

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 19-020-07-1-5-00005
Petitioners: Martha and Julie Olinger
Respondent: Dubois County Assessor
Parcel No.: 19-11-33-300-069.000-020
Assessment Year: 2007

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

PROCEDURAL HISTORY

1. The Petitioners initiated an assessment appeal with the Dubois County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated December 27, 2007.
2. The PTABOA issued its Form 115 Notification of Final Assessment Determination dated September 2, 2008.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 dated October 15, 2008. The Petitioners elected to have this case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated May 13, 2009.
5. The Board held an administrative hearing on July 9, 2009, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioners: Julie Olinger, Petitioner
 - b. For Respondent:¹ Gail Gramelspacher, Dubois County Assessor,
Fred E. Hollinden, Dubois County PTABOA,
Greg Abell, Dubois County PTABOA,
Larry Persohn, Dubois County PTABOA

¹ Marilyn Meighen appeared as the attorney for the Dubois County Assessor.

FACTS

7. The appealed property is an improved residential parcel located at 1045 W. Sixth Street, Patoka Township, Dubois County, Huntingburg, Indiana.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2007, the PTABOA determined the assessed value of the subject property to be \$23,900 for the land and \$343,800 for the improvements, for a total assessed value of \$367,700.
10. For 2007, the Petitioners requested a value of \$23,900 for the land and \$271,200 for the improvements, for a total assessed value of \$295,100.

PETITIONERS' CONTENTIONS

11. The Petitioners contend their property's assessment for 2007 is incorrect because county assessing officials assigned a grade of "A" to the improvements. *Olinger testimony*. In support of this contention, the Petitioners offered photographs of their house to demonstrate that the grade would more appropriately be a "B" rather than the current "A." *Petitioner Exhibits 4 through 7; Olinger testimony*. In addition the Petitioners presented copies of Appendix A, Pages 11 through 14 of the Real Property Assessment Guidelines – Version A. *Petitioner Exhibit 6*. On her copies, Ms. Olinger penned notes and highlighted key sections of the chart of residential grades. *Id.* According to Ms. Olinger, the Petitioners' home should be assigned a "B" grade because its design, materials and finishes are more like those listed in the "B" column rather than the "A" portions of the Guidelines. *Id.* Further, Ms. Olinger submitted copies of an electronic mail message from the Department of Local Government Finance, in which an employee of the DLGF acknowledged that grade is a "subjective issue" and that nothing in the Guidelines dictated that angles in construction other than ninety degrees require an "A" grade. *Petitioner Exhibit 4*.
12. The Petitioners also contend that other comparable properties were assessed with a lower grade than their property. *Olinger testimony*. In support of this contention, the Petitioners submitted property record cards and photographs of eight other houses in the county, on which Ms. Olinger penned multiple notes and explanations. *Petitioner Exhibit 7; Olinger testimony*. According to Ms. Olinger, she created a chart listing information about the Petitioners' home and the other comparable houses showing the commonalities and differences that should impact the assessor's decisions about grade choice. *Id.* For example, Ms. Olinger testified that their house has 19 angles, which she contends the county strongly considered when grading the house as an "A," while Comparable No. 1, located in the same block on the same street, has 40 angles but a "B+1" grade. *Petitioner Exhibit 7; Olinger testimony*. Another example, according to Ms. Olinger, is Comparable No. 2 with a "B+2" grade which has 14-foot ceilings, while the Petitioners'

home has uniform nine-foot ceilings. *Id.* Ms. Olinger contends that Comparable No. 6 is the most similar to the Petitioners' home in design and finish but is graded as a "B." *Id.* In her summary, the Petitioner calculated the per-square-foot assessed values of all the homes, which ranged from a high of \$76.81 for the appealed property to \$66.01 for Comparable No. 6. *Id.*

13. The Petitioners further contend that inaccuracies in measurements of the improvements, though partially corrected during the county-level hearing process, contribute to the overstatement of the assessment. *Olinger testimony.* In support of this contentions, the Petitioners presented evidence of the measurements of their house.² *Petitioner Exhibit 5; Olinger testimony.*
14. Finally, the Petitioners argue that the county inappropriately assessed her property based on a sales disclosure filed by their late father on October 13, 2005, which shows \$183,333 as one third of the value of the property under appeal. *Respondent exhibit B; Olinger testimony.* According to Ms. Olinger, the sales disclosure includes the parcel under appeal and an adjoining parcel where a garage is located. *Id.* Because it was an intra-family transaction and no money exchanged hands, the Petitioners contend the county should not base an assessment on the document. *Id.*

