

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00551
Petitioner: Charles W. Russell
Respondent: Department of Local Government Finance
Parcel #: 007162701720029
Assessment Year: 2002

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 informal hearing as described in Ind. Code § 6-1.1-4-33 was held on January 13, 2004 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$127,300 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 20, 2004.
3. The Board issued a notice of hearing to the parties dated October 8, 2004.
4. A hearing was held on November 16, 2004, in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located at 2628 39th Place, Highland, in North Township.
6. The subject property is a residential one-story frame duplex with a 1764 sq.ft. structure on a 66' x 130' lot.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$28,800 for the land and \$98,500 for the improvements for a total assessed value of \$127,300.
9. The Petitioner requested an assessed value of \$104,000 on his Form 139L.

10. Charles W. Russell, the property owner, and Steven McKinney, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioner's contention in support of alleged error in assessment:
 - a. The Petitioner contends the subject structure is a side by side duplex and argues that the structure should be classified as a row-type structure and receive a row-type adjustment. *Petitioner Exhibit 1 and Russell testimony.*
 - b. The Petitioner contends the grade on the subject duplex is overstated in comparison with a neighboring property (the Brown property). *Russell testimony.* According to the Petitioner, the Brown property is located in the same neighborhood as the subject property and has a grade of "D+2", whereas the subject property has a grade of "C". *Russell testimony.* The Petitioner further contends that the Brown property has more square footage, has a brick front, and was constructed four years after the subject by the same contractor. The comparable is graded as "D+2". *Petitioner Exhibits 2 and 6 and Russell testimony.*
 - c. The Petitioner contends the assessed value exceeds the market value of the property. The Petitioner requested the property be assessed at an overall assessed value of \$104,000. *Russell testimony.* In support, the Petitioner testified that the Brown property sold on April 17, 2000 for \$104,000. *Petitioner Exhibit 4.* According to the Petitioner, the Brown property is like the subject in that they are side by side duplexes; each duplex contains two bedrooms, one bathroom, similar in size, and age, exterior amenities, was constructed by the same contractor and is located within the same neighborhood. *Petitioner Exhibit 1, 2, 5 and 6 and Russell testimony.*
 - d. Finally, the Petitioner contends the utility shed's year of construction as listed on the property record card is incorrect. *Russell testimony.*
12. Summary of Respondent's contention in support of the assessment:
 - a. The Petitioner's testimony and evidence is accurate; the property appears to be a row-type structure, therefore it should receive a row-type adjustment. *McKinney testimony.* The Respondent testified the property is being shown as a one-story single family dwelling, however the classification of the structure should be row-type for a side by side duplex, therefore receiving a row-type adjustment of .92. *McKinney testimony.*
 - b. The Respondent testified the subject structure is graded fair and accurate at a grade "C". *McKinney testimony.*

- c. The Respondent testified the subject property is correctly assessed with land at \$28,800 and improvements at \$98,000 for an overall assessed value of \$127,300. *Respondent Ex. 2 and McKinney testimony.*
- d. The Respondent also agree with the Petitioner's testimony that the year of construction of the utility shed as it is stated on the property record card is incorrect. *McKinney testimony.* According to the Respondent, the property record card is showing the year of construction on the utility shed as 1997, however the Petitioner's evidence shows the year of construction is 1975. *McKinney testimony.*

Record

13. The official record for this matter is made up of the following:

- a. The Petition.
- b. The tape recording of the hearing labeled Lake Co. #644.
- c. Exhibits:

Petitioner Exhibit 1 – Four Exterior photographs of the subject property.
 Petitioner Exhibit 2 – Two photographs of comparable property located at 2620 39th Place.
 Petitioner Exhibit 3 – Four photographs of the utility shed on the subject property.
 Petitioner Exhibit 4 – Multi Unit Client Detail Report (MLS) on comparable property at 2620 39th Place, dated April 17, 2000.
 Petitioner Exhibit 5 – A copy of Charles Russell's 2002 property record card.
 Petitioner Exhibit 6 – A copy of William Brown's 2002 property record card.
 Petitioner Exhibit 7 – A corrected 2004 property record card for Charles Russell.
 Petitioner Exhibit 8 – A copy of the Notice of Hearing on Petition, dated October 8, 2004.
 Petitioner Exhibit 9 – A copy of the Notice of Final Assessment, dated March 31, 2004.
 Petitioner Exhibit 10 – A copy of the Notice of Assessment of Land and Structures – Form 11, dated November 14, 2003.

Respondent Exhibit 1 – A copy of the Form 139L petition, dated April 20, 2004.
 Respondent Exhibit 2 – A copy of Charles Russell's 2002 property record card.
 Respondent Exhibit 3 – An exterior photograph of the subject dwelling.

Board Exhibit A – Form 139L petition, dated April 20, 2004
 Board Exhibit B – Notice of Hearing on Petition, dated October 8, 2004

Board Exhibit C – Hearing sign-in sheet.

- d. These Findings and Conclusions.

Analysis

14. The most applicable 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 Insurance Company 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.

