

REPRESENTATIVE FOR PETITIONER:

John Stiff, Petitioner

REPRESENTATIVES FOR RESPONDENT:

Tara Acton, Wayne Township Deputy Assessor

Michael Thompson, Wayne Township Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

John Stiff,	)	Petition No.:	49-900-02-1-5-00840
	)	Parcel:	9057013
Petitioner,)		
)		
v.)		
	)	County:	Marion
Wayne Township,	)	Township:	Wayne
	)	Assessment Years:	2002
Respondent)		

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

April 18, 2005

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUES

1. The issues presented for consideration by the Board were:

ISSUE 1 – *Whether the fireplace is assessed correctly.*

ISSUE 2 – *Whether the grade applied to the subject dwelling is correct.*

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, Petitioner filed a Form 131 Petition for Review of Assessment, petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on March 25, 2004. The determination of the Marion County Property Tax Assessment Board of Appeals (PTABOA) was issued on February 27, 2004.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on October 19, 2004, in Indianapolis, Indiana before Paul Stultz, the duly designated Administrative Law Judge (“ALJ”) authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were sworn and presented testimony at the hearing:
 - For the Petitioner:
 - John Stiff, Petitioner
 - For the Respondent:
 - Tara Acton, Wayne Township Deputy Assessor
 - Michael Thompson, Wayne Township Deputy Assessor
5. The following exhibits were presented for the Petitioner:
 - Petitioner’s Exhibit 1 – Copy of subject Property Record Card (PRC)
 - Petitioner’s Exhibit 2 – Copy of Real Property Assessment Guidelines for 2002 - Version A, Chapter 3, page 30; Appendix A, pages 5, 6, 9 –15, 22, 24
 - Petitioner’s Exhibit 3 – Copy of Installing and Operating Your Marco Wood-burning Fireplace - pages 1, 3, 4, and 21
 - Petitioner’s Exhibit 4 – Four (4) photographs of subject fireplace
 - Petitioner’s Exhibit 5 – Three (3) photographs of subject exterior

6. The following exhibits were presented for the Respondent:
 - Respondent's Exhibit 1 – Copy of subject PRC
 - Respondent's Exhibit 2 – Copy of neighborhood factor sheet setting neighborhood factor at 125%
 - Respondent's Exhibit 3 – Copy of neighborhood factor sheet setting neighborhood factor at 145%
 - Respondent's Exhibit 4 – Three (3) aerial photographs of the subject neighborhood
 - Respondent's Exhibit 5 – Four (4) photographs of the subject property
 - Respondent's Exhibit 6 – Copy of Real Property Assessment Guidelines for 2002 - Version A, Appendix C, page 7

7. 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 with attached Midwest Title Corp. Settlement Statement
 - Board Exhibit B – Notice of Hearing on Petition dated September 17, 2004

8. The subject property is a single-family residence (condominium) located at 7414A Chapel Villas Lane, Indianapolis, Wayne Township, Marion County.

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

10. For 2002, the PTABOA determined the assessed values of the property to be:

Land: \$21,300	Improvement: \$110,500
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11. For 2002, the Petitioner contends the assessed values of the property should be:

Land: \$21,300	Improvement: \$103,800
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JURISDICTIONAL FRAMEWORK

12. The 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 Board under any law. Ind. Code § 6-1.5-

4-1(a). All such appeals are conducted under Ind. 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

13. 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).
14. 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”).
15. 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.

ANALYSIS

ISSUE 1 – Whether the fireplace is assessed correctly.

16. The Petitioner contends that the fireplace contained in the subject dwelling is a prefabricated sheet metal unit and should be valued accordingly. *Stiff testimony.*
17. The Respondent contends that the Petitioner's exterior stack is brick, and that the fireplace therefore should be valued as masonry. *Thompson testimony.*

