STATE OF INDIANA
Board of Tax Review

VICTORIA ENTERPRISES,	)	On Appeal from the Allen County
	)	Property Tax Assessment Board
Petitioner,	)	of Appeals
	)	
v.	)	Petition for Review of Assessment, Form 131
	)	Petition No. 02-074-00-1-4-00018
ALLEN COUNTY PROPERTY TAX	)	Parcel No. 94-2263-0032
ASSESSMENT BOARD OF APPEALS	)	
And WAYNE 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:

Issues

1. Whether additional obsolescence should be applied to the subject property.
2. Whether the atrium and mezzanine pricings are incorrect.
3. Whether the grade 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 be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-3, Landmark Appraisals, Inc. (Landmark), on behalf of Victoria Enterprises (Victoria), filed a Form 131 petition requesting a review by the State. The Form 131 was filed on September 8, 2000. The Property Tax Assessment Board of Appeals' (PTABOA) determination on the underlying Form 130 petition is dated August 28, 2000.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on March 8, 2001 before Hearing Officer Joseph Stanford. Testimony and exhibits were received into evidence. M. Drew Miller represented the Petitioner. Mike Ternet and Kimberly Klerner represented the PTABOA. Jerry Zuber represented Wayne Township.

4. At the hearing, the subject Form 131 petition was made part of the record and labeled Board Ex. A. The Notice of Hearing on Petition is labeled Board Ex. B. In addition, the following exhibits were submitted to the State:
   Petitioner's Ex. 1 – Assessment Review and Analysis.
   Petitioner's Ex. 2 – Appraisal of subject property.
   Petitioner's Ex. 3 – State Board Final Determination for Robert J. and Mary G. Giczewski, Pet. No. 29-018-95-1-5-00037.
   Petitioner's Ex. 4 – Tax representative disclosure statement.

   Respondent's Ex. 1 – Subject property record card, with 2001 changes.

5. The subject property is located at 5800 Fairfield Avenue, Fort Wayne, Indiana (Wayne Township, Allen County). The hearing officer did not view the property. The parties agreed that the assessed value under appeal is $40,330 for land and $367,900 for improvements.

Issue No. 1 – Whether additional obsolescence should be applied to the subject property

6. The PTABOA has applied 10% obsolescence to the subject property, based on historical vacancy. *Klerner Tetstimony* & *Respondent Exhibit 1.*

7. Mr. Miller contends that the building suffers from functional inutilities as well as a poor location. He testified that the building was 58% occupied as of January 30, 2001, and that only 75% of the total square footage is leasable. He contends that, in modern office buildings, a greater percentage of the total square footage is leasable.

8. Mr. Miller stated that recent Tax Court decisions allow a taxpayer to utilize accepted appraisal methods to quantify obsolescence. Victoria attempts to quantify obsolescence through the use of an appraisal (Pet. Ex. 2), completed on July 7, 1992 by Misner & Associates, Inc., Fort Wayne, Indiana.

9. Victoria's calculation, submitted by Mr. Miller, uses the depreciated building value of $809,508 shown in the appraisal (Pet. Ex. 2 at 48). This 1992 value is trended back to 85% of 1991 costs, which are the costs utilized in the schedules of the 1995 real estate manual. The trended depreciated value is $667,480. This is compared to a PTABOA remainder value (assuming a "C" grade) of $1,099,285. The difference, 39%, is assumed to be obsolescence and is the amount of obsolescence that Victoria requests.

10. Mr. Miller contends that the method used equates cost in the real world with true tax values. Market information is used in the appraisal, obtained from an income analysis and comparable sales. The appraisal estimates 67% depreciation from all causes, and does not specifically identify or segregate depreciation by type (physical, functional, and economic).

11. Mr. Ternet contends that the figures submitted by Mr. Miller do not make sense, and are compiled from different sources (the market, the Indiana real estate manual, and the Marshall Swift manual), making them meaningless. He also opines that Mr. Miller should have submitted an income statement, because high vacancy rates are not necessarily caused by obsolescence.

B. Issue No. 2 – Whether the atrium and mezzanine pricings are incorrect

12. Mr. Miller contends that the subject property does not have an atrium or a mezzanine.

13. According to Marshall Swift, an atrium is "an interior courtyard usually with a glass roof to provide a greenhouse-like effect inside." (Pet. Ex. 1, Oral Testimony of Mr. Miller). Also, according to Mr. Miller, the Indiana real estate manual states that atriums may have fireproof steel construction.

14. Mr. Miller testified that the area assessed as an atrium is a section within the interior of the building, with the second floor eliminated. It is an open area with four skylights constructed of plastic. He testified that it lacks fireproof steel construction. He contends that the area should be priced as an open mall concourse area. He also testified that the area has no exterior walls, and therefore should have a perimeter-area-ratio (PAR) of zero. The PTABOA lists a PAR of five (5).

