

REPRESENTATIVE FOR PETITIONER:

Frederick R. Meyer, Trustee

REPRESENTATIVE FOR RESPONDENT:

Jean Swanson, Porter County Hearing Officer

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Trust No. 6-2-1962,)	Petition No.: 64-005-07-1-5-00006
Frederick R. Meyer, Trustee)	
)	
)	
Petitioner,)	
)	Parcel No.: 64-07-27-300-016.000-005
v.)	
)	
)	
Porter County Assessor,)	County: Porter
)	Township: Jackson
)	
Respondent.)	Assessment Year: 2007

Appeal from the Final Determination of the
Porter County Property Tax Assessment Board of Appeals

December 20, 2010

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the assessed value of the Petitioner's property is over-stated.

PROCEDURAL HISTORY

2. The Petitioner initiated its assessment appeal by filing a written request to the Property Tax Assessment Board of Appeals for Review of Assessment on March 18, 2009. The Porter County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determination on November 30, 2009.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner filed a Form 131 Petition for Review of Assessment on January 4, 2010, petitioning the Board to conduct an administrative review of the property's 2007 assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on October 7, 2010, in Valparaiso, Indiana.
5. The following persons were sworn at the hearing:
 - For the Petitioner:
Frederick R. Meyer, Trustee

 - For the Respondent:
Jean Swanson, Porter County Hearing Officer.

6. The Petitioner presented the following exhibits:
 - Petitioner Exhibit 1 – Statement of the issues,
 - Petitioner Exhibit 2 – Comparison of neighboring properties' assessments,¹
 - Petitioner Exhibit 3 – Letter to Ms. Chrisman stating Petitioner's issues,
 - Petitioner Exhibit 4A-4F – Photographs of the Petitioner's house and of 432 East 725 North,
 - Petitioner Exhibit 5 – Petitioner's property record card,
 - Petitioner Exhibit 6 – Property record card for 432 East 725 North.

7. The Respondent presented the following exhibits:
 - Respondent Exhibit 1 – Sales disclosure form for the Petitioner's purchase of the property, dated April 19, 2001,
 - Respondent Exhibit 2 – 2002 property record card for the subject property,
 - Respondent Exhibit 3 – Assessment information for properties on 725 North,
 - Respondent Exhibit 4 – 2007 property record card for 427 East 725 North,
 - Respondent Exhibit 5 – 2007 property record card for 432 East 725 North,
 - Respondent Exhibit 6 – Photographs of the Petitioner's home and 432 East 725 North,
 - Respondent Exhibit 7 – Real estate article dated February 10, 2008.

8. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:
 - Board Exhibit A – Form 131 Petition,
 - Board Exhibit B – Notices of Hearing-Reschedule, dated July 26, 2010,
 - Board Exhibit C – Hearing sign-in sheet.

9. The subject property is a house located at 427 East 725 North, Valparaiso, Indiana.

10. The ALJ did not conduct an on-site inspection of the subject property.

11. For 2007, the PTABOA determined the assessed value of the property to be \$39,800 for the land, and \$272,800 for the improvements, for a total assessed value of \$312,600.

¹ The Respondent's representative, Ms. Swanson objected to Petitioner Exhibit 2 because the properties had not sold and, she argued, their grades and assessments were irrelevant to the Petitioner's appeal. Ms. Swanson's objections go to the weight, rather than to the admissibility of the evidence. The Board therefore overrules the objection and will consider the exhibit in reaching a determination.

12. The Petitioner did not request a specific assessed value.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

14. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals 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).
15. 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. Wash. 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”).
16. 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

PARTIES' CONTENTIONS

17. The Petitioner contends that the assessed value of its property is over-stated based on its grade and the grade of other properties in the neighborhood. The Petitioner presented the following evidence in support of its contentions:
 - A. The Petitioner's representative contends that the Petitioner's property was not assessed consistently with other properties in the Petitioner's neighborhood. *Meyer testimony*. According to Mr. Meyer, the homes on the subject property's street are all graded as "B" or "C" grade structures, except for the Petitioner's house, which was originally graded A-, but was reduced to B+1 for the March 1, 2007, assessment. *Id.* In support of this contention, the Petitioner presented assessment information for properties on 725 North. *Petitioner Exhibit 2*.
 - B. The Petitioner further contends that the grade of the Petitioner's house is incorrect. *Meyer testimony*. Mr. Meyer argues that the Petitioner's property is a fairly ordinary house, rather than an "architecturally designed" home with many "roof cuts" as the Respondent's representative argues. *Id.* According to Mr. Meyer, the Petitioner's house is virtually the same as the house located at 432 East 725 North which is graded B-1. *Id.*; *Respondent Exhibit 6*. Although the neighboring property is six years older than the Petitioner's house, Mr. Meyer argues that the neighboring house is well-designed, with the same number of rooms and bathrooms, and more acreage, but it is assessed for only \$253,600 in 2009, while the Petitioner's residence is assessed for \$326,800. *Id.*
 - C. The Petitioner also contends that there are errors in the property's assessment. *Meyer testimony*. According to Mr. Meyer, the house was previously assessed as a 1 ½-story house but it is now assessed as a two-story house. *Id.* Mr. Meyer argues that the Petitioner's photographs show the pitch of the roof and the only place where there is no slant is on the south side of the house. *Id.*; *Petitioner Exhibit 4A-4C*. There are