18. The Petitioner submitted photographs and installation instructions for the subject fireplace to support his contention that the fireplace is a prefabricated sheet metal unit. *Stiff testimony; Pet'r Exs. 3-4.* The Petitioner also submitted a copy of a portion of the Real Property Assessment Guidelines for 2002 - Version A ("Assessment Guidelines") addressing the assessment of fireplaces. *Pet'r Ex. 2.*
19. The Respondent presented evidence that the stack through which the fireplace vents has a brick exterior. *Thompson testimony; Resp't Ex. 5.* The Respondent contends that the exterior of the stack - rather than the interior construction of the fireplace - is the determining factor in deciding whether to assess a fireplace as prefabricated steel as opposed to masonry.
20. The Real Property Assessment Guidelines for 2002 - Version A ("Assessment Guidelines") provide that residential fireplaces are to be assessed based upon the construction of their "stacks." *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A, app. C, at schedule E.1 (incorporated by reference at 50 IAC 2.3-1-2).* Thus, pursuant to the Assessment Guidelines, fireplaces may be assessed in one of the following ways:

Fireplaces (in hundreds of dollars)		
Average Quality Stack		
	<u>Masonry</u>	<u>Prefab Steel</u>
First Opening	24	13
Each additional opening	10	5

Id.

21. The Assessment Guidelines do not define the term "stack." However, the "[t]he foremost goal of regulatory construction is to determine the intent of the State Board by giving the words and phrases their plain, ordinary, and usual meaning and by reading the regulations within the context of the entire act of which they are a part." *State Board of Tax*

Comm'rs v. Two Market Square Associates Ltd. Partnership, 679 N.E.2d 882, 885-86 (Ind. 1997).

22. The American Heritage Dictionary of the English Language defines “stack” as a chimney or flue. AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE at 1749 (1992 ed.). Thus, for purposes of the Assessment Guidelines, “stack” means chimney.
23. The Petitioner testified that the interior of the fireplace consisted of sheet metal. *Stiff testimony*. However, the Petitioner did not testify regarding the construction of the interior of the chimney. While the Petitioner presented installation instruction for the subject fireplace, it is not apparent from the face of those instructions whether the interior of the chimney is also constructed of steel. *See, Pet'r Ex. 5*. The undisputed evidence is that the exterior of the chimney is constructed of brick. *Thompson testimony; Res'p Ex. 5*. Consequently, the Petitioner failed to establish a prima facie case that the subject fireplace was valued incorrectly.

ISSUE 2 – Whether the grade applied to the subject dwelling is correct.

24. The Petitioner contends that the subject dwelling should be assigned a quality grade of “C.” *Stiff testimony*.
25. The Respondent argues that the current grade of “C+1” accurately describes the construction and design quality of the subject dwelling. *Thompson testimony*.
26. The Petitioner presented the following evidence in regard to this issue:
 - A. The Petitioner submitted a copy of the Quality Grade Specification Table from the Assessment Guidelines. *Pet'r Ex. 2*.
 - B. The Petitioner highlighted various items on the Quality Grade Specification Table and in the left margin made handwritten notes regarding the grade category to which he believes those items correspond. *Pet'r Ex. 2*.

- C. The Petitioner tallied the highlighted grades and determined that the subject property had fourteen (14) “C” graded items, four (4) “C-1” graded items, and ten (10) “D” graded items. The Petitioner then concluded that based on his analysis the subject property’s grade should be “C”.¹ *Stiff testimony.*
27. The Respondent presented the following evidence to rebut the Petitioner’s evidence and to support its position that a grade of “C+1” is correct.
- A. All of the condominiums in the subject neighborhood are graded as “C+1.”
Thompson testimony.
- B. While there may have been differences in the sale prices of condominiums based upon floor plans offered by the builder, those differences primarily reflected differences in the relative square footage of the units. *Id.*
- C. Aerial photographs of the subject neighborhood show little variance in the design of the condominiums in the neighborhood. *Thompson testimony; Res’p Exs. 4-5.*
- D. If the grade of the subject property were changed to “C” or “C-1,” the neighborhood factor would have to be recomputed. *Acton testimony; Res’p Exs. 2-3.*
- E. Many of the features highlighted by the Petitioner as belonging to “C” or “D” grade houses are also consistent with higher graded houses. *Thompson testimony; Pet’r Ex. 2.*

Quality Grade under the Assessment Guidelines

28. 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

¹ In his Form 131 petition, the Petitioner requested a grade of “C-1.” However, the Petitioner testified at the hearing that he could not defend a grade below “C.” *Stiff testimony.*