15. Mr. Miller also contends that no mezzanine exists. The area assessed as a mezzanine is a second floor walkway, which serves as an entrance to the offices. He testified that there is no soffit, lighting, or heating specific to this area. Mr. Miller stated that a mezzanine is a structure between floors. He contends that the area in question should be priced as part of the second floor offices.

16. Ms. Klerner noted that the entrances to the second floor offices from the area in dispute are the only entrances to these offices.

C. Issue No. 3 – Whether the grade is excessive

17. The PTABOA currently has a grade of "C+2" on the property. Mr. Miller testified that the subject building is a wood-framed structure with a basic square design. He testified that construction is conventional and that he did not find any features of the building that would warrant above a "C" grade.

18. To calculate grade, Victoria utilizes the segregate reproduction costs shown in the appraisal report (Pet. Ex. 2 at 47). The report breaks down the reproduction cost of all areas of the building, and adds relevant fees and local cost multipliers. The calculated cost new is $2,453,059, as of July 1992. This value is trended back to 85% of 1991 costs, which are the costs utilized in the schedules of the 1995 real estate manual. The trended reproduction cost is $2,022,550.

19. To determine the appropriate grade, Victoria compares the trended reproduction cost above with the assessor reproduction cost before grade, $1,998,700. Since the difference is only about 1%, Mr. Miller concludes that a grade of "C" is appropriate.

20. Mr. Ternet contends that factors such as the atrium and a unique design support a grade of above "C."

D. Contingency Fee

21. Mr. Miller testified that Landmark works for Victoria on a contingency fee basis. In other words, the amount of compensation Landmark receives is based on the amount of reduction in Victoria's assessment.

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.

D. Reliability of evidence

18. The weight of Mr. Miller's testimony is negatively affected, because Mr. Miller receives compensation based on the amount that the Petitioner's tax assessment is reduced. Clearly, expert witnesses should not receive contingent fees. Courts agree that an expert witness whose fee is contingent upon the outcome of a case is improperly motivated and cannot objectively inform the court on the issue before it. "It is the potentially adverse influence of the motivation to enhance his compensation that makes a contingent fee arrangement for an expert witness inappropriate." *City & County of Denver v. Board of Assessment,* 947 P.2d 1373, 1379 (Colo. 1997)(citing *New England Tel. & Tel. Co. v Board of Assessors of Boston,* 392 Mass. 865, 468 N.E. 2d 263, 265 (1984)). "[A] bargain to pay compensation to an expert witness for the purpose of 'forming an opinion' is lawful 'provided that payment is not contingent on success in litigation affected by the evidence." *Id* (citing Arthur Linton Corbin, *Corbin on Contracts,* 1430 (1962 & Supp. 1997)). Moreover, the Unform Standards of Professional Appraisal Practice (USPAP) state that it is "unethical" to accept compensation that is contingent upon reporting "a direction in value that favors the cause of the client …[or] the attainment of a desired result." *Denver,* 947 P. 2d at 1378 (citing USPAP at 2 (1996)). *See also Wirth v. State Board of Tax Commissioners,* 613 N.E. 2d 874 (Ind. Tax 1993). The contingent fee nature of the representative's agreement goes to the weight of the testimony.

E. Issue No. 1 - Whether additional obsolescence should be applied to the subject property

19. Depreciation is a concept in which an estimate must be predicated upon a comprehensive understanding of the nature, components, and theory of depreciation, as well as practical concepts for estimating the extent of it in improvements being valued. 50 IAC 2.2-10-7.

20. The elements of functional and economic obsolescence can be documented using recognized appraisal techniques. These standardized techniques enable a knowledgeable person to associate cause and effect to value pertaining to a specific property.

21. It is incumbent on the taxpayer to establish a link between the evidence and the loss of value due to obsolescence. After all, the taxpayer is the one who best knows his business and it is the taxpayer who seeks to have the assessed value of his property reduced. *Rotation Products Corp. v. Department of State Revenue,* 690 N.E. 2d 795, 798 (Ind. Tax 1998).

22. Regarding obsolescence, the petitioner has a two-prong burden of proof: (1) the petitioner has to prove that obsolescence exists, and (2) the petitioner must quantify it. *Clark v. State Board of Tax Commissioners,* 694 N.E. 2d 1230, 1233 (Ind. Tax 1998).

23. The local assessing officials agree that obsolescence exists, and have applied 10% obsolescence to the subject property. Therefore, the first prong of Victoria's burden has been satisfied. However, for the reasons that follow, Victoria has failed to meet the second prong, which is to properly quantify the obsolescence that it contends exists.