RESPONDENT'S CONTENTIONS

15. The Respondent contends the 2007 assessed value is correct and that the Petitioners failed to prove that their assessment is incorrect and what the correct assessed value should be. *Meighen argument.* According to Ms. Meighen, Ms. Olinger simply chose to attack the assessor's method of assessment as it relates to the grade placed on the improvements rather than focusing on the bottom line market value-in-use as required by the Indiana Tax Court in decisions such as *PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006) and *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 764 (Ind. Tax Ct. 2006). *Id.*
16. The Respondent also contends the assessment is not over-stated based on a sales disclosure form, dated October 5, 2005, filed by the late father of the Petitioners. *Respondent Exhibit B; Gramelspacher testimony.* According to the Respondent, the sales disclosure form listed the value of one-third of the subject property and an adjacent parcel with a garage improvement as \$183,333. *Id.* Ms. Gramelspacher testified that the adjoining parcel – which is not under appeal – had an assessed value of \$48,400. *Id.* Subtracting one-third of that value leaves a value of about \$140,000 attributable to the subject property on the sales disclosure. *Id.* One third of the current assessed value of the subject property for 2007 is \$122,557, which the Respondent argues is well under the value indicated by the sales disclosure form. *Id.*

² Ms. Olinger testified that the grade and inaccuracies in measurements have resulted in incorrect assessments since the structure was completed and assessed for 2005, and that the county should refund the resulting tax over-payments. The current appeal, however, is for tax year 2007. The Board has no appeal of the Petitioners' 2005 or 2006 assessments before it and therefore has no jurisdiction over those assessments.

17. The Respondent further contends that the assessor re-sketched the subject improvements to reflect the measurements and drawings provided by the Petitioners as evidence during the county-level hearing. *Meighen argument; Gramelspacher testimony*. In addition the Respondent made other corrections to the PRC as requested by Ms. Olinger. *Id.*
18. Finally, the Respondent contends that House Enrolled Act 1001, Section 111, which shifts the burden of proof from the Petitioner to the Respondent in appeals where the assessed value of the property has increased five-percent or more does not apply to the Petitioners' appeal. *Meighen argument; Respondent Exhibit E*. According to the Respondent's counsel, the act does not apply retroactively and the increase in the assessed value of the subject property was less than five percent during the appropriate time frame. *Meighen argument*.

RECORD

19. The official record for this matter is made up of the following:
 - a. The Form 131 petition and related attachments.
 - b. The digital recording of the hearing.
 - c. Exhibits:
 - Petitioner Exhibit 1 – Copy of the Form 130 Petition,
 - Petitioner Exhibit 2 – Copy of the Form 131 Petition,
 - Petitioner Exhibit 3 – Copy of the Form 115 Notice of Final Assessment Determination,
 - Petitioner Exhibit 4 – Copies of an electronic mail message from the Department of Local Government Finance concerning grade,
 - Petitioner Exhibit 5 – PRC and photographs of the appealed property,
 - Petitioner Exhibit 6 – Copy of Appendix A of the 2002 REAL PROPERTY ASSESSMENT MANUAL,
 - Petitioner Exhibit 7 – Copy of PRCs and photographs of eight comparable properties,

 - Respondent Exhibit A – Copy of the PRC of the appealed property,
 - Respondent Exhibit B – Copy of the sales disclosure on the property dated October 7, 2005,
 - Respondent Exhibit C – Copy of PRC for Parcel No. 19-11-33-300-067.000-020,
 - Respondent Exhibit D – Withdrawn

 - Board Exhibit A – Form 131 petition and its related attachments,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing sign-in sheet.
 - d. These Findings and Conclusions.

ANALYSIS

20. The most applicable governing cases are:
- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
 - c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
21. The Petitioners failed to provide sufficient evidence to establish a prima facie case for a reduction in their property's assessed value. The Board reached this decision for the following reasons:
- a. Indiana assesses real property based on its “true tax value,” which the 2002 Real Property Assessment Manual defines as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property's market value: the cost approach, the sales comparison approach, and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES).
 - b. A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See MANUAL* at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N. E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. *MANUAL* at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer actual construction costs, sales information for the subject property or comparable properties and any other

information compiled according to generally accepted appraisal practices. MANUAL at 5.

