

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

Petition No.: 41-041-06-1-5-00001
Petitioners: Jeff and Maureen Dempewolf
Respondent: Johnson County Assessor
Parcel No.: 410410034042000038
Assessment Year: 2006

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

Procedural History

1. Jeff and Maureen Dempewolf, the Petitioners, initiated an assessment appeal with the Johnson County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 8, 2007.
2. The PTABOA issued its decision on October 17, 2007.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the County Assessor on November 12, 2007. They elected to have this case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated April 23, 2008.
5. The Board held an administrative hearing on June 4, 2008, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Jeffrey Dempewolf, Petitioner
 - b) For Respondent: Michael S. Watkins, Johnson County Assessor's office

Facts

7. The property is a residence located at 2575 Forest Hills Boulevard, in Greenwood, Indiana.

8. The Administrative Law Judge did not inspect the property.
9. The PTABOA determined the assessed value of subject property to be \$47,700 for the land and \$257,600 for the improvements, for a total assessed value of \$305,300.
10. The Petitioners requested an assessed value of \$47,700 for the land and \$240,900 for the improvements, for a total assessed value of \$288,600.¹

Issue

11. Summary of the Petitioners' contentions in support of an alleged error in assessment:
 - a) The Petitioners contend that their property has not been assessed in a "uniform and equal" manner, according to Article X, Section 1(a) of the Indiana Constitution. *Dempewolf testimony*. According to Mr. Dempewolf, the homes on both sides of the subject property and directly across the street are all graded "B-1," but their home is currently assessed with a "B" grade. *Id.* Mr. Dempewolf argues that the subdivision is a community of custom homes, and the interior finish on the neighboring homes is "much nicer" than the subject property. *Id.* In support of this contention, the Petitioners submitted photographs of the subject property and other nearby homes. *Petitioners Exhibits 5 through 9*. Similarly, Mr. Dempewolf argues, a home located at 4569 Osprey is graded "C+2." *Id.* According to the Guidelines, "C" grade homes are tract-type homes and 4569 Osprey is clearly not a tract home. *Dempewolf testimony; Petitioners Exhibit 1*.
 - b) In addition, the Petitioners argue that the subject property is unfairly assessed due to the difference in the assessment of their garage compared to the assessment of a neighbor's garage. *Dempewolf testimony*. According to the Petitioners, the subject property's property record card shows that both a market adjustment of 114% and the grade multiplier of 120% were applied to the Dempewolfs' garage. *Id.; Petitioners Exhibit 10*. The neighbor's garage, however, has only the market adjustment applied to it and not the grade multiplier. *Id.; Petitioners Exhibit 11*.
 - c) The Petitioners further contend that the property's grade is incorrect. *Dempewolf testimony*. Mr. Dempewolf argues that the grade of the home should be between a "B-1" and a "C+2" grade. *Id.; Petitioners Exhibit 1A*. In support of this contention, the Petitioners presented the *Quality Grade Specification Tables* from the REAL PROPERTY ASSESSMENT GUIDELINES. *Petitioners Exhibit 1*. According to Mr. Dempewolf, while many characteristics are the same for both "B" and "C" grade improvements, the Petitioners' home more closely resembles the "C" grade on three characteristics – flooring, built-ins, and bath finish. *Dempewolf testimony*. Mr. Dempewolf admits, however, that the cabinets in the home are better quality and are characteristic of a "B" grade home. *Id.*

¹ On the Form 131 Petition, the Dempewolfs originally requested an improvement value of \$ 242,100. At the hearing, Mr. Dempewolf stated he made an error, and was actually requesting an improvement value of \$240,900.

- d) Based on the above, the Petitioners argue that their home should be graded either a “B-1” or a “C+2.” *Dempewolf testimony; Petitioners Exhibit 1A*. Further, the Petitioners contend, the grade multiplier should not be applied to the assessed value of the garage. *Id.* Therefore, the Petitioners conclude, their home should be assessed for no more than \$240,900. *Id.*
 - e) In response to the Assessor’s arguments, the Petitioners contend that they “significantly overpaid” for their home. *Dempewolf testimony*. According to Mr. Dempewolf, at the time of purchase, they were coming in from out of state and only had two weeks to find a home. *Id.*
12. The Respondent argues that the Petitioners purchased their home on July 8, 2005, for \$355,000. *Watkins testimony; Respondent Exhibit 1*. The Assessor’s witness, Mike Watkins, testified that the home was on the market for 61 days with an original listing price of \$359,900. *Id.* According to Mr. Watkins, the assessed value of the subject property as of March 1, 2006, was \$305,300, which is almost \$50,000 less than the property’s purchase price. *Watkins testimony*. Thus, the Respondent contends, the property is not over-valued. *Id.*

Record

13. The official record for this matter is made up of the following:
- a) The Petition, and all subsequent pre-hearing, and post-hearing submissions.
 - b) The digital recording of the hearing.
 - c) Exhibits:
 - Petitioner Exhibit 1A: Summary of Petitioners’ presentation,
 - Petitioner Exhibit 1: VERSION A--REAL PROPERTY ASSESSMENT GUIDELINES, Appendix C, p. 9, and Appendix A, pp.9-14,
 - Petitioner Exhibit 2: Photograph of flooring in subject property,
 - Petitioner Exhibit 3: Photograph of mantel in subject property,
 - Petitioner Exhibit 4: Photograph of master bath in subject property,
 - Petitioner Exhibit 5: Exterior photograph of subject property,
 - Petitioner Exhibit 6: Photograph of 2587 Forest Hills Blvd.,
 - Petitioner Exhibit 7: Photograph of 2561 Forest Hills Blvd.,
 - Petitioner Exhibit 8: Photograph of 2560 Forest Hills Blvd.,
 - Petitioner Exhibit 9: Photograph of 4569 Osprey,
 - Petitioner Exhibit 10: Property Record Card for the subject property,
 - Petitioner Exhibit 11: Property Record Card for 2587 Forest Hills Blvd.,

