

REPRESENTATIVE FOR RESPONDENT:  
Marilyn S. Meighen, Meighen & Associates, P.C.

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Steve K. and Tamera B. Manka	)	Petition Nos.:	29-020-03-3-5-00195
	)		29-020-04-3-5-00192
Petitioners,	)		29-020-05-3-5-00189
	)		
v.	)	Parcel:	1915090016003000
	)		
Hamilton County Assessor	)	County:	Hamilton
	)	Township:	Fall Creek
Respondent.	)		
	)	Assessment Years:	2003, 2004 and 2005

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

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**August 5, 2008**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (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 issue presented for consideration by the Board is whether the Petitioners have sufficiently shown that there is an error in the grade factor applied to the house that can be corrected on a Form 133 petition under Indiana Code § 6-1.1-15-12.

### **PROCEDURAL HISTORY**

2. On January 15, 2007, Steve K. and Tamera B. Manka (the Petitioners) filed three Form 133 Petitions for Correction of an Error for assessment years 2003, 2004 and 2005, with the Hamilton County Assessor.
3. On October 18, 2007, the Hamilton County Property Tax Assessment Board of Appeals (PTABOA) issued assessment determinations for the property. The PTABOA granted relief on the issue of square footage and denied relief on the issue of grade.
4. On November 9, 2007, the Petitioners filed Form 133 petitions with the Hamilton County Auditor seeking review of the PTABOA determinations. The Board received the Form 133 petitions on November 26, 2007.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

5. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, held a hearing on May 14, 2008, in Noblesville, Indiana.

6. The following persons were sworn as witnesses at the hearing:

For the Petitioners:

Steve K. Manka, property owner

For the Respondent:

Debbie Folkerts, Hamilton County Assessor

7. The Petitioners requested that the items attached to the Form 133 petitions and entered into the record as Board Exhibit A, be considered the Petitioners' evidence, including:

- a. Form 133 – Petitions For Correction of an Error for 2003, 2004 and 2005,
- b. Correction of Assessment Notification issued by Pamela Zagar, Fall Creek Township Assessor,
- c. A letter from Steve Manka to Indiana Board of Tax Review, dated November 19, 2007,
- d. A chart identifying the March 1, 2005, valuation for seven properties located on Muirfield Trace,
- e. A letter from Steve Manka to Pam Zagar, Fall Creek Township Assessor, dated January 16, 2007,
- f. Notification of Final Assessment Determination – Form 115 for March 1, 2006, on the property,
- g. 2006 property record card.

8. The Respondent presented no exhibits.

9. The following additional items are officially recognized as part of the record of the proceedings and labeled Board Exhibits:

Board Exhibit A – Form 133 petitions with attachments,  
Board Exhibit B – Notices of Hearing on Petition, dated March 13, 2008,  
Board Exhibit C – Hearing sign-in sheets.

10. The subject property is a 4,670 square foot house with an attached garage on .36 of an acre located at 11487 Muirfield Trace, Fishers, Fall Creek Township, in Hamilton County.
11. The ALJ did not conduct an on-site inspection of the subject property.
12. The PTABOA determined the assessed value of the property to be \$54,200 for the land and \$376,700 for the improvements, for a total assessed value of \$430,900 for 2003, 2004 and 2005.
13. The Petitioners requested an assessed value of \$54,200 for the land and \$312,424 for the improvements, for a total assessed value of \$366,624 for 2003, 2004 and 2005.

#### **JURISDICTIONAL FRAMEWORK**

14. The Indiana Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and 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 Ind. Code § 6-1.1-15.

#### **ADMINISTRATIVE REVIEW AND PETITIONER'S BURDEN**

15. 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).
16. 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”).
17. 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.

#### **PARTIES’ CONTENTIONS**

18. The Petitioners contend that the local assessor made an error in assigning the home’s grade factor in 2000. *Manka testimony*. According to the Petitioners, their house was the first one constructed in the neighborhood and the assessor assigned it a grade of “A”. *Id.* Later, the assessor assigned comparably-sized homes in the same neighborhood that were built to the same architectural standards “B” grades. *Id.*
19. Mr. Manka testified that they appealed their 2006 assessment on a Form 130 to the Hamilton County PTABOA and as a result of that appeal the PTABOA reduced the grade factor to “B-1”. *Board Exhibit A; Manka testimony*. The Petitioners argue that this grade factor should also be assigned for the 2003, 2004, and 2005 assessments. *Manka testimony*. In reply to the Respondent’s arguments that the Petitioners should have appealed their 2003, 2004, and 2005, assessments