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.*

29. 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.*
30. However, the Assessment Guidelines also recognize that some improvements in a neighborhood may have construction characteristics that deviate from the base quality grade specifications. 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 Petitioner's prima facie case

31. As set forth above, the Petitioner submitted a copy of the quality grade specification tables from the Assessment Guidelines in support of his position that the subject house should have received a "C" grade. *Pet'r Ex. 2.* The Petitioner highlighted a grade description for most of 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. *Stiff testimony; Pet'r Ex. 2.*
32. However, the Petitioner provided little or no explanation regarding many of the features he identified. For example, under the category for fixtures, the Petitioner simply highlighted the term "average grade fixtures" under the "C" grade column. *Id.* The

Petitioner did not describe the fixtures or explain why they constitute “average grade” fixtures rather than “good grade” fixtures associated higher quality grade ratings. The conclusory nature of such statements deprives them of any significant probative value. Nonetheless, the Petitioner did present more specific evidence concerning a few features of the subject dwelling, such as the fact that seventy-five percent of its soffits had less than 12-inch overhangs. *Stiff testimony; Pet’r Ex. 2.*

33. The Petitioner essentially relies upon a rough average of the highlighted items from the Grade Specification Tables. The Petitioner highlighted fourteen (14) items from the “C” grade column, and ten (10) from the “D” grade column. *Pet’r Ex. 2.* The Petitioner also determined that four (4) items fell in a “C-” category not specifically listed in the tables. *Id.* The Petitioner then concluded that a grade of “C” is appropriate.
34. Based on the foregoing, the Petitioner established a prima facie case that the current grade of “C+1” is incorrect and that an appropriate grade for the subject dwelling would be “C.” *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).

The Respondent’s rebuttal

35. The burden therefore shifted to the Respondent to impeach or rebut the Petitioner’s evidence. *Meridian Towers*, 805 N.E.2d at 479.
36. The Respondent correctly asserts that many of the features highlighted by the Petitioner as corresponding to “C” or “D” grades correspond to higher grades as well. For example, the Petitioner assigned a “C” grade to his aluminum flashing, even though aluminum flashing is also consistent with “A” and “B” grades. GUIDELINES, app. A at schedule E.1. Thus, many of the features relied upon by the Petitioner are of little use in distinguishing

the subject dwelling from dwellings exhibiting slightly higher than average construction quality and materials.

37. Moreover, the weight of the evidence supports a finding that the quality of materials and workmanship used to construct the subject dwelling does not differ significantly from the quality of materials and workmanship used to construct the other condominiums in the development, all of which were assigned a quality grade of “C+1.” *Thompson testimony*. 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.
38. The Petitioner testified that the builder offered two different building types with four different floor plans, and that prices ranged from \$100,000 to \$150,000. *Stiff testimony*. However, the Petitioner did not present evidence that the differences in the various condominiums generally were attributable to the quality of materials and workmanship as opposed to factors such as differences in square footage or the inclusion of a screened-in porch. *Stiff testimony*. While the Petitioner speculated that the higher prices of some of the condominiums in the development might be partially attributable to the original purchasers choosing “options” for higher-grade interior features, he did not identify any condominiums containing such options. *Stiff testimony*. The Petitioner did contend that aerial photographs of the neighborhood showed some differences between condominiums relating to roof design and pitch as well as the presence or absence of “bump outs.” *Stiff testimony, Res’p Ex. 4*. However, the differences appear relatively minor. *Res’p Ex. 4*.
39. Based on the foregoing, the Respondent sufficiently rebutted the Petitioner’s evidence regarding the grade of the subject dwelling. The evidence weighs against a finding that the grade assigned to the subject dwelling is incorrect.

SUMMARY OF FINAL DETERMINATION

ISSUE 1 – Whether the fireplace is assessed correctly.

36. The Petitioner failed to make a prima facie case that the fireplace should be assessed as prefabricated steel instead of masonry. The Board finds for the Respondent.

ISSUE 2 – Whether the grade applied to the subject dwelling is correct.

37. The Petitioner made a prima facie case for a reduction in grade. However, the Respondent rebutted the Petitioner's evidence. The Board therefore finds that the quality grade assigned to the subject dwelling should not be changed.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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.