

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

Petition No.: 46-023-04-1-5-00024
Petitioners: Robert J. and Joy H. Kuchler
Respondent: Michigan Township Assessor (LaPorte County)
Parcel No.: 45-01-14-0154-069
Assessment Year: 2004

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 Petitioners initiated an assessment appeal with the LaPorte County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated July 22, 2005.
2. The Petitioners received notice of the decision of the PTABOA on July 11, 2006.¹
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on August 10, 2006. The Petitioners 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 March 19, 2008.
5. The Board held an administrative hearing on May 1, 2008, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Robert J. Kuchler, Petitioner,

¹ The ALJ mistakenly determined that the Form 131 was untimely filed based on the notification date shown on the Form 115 and ruled that the evidence would only be considered for the Petitioners' 2005 assessment. A further review indicated the June 11, 2006, notification date on the Form 115 was a typographical error because the PTABOA members signed the form on July 11, 2006. The Petitioners filed a letter dated May 14, 2008, identifying the error on the Form 115 and presenting additional evidence related to their 2004 appeal. The Respondent, likewise, agreed the Form 115 was in error in a letter dated June 6, 2008. The Township Assessor further responded to the Petitioners' additional evidence. The Board, therefore, determines that the petition was timely filed for 2004 and considers the evidence in the parties' letters as relevant to the Petitioners' 2004 appeal.

For Respondent: Terry Beckinger, Michigan Township Assessor
Joshua D. Pettit, Nexus Group

Facts

7. The subject property is a residential dwelling located at 2403 Lakeshore Drive, Long Beach, Indiana in Michigan Township, LaPorte County.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the subject property to be \$215,000 for the land and \$155,000 for the improvements, for a total assessed value of \$370,000.²
10. The Petitioner requested an assessment equal to its October, 1999 appraised value of \$370,000 discounted 10 months at a rate of 4.9% per month.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
 - a. The Petitioners contend their home is over-assessed because the township failed to adjust the October 1999 appraised value to the statutory valuation date of January 1, 1999, for the March 1, 2004, assessment. *Kuchler testimony; Petitioner Exhibits 1 and 10*. According to the Petitioners, substantial price inflation occurred in 1999.³ *Id.* In support of this contention, the Petitioners presented a list of "all sales" on Lake Shore Drive, in Hillside and Long Beach in 1998 and 1999 to show the increase in average and median sales prices. *Petitioner Exhibit 8*. In addition, the Petitioners presented three homes that sold twice to show the inflation rate. *Petitioner Exhibit 9*. Based on these sales, the Petitioners argue that the prices of homes in the neighborhood rose at a rate of between 2.1% and 4.9% per month in 1998 and 1999. *Id.; Kuchler testimony*. Thus, the Petitioners contend, the Board should decrease the appraised value of \$370,000 by 4.9% per month for the ten months between the valuation date of January 1, 1999, and the appraisal date of October 1999 *Id.*
 - b. The Petitioners further contend the subject property's grade should be lowered. *Kuchler testimony*. According to the Petitioners, the house is of

² The PTABOA issued a Form 115 determining the final assessed value for 2004 to be \$299,900 for the land and \$142,600 for the improvements, for a total assessed value of \$442,500. The parties, however, agreed that the assessed value for 2004 was \$215,000 for land and \$155,000 for improvements, for a total assessed value of \$370,000, based on a Board determination in the Petitioners' 2003 appeal.

³ Mr. Kuchler testified that he is certified as a Level I assessor in Indiana.

average quality and therefore should be assessed as a grade C, rather than a grade B. *Id.* In support of this contention, the Petitioners presented a list of the property's characteristics and highlighted various construction components shown in the REAL PROPERTY ASSESSMENT GUIDELINES, Appendix A. *Petitioner Exhibits 6 and 7.*

- c. The Petitioners also contend the effective year is incorrect. *Kuchler testimony.* The Petitioners testified the home was constructed in 1925 and remodeled in 1948. *Id.* According to the Petitioners, the assessor incorrectly averaged the 1925 construction date with the 1948 remodel date to arrive at an effective age of 1937. *Id. Petitioner Exhibit 6.* In support of this contention, the Petitioners submitted an excerpt from the GUIDELINES, Chapter 3, page 57, which states "Room additions added to existing dwellings before March 2, 1999, must be calculated as part of the original structure and depreciated based on the age of the main structure." *Id.*
 - d. Finally, the Petitioners contend that the property record card should be changed to reflect the property's assessed value. *Kuchler testimony; Petitioner Exhibit 10.* According to the Petitioners, if changes are made to the grade and effective year, the improvement value based on the GUIDELINES cost approach will equal the value determined by the Petitioners' appraisal. *Id.; Petitioner Exhibit 5.*
12. Summary of Respondent's contentions in support of the assessment:
- a. The Respondent contends the assessed value is correct. *Beckinger testimony.* According to the Respondent, the methodology in arriving at a value is not as important as the bottom-line value. *Id.* The Respondent referenced three Indiana Tax Court cases, *Eckerling*, *O'Donnell*, and *P/A Builders*, that it argues supports this contention. *Id.*
 - b. The Respondent also contends that, although the Petitioners introduced information on their opinion of the home's grade, the Respondent has not seen the inside of the house, the fixtures, or the quality of the home's construction. *Pettit testimony.*