- two bedrooms, a bath, and closets on the second floor, Mr. Meyer argues, but quite a large portion of the second story is unusable. *Meyer testimony*.
- D. Finally, Mr. Meyer argues that the assessment was biased by a note in the property's file showing the house was purchased for \$400,000. *Meyer testimony*. According to Mr. Meyer, he purchased the property for \$370,000 in 2001.² *Id.* Therefore, Mr. Meyer argues, the note is incorrect and should be removed from the property's records. *Id.*
18. The Respondent contends the property's assessed value is correct and equitable. The Respondent presented the following evidence in support of the assessment:
- A. The Respondent's representative, Ms. Swanson, contends the Petitioner is essentially relying on a sales comparison method of establishing the value of its home. *Swanson testimony*. According to Ms. Swanson, in order to use the sales comparison method, the comparable property must have sold. *Id.* However, Ms. Swanson argues, none of the Petitioner's "comparable" properties sold in the relevant time frame. *Id.*
- B. Ms. Swanson further contends that the Petitioner's house was originally assessed with an attic and ½ -story, which is what the Petitioner's photographs show. *Swanson testimony; Respondent Exhibit 2*. According to Ms. Swanson, however, the house has been graded A-1 since it was built. *Id.* This, as well as the fact that the assessor did not use the sales disclosure in setting the property's value, shows there is no prejudice in the Petitioner's property's current assessment. *Id.*

ANALYSIS

19. 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

² The property record card shows that the property was transferred into trust subsequent to its purchase by the Meyers.

owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (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. In 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.

20. 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); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). 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 sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
21. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
22. Here, the Petitioner argues that its property is assessed in excess of neighboring properties because the home’s grade is higher than other properties. *Meyer 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.* On appeal, 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.* 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 Petitioner here only argued that the method of assessment was not uniform. The Petitioner failed to offer any evidence to show that the assessment exceeded the property’s market value-in-use. Thus, the Petitioner failed to raise a prima facie case.

23. To the extent that the Petitioner’s “comparable” property could be seen as some evidence of the subject property’s market value-in-use, the Petitioner’s representative’s arguments likewise fail. By comparing its assessed value to the assessed value of other properties, the Petitioner essentially relies on a “sales comparison” method of establishing the market value of their property. In order to effectively use the sales comparison approach as evidence in property assessment appeals, however, the proponent 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 properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject

property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must also explain how any differences between the properties affect their relative market value-in-use. *Id.* Here, Mr. Meyer made little attempt to compare the properties. He merely emphasized the proximity of the neighboring property and that both houses have the same number of bathrooms and are brick structures. This is insufficient to prove the comparability of the properties despite Mr. Meyer's argument that the properties were "virtually the same." Moreover the Petitioner's "comparable" property was several years older than the Petitioner's house and substantially smaller in size. Mr. Meyer made no attempt to value that difference other than to testify that it could not be worth \$73,200. Thus, the assessed value of the Petitioner's "comparable" property fails to prove the value of the Petitioners' property.

24. The Petitioner also claims its home is incorrectly assessed because the grade of the home is incorrect. *Meyer testimony*. 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 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 houses 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.*
25. When a taxpayer contests the grade assigned to an improvement, however, it must offer probative evidence concerning the alleged assessment error. *See Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 894 (Ind. Tax Ct. 1995); *Whitley Prods. Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); and *Kemp v. State Board of Tax Commissioners*, 726 N.E.2d 395, 400 (Ind. Tax Ct. 2000). A

taxpayer's conclusory statements do not constitute probative evidence concerning the grading of the subject improvement. *See Whitley Prods.*, 704 N.E.2d at 1119.

Furthermore, mere references to photographs or regulations, without explanation, do not qualify as probative evidence. *See Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999); *Kemp*, 726 N.E.2d at 400. Here, the Petitioner's representative merely submitted property record cards and photographs of the subject property and a neighboring property. He made no reference to the various characteristics that determine a structure's grade. Nor did he offer evidence of the characteristics of the Petitioner's house. Mr. Meyer merely argued that the house was ordinary; it did not have a significant number of "roof cuts;" and it was similar to a neighboring property that had a different quality grade. This falls far short of the burden the Petitioner faces to prove a structure's grade was assessed in error.

26. Even if the Board were to find an error in the home's assessment, the Petitioner failed to show that its assessed value 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*"). Thus the Petitioner's contentions that the grade was incorrect are insufficient to raise a prima facie case that the property was assessed in error without some evidence that the assessed value exceeds the property's market value-in-use.³

³ Additionally, the Petitioner contends the property should be assessed as a 1 ½-story structure, not a 2-story house. The photographs appear to support the Petitioner's claim. However, the property is not assessed with a full second floor, but assessed as only having 641 finished square feet. The Board finds no prejudice in the determination that part of the house is a two story structure rather than the house as a whole is a 1 ½ story structure.

27. Finally, the Board notes that the Petitioner's representative's claim that a hand-written note showing a purchase price of \$400,000 prejudiced the Petitioner's assessment is unsubstantiated by any evidence. The Petitioner purchased the property for \$370,000 in 2001. The Respondent's evidence shows that property values steadily increased between the Petitioner's 2001 purchase and the January 1, 2006, valuation date for the March 1, 2007, assessment. Despite this, the assessor valued the Petitioner's property at only \$312,600. Here the evidence reflects that the Petitioner's property remains assessed well below its market value-in-use.
28. 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. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

29. The Petitioner failed to raise a prima facie case that its property was over-valued or assessed inequitably. 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 that the property's assessed value should not be changed.

ISSUED: _____

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>.

