

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-028-02-1-5-00199  
**Petitioners:** David & Rhonda Braatz  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 008-08-15-0013-0010  
**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 23, 2004 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$478,300 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated October 28, 2004.
4. A hearing was held on December 2, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

### Facts

5. The subject property is located at 9090 Grand Boulevard, Merrillville, in Ross Township.
6. The subject property is a single family residence on approximately 43.5 acres.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the property to be \$46,700 for the land and \$ 431,600 for the improvements for a total assessed value of \$478,300.
9. The Petitioners requested an assessed value of \$46,700 for the land and \$310,000 for the improvements for a total assessed value of \$356,700.

10. David Braatz, one of the property owners, and Everett Davis, representing the DLGF, appeared at the hearing and were sworn as witnesses.

### **Issues**

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) The Petitioners contend that the assessment is too high based on the actual purchase price of the land and construction cost new of the improvement. *Braatz testimony*. In support of this contention, the Petitioners submitted cost summaries and construction bills. *Petitioner Exhibit 7*.
  - b) The Petitioners also argued that the grade of the dwelling was incorrect. *Braatz testimony*. According to the Petitioners, the dwelling was graded C-1 on the subject property's 1997 property record card, yet was graded A-1 on the property's 2003 property record card. *Id.*; *Petitioner Exhibits 3, 4*.
  - c) The Petitioners further testified as to the construction of the dwelling based on the REAL PROPERTY ASSESSMENT GUIDELINES "Residential and Agricultural Grade" tables. *See REAL PROPERTY ASSESSMENT GUIDELINES VERSION A, app. A, at 10-14, (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES)*. *Braatz testimony; Petitioner Exhibit 6*. In support of Petitioners' contention that the grade is in error, Petitioners referred to the construction cost summary and photographs of the subject property. *Petitioner Exhibits 7, 5*. According to Petitioners, the subject dwelling is brick construction only in the front and is simply a vinyl sided, box construction on the sides and rear of the structure. *Id.* The Petitioners further alleged that the home had 2"x 4" stud construction and its carpet, fixtures and trim were of average quality and nothing special. *Id.*
  - d) Finally, the Petitioners alleged that the grade assigned to the subject property was incorrect based on comparable properties. *Braatz testimony; Petitioner Exhibits 8-11*. According to Petitioners, other homes in the area that were as nice as or nicer than the subject property were graded with B and C grades. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The Respondent did not present any evidence or comparables. However, while Respondent did not dispute Petitioners' contention regarding the grade of the subject dwelling, Respondent testified that he could not agree that the grade was incorrect. *Davis testimony*.
  - b) The Respondent further testified that Petitioners' construction cost evidence was too remote from the valuation date to be probative of the property's value. *Davis 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 County #898.
- c) Exhibits:

- Petitioner Exhibit 1: Form 139L
- Petitioner Exhibit 2: Deed to subject property
- Petitioner Exhibit 3: 1997 PRC
- Petitioner Exhibit 4: 2002 PRC
- Petitioner Exhibit 5: Photographs
- Petitioner Exhibit 6: Grade table
- Petitioner Exhibit 7: Construction cost summary
- Petitioner Exhibit 8: 9441 Sullivan PRC and photographs
- Petitioner Exhibit 9: 9441 Sullivan MLS
- Petitioner Exhibit 10: 12257 Williams PRC and photographs
- Petitioner Exhibit 11: 810 Mary Ellen PRC and photographs
- Petitioner Exhibit 12: Corrected subject PRC

- Respondent Exhibit 1: Form 139L Petition
- Respondent Exhibit 2: Subject Property Record Card
- Respondent Exhibit 3: Subject photograph

- Board Exhibit A: Form 139 L
- Board Exhibit B: Notice of Hearing
- Board Exhibit C: Sign in sheet

- d) These Findings and Conclusions.

## Analysis

14. The most applicable laws 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 at 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. *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.
15. The Petitioners provided sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:

*Quality Grade under the Assessment Guidelines*

- 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. 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 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.*
- c. 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.

*The Petitioners’ prima facie case*

- d. The subject dwelling is presently graded an “A-1.” As set forth above, the Petitioners submitted a copy of the quality grade specification tables from the Assessment Guidelines in support of the position that the subject house should have received a