Record

13. The official record for this matter is made up of the following:
- a. The Petition,
 - b. The compact disk recording of the hearing labeled Kuchler Hearing,
 - c. Exhibits:

Petitioner Exhibit 1 – Excerpt of Appraisal Report dated October 1999,
Petitioner Exhibit 2 – Excerpt of the Board’s 2003 Final Determination on
the property,
Petitioner Exhibit 3 – Property record card dated September 15, 2004,
Petitioner Exhibit 4 – Property record card dated May 4, 2007,
Petitioner Exhibit 5 – Comparison of data from the property record card,
Petitioner Exhibit 6 – Narrative supporting the Petitioners’ adjustment of
grade and effective year,
Petitioner Exhibit 7 – Real Property Assessment Guidelines -Version A,
Appendix A, pages 10-14,
Petitioner Exhibit 8 – Neighborhood sales for 1998 and 1999,
Petitioner Exhibit 9 – Resale of properties occurring in 1998 and 1999,
Petitioner Exhibit 10 – Summary.

The Respondent did not present any exhibits.

Board Exhibit A – Form 131 petition and all subsequent mailings to the
Board,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet

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 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 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 establish an error in their assessment. The Board reached this decision for the following reasons:
- a. The Petitioners contend that the 1999 appraisal used in their 2003 appeal should be trended back ten months due to a significant increase in sale prices in 1999. *Kuchler testimony*. In support of this contention, the Petitioners presented a list of “all sales on Lake Shore Dr, Hillside, Long Beach, 1998 and 1999”⁴ and three “resales” to show the inflation rate. *Petitioner Exhibits 8 and 9*. According to the Petitioners, the prices of homes in the neighborhood rose at a rate of between 2.1% and 4.9% per month in 1998 and 1999. *Id.*; *Kuchler testimony*. Thus, the Petitioners seek a 4.9% reduction in the \$370,000 appraised value for the ten months between the January 1, 1999, statutory valuation date and the October 1999 date of their appraisal.
 - b. Real property in Indiana is assessed on the basis of its “true tax value.” *See* Ind. Code § 6-1.1-31-6(c). “True tax value” is defined as “[t]he 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 2 (incorporated by reference at 50 IAC 2.3-1-2). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
 - c. To support their valuation, the Petitioners first presented an excerpt from an appraisal dated October of 1999 valuing the property at \$370,000. *Petitioner Exhibit 1*. The excerpt contained the coversheet and the first page of the nine page appraisal.⁵ *Id.* An appraisal performed in accordance with generally recognized appraisal principles is sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003). The

⁴ The Board assumes that the Petitioners presented sales from Lake Shore Drive in the communities of Hillside and Long Beach in 1998 and 1999. However, “all sales on Lake Shore Dr, Hillside, Long Beach, 1998 and 1999” may refer to three different streets. As a result, the Petitioners’ evidence is not clear. “It is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis.” *Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004).

⁵ The Petitioners also presented an excerpt of the Board’s 2003 determination on the property’s assessment which contained the coversheet and page 7 of 8 of the Board’s determination. *Petitioner Exhibit 2*. The excerpt, however, did not contain any finding regarding the value of the property, only that “the assessment should be changed.” *Id.*

Petitioners, here, however, presented only a single page of the appraisal. According to the evidence, eight additional pages exist but were not presented as evidence. From the Petitioners' evidence, the Board cannot determine whether the appraisal was "performed in accordance with generally recognized appraisal principles" or whether the appraiser employed exceptions to or deviations from those standards in preparing its appraisal. *Meridian Towers*, 805 N.E.2d at 479.