24. In attempting to quantify the amount of obsolescence to apply to the subject property, Victoria submitted the calculations prepared by Mr. Miller (Pet. Ex. 1), based on information included in a 1992 appraisal report (Pet Ex. 2).

25. Before addressing the calculation itself, the State finds no validity in using 1992 market data to attempt to compute obsolescence for the 2000 assessment year. Even if there are no changes to the property itself, market forces affecting the amount of obsolescence that a property suffers are constantly changing. Even if the State were to find that Victoria utilized accepted appraisal techniques in calculating obsolescence, the percentage determined by Victoria would be relevant to 1992, not 2000.

26. *Assuming arguendo* that Victoria had utilized data from the relevant time period in its calculation of obsolescence, it failed to employ accepted appraisal techniques. In fact, the $809,508 referred to as "depreciated cost" in Landmark's exhibit (Pet. Ex. 1) is actually the market value of the improvement taken from the cost approach of the appraisal report (Pet. Ex. 2 at 48). This 1992 value is trended back to 1991, and then compared with true tax value. Victoria assumes that market value and true tax value of the improvement should be equal, and further assumes that any difference constitutes obsolescence.

27. To repeat, the true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *Town of St. John V*, 702 N.E. 2d at 1038. In spite of the Tax Court's ruling, the calculation performed by Landmark very simply uses obsolescence as a tool for an adjustment to market value.

28. Even if the State felt compelled to adjust the assessment of the subject improvement to market value based on the calculation submitted by Landmark, the calculation lacks evidentiary support. The market value of the improvement according to the appraisal, $809,509, is based on accrued depreciation from all causes of 67%. The 67%, however, is not segregated between physical depreciation and obsolescence. The appraisal report never states how much, if

any, of the 67% accrued depreciation is obsolescence. Moreover, the 67% itself is unsupported. In fact, this depreciation percentage is merely a plug figure to allow the market value computed by the cost approach to approximate the market values computed by the sales and income approaches. As stated previously, however, the sales and income approaches use data from 1992, not 2000. Therefore, none of the data can be considered relevant.

29. Landmark's calculation is the only evidence submitted by Victoria attempting to prove an error in the obsolescence percentage. Thus, for the reasons set forth, Victoria has failed to prove that the 10% obsolescence applied by the PTABOA is incorrect. The Petitioner did not meet the second prong of the two-prong obsolescence burden. Accordingly, there is no change in the assessment as a result of this issue.

F. Issue No. 2 – Whether the atrium and mezzanine pricings are incorrect

30. An atrium is defined, as the evidence submitted by Victoria suggests, as an interior courtyard with a roof (usually glass) that lets in sunlight to provide a greenhouse-like effect. Generally, the area is a single-story structure within a multi-structure building.

31. Upon examination of the photographs (Pet. Ex. 1) and testimony, it is determined that the area assessed as an atrium is clearly an atrium. The area in question has plastic skylights, creating a greenhouse-like effect, which provides for the existence of live trees in this area. It is a single-story structure within a two-story building. The fact that the skylights are constructed of plastic instead of glass, and that construction may not be fireproof steel, does not preclude the structure from being an atrium. The State notes that the definition, provided by Victoria, only states that the skylight or ceiling is *usually* glass.

32. Victoria is correct, however, in its contention that the PAR of the atrium should be zero. In assessing an atrium, the zero PAR is applicable to those areas which

have no perimeter walls. If this is the case, the pricing must not include an allowance for walls in the per square foot rate. 50 IAC 2.2-11-6. The subject atrium has no perimeter walls. The only walls around the atrium are part of the offices, and are therefore already included in the office pricing. Thus, the PAR of the atrium should be zero. There is a change in the assessment as a result of this issue. In addition, the PTABOA lists the atrium as having only one "equivalent story." The evidence clearly shows the atrium to be two equivalent stories. This correction is also hereby made to the assessment of the atrium.

33. A mezzanine is defined as a structure between two floors. The area assessed as a mezzanine is not a structure between two floors, but a walkway that is a part of the second floor. Therefore, Victoria is correct in its contention that there is no mezzanine. The area assessed as a mezzanine should simply be assessed as part of the second floor office square footage, as would any other hallway or walkway of this nature. There is a change in the assessment as a result of this issue.

G. Issue No. 3 – Whether the grade is excessive

34. "Grade" means the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.

35. Grade is used in the cost approach to account for variations from the norm or "C" grade. The quality and design of a building are the most significant variables in establishing grade. 50 IAC 2.2-10-3.

36. The major grade classifications are "A" through "E." 50 IAC 2.2-10-3. The cost schedules (base prices) in the Manual reflect the "C" grade standards of quality and design. The following 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%

37. Intermediate grade levels ranging from “A+10” through “E-1” are also provided in the Manual to adequately account for quality and design features between major grade classifications. 50 IAC 2.2-10-3(c).