- at the time of the assessment, Mr. Manka testified that they could not have discovered the error in the grade assignment until additional homes were built in the neighborhood. *Id.*
20. Finally, the Petitioners contend that the assignment of grade to similar homes is objective in nature. *Manka testimony.* The Petitioners therefore argue that any such error is correctable on a Form 133 petition, under Ind. Code § 6-1.1-15-12. *Id.*
  21. The Respondent argues that the Form 133 petition is limited by statute to only correcting objective errors. *Meighen argument.* The Respondent cites to *Bender v. State Board of Tax Commissioners*, 676 N.E.2d 1113 (Ind. Tax 1997); *Reams v. State Board of Tax Commissioners*, 620 N.E.2d 758 (Ind. Tax 1993); and *Hatcher v. State Board of Tax Commissioners*, 561 N.E.2d 852 (Ind. Tax 1990), in support of the proposition that only objective errors, whose determination require a simple observation of fact without resort to subjective judgment, may be corrected on a Form 133 petition. *Id.* The Respondent contends that grade is a subjective component in the assessment of a house and therefore any alleged error in the assignment of a grade is not correctable on a Form 133 petition. *Id.*
  22. The Respondent further contends that taxpayers have the opportunity to question their assessments every year. *Meighen argument.* According to the Respondent, this right is triggered by either a Notice of Assessment or a property owner's tax statement. *Id.* However, the Respondent argues, the Tax Court stated in *Williams Industries v. State Board of Tax Commissioners*, 648 N.E.2d 713 (Ind. Tax 1995), that there are also responsibilities that accompany the opportunity to appeal an assessment. *Id.*
  23. The Respondent agrees that the Petitioners' grade on the property was changed for 2006, as a result of a Form 130 petition being filed within the statutory

deadline to the local officials. *Meighen argument*. The Respondent argues, however, that the change in the 2006 assessment does not give the Petitioners any inherent rights to file 133 petitions requesting the same change for 2003, 2004 and 2005. *Id.* In support of this contention, the Respondent cites to the Indiana Board of Tax Review decision in *Andrew and Julie Anglemeyer v. Seward Township Trustee/Assessor*, Petition Nos. 43-021-04-3-5-00036 – 00041. *Meighen argument*.

24. Finally, the Respondent contends that the assessor uses the Real Property Assessment Guidelines, as a starting point in assessing real property. *Meighen argument*. According to the Respondent, although the Guidelines address several components in assessing a property, the ultimate goal of the assessor is to determine the market value-in-use of the property. *Id.* This is supported by the Indiana Tax Court decisions in, *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90 (Ind. Tax 2006), and *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax 2007). *Id.*

#### ANALYSIS

25. Under Indiana's true tax value system, improvements have various grades based on their design and the quality of material and workmanship. *Sollers Pointe Co. v. Department of Local Government Finance*, 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 at 2. The Guidelines provide quality grade specification tables to assist in the determination of the appropriate quality grades. *Id.* at 9. The descriptions in the 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.*

26. When contesting a grade assigned to an improvement, a taxpayer must offer probative evidence concerning the alleged error. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Conclusory statements concerning the grade, however, do not constitute probative evidence. *Id.*
27. Here, the Petitioners simply testified that the township assessor made an error in applying an “A” grade factor to the house when it was originally constructed. *Manka testimony*. The Petitioners did not 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. This is insufficient to show an error in the assessment. *See Whitley Products, Inc.*, 740 N.E.2d at 1119.
28. To the extent that the Petitioners can be seen to claim a lack of uniformity because the neighboring properties are physically similar to the subject property but were assigned lower grade factors, the Petitioners’ claim also fails. Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. However, “taxpayers are required to make a detailed factual showing at the administrative level.” *Home Federal Savings Bank v. Madison Township Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, “the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence.” *Id.*
29. To introduce evidence of comparable properties, a taxpayer must explain how the properties are comparable. *See Blackbird Farms Apartments v. Department of Local Government Finance*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain how the



properties were comparable). Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id.* *See also, Hoogenboom-Nofziger*, 715 N.E.2d at 1024 (holding that taxpayer failed to make prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, Ltd. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).

30. Here, the Petitioners did not attempt to compare the physical characteristics of the properties. Mr. Manka merely testified that the neighboring properties “were built to the same architectural standards.” This is insufficient to show that the neighboring properties are comparable to the Petitioners’ home. *See Home Federal Savings Bank v. Madison Township Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). *See also, Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005) (holding that the taxpayers did not adequately engage in a sales comparison analysis where they failed to explain how the characteristics of the subject property compared to those of purportedly comparable properties or how any differences between the properties affected their relative market value-in-use). Thus, the Petitioners failed to establish a prima facie that the grade assigned to the house for 2003, 2004 and 2005 is in error.
  