- d. To support their claim for a 4.9% monthly reduction of that \$370,000 appraised value, the Petitioners then presented a list of "all sales" on Lake Shore Drive. *Petitioner Exhibit 8*. The chart identified six sales in 1998 and ten sales in 1999. *Id.* First, the Petitioners only presented a small number of sales on one street to support their claim for reduction. There is no evidence that the Petitioners' Exhibit represents "all sales" in the subject property's neighborhood or that the sale properties were representative of properties in the neighborhood. Nor did the Petitioners testify that six sales in 1998 and ten sales in 1999 are sufficient to reliably determine the appreciation rate in a neighborhood. According to 50 IAC 21-3 *et seq.*, assessors apply annual adjustments to property assessments pursuant to International Association of Assessing Officers' Standard on Ratio Studies (IAAO standard). The Petitioners provided no evidence that their sales were sufficient to comply with IAAO standards.
- e. Moreover, none of the Petitioners' cited sales were supported by sales disclosure forms or property record cards. In determining and applying an annual adjustment, the assessor must "retain and properly verify all sales disclosure forms ..." 50 IAC 21-3-2. Here, there is no assurance that the sales listed in Petitioner Exhibits 8 and 9 were market sales. At a minimum, the Petitioners would need to present evidence that the sales were arms' length transactions for the Board to rely upon any inference drawn from those sales.
- f. In addition, the exhibit identified the area of the home but did not provide any details regarding the characteristics of the property. *Petitioner Exhibit 8*. Arguably the properties that sold in 1999 may simply be nicer, higher quality homes than those that sold in 1998. Similarly, the Petitioners presented no testimony that the properties sold in their "paired" sales were sold in the same condition as they were purchased. *Petitioner Exhibit 9*. The paired sales may have been renovated and "flipped." According to 50 IAC 21-4-1, "Properties throughout any given municipality or area, even though they have the same classification, may vary considerably in quality, style, age, location, and amenities, and, therefore, may change in value at differing rates." *Id.* Thus, "sales used to develop annual adjustment factors must be comparable to the properties for which the factors are being developed. In other words, the assessor should endeavor to ensure that the factors are developed from a sample of sales that is representative to the population of parcels to which the factor or factors will ultimately be applied." 50 IAC 21-4-1(d). Without

evidence regarding the character and condition of the sale properties, the Board cannot conclude the evidence is sufficient to support the Petitioners' contentions.

- g. Finally, the Petitioners' Exhibit failed to identify any change in the market that occurred between January and October of 1999. *Petitioner Exhibit 8*. Exhibit 8 identified the year of the various sales but did not identify the dates of the sales. *Id.* All 1999 sales were grouped together and undated despite the fact that the Petitioners are seeking an adjustment for the time period of January through October of 1999. *Id.* Similarly, all three of the "resale" transactions occurred in June of 2000, June of 2001, and June of 2002, respectively. Therefore, they were well outside the January through October 1999 time frame at issue. *Petitioner Exhibit 9*. Also, the Petitioners' various calculations yielded monthly appreciation rates of 2.1%, 2.6%, 2.9%, 3.1% and 4.9%. This wide disparity in appreciation rates, coupled with the limited number of sales, none of which carry specific details regarding the actual sales dates of the characteristics of the properties, fails to demonstrate that properties in the Petitioners' neighborhood appreciated at a rate of 4.9% per month. Thus, while the Petitioners' factual evidence was not impeached or rebutted by the Respondent, they presented no evidence to support a finding that the Petitioners' assessed value of \$370,000 should be further reduced by 4.9% per month for the period of January to October of 1999.
- h. The Petitioners also contend the grade assigned to the subject property is incorrect. *Kuchler testimony*. In support of this contention, the Petitioners listed characteristics of the house and highlighted components from the Real Property Assessment Guidelines, Appendix A. *Petitioner Exhibits 6 and 7*.
- i. 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.*
- j. 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).

- k. Here, the Petitioners submitted a copy of the grade specification tables from the Guidelines. *Petitioner Exhibit 7*. The Petitioners highlighted a grade description for twenty-six 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, submitted no pictures to illustrate the various features of their home. Nor did they offer any detailed description of the actual features of the house or how the features contribute to the overall design of the house and the quality of the materials and workmanship. The Petitioners merely pointed to the generic description provided in the tables and concluded that the features of the house were indicative of a “C” grade classification. *Kuchler testimony; Petitioner Exhibit 7*. 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.

- l. Finally, the Petitioners contend the effective year of their home is incorrect. *Kuchler testimony*. According to the Petitioners, their property was constructed in 1925 and remodeled in 1948. *Id.* “Room additions added to existing dwellings before March 1, 1999, must be calculated as part of the original structure and depreciated based on the age of the main structure.” GUIDELINES, Chapter 3 at 57; *Petitioner Exhibit 6*. Thus, the Petitioners argue, the effective year of the home should be 1925. *Kuchler testimony*. The Petitioners are correct. Pursuant to the Guidelines, the effective age of the dwelling is 1925. This should be corrected on the property record card. The Board, however, does not order a change in value because even if the assessment did not fully comply with the Guidelines, the Petitioners must show that their assessment is not a reasonable measure of true tax value. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N. E. 2d764, 768 (Ind. Tax Ct.). Arguments based on strict application of the Guidelines are not sufficient to rebut the assumption that the assessment is correct. *Id.* Here, the Petitioners failed to raise a prima facie case that their property should be assessed for a value lower than its current assessment of \$370,000.

- m. Where the 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*, 799 N.E.2d at 1221-1222; *Whitley Products*, 704 N.E.2d at 1119.

Conclusion

16. The Petitioners failed to provide sufficient evidence for a change in their assessed value. The Board finds, however, that the effective year for the improvements should be corrected. The Board finds in favor of the Respondent on all other matters.

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 pursuant to 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 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/bills/2007/SE0287.1.html>.