38. Victoria’s request for a reduction in grade, from “C+2” to “C”, is based on a comparison of actual construction costs to the assessor’s reproduction cost before applying grade (sub-total cost).

39. Again, true tax value does not equal market value. 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.

40. The reproduction cost schedules used for valuing commercial buildings are found in 50 IAC 2.2-11-6. These cost schedules are at the heart of true tax value’s method for determining value. These schedules, effective for the 1995 general reassessment, reflect 1991 reproduction costs, according to Marshall Valuation Services, reduced by 15 percent. See *Town of St. John,* 690 N.E. 2d at 373, *nt.* 5. The overall purpose of these schedules was to approximate prevailing construction costs in 1991, less 15 percent.

41. The appraisal report submitted by Victoria lists reproduction cost new, at July, 1992, of $2,453,059 (Pet. Ex. 2 at 47). This cost is based on an analysis of building materials used, and a segregated cost breakdown. All costs appear to be included, and are adjusted to local costs. The State finds this determination of reproduction cost new to be complete, accurate, and reliable.

42. The July, 1992 reproduction cost new must be trended back to 85% of 1991 costs. This is accomplished by the use of Marshall Swift cost multipliers. As Landmark's exhibit (Pet. Ex. 1) correctly shows, the relevant cost multipliers are:

July, 1992 Multiplier	1.125
First Quarter 1991 Multiplier	1.159
1.125 divided by 1.159 equals	
Discount Factor	.9707

43. The calculated reproduction cost new of $2,453,059 is multiplied by the discount factor of .9707. The result, $2,381,184, represents the cost of reproduction in 1991 dollars. This discounted reproduction cost must then be multiplied by 85% to arrive at the deflated reproduction costs used by the Indiana real estate manual, which, again, are prevailing 1991 costs less 15%. This cost is $2,024,006.

44. The sub-total of the building's reproduction cost must be recalculated as a result of the changes ordered above. The new sub-total is $1,988,940.

45. By dividing the subject deflated reproduction cost of $2,024,006 by the subject sub-total value of $1,988,940, the correct grade factor can be determined. The resulting number represents the percentage that is required to equate the subject actual reproduction cost to the replacement cost from the pricing schedule, 50 IAC 2.2-11-6. This calculation results in a percentage of 101.8, which translates into a grade of "C" (102% is rounded to 100%).

46. The State grants that the Regulation, 50 IAC 2.2, does not explicitly identify the mathematical calculation detailed above. However, as stated previously, the Regulation provides factors, or multipliers, that are assigned to each grade classification. The multipliers listed in the Grade-Design Factor chart represent the percentage of the actual reproduction cost as compared to the reproduction

cost determined by using the pricing schedules. The chart clearly requires the assessor to make this determination to apply the appropriate grade. For example, if the actual reproduction cost is 100% of the cost determined by using the pricing schedules, the grade is "C." A factor of 105% means that there is an additional 5% of cost, due to quality and design, which is not provided for in the pricing schedules. To account for this, the grade must be increased to "C+1." Therefore, while the calculation performed above is not specifically shown in the Regulation, it is clear when looking at the Grade-Design Factor chart that this type of analysis is acceptable, if not necessary, in the determination of grade.

47. Clearly, a calculation of actual cost serves as a more accurate and reliable method of determining grade than an arbitrary estimate. The Tax Court finds assessments arbitrary and capricious if the Court finds the assessment techniques vague. *Garcia v. State Board of Tax Commissioners,* 694 N.E. 2d at 796 (Ind. Tax 1998). The method used by Victoria, and by the State, to calculate grade is an ascertainable way to measure grade that is allowed by the Regulation.

48. At first blush, it may seem inconsistent that the State recognizes Victoria's method of calculating grade as acceptable, but does not recognize a seemingly similar analysis to measure obsolescence as acceptable. In fact, this case serves as an excellent example of the difference between reproduction cost and market value. Market value is the value for which a property would sell if it were offered on the open market. Replacement cost is the cost of producing an exact replica of the building. In its obsolescence analysis, Victoria compares the *market value* of the improvement with the assessor's true tax value, assuming the two should be equal. In its grade analysis, Victoria compares real world *reproduction cost* with true tax value. Again, true tax value does not mean market value. On the other hand, reproduction cost forms the basis of true tax value's method for determining value.

49. 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,* ___ N.E. 2d ___ (Ind. 2002), 2002 WL 550985.

50. 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 provided, and the above calculation is identical to the calculation used to determine grade in the *Garcia* case.

51. For the reasons set forth, it is determined that Victoria has proven that the correct grade of the subject improvement is "C." There is a change 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.

_____

Chairman, Indiana Board of Tax Review