- “B-1” grade. *Petitioner Ex.6.*<sup>1</sup> The Petitioners highlighted a grade description for the categories listed in those tables and testified that the highlighted portions represent the features of the subject house and the grade category into which those features should be assigned. *Braatz testimony; Petitioner Exhibit 2.*
- e. According to Petitioners, the subject dwelling is brick construction only in the front and is simply a vinyl sided, box construction on the sides and rear of the structure. *Braatz Testimony.* The Petitioners further testified that the home had 2”x 4” stud construction and its carpet, fixtures and trim were of average quality. *Id.* The Petitioners stated that Petitioners were the general contractor for the construction and that they chose to construct the property with few gables and few cuts or offsets so that they could build a larger home for less money. *Id.*
- f. Petitioners also offered into evidence their construction receipts that showed the actual costs of interior items such as carpeting, lighting and tile. *Petitioner Exhibit 7.* According to Petitioners, the summary and receipts prove that the house was not built with high grade or high quality fixtures and materials. *Braatz testimony.*
- g. Petitioners further offered evidence of neighboring homes that were graded lower than the subject dwelling. *Petitioner Exhibits 8, 10 and 11.* According to Petitioners, these homes are “as nice” or “nicer” than the subject dwelling but were assigned B, B-1, and C+2 grades respectively. *Braatz testimony; Petitioner Exhibits 8, 10 and 11.* For example, the Petitioners testified that the property at 9441 Sullivan Lane is fully bricked with multiple gables, cuts and offsets front and back. *Id.; Petitioner Exhibit 8.* According to Petitioners, the home is rated a “B-1” despite its better quality construction than the subject property. The Petitioners also presented listing and sale information for the 9441 Sullivan Lane property that identifies the amenities the home offers, which Petitioners allege are of better quality than the Petitioners’ property. *Id.; Petitioner Exhibit 9.* As explained above, the Assessment Guidelines begin from the presumption that the particular improvement being valued has the same quality grade as the base quality grade established for the neighborhood. GUIDELINES, app. A at 6.
- h. Based on the foregoing, the Petitioners established a prima facie case that the current grade of “A-1” is incorrect and that an appropriate grade for the subject dwelling would be “B-1.” *See, Sollers Pointe*, 790 N.E.2d at 191 (stating that to make a prima facie case on grade, a taxpayer can offer “specific evidence tied to the descriptions of the various grade classifications”); *see also, Grider v. Dep’t of Local Gov’t Fin.* 799 N.E.2d 1239, 1242 (Ind. Tax Ct. 2003).

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<sup>1</sup> Petitioners also allege that the subject dwelling had a “C-1” grade on its 1997 PRC. The Petitioners are mistaken in their reliance on that assessment. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm’rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property’s assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id.*

- i. The Petitioners raised a prima facie case that the grade on the subject dwelling was in error. Therefore, the burden shifted to the Respondent to impeach or rebut the Petitioner's evidence. *Meridian Towers*, 805 N.E.2d at 479. Here, the Respondent did not present any evidence or comparables to dispute Petitioners' contention regarding the grade of the subject dwelling. However, Respondent testified that he could not agree that the grade was incorrect. *Davis testimony*. Although no "agreement" on the grade was reached between the parties, Respondent's testimony is insufficient to rebut Petitioners' prima facie case. The Board, therefore, holds that the subject dwelling should be graded "B-1."

#### *The Cost of Construction*

- j. The Petitioners also submitted a deed for the original land purchase along with actual construction costs totaling \$313,407 in 1996. The Petitioners stated they were their own contractor therefore no contractor overhead and profit is included in the total as it would on a typical project. *Braatz Testimony; Petitioner Exhibits 2, 7*.
- k. The 2002 Real Property Assessment Manual ("Manual") defines the "true tax value" of real estate as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual's definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property's market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. However, for the 2002 general reassessment, real estate is to be valued as of January 1, 1999. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 4 (incorporated by reference at 50 IAC 2.3-1-2).
- l. Here, the Petitioners offered cost summaries and receipts for the construction of the subject dwelling, but submitted no evidence that related the 1996 construction costs to the 1999 valuation date. In response, the Respondent argued that the 1996 construction costs were too "remote" to be relevant to the 2002 assessment date. We agree. Absent evidence relating the 1996 construction costs to the 1999 valuation date, the Board cannot determine what the appropriate appreciation rate would be. Thus, the Board holds that the construction of the property in 1996, without evidence relating those construction costs to 1999, has no probative value to the determination of the propriety of the assessed value in 1999.

#### *Crawl Space*

- m. The Petitioners also testified and presented evidence that there is no crawl space under the sunroom. *Braatz testimony; Petitioner Exhibit 5*. The Respondent agreed that this should be removed on the property record card. *Davis Testimony*. The Board accepts this agreement and therefore finds that the 120 sq.ft. crawl space should be removed and the property assessed accordingly.

**Conclusion**

16. The Petitioners raised a prima facie case that the subject property was graded incorrectly. The Respondent failed to support the assessment. The Board, therefore, finds in favor of the Petitioners and holds that the subject dwelling should be assigned a “B-1” grade. Further, the parties agreed that 120 sq.ft. of crawl space should be removed from the property record card. The Board accepts this agreement and holds that the subject property should be assessed accordingly.

**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: \_\_\_\_\_

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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](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>>.