

**STATE OF INDIANA
Board of Tax Review**

PAUL SPARKS,)	On Appeal from the Clark County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petition for Review of Assessment, Form 131
)	Petition No. 10-011-00-1-5-10014
CLARK COUNTY PROPERTY TAX)	Parcel No. 14000820400
ASSESSMENT BOARD OF APPEALS)	
AND JEFFERSONVILLE 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

There are three different structures on the subject parcel being appealed. They are identified as PO-1, PO-2, and PO-3. PO-1 is a one-story building, and is the Petitioner's residence. PO-2 is a one-story building with an attached garage. This structure is rental property. PO-3 is a one-story building with a finished attic and an attached garage. The Petitioner has multiple issues concerning each structure. The issues will be listed by structure (PO-1, PO-2, and PO-3).

Building PO-1

1. Whether the square footage for the building is correct.
2. Whether depreciation is correct.
3. Whether obsolescence should be applied to building.
4. Whether the Township Assessor omitted facts on the reassessment Form 11.
5. Whether the County Assessor failed to complete Form 131.
6. Whether the square footage for the porch is correct.
7. Whether the grade is correct.
8. Whether the Assessor disregarded 50 IAC 2.2-6-1-(e)(3).

Building PO-2

9. Whether the grade is correct.
10. Whether obsolescence should be applied to building.
11. Whether depreciation is correct.
12. Whether the Township Assessor omitted facts on the reassessment Form 11.
13. Whether the Assessor disregarded 50 IAC 2.2-6-1-(e)(3).
14. Whether building is a pole construction type building.

Building PO-3

15. Whether the grade is correct.
16. Whether building is a garage only.

Other issue

17. Whether the County or Township Assessor's violated any laws pertaining to their actions regarding the 130 Petition Hearing.

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, Mr. Paul Sparks filed a petition requesting a review by the State. The Form 131 Petition was filed on September 27, 2000. The Clark County Property Tax Assessment Board of Appeals (PTABOA) Notification of Final Assessment Determination 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 Paul Stultz. Testimony and exhibits were received into evidence. Mr. Sparks was self-represented. Mr. Robert Lewis, Jeffersonville Township Assessor, and Ms. Gloria Coffey, Deputy Township Assessor, represented Jeffersonville Township.
4. At the hearing, the subject Form 131 petition was made part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition was labeled Board Exhibit B. In addition, the following items were received by the State:
Petitioner's Exhibit 1 – documentation including the following:
 - a. page with two statements on it;
 - b. letter from the Indiana Department of Revenue, dated August 23, 1997;
 - c. page with one statement on it ;
 - d. application for mortgage, two pages;
 - e. page with one statement on it;
 - f. letter from Scott Kremer, AIA, dated February 7, 2001;
 - g. page with five statements on it;
 - h. The Courier Journal article dated February 3, 2001; and
 - i. Ameritech yellow page, dated 1999, shows Petitioner's business listing.

Respondent's Exhibit 1- responses to the Petitioner's issues, four pages.

5. The subject property is located at 240 North Oak Street, Clarksville, Jeffersonville Township, Clark County. The Hearing Officer did not view the property.
6. During the hearing, the Hearing Officer requested Mr. Sparks provide insurance information concerning the subject property. This information was received by

mail on March 22, 2001. The evidence submitted was a billing notice dated November 11, 2000, and is labeled as Petitioner's Exhibit 2.

Issue No. 1- Whether the square footage for the building (PO-1) is correct.

7. Mr. Sparks did not testify in regard to this issue. The only reference to this issue is statement on the attachment to Form 131 which claims the Township did not measure the building correctly, and the correct square foot is 2,262.
8. Mr. Lewis did not testify in regard to this issue.

Issues No. 2 and 11 - Whether the depreciation is correct for PO-1 and PO-2.

9. Mr. Sparks did not testify in regard to this issue. The only reference to this issue is statement on the attachment to Form 131, which claims the depreciation is not correct.
10. Mr. Lewis did not testify in regard to this issue.

Issues No. 3 and 10 - Whether obsolescence should be applied to buildings PO-1 and PO-2

11. Petitioner argued that economic obsolescence should be applied to subject property because the subject property has failed to generate the income it was built to generate. Frequent flooding has caused the retail business from his house (PO-1) to fail. Photos of the subject property showed the degree of flooding that took place in 1997. He was unable to obtain a mortgage for the subject property due to the flooding. The mortgage application submitted shows the mortgage was rejected.
Sparks Testimony & Petitioner's Exhibit 1.
12. Petitioner testified that the subject property is located on Mill Creek. It does not

take a large amount of rain for Mill Creek to overflow its banks. The subject property record card reflects negative land influence factors of 60% and 80% due to frequent flooding. *Lewis Testimony.*

Issues No. 4 and 12 - Whether the Township Assessor omitted facts on the reassessment Form 11, PO-1 and PO-2.

13. Mr. Sparks did not testify in regard to this issue. The only reference to this issue is statement on the attachment to Form 131 that claims the Township did not list required information on the Form 11.
14. Mr. Lewis did not testify in regard to this issue.

Issue No. 5 - Whether the County Assessor failed to complete Form 131, PO-1

15. Mr. Sparks did not testify in regard to this issue. The only reference to this issue is statement on the attachment to Form 131 that claims the County Assessor did not complete the Form 131.
16. Mr. Lewis did not testify in regard to this issue.

Issue No. 6- Whether the square footage for the porch is correct, PO-1.

17. Mr. Sparks did not testify in regard to this issue. The only reference to this issue is statement on the attachment to Form 131 that claims the porch measurements are incorrect.
18. Mr. Lewis did not testify in regard to this issue

Issues No. 7, 9, and 15 - Whether the grade is correct, PO-1, PO-2, and PO-3.

19. Mr. Sparks presented photos of properties that he opined were comparable to his

property. He stated the photos were taken in 1997. The photos were to be reviewed at the hearing and were not submitted as evidence.

20. Mr. Sparks claimed that the comparables had assessments that were half of the subject's assessment. Mr. Sparks did not present the property record cards of the comparable properties.
21. Ms. Coffey explained that part of the difference in the assessments of the comparables and the subject was the fact that the subject property has three structures being assessed and the number of structures the comparables have assessed is unknown.
22. The insurance information requested (Petitioner's Exhibit 2) has limits to the coverage for PO-1 of \$217,000. The limit to the coverage for PO-2 and PO-3 together is \$85,000. The total coverage for PO-1, PO-2, and PO-3 is \$302,000.

Issues No. 8 & 13- Whether the Assessor disregarded 50 IAC 2.2-6-1-(e)(3), PO-1 and PO-2

23. Mr. Sparks did not testify in regard to this issue. The only reference to this issue is two statements on the attachment to Form 131: (1), the County Assessor failed to respond to parcel not facing a paved street; and (2), the Board maintains the property fronts a paved street.
24. Mr. Lewis did not testify in regard to this issue.

Issue No. 14 - Whether building is a pole construction type building, PO-2

25. PO-2 is a pole-constructed structure. Scott Kremer, a licensed architect, states that the subject building is constructed in the method of a pole-barn and does not utilize a foundation system. *Sparks Testimony & Petitioner's Exhibit 1.*

26. Mr. Lewis did not testify in regard to this issue.

Issue No. 16- Whether building is a garage only, PO-3

27. The Petitioner testified that PO-3 is a useless garage, not a dwelling with an attached garage. Flooding destroyed the plumbing and sewer septic system. The building did have a kitchen sink. 50 IAC 2.2 states once a garage always a garage. *Sparks Testimony.*

28. The Respondent testified that the building is an apartment with an integral garage. The building has a small kitchen, bathroom, living area, and a bedroom area upstairs. *Lewis Testimony.*

29. The subject property record card shows PO-3 is assessed as a one-story brick building on a slab and a one car attached garage over slab, both with a finished attic.

Issue No. 17- Whether the County or Township Assessors violated any laws pertaining to their actions regarding the 130 Petition Hearing.

30. Petitioner testified that at the County hearing, the County Assessor did not refute any of his presentation. The building identified as PO-2 should be dropped from the assessment because the County Assessor did not question the statement that PO-2 should not be assessed. *Sparks Testimony.*

31. Mr. Sparks listed the following on the attachment to the Form 131 Petition:

- a. Township Assessor failed to list required information on the Form 11;
- b. County Assessor failed to complete Form 131;
- c. Township Assessor failed to obey laws requiring him to notify the Petitioner of the Township Assessor's response to the 130 Petition;
- d. County Assessor failed to explain her action and list her agreement or disagreement to the issues;

- e. County Assessor has failed in her duty to respond to the Petitioner; and
 - f. Record of the 130 Hearing is incorrect due to the following:
 - 1. failure to list official titles;
 - 2. failure to list exhibits; and
 - 3. failure to view subject property.
32. Because Mr. Sparks was expressing legal opinions, the Hearing Officer asked Mr. Sparks for his qualifications or experience in the practice of law. Mr. Sparks responded that he did not have a license to practice law, and he did not have any experience in any legal area.

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.

Issue No. 1- Whether the square footage for the building (PO-1) is correct.

Issues No. 2 and 11 - Whether the depreciation is correct for PO-1 and PO-2.

Issues No. 4 and 12 - Whether the Township Assessor omitted facts on the reassessment Form 11, PO-1 and PO-2.

Issue No. 5 - Whether the County Assessor failed to complete Form 131, PO-1

Issue No. 6- Whether the square footage for the porch is correct, PO-1.

Issues No. 8 & 13- Whether the Assessor disregarded 50 IAC 2.2-6-1-(e)(3), PO-1 and PO-2

18. Mr. Sparks did not testify or present evidence concerning Issues 1, 2, 4, 5, 6, 8, 11, 12 and 13. He made conclusory statements on the attachment to the Form 131 Petition filed in this matter.

19. To repeat, taxpayers are expected to make detailed factual presentations to the State Board regarding alleged errors in assessment. *Id.* "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)).
20. Mr. Lewis did not address any of these issues.
21. There is no testimony or evidence before the State concerning these issues. The Petitioner has not met his burden of proof in the above issues. There is no change in the assessment as a result of issues 1, 2, 4, 5, 6, 8, 11, 12 and 13.

Issues No. 3 and 10 - Whether obsolescence should be applied to buildings, PO-1 and PO-2

22. 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.
23. The elements of functional and economic obsolescence can be documented using recognized appraisal techniques. *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801 (Ind. Tax 1998). These standardized techniques enable a knowledgeable person to associate cause and effect to value pertaining to a specific property.
24. 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).

25. Regarding obsolescence, the taxpayer has a two-prong burden of proof: (1) the taxpayer has to prove that obsolescence exists; and (2) the taxpayer must quantify it. *Clark*, 694 N.E. 2d at 1233.
26. Obsolescence depreciation is seldom applied to residential dwellings. There must be an extremely abnormal circumstance involved with a residential dwelling before obsolescence depreciation applies. 50 IAC 2.2-7-9(d).
27. Functional obsolescence means obsolescence caused by factors inherent in the property itself. 50 IAC 2.2-1-29. Property Assessment Valuation, Second edition, published by International Association of Assessing Officers states, "Functional utility is the overall usefulness and desirability of a property; the ultimate criterion is whether the improvement efficiently satisfies the wants and needs of the market. Functional obsolescence is the loss of value in a property improvement due to changes in style, taste, technology, needs, and demands."
28. Economic obsolescence means obsolescence caused by factors extraneous to the property. 50-IAC 2.2-1-24. Property Assessment Valuation, Second edition, published by International Association of Assessing Officers states, "External obsolescence is loss in value as a result of an impairment in utility and desirability caused by factors external to the property (outside the property's boundaries) and is generally deemed to be incurable."
29. Mr. Sparks alleged the subject property has suffered obsolescence due to the following:
 - a. Subject property does not generate the income it was built to generate;
 - b. Flooding has caused his retail business to fail; and
 - c. A mortgage application was denied for the subject property.
30. Mr. Lewis pointed to fact that the subject land values have negative influence factors of 60% and 80% to address the fact that flooding occurs on the subject property.

31. The Petitioner offered no testimony or evidence to quantify his request for functional and economic obsolescence. Furthermore, he has fallen short of proving that obsolescence exists in the subject property. In consideration of directives within *Clark, supra.*, functional and economic obsolescence depreciation is not granted. There is no change in the assessment as a result of these issues.

Issues No. 7, 9, and 15 - Whether the grade is correct, PO-1, PO-2, and PO-3.

32. 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.*

33. “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.

34. 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).

35. 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).
36. 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).
37. 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.
38. 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.
39. 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.

40. Mr. Sparks presented photos of comparable properties to be examined at the hearing. He claimed that the comparable properties' assessments were half the subject's assessment.
41. Ms. Coffey pointed out the subject property has three structures and the number of structures on the comparable properties is unknown.
42. Mr. Sparks did not provide the property record cards for the comparable properties. He did not explain how the alleged comparables were actually comparable to the subject property.
43. The Petitioner argued for a grade reduction based upon allegedly comparable neighborhood properties. The Petitioner did not establish that these properties were, in fact, comparable. Characterizing properties as comparable is insufficient for appeal purposes. Mr. Sparks did not identify properties that are similarly situated to the property under appeal and did not credibly establish disparate tax treatment between the subject property and others similarly situated. Adequate justification for the requested grade reduction was not provided.
44. To establish construction const, Mr. Sparks presented the insurable value for the three buildings, Petitioner's Exhibit 2. PO-1 is insured at \$217,000; PO-2 and PO-3 together are insured at \$85,000.
45. True tax value does not equal market value. Ind. Code § 6-1.1-31-6(e). True tax value does not attempt to determine the actual market value for which property would sell if it were offered on the open market. Nevertheless, true tax value's method for valuing is the same as one of the well-accepted methods for determining fair market value -- reproduction cost less depreciation.

46. The cost schedules in the Regulation, 50 IAC 2.2-7-11, are at the heart of true tax value's method for determining value. The cost schedules effective for the 1995 general reassessment reflect 1991 reproduction costs (based on market information derived from Marshall Valuation Services price tables) that were then reduced across the board. The overall purpose of these cost schedules was to approximate prevailing construction costs in 1991 less 15%.
47. The insurable value for PO-1 is \$217,000. The insurable value for PO-2 and PO-3 is \$85,000. The insurable value is dated as of November 2000.
48. The State will compare the insurable value information to the Regulation's cost schedules for purposes of the grade issue raised in this appeal. The State cannot compare the insurable value as of November 2000 (Petitioner's testimony) with construction cost information based on 1991 dollars (cost schedules in the Regulation). Accordingly, the State will adjust the 1991 dollars (cost schedules in the Regulation) to bring them up to November 2000.
49. To adjust the 1991 Reproduction Cost New ("RCN") to compare with the insurable value, the State will use the Marshall and Swift 1999 Residential Cost Handbook. This handbook is a national recognized publication of assessment / appraisal theory and cost data. It provides comparative cost multipliers by region and also provides a formula to trend the known cost of a home to a present date. By using the Marshall Swift comparative cost multipliers for Indiana, the buildings' RCN at 1991 can be trended to be comparable with the insurable value as of November 2000. In this manner, a grade factor can be quantified.
50. The Marshall and Swift cost multipliers for first quarter January 1991 is 1.261. To calculate the present cost of the 1991 RCN the formula is 1991 multiplier (1.261) times the known cost (PO-1 = 85,790 and for PO-2 and PO-3 = 59,350 per the property record cards). The RCN for all three buildings also has to be divided by .85 due to the fact that the RCNs are at 85% of the actual cost. The calculation is as follows:

PO-1 = $\$85,790 \div .85 = \$100,929$ times 1.261 = \$127,271

PO-2 and PO-3 = $\$59,350 \div .85 = \$69,824$ times 1.261 = \$88,048

51. The Petitioner's adjusted RCN for the three buildings can now be compared to the November 2000 insurable values. PO-1 adjusted RCN is \$127,271. This is well below the PO-1's insurable value of \$217,000. PO-2 and PO-3 adjusted RCN is \$88,048. This is very comparable to the same insurable value of \$85,000.
52. Based on the insurable value provided by the Petitioner, the grades of the structures are not excessive.
53. The State acknowledges that the Regulation does not explicitly identify the mathematical calculation detailed above, but this does not prohibit the State from using such a calculation for purposes of: (1) meaningfully dealing with the evidence presented, (2) reviewing the propriety of a grade factor that is challenged in this appeal, and (3) determining value according to the common law developed by the Tax Court.
54. 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*, 766 N.E. 2d 341 (Ind. 2002).
55. 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 Petitioner presented the insurance costs as the best evidence available to determine the cost of the buildings.
56. As previously stated, none of the three buildings are graded at too high a level, based on the insurable value information. For all reasons set forth above, the Petitioner failed to meet his 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.

Issue No. 14 - Whether building is a pole construction type building, PO-2

57. Mr. Sparks presented a letter from Mr. Kremer supporting Mr. Sparks' claim that Building PO-2 is a pole-constructed building, Petitioner's Exhibit 1. Mr. Kremer stated in the letter "This house is constructed in the method of a 'Pole-Barn' and does not utilize a foundation system."
58. Mr. Lewis stated on page two of his responses to the Petitioner that Building PO-2 is not a pole construction structure. Respondent's Exhibit. 1.
59. Mr. Sparks presented probative evidence to make a prima facie case. The letter from the architect is sufficient to establish the fact that Building PO-2 is pole constructed. This evidence was not rebutted by substantial evidence from the Respondents.
60. Pursuant to 50 IAC 2.2-7-11 (Schedule A.1): When determining replacement on pole type construction, the difference in cost, as compared with conventional construction, should be reflected in the quality grade. The factor should be lowered by a full grade. Building PO-2 is currently graded as a C-1. The State determined the grade for subject building is D-1. There is a change in the assessment as a result of this issue.

Issue No. 16- Whether building PO-3 is a garage only.

61. Mr. Sparks testified that Building PO-3 is a useless garage and is not a dwelling. He claimed flooding destroyed the plumbing and sewer/ septic system. Mr. Sparks asserted that 50 IAC 2.2 states once a garage always a garage. He did not specify precisely where 50 IAC 2.2 makes the above statement. Mr. Sparks did acknowledge that the subject building has a sink.

62. Mr. Lewis stated that the subject building was an apartment with an integral garage. He claimed that the building has a small kitchen, bathroom, living area, and a bedroom area upstairs.
63. Note Finding of Fact ¶32 – the property record card for PO-3 lists the building as a one-story brick building on a slab and a one-car attached (not integral) garage.
64. Mr. Sparks made conclusory statements, but did not present probative evidence to make a prima facie case. The Petitioner failed to meet his burden of proof regarding the alleged impropriety of method used by the Respondents to assess subject Building PO-3. There is no change in the assessment as a result of this issue.

Issue No. 17- Whether the County or Township Assessor’s violated any laws pertaining to their actions regarding the 130 Petition Hearing.

65. Mr. Sparks claimed the Respondents made legal errors during the PTABOA hearing. These allegations are made on the attachment to the 131 Petition. Mr. Sparks did not request the State to provide a particular remedy. The alleged errors are as follows:
 - a. The County Assessor did not refute his presentation;
 - b. Township Assessor failed to list required information on the Form 11;
 - c. County Assessor failed to complete Form 131;
 - d. Township Assessor failed to obey laws requiring him to notify the Petitioner of the Township Assessor’s response to the 130 Petition;
 - e. County Assessor failed to explain her action and list her agreement or disagreement to the issues;
 - f. County Assessor has failed in her duty to respond to the Petitioner; and
 - g. Record of the 130 Hearing is incorrect due to the following
 1. failure to list official titles;
 2. failure to list exhibits; and

3. failure to view subject property.

66. Again, taxpayers are expected to make detailed factual presentations to the State regarding alleged errors in assessment. *Id.* "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)). His conclusory statements on the attachment to the Form 131 Petition filed in this matter do not suffice as probative evidence to establish a prima facie case. Mr. Sparks did not meet his burden of proof in this matter.
67. The State cannot determine what remedy the Petitioner is requesting. If Mr. Sparks had proved that the PTABOA hearing resulted in errors, the Petitioner was given a full hearing before the State. Mr. Sparks did not point to any statute that requires a Petitioner's assessment be deleted, as he suggested, from the Township tax roll. The State cannot remand a petition back to the PTABOA. There is no 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