- c. The Petitioners first argue that their property is incorrectly assessed because the county assigned a grade of “A” to the Petitioners’ house. *Olinger testimony*. According to Ms. Olinger, the structure should have been assessed as a “B” grade or lower because of the characteristics of the building. *Olinger testimony; Petitioner Exhibits 4-7*. Under Indiana’s true tax value system, improvements are assigned various grades based upon their design and the quality of their materials and workmanship. *Sollers Pointe Co. v. Dep’t of Local Gov’t Fin.*, 790 N.E.2d 185, 190 (Ind. Tax Ct. 2003). Construction quality and the resultant quality grade assigned is a composite characteristic, which describes the cumulative effects of workmanship, the costliness of materials, and the individuality of design used in constructing an improvement. GUIDELINES, app. A at 3. The Guidelines provide quality grade specification tables to assist in the determination of appropriate quality grades. *Id.* at 9. The descriptions in those tables are intentionally general and emphasize the most prominent elements of dwelling units within a particular grade. *Id.* Although the construction quality of individual components of an improvement may vary, the overall construction quality tends to be consistent for the entire residence. *Id.*
- d. Here, Ms. Olinger merely testified that the Petitioners’ house was built on an eight-inch concrete block foundation, with a three-quarter inch plywood sub floor on two-inch-by-eight-inch or two-inch-by-ten-inch wood I-joists. *Olinger testimony*. The house has a brick veneer, solid wood front door, insulated steel garage door and glass patio doors, casement and double-hung windows, and a shingled roof. *Id.* Further, she argues the home has builder’s grade carpet, vinyl, and ceramic tiled floors, composition interior doors, average quality hardware, good to average quality bath finishes, and flooring. *Id.* In addition, Ms. Olinger contends, while the Petitioners’ home is custom-built, it has few cuts, angles or offsets. *Id.* The Board notes that the majority of these features fall within the “A,” “B” and even “C” grade categories. Without more than Ms. Olinger’s conclusory testimony and some photographs, the Board is unable to find that the assessment of the Petitioner’s residence as an “A” grade structure was in error. *See Lacy Diversified Indus., Ltd. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (mere references to photographs or the State Board’s regulations, without explanation, do not qualify as probative evidence with respect to grading issues).
- e. Further, even if the Petitioners had shown that the grade was incorrect on their assessment, the Petitioners failed to show that the assessment did not accurately reflect the market value of the property. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that “under the old system, a property’s assessed value was correct as long as the assessment regulations

were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*). Here the Petitioners presented no market evidence to show that their property's assessed value exceeds its market value-in-use in 2007.³

- f. The Petitioners also argue that comparable properties were assigned grades lower than "A" while their structure was given an "A" grade despite the fact that the Petitioners' house's design, trims and finishes are inferior to the comparable properties' characteristics. *Olinger testimony*. This argument, however, focuses solely on comparing the grades of other properties to the grade assigned to the Petitioners' property. Such arguments were found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.*
- g. Finally, the Petitioners argue that it was inappropriate for the county to use the \$183,333 figure that their father reported on the 2005 sales disclosure form as representing one third of the value of the property to assess their property. *Olinger testimony*. According to Ms. Olinger it is not possible to fully understand what value her father defined for the appealed property on the sales disclosure. *Id.* Ms. Olinger, however, refused to respond to the Respondent's question as to what the value-in-use of their property should be. *Id.* Because the Petitioners presented no probative evidence of market value that substantially differed from the sales disclosure form filed by their late father, the Petitioners failed to show that it was an error for the Respondent to consider the form in assessing their property.
- h. The Board acknowledges that the Petitioners worked diligently to prepare and gather evidence, and present it at the hearing. Nonetheless, Ms. Olinger's efforts fall short of proving their 2007 assessed value is incorrect. Where a petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.1215, 1221-1222 (Ind. Tax Ct. 2003).

³ The Petitioner testified that even though the assessor made significant changes to the property record card during the county-level hearing process, "other errors" on the property record card such as some wall measurements still exist. To the extent such errors exist, they should be corrected. The Petitioner, however, gave the Board little evidence to determine what information was in error. Further, even if such errors exist, it is insufficient to warrant a change in the property's assessment barring evidence that the assessment does not reflect the market value-in-use of the property. *Eckerling*, 841 N.E.2d at 678.

CONCLUSION

22. The Petitioners failed to raise a prima facie case that their property was over-valued. The Board finds in favor of the Respondent.

FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review determines the assessments should not be changed.

ISSUED: _____

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.