Respondent Exhibit 1: MIBOR listing for subject property,

Board Exhibit A: Form 131 Petition,

Board Exhibit B: Notice of Hearing,

Board Exhibit C: Hearing sign-in sheet,

Board Exhibit D: Letter of authorization for County Assessor,

d) These Findings and Conclusions.

Analysis

14. 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 Township 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 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 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 failed to provide sufficient evidence to support their contentions. The Board reached this conclusion for the following reasons:

- a) The 2002 Real Property Assessment Manual defines “true tax value” 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 (incorporated by reference at 50 IAC 2.3-1-2) at 2. The appraisal profession traditionally has used three methods to determine a property's market value: the cost, sales-comparison and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.

- b) A property's assessment under the Guidelines is presumed to accurately reflect its true tax value. See MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer, however, 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. Similarly, a taxpayer may offer sales information for the subject property or comparable properties or other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c) Here, the Petitioners contend that their property is assessed in excess of neighboring properties because their home's grade is higher than other properties and because their garage has both a neighborhood adjustment and a grade factor applied to its value. *Dempewolf testimony*. This exact argument was rejected by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor et al.*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). In that case, the landing area for the petitioner's driving range was assessed as "usable undeveloped" land and assigned a value of \$35,100 per acre, while the landing areas of other driving ranges were assessed at a golf course rate of \$1,050 per acre. 859 N.E.2d at 397. Westfield appealed contending that its assessment was not uniform and equal. *Id.*
- d) The Indiana Tax Court held that under the prior assessment system, "true tax value" was determined by Indiana's assessment regulations and "bore no relation to any external, objectively verifiable standard of measure." 859 N.E.2d at 398. Therefore, "the only way to determine the uniformity and equality of assessments was to determine whether the regulations were applied similarly to comparable properties." *Id.*
- e) Presently, "Indiana's overhauled property tax assessment system incorporates an external, objectively verifiable benchmark -- market value-in-use." 859 N.E.2d at 399. "As a result, the new system shifts the focus from examining how the regulations were applied (i.e., mere methodology) to examining whether a property's assessed value actually reflects the external benchmark of market value-in-use." *Id.* Thus, 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 the assessed value, as determined by the assessor, does not accurately reflect the property's market value-in-use. *Id.* Like the petitioner in *Westfield Golf*, the Petitioners here only argued that the method of their assessment was not uniform. The Petitioners failed to offer any

evidence to show that the assessment exceeded the property's market value-in-use.² Thus, the Petitioners failed to raise a prima facie case.

- f) The Petitioners further claim their home is incorrectly assessed because the grade of the home is incorrect. *Dempewolf testimony*. In support of this contention, the Petitioners listed characteristics of the house and highlighted components from the Real Property Assessment Guidelines, Appendix A. *Petitioners Exhibit 1*.
- g) Under Indiana's true tax value system, improvements have various grades based on their design and the quality of 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." 2002 REAL PROPERTY ASSESSMENT GUIDELINES - VERSION A, Appendix A at 3 (incorporated by reference at 50 IAC 2.3-1-2). 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.*
- h) When contesting a grade assigned to an improvement, a taxpayer must offer probative evidence concerning the alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Conclusory statements concerning the grade, however, do not constitute probative evidence. *Id.* Likewise, mere references to photographs or regulations, without explanation, do not qualify as probative evidence for purposes of grading issues. *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
- i) Here, the Petitioners submitted a copy of the grade specification tables from the Guidelines. *Petitioners Exhibit 1*. The Petitioners highlighted a grade description for four of the categories listed on the table and testified that the highlighted portions represented the features of the house and the grade category into which those features should be assigned. *Id.* The Petitioners, however, merely pointed to the generic description provided in the tables and concluded that the features of the house were indicative of a "B-1" or "C+2" grade classification. *Dempewolf testimony; Petitioners Exhibit 1*. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products*, 704 N.E.2d at 1118. The Petitioners, therefore, failed to raise a prima facie case that the grade of the improvements should be changed.

² In fact, the evidence shows that the property's market value *exceeds* its assessed value by almost \$50,000. Mr. Dempewolf argues that they "significantly overpaid" for the property. The Petitioners, however, offered no evidence in support of this contention, such as an appraisal showing a lower value for the property.

- j) Finally, even if the Board were to find an error in the home's grade, the Petitioners failed to show that their assessed value does not accurately reflect the property's market value-in-use. *See P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (The focus is not on the methodology used by the assessor, but instead on determining whether the assessed value is actually correct. Therefore, the taxpayer may not rebut the presumption that an assessment is correct merely by showing that an assessor failed to comply strictly with the Guidelines). The Petitioners, therefore, failed to establish a prima facie case showing an error in the assessment.
- k) When a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners failed to raise a prima facie case. The Board finds in favor of the Respondent.

Final Determination

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