15. The Petitioner failed to raise a prima facie case that the grade of his property was improperly assessed. However, the parties reached agreement that the property should be assessed as a duplex and given a row-type housing adjustment and that the shed’s year of construction should be assessed as 1975. These conclusions were reached for the following reasons:

Grade Factor

- a. 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. REAL PROPERTY ASSESSMENT GUIDELINES VERSION A, app. A, at 3, (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES). 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 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.*
- b. The Assessment Guidelines presume that neighborhoods tend to have improvements of the same or similar quality of construction, which narrows the range of grades assigned to a particular neighborhood. *Id.* at 6. Consequently, assessors are directed to begin from an assumption that the particular improvement being valued has the same quality grade as the base quality grade established for the neighborhood. *Id.* However, the Assessment Guidelines also recognize that some improvements in a neighborhood may have construction characteristics that deviate from the base quality grade specifications. In order to assign a quality grade to those properties, the Assessment Guidelines call for the assessor to weigh the components that deviate from the base quality grade selected for the neighborhood to determine whether an intermediate quality grade, or an entirely higher or lower full quality grade, is appropriate. GUIDELINES, app. A at 6.
 - c. The subject dwelling is presently graded “C.” *Petitioner Exhibit 5.* According to the Petitioner, the Brown property, which is a similar duplex home but larger in size and fully bricked, was graded a “D+2.” *Russell testimony; Petitioner Exhibit 2 and 6.* The Petitioner further testified that his property was four years older than the neighboring property that received a lower grade. *Id.* In support of his argument, the Petitioner submitted pictures of the exterior of his property and the neighboring duplex. *Petitioner Exhibit 1 and 2.*
 - d. The Petitioner’s evidence is insufficient to raise a prima facie case that his grade is incorrect. While Petitioner testified that the neighboring duplex was constructed by the same contractor, this alone is insufficient to convince us that an error has been made in Petitioner’s assessment. The Petitioner offered no evidence of the workmanship, the costliness of materials, and the individuality of design used in constructing an improvement. The Petitioner did not testify as to the finish, fixtures, floor coverings, trim or any of the details of the construction of either property. Petitioner merely argued that both properties were “similar” and, thus presumably, should be graded similarly. Conclusory statements such as the home has “average grade fixtures” or that the subject property is “similar” to a lower graded neighboring property do not constitute probative evidence. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1120 (Ind. Tax 1998). A taxpayer cannot simply point to alleged deficiencies in a building and expect to make a prima facie case as to grade or any other issue. *Indian Industries v. Department of Local Government Finance*, 791 N.E.2d 286 (Ind. Tax 2003) (citing *Miller Structures v. State Board of Tax Commissioners*, 748 N.E.2d 943, 953 (Ind. Tax 2001)).
 - e. Where the Petitioner has not supported his 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.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Sales Comparables

- f. The Petitioner also alleged that, based on the sale of the Brown property, the subject property is over-assessed. According to the Petitioner, the neighboring property sold on April 17, 2000 for \$104,000.
- g. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent of such evidence must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id* at 471. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id*. In the case at bar, the Petitioner does not identify how the properties are similar or what makes these properties “comparable.” The only comparisons the Petitioner makes is that both properties are duplexes but that the neighboring property is fully bricked and each unit has more living area. The Petitioner did not explain why these particular characteristics were chosen or why these characteristics are the most reflective characteristics of the properties’ respective values. Nor did Petitioner quantify the value of these differences. Thus, we find that the Petitioner failed to raise a prima facie case.
- h. Where the Petitioner has not supported his 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 Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Parties’ Agreement on Assessment Changes

- i. The Petitioner further alleged that his property was a duplex that was entitled to a row-type adjustment. In support, the Petitioner submitted photographs and the property record card for the neighboring Brown property. The Property record card indicates the Brown property was assessed as a row-type structure. The Petitioner claims his property is similar and should be assessed in an identical manner. *Russell testimony; Petitioner Exhibits 1, 2 and 6*. The Respondent agreed with the Petitioner’s contention. The Respondent stated the subject structure should be classified as a row-type structure and should receive a row-type adjustment of 0.92. *McKinney testimony*. The Board accepts this agreement between the parties and agrees that, based on the undisputed testimony of the Petitioner, there should be a

change in the assessment. The subject property should be assessed as a row-type structure and assigned a row-type adjustment of 0.92.

- j. Similarly, the Petitioner testified and submitted photographs that show the year of construction on the utility shed is 1975. *Russell testimony; Petitioner Exhibit 3*. The Respondent agreed the Petitioner's evidence was accurate and that the utility shed's year of construction should be changed to 1975. *McKinney testimony*. The Board accepts this agreement and, based on the undisputed testimony of the Petitioner, finds that the year of construction on the utility shed is 1975 and the utility shed should be assessed accordingly.

Conclusion

16. The Petitioner failed to raise a prima facie case that the grade of his property was improperly assessed or that his property was over-assessed based on the sale of a neighboring property. However, the parties reached agreement that the property should be assessed as a duplex and given a row-type housing adjustment and that the utility shed's year of construction should be assessed as 1975.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.