

**STATE OF INDIANA
Board of Tax Review**

In the matter of the Petition for Review)
of Assessment, Form 131) Petition No.: 89-030-95-1-5-00607

Parcel No.: 501020050700029

Assessment Year: 1995

Petitioner: John L. Valentine
 3033 Waverly Dr.
 Richmond, IN 47374

Petitioner Representative: Ralph Campbell
 Property Valuation Services, Inc.
 P O Box 184
 Fishers, In 46038

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 the grade is correct.

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, Ralph Campbell, Property Valuation Services, Inc., on behalf of John L. Valentine, the Petitioners, filed a petition requesting a review by the State. The Form 131 was filed on October 16, 1996. The County's determination on the underlying Form 130 petition was issued September 17, 1996.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on June 16, 1997, before Hearing Officer Gail Snyder. Ralph Campbell represented the Petitioners. Mike Statzer represented Wayne Township. No one was present to represent Wayne County.

4. At the hearing the Form 131 was entered as evidence and labeled Board Exhibit A. In addition the following exhibits were submitted to the State:
Petitioner's Exhibit 1 – Documents:
 - a. A copy of a realtor's information sheet regarding the subject residence.
 - b. Exterior photographs of the subject residence.
 - c. Property record card for the subject residence.
 - d. A copy of pages 11, 12, 13, and 14, Rule 12, Real Property Assessment Manual, with highlighted grade specification table.
 - e. Improvement Grade & Design information.
 - f. A comparison of characteristics of the residence to the grade specification table.
 - g. Land Assessment information.Petitioner's Exhibit 2 – Documents:
 - a. A copy of pages 47 through 54, Rule 7, Real Property Assessment Manual.

- b. Information regarding “comparable” properties:
1. Property record card and exterior photographs for property located at 3180 Wernle Rd., Richmond, IN.
 2. Property record card and exterior photographs for property located at 3319 Lantern Tr., Richmond, IN.
 3. Property record card and exterior photographs for property located at 3449 Orchard Dr., Richmond, IN.
 4. Property record card and exterior photographs for property located at 3071 Waverly Dr., Richmond, IN.
 5. Property record card and exterior photographs for property located at 3086 Dogwood Lane, Richmond, IN.
 6. Property record card and exterior photographs for property located at 513 Pinetree Ln., Richmond, IN.
 7. Property record card and exterior photographs for property located at 3091 Dogwood Ln., Richmond, IN.
 8. Property record card and exterior photographs for property located at 3030 Waverly Dr., Richmond, IN.
 9. Property record card and exterior photographs for property located at 1359 Henley Rd., Richmond, IN.
 10. Property record card and exterior photographs for property located at 3202 Dogwood Ln., Richmond, IN.

5. The subject property is a residence located at 3033 Waverley Drive, Richmond, Wayne Township, Wayne County, Indiana.

6. The hearing officer viewed the subject property.

Regarding Grade

7. The property record card for the subject property shows the local officials have applied a grade of A+1 (180%) in the assessment of the subject residence. The Form 115, Notification of Final Assessment by the County Board of Review,

shows the assessed value is land \$11,100 and improvements \$77,570. The Petitioner contends a grade of B (120%) or B+2 (140%) is appropriate. (*Campbell testimony and Form 131.*)

8. Petitioner's Exhibit 2 contains information regarding comparable properties. Comparing the structure's characteristics to the grade specification table shows it is primarily a B grade structure. (*Campbell testimony and Petitioner's Exhibit 1.*)
9. The overall design, roof and wall cuts, trim and windows of the subject residence are indicative of an A+1 (180%) grade. The workmanship is "topnotch" and the materials used in the construction are good. The grade specification table has characteristics that appear in A, B, and C grade columns. (*Statzer testimony.*)

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.

Conclusions Regarding Grade

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 grade selected represents a composite judgment of the overall quality and design. *Mahan*, 622 N.E. 2d at 1064; 50 IAC 2.2-7 (f).
23. Subjectivity is used in the grading process. For assessing officials and taxpayers alike, however, the Regulation provides indicators for establishing grade. The

text of the Regulation provides indicators for establishing grade. The text of the Regulation (see 50 IAC 2.2-7-6 (d)), the grade specification table (50 IAC 2.2-7-6 (b)), and graded photographs (50 IAC 2.2-7-10) all provide guides for establishing grade.

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.
26. 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.
27. The Petitioner submitted evidence regarding properties that he contends are comparable to the subject property. Petitioner’s Exhibit 2 provides information about ten (10) different properties. It is the Petitioner’s burden to establish true comparability and disparate treatment. “The elements of comparison (property characteristics) for improvements include the following: Overall quality; architectural attractiveness; age; size (for example, square footage, stores, number of units, and number of bedrooms and baths); amenities (for example, special-purpose rooms, garage, swimming pool, and parking); functional utility

(for example, architecture and appearance, layout, and equipment); and physical condition (for example, physical deterioration, maintenance, and modernization, including remodeling and additions)". *IAAO Property Assessment Valuation*, 98 (2nd ed.1996). Other than Mr. Campbell's conclusory statement that "some comps" were submitted there is no testimony regarding the true comparability of the alleged comparable properties and the property that is the subject of this appeal. The Petitioner did not establish the properties are similarly situated to the property under appeal and did not credibly establish disparate treatment between the subject property and others similarly situated. The attempted grade reduction must fail for this reason.

28. Mr. Campbell, the Petitioner's witness, offers testimony about characteristics of the subject residence based on the grade specification table. Petitioner's Exhibit 1 includes a copy of the grade specification table with highlighted characteristics. The exhibit does not establish that the local taxing officials misapplied the tax system in this case. Numerous features set forth on the grade specification table appear in more than one grade category. For example, gutters and conductors appear in more than one grade category. There are also features on the grade specification table that do not appear in multiple grade categories. For example, a tiled bath is a feature of a B grade home while a ceramic tiled bath is a feature of an A grade home. Further, the grade specification table does not include features that are present in many homes. For example, the specification table does not include features such as skylights and built-in bookcases. Standing alone this evidence does not establish an incorrect grade application.
29. Respondent's Exhibit 2 includes an exterior photograph of the subject residence. According to 50 IAC 2.2-7-10 both exterior and interior characteristics should be considered to accurately establish the level of A Grade. While the exterior photograph may support testimony regarding exterior characteristics, the Petitioner submitted no photographs of the interior.

30. The Supreme Court has upheld assessments that assign grades in excess of A. *State Board of Tax Commissioners v. Garcia*, 766 N.E. 2d 341 (Ind. 2002).
Petitioner has failed to prove that the grade assigned by the local assessing official is incorrect.

31. As previously stated, the local officials assigned an A+1 (180%) grade factor to the home under appeal. For all reasons set forth above, the Petitioners failed to meet their burden of proof regarding the alleged impropriety of the grade factor assigned. Accordingly, no change is made in the assessment as a result of this issue.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review