31. Similarly, the fact that the Hamilton County Assessor assigned the house a “B-1” grade in 2006 is not probative evidence that the structure’s “A” grade in 2003,

2004, and 2005 was in error. In Indiana, each tax year stands alone as a separate and distinct assessment. *Indianapolis Racquet Club v. State Board of Tax Commissioners*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004); *Barth v. State Board of Tax Commissioners*, 699 N.E.2d 800, 806 n. 14 (Ind. Tax Ct. 1998). 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. *Id.*

32. Finally, the Petitioners sought to resolve their claim by filing Form 133 petitions. Petitioners who file Form 133 petitions must show that an objective error is alleged and must quantify the error. *Damico v. Department of Local Government Finance*, 769 N.E.2d 715, 721 (Ind. Tax Ct. 2002). An objective error is one that “involves a simple observation of fact without resort to subjective judgment.” *Id.* Here, the Petitioners contend that, as a result of filing a Form 130 appeal to the PTABOA for 2006, the PTABOA reduced the grade factor on the subject property to “B-1”. *Board Exhibit A; Manka testimony*. According to the Petitioners, the admission by the PTABOA of the error in the grade for the 2006 assessment makes it correctable on a Form 133 petition, under Ind. Code § 6-1.1-15-12 for 2003, 2004 and 2005. *Manka testimony*.
33. Form 133 petitions are governed by Ind. Code § 6-1.1-15-12. That statute provides, in relevant part:
- (a) Subject to the limitations contained in subsections (c) and (d), a county auditor shall correct errors which are discovered in the tax duplicate for any one (1) of the following reasons:
    - (1) The description of the real property was in error.
    - (2) The assessment was against the wrong person.
    - (3) Taxes on the same property were charged more than one (1) time in the same year.
    - (4) There was a mathematical error in computing the taxes or penalties on the taxes.
    - (5) There was an error in carrying delinquent taxes forward from one (1) tax duplicate to another.
    - (6) The taxes, as a matter of law, were illegal.
    - (7) There was a mathematical error in computing an assessment.

(8) Through an error of omission by and state or county officer the taxpayer was not given credit for an exemption or deduction permitted by law.

Ind. Code § 6-1.1-15-12 (2003).

34. The Indiana Tax Court has made it clear that the only errors correctable by Form 133 petitions are those errors that can be corrected without resort to subjective judgment. *Bender*, 676 N.E.2d at 1114. Thus, a Form 133 petition is proper when the error is objective and can be corrected by a simple true or false finding of fact. *Id.* at 1115. The Court in *Hatcher* said that an example of an objective error would be when a dwelling is recorded as having a fireplace when in fact it does not have a fireplace, because that could be “judged and corrected objectively through a visual inspection,” and the value of the non-existent fireplace could then be subtracted from the assessment computation. *Hatcher*, 561 N.E.2d at 857.
35. The Tax Court has previously ruled that Form 133 petitions are not appropriate for curing any defects made in grading. *See, e.g., Reams*, 620 N.E.2d at 759. In *Reams*, the Court addressed a taxpayer’s use of a Form 133 petition to obtain retroactive relief for an error in assignment of grade factor to the house. *Reams*, 620 N.E.2d 758. The court explained that the selection of the grade factor “calls upon the judgment of the assessor,” and therefore the grading of a residence is a subjective process. *Id.* at 759. According to the Court, a taxpayer wishing to appeal such a process may only do so by timely filing a Form 130 petition. *Id.* *See also Bock Products, Inc. v. Indiana State Bd. of Tax Com’rs*, 683 N.E.2d 1368, 1372 (Ind. Tax Ct. 1997); and *Rinker Boat Co. v. State Bd. of Tax Com’rs*, 722 N.E.2d 919, 924 (holding that the review of a Form 133 petition for correcting an error in grade would require subjective judgment).
36. Here, the Petitioners’ argument that the subject property is similar to neighboring properties in quality of construction and materials fails to establish that there was

an objective error correctable by a Form 133 petition. Similarly, that an error in the grade factor was not discovered until additional homes were built in the neighborhood does not relieve the Petitioners of their obligation to timely file the proper appeal. It is clear that an assessor may use judgment when assigning grade factors and therefore any such assignment is not subject to review through a Form 133 petition.

### **SUMMARY OF FINAL DETERMINATION**

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

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

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Chairman,  
Indiana Board of Tax Review

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Commissioner,  
Indiana Board of Tax Review

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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 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>.**