

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

**Petition Number:** 74-017-08-1-5-00001  
**Petitioners:** Donald R. and Ann M. Schulte  
**Respondent:** Spencer County Assessor  
**Parcel No.:** 74-15-21-200-005.004-017  
**Assessment Year:** 2008

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 Spencer County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated August 4, 2009.
2. The PTABOA issued notice of its decision on October 21, 2009.
3. The Petitioners filed a Form 131 petition with the Board on December 3, 2009, and an amended Petition to correct errors on January 8, 2010. The Petitioners elected to have their case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated June 9, 2010.
5. The Board held an administrative hearing on August 31, 2010, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. The following persons were present and sworn in at the hearing:
  - a. For Petitioners: Donald R. Schulte, Petitioner
  - b. For Respondent: Sara Arnold, Spencer County Assessor  
Kirk E. Reller, county contractor

**FACTS**

7. The property at issue is an improved residential parcel located at 1889 West State Road 66, Ohio Township, Rockport, Spencer County, Indiana.
8. The ALJ did not conduct an on-site visit of the property.

9. For 2008, the PTABOA determined the assessed value of the subject property to be \$19,500 for the land and \$194,500 for the improvements, for a total assessed value of \$214,000.
10. The Petitioners requested an assessed value of \$19,500 for the land and \$139,000 for the improvements for a total assessed value of \$158,500 for the 2008 assessment.

### ISSUES

11. Summary of the Petitioners' contentions in support of an alleged error in their property's assessment:
  - a. The Petitioners contend their property's 2008 assessed value is over-stated because the grade of their house was raised from a C-1 to a C+2 by the assessor. *Schulte argument*. According to Mr. Schulte, no changes had been made to the house since 1996 that would justify a change in the grade of the improvements. *Id.* Further, he argues, the assessor did not change the grade on other similar properties. *Id.* In support of this contention, the Petitioners presented a property record card for 620 Main Street, showing a C+1 grade for the house, and a property record card for 182 South County Road 400 West, showing a C grade for the house. *Petitioners Exhibits 2 and 3.*
  - b. Mr. Schulte admitted that the Petitioners listed the property for \$339,000 in 2007, but he argues a property's assessment should not change just because the property's owners offer the property for sale at a certain value. *Schulte argument*. According to Mr. Schulte, the property was not worth its listing price and, in fact, has since been lowered to \$279,900. *Id.*; *Petitioners Exhibit 1.*
  - c. Finally, the Petitioners contend their property is over-valued based on the assessed value of other properties in the area. *Schulte argument*. Mr. Schulte admitted that the Petitioners' property was worth its assessed value, but he argues other properties are assessed for less than they are worth. *Id.* In support of this contention, the Petitioners presented listing sheets and property record cards for 3833 North County Road 900 West, which was listed for \$229,900 and assessed for \$121,800 for 2009; 10764 East County Road 1500 North, which was listed for \$299,900 and assessed for \$138,700; 827 Washington Street, which was listed for \$319,000 and assessed for \$235,400; and 106 Walnut Street, which was listed for \$200,000 and assessed for \$86,100. *Petitioner Exhibit 4.* According to Mr. Schulte, none of the properties' assessed values were increased by the assessor's office for the subsequent year; whereas the Petitioners' property was assessed for \$60,000 more after the Petitioners listed the property for sale. *Schulte argument.*
12. Summary of the Respondent's contentions in support of the assessment:
  - a. The Respondent's witness contends that assessed values in 2008 are based on the market value-in-use of a property as of January 1, 2007. *Reller testimony.* In

accordance with the directives and samples provided by the Department of Local Government Finance concerning annual trending of assessments, Mr. Reller argues, Spencer County used information about properties listed for sale, as well as census data, and Marshall & Swift construction costs to determine assessed values. *Id.*

- b. The Respondent also argues that the property's assessment is not over-stated. *Reller argument.* According to Mr. Reller, the property was listed for \$339,000, but it was only assessed for \$214,000. *Id.* Thus, he argues, the property was under-assessed for the tax year at issue. *Id.* Further, he argues that the Board should give little weight to the assessed value of the other properties cited by the Petitioners because Mr. Schulte did not show those properties