

**STATE OF INDIANA
Board of Tax Review**

In the matter of the Petition for Review)
of Assessment, Form 131) Petition No. : 29-014-98-1-5-00012

Parcel No. : 08091404011000

Assessment Year: 1998

Petitioner: Brentt Cortus Duff
 517 Super Star Ct.
 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 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 Ind. Code § 6-1.1-15-3, Brentt C. Duff (Petitioner) filed a Form 131 petition on July 1, 1999 requesting a review by the State Board. The Hamilton County Property Tax Assessment Board of Appeals (PTABOA) Assessment Determination on the underlying Form 130 petition was dated June 6, 1999.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on March 15, 2001 before Hearing Officer Joan L. Rennick. Testimony and exhibits were received into evidence. Brentt Duff was self-represented. Debbie Folkerts represented the PTABOA and Tom Thomas represented Washington Township. Alyson K. Kunack was also present as an observer from the State Board.
4. At the hearing, the subject Form 131 was made a part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition was labeled Board Exhibit B. The Hearing Sign In Sheet was labeled Board Exhibit C. In addition, the following exhibits were submitted to the State Board:

Petitioner Exhibit 1 – Includes the following:

- (a) Section 1 of Article X, Constitution of Indiana;
- (b) Forward i of the Indiana Real Property Assessment Manual;
- (c) Table of Contents of the Indiana Real Property Assessment Manual with Sections 6 and 10 highlighted;
- (d) Letter from Tom McDonald to Dixie Packard, Clay Township Assessor dated August 12, 1998 regarding actual costs of construction evidence in Indiana's Assessment System;
- (e) "Indiana's Property Tax Assessment Dilemma" by Larry DeBoer for Spring 2000 with Indiana Code 6-1.1-31-6(c) highlighted

Petitioner Exhibit 2 - Mr. Duff's home building history, sketch, and floor plan of the "Doral" model

Petitioner Exhibit 3(a-d) - Exterior photographs of the subject property

Petitioner Exhibit 4(a-x) - Interior photographs of the subject property

Petitioner Exhibit 5 - Copy of 50 IAC 2.2-7-6, Grade definition, Grade

Specification Table highlighted with subject features, and major grade classifications with highlighted features of the "B" and "C" grade classifications

Petitioner Exhibit 6 - Property Tax Group I narrative, opinion of grade traits of the subject property

Petitioner Exhibit 7 - Chart of traits of subject property prepared by Property Tax Group I

Petitioner Exhibit 8 – Grade Weight (Weighted Average) chart

Petitioner Exhibit 9 – Copies of pages 53 to 56 from 50 IAC 2.2-7-10, Graded Residential Photographs

Petitioner Exhibit 10 – Home Comparison to other “Same” Homes, with photographs

Petitioner Exhibit 11 - Letter from builder of subject property

Petitioner Exhibit 12 - Property record cards (PRC's) of comparable homes

Petitioner Exhibit 13 - Plat map

Petitioner Exhibit 14(a-t) - Photographs and PRCs of 20 neighboring homes

Petitioner Exhibit 15 - Village Farms Tax Comparison Matrix

Petitioner Exhibit 16 - Assessed Valuation/Market Rate % Comparison

Petitioner Exhibit 17 - Subject's market value (appraised) vs. assessed valuation

Petitioner Exhibit 18 - Neighborhood statistics

Petitioner Exhibit 19 - Letter of opinion of grade from Warren Township Assessor, Marion County

Petitioner Exhibit 20 - Summary of the PTABOA decision on subject property

Petitioner Exhibit 21 - Requested information on construction costs

Respondent Exhibit 1 - Sketch and floor plan of "Doral" home

Respondent Exhibit 2 - PRC's for properties shown in Respondent Exhibit 3

Respondent Exhibit 3 - Front and rear photographs of the subject "Doral" home and four (4) other "Doral" homes

Respondent Exhibit 4 - PRC's of houses built by same builder showing the same houses with the same grade

Respondent Exhibit 5 - Response by the Township Assessor to grade issue

- Respondent Exhibit 6 - Response by the County Assessor to grade issue
5. At the hearing, the Hearing Officer requested additional information from the County. This additional information was in the form of the PTABOA hearing tape. The County was given until March 25, 2001 to respond. The County responded in a timely manner. The request for the additional information and the County's response are entered into the record and labeled as Board Exhibit D and Respondent Exhibit 7, respectively.
 6. The subject property is a residence located at 517 Super Star Court, Carmel, Washington Township, Hamilton County.
 7. The Hearing Officer did not view the subject property.

Issue - Grade

8. The subject property is a residence currently graded "B-1" by the PTABOA. The home is a Doral model and was built by the Petitioner to obtain the largest square foot for the cheapest price.
9. There are other Doral model properties, built by the same builder, submitted as evidence. The subject is a two-story home with a multi-gabled roof that has the appearance of a custom built home. *Duff testimony.*
10. Both parties were in agreement that the interior was not the same quality as the exterior of the subject dwelling.
11. The Petitioner presented a statistical analysis of market value and true tax value in support of his position. The Petitioner also presented other properties with grades ranging from a "C" to a "B-2" to compare to the subject home. The Petitioner presented a letter from Allen Durnil, Warren Township Assessor, Marion County, stating that in his opinion he believed the grade is a "B-2/C+2". It should be noted, Mr. Durnil did not personally inspect the subject home.

12. The Respondent contends the grade is correct due to features of the home and that the Petitioner did not establish comparability between his home and the other properties that he presented as comparables.

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.

A. Issue-Grade

1. 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	60%

50 IAC 2.2-7-6(e)

21. Intermediate grade levels ranging from “A+10” to “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 grading property. For assessing officials and taxpayers alike, however, the Manual provides indicators for establishing grade. The text of the Manual (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.
24. Though it may be difficult to establish whether a home has a “cheap quality interior finish with minimal built-in features” or is “devoid of architectural treatment”, this does not mean that a taxpayer is precluded from offering evidence tending to demonstrate that the home has these characteristics. *Whitley*, 704 N.E. 2d at 1119.

25. In property tax appeals, the Petitioner has the responsibility to provide probative and meaningful evidence to support a claim that the grade factor assigned by the local officials is incorrect.

2. Evaluation of the Evidence

26. The subject property was built in 1997 and assigned a grade of “B+2” during the construction process. The Petitioner and the Respondent both agreed the original grade (“B+2”) was in error when one considered the interior and exterior amenities after construction. Having stated this, the issue on appeal is whether the “B-1” grade determined by the PTABOA should be lowered to a “B-2”.
27. The Petitioner gave a history of the construction of his home and the goals he sought to attain. As part of his evidence, the Petitioner included interior and exterior photographs of the subject property; a “weighted average” of the features of the home as they compared to the Grade Specification Table; comparison photographs from the Regulation; comparables; a market value verses assessed value analysis; a letter from the Warren Township Assessor and a letter from the builder of the subject home.
28. Before applying the evidence to reduce the contested assessment, the State Board must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.
29. Using the Grade Specification Table, the Petitioner analyzed the traits attributed to the subject home and assigned one point to each component. This analysis resulted in a figure of 110% that equated to a “B-2” grade.
30. The Petitioner used two methods to quantify grade - a “weighted average calculation” and a “major grade classification analysis”. Both methods are flawed and do not constitute probative evidence of error.

31. An important element of the “weighted average calculation” is identifying the features of the home under appeal and “matching” those features to a grade column in the grade specification table. Likewise, the same element appears in the “major grade classification analysis” because features in the home are identified and “matched” to the text found at 50 IAC 2.2-7-6(d). For example, the home was alleged to have average wood, average quality carpet and average plumbing fixtures. Petitioner’s Exhibits 5 and 6. Conclusory statements such as the home has “average quality carpet” or “average wood” 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.
32. 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 Board to make such a list. For example, neither the grade specification table nor the text lists 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.
33. Also, the “methods” used in this appeal give equal weight to the cost of each feature listed in the grade specification table and descriptive text and allegedly present in the contested home.
34. In summation, the “methods” of “quantification” are fundamentally flawed and do not present the State Board with probative evidence in this appeal.
35. The Petitioner submitted a copy of 50 IAC 2.2-7-10, pages 53 – 56, Graded residential photographs, as part of his comparison of the subject dwelling to other similarly graded properties. As stated in this section of the Regulation, “These photographs are only an indication of grade and not a determination of the actual grade of the structure shown. Grade must be based upon individual inspection of the type of materials and quality of workmanship of the subject parcel.”

36. The Petitioner submitted some construction cost information at the request of the Hearing Officer. These costs are not all-inclusive as costs for excavation, permits, survey, and contractor's overhead and profit are not included.
37. Furthermore, the costs are significantly less than the purported market value of \$223,062 shown in Petitioner Exhibit 17. Acknowledging that the market value includes land and deducting the true tax value of the land, which is based on 1991 market value, the remainder for improvements is \$193,212. However, since this is an estimate of the 1997 market value of improvements and not the actual construction cost, the State Board cannot make an adjusted cost calculation to meaningfully deal with the evidence presented.
38. The Petitioner submitted neighborhood data illustrating the relationship of assessed value to market value. The Petitioner determines the average neighborhood assessed valuation to be 20.7% of the market value; the Petitioner's percentage is 21.7%. This is hardly a significant difference. In fact, the Petitioner's own calculations indicate differences ranging from just over 17% (17.3%) to just under 24% (23.8%). The Petitioner's home is closer to the middle of this range.
39. It should be noted the Petitioner attempts to make a relationship between market and assessed values. Ind. Code § 6-1.1-31-6(c) states, "With respect to the assessment of real property, true tax value does not mean fair market value. True tax value is the value determined under the rules of the state board of tax commissioners."
40. The Petitioner submitted into evidence a letter from the Warren Township Assessor, Marion County (Petitioner Exhibit 19). It should be noted the subject property is not in Marion County but in Hamilton County. It is the *opinion* of the Assessor (Mr. Durnil) *based on the information presented to him by the Petitioner* that the grade should be either a "B-2" or "C+2". This letter of opinion based on information presented by the Petitioner, does not make a prima facie case. There

is no explanation as to the information presented or what criteria the assessor used to determine the grade. In addition, Mr. Durnil had not been in the subject dwelling.

41. The Petitioner also presented a copy of the minutes of the PTABOA hearing (Petitioner Exhibit 20) on his home that purportedly lowered the grade on his home from a "B+2" to a "B-2".
42. Upon a request made by the Hearing Officer, Ms. Folkerts sent a copy of the PTABOA hearing tape that states the original vote was to lower the grade to a "B-2", but before the PTABOA adjourned it was decided to discuss the grade issue on the Duff appeal at greater length. The tape shows that after further discussion, it was decided to lower the grade to "B-1". The main reasons discussed on the tape for this change were due to the exterior appointments such as the windows and brick to the peak of the garage area.
43. The Petitioner submitted PRCs and exterior photographs for nineteen (19) residential dwellings, eighteen (18) of which are in Carmel where the subject property is also located. The grade factors applied to these structures range from "C" to "B-2".
44. The Petitioner also submitted photographs of his home and three (3) other homes that have the same basic floor plan and are located in Hamilton County (Petitioner's Exhibit 10). The other three (3) homes are graded "B-2" or "C+2". The similarity of the properties was substantiated with correspondence from Larry Cowell, President of Diamond Star Homes, Inc. (Petitioner's Exhibit 11) the builder of all the homes including the subject shown in Petitioner's Exhibit 10. The letter from the builder lists five (5) other homes built in Hamilton County that started with the same "Doral" pre-designed model. Mr. Cowell stated all contain similar structural materials and features, but three (3) had upgraded the interior and two (2) the exterior. Mr. Cowell further stated that the subject property, when compared to the other five (5) homes, had fewer built-in features, i.e. does not

have ceramic splash or wood windows, had some design structural features that were less costly, i.e. had fewer gables, and had fewer upgrade features compared to the other five (5) homes.

45. It is the Petitioner's position that a grade reduction is warranted based upon allegedly comparable neighborhood properties. As stated in Conclusions of Law ¶11, the taxpayer's burden in the State Board's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties.
46. In the case at bar, the Petitioner has presented probative evidence in the form of the comparable PRCs, comparable photographs, photographs of the subject (interior and exterior) and the builder's letter to establish that the properties were, in fact, comparable. In doing so, the Petitioner did credibly establish disparate tax treatment between the subject property and other similarly situated properties assessed at lower grade factors than the subject.
47. Once the taxpayer sustains his burden, the burden then shifted to the local assessing officials to rebut the taxpayer's evidence and to justify its decision on the grade issue.
48. Mr. Thomas contends the same pre-designed model may be used, but modifications made by each owner keep those houses from being the "same" houses. Mr. Thomas presented four (4) property record cards to illustrate what he considered "same" houses. According to Mr. Thomas, the same builder built these houses, have the same floor plan, same square footage, and all have the same grade (Respondent Exhibit 4).
49. Mr. Thomas pointed out the differences between the subject property and several of the "Doral" models. The photographs and PRCs indicate differences in

basement size, first and second floor square foot totals, elevation layouts, and living areas over the garage (Respondent Exhibits 2 and 3).

50. It is Mr. Thomas' contention that the subject property has great curb appeal and that the rear of the house is as nice as the front. This is not the same for the comparable "Doral" houses. Photographs illustrate the difference in front and rear exposures (Petitioner Exhibit 3). However, a review of these PRCs showed the grades ranging from "B-1" to "C+2".
51. Mr. Thomas testified that the grade of houses in the immediate neighborhood range from "B-1" to "A+1" or "A+2".
52. Both parties in the appeal agreed the interior of the subject structure does not follow the design quality of the exterior. The builder stated in his letter that the subject has fewer built-in features and fewer upgrades when compared to the other five (5) "Doral" homes. Respondent's Exhibit 5 states that the house has no trim work, has standard heating and air conditioning, and either linoleum or carpeting for floor covering. The Petitioner's photographs substantiate the testimony concerning the interior of the dwelling.
53. In evaluating the Respondent's rebuttal, it must be noted that even though the subject may be different than the other "Doral" homes in size and amount of brick, this does not affect the grade. These features are accounted for in the assessment before the grade factor is applied.
54. The Respondent's testimony includes the statement that the grade of houses in the immediate area ranges from "B-1" to "A+1", or "A+2". No documentation was submitted to substantiate this claim or that the structures were alike.
55. While it may be true that evidence concerning the interiors of the comparable properties is lacking, the interior of the subject is shown in the photographs submitted by the Petitioner. As stated earlier, both parties agreed that the

exterior of the subject is not an indication of the interior and does not have the finish of a custom built home.

56. The Petitioner submitted similarly situated properties, properties built by the same builder, properties in the same area as the subject, and properties that have many of the same exterior characteristics. None of the properties submitted have a grade factor higher than "B-2". The subject is graded "B-1".
57. If the Respondent's position is taken as fact, then this would mean that structures with a grade factor below the subject's would have interiors of even lesser quality as that shown in the Petitioner's photographs.
58. The Respondents rebuttal of the Petitioner also included statements of multi-gabled roof, cuts in the wall outline, upgraded windows, a cathedral ceiling, and curb appeal. Most of the comparables submitted by the Petitioner also have the same features.
59. For all the reasons set forth above, the Petitioner has met his burden of proof by identifying similarly situated properties and establishing disparate treatment. The Respondents were unable to support their position with substantial evidence. Accordingly, a 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.

Chairman, Indiana Board of Tax Review