 building value of \$426,000. Using Marshall & Swift to trend the value back to 1991 (1.225 factor 1998 divided by 1.023 factor for 1991) equals a factor of .8351. The .8351 times 426,200 equals adjusted cost of \$355,900. The \$355,900 is then reduced by 15% to reflect the cost tables in the Regulation for 1991 equals a replacement cost of \$302,500. The property record card indicates a replacement cost new of \$148,700. Divide \$302,500 by \$148,700 equals 2.03

or 200%. The home under appeal is currently graded at “A-1” or 150%. *Harmon Testimony and Respondent’s Exhibit 1*.

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. 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).

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.

D. Conclusions 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. 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 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. 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 (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

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 (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).
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 Service 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 schedules 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 like it has done in other appeals.
30. The Tax Court demands quantification techniques for grade application and the State reasonably decides that adjusted cost calculations are the best way to answer that demand.
31. Mr. Johantges 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 a calculation would have revealed constitute mere speculation and do not, in any way, shape the decision made in these Findings and Conclusions.

Discussion of Petitioner's Evidence

32. Petitioner's representative used a highlighted grade specification table in order to support a grade reduction. The "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 good grade electric fixtures (grade “B”) and good quality cabinets (grade “B”). Petitioner’s Exhibit 1. 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. It is important to note that the grade specification table does not identify, and cannot possibly identify, every feature found in 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 Corian countertops or intricate ceiling ornamentation. The table is intended as a guide. There is no evidence that other features were considered.
35. The Petitioner presents evidence of a comparable property graded “B+2” (the Casey house). This evidence consists of two exterior photographs, a property record card and the conclusory statement that the comparable is superior to the subject. Labeling the Casey home “superior” does not establish that it is superior.
36. The testimony that the Casey home is comparable to the home under appeal and therefore, the subject’s grade should be reduced is 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 t 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N. E. 2d 1230, 1239, n 13 (Ind. Tax 1998)).
37. The Petitioner did not credibly identify similarly situated properties or establish disparate treatment. The Petitioner claimed that one home was comparable and based on a comparison with this one property requested a grade reduction.

38. The Petitioner has failed to meet the burden of proof in this appeal.

39. For the above reasons, the State declines to reduce the grade of the subject.
The determination of the Hamilton County PTABOA is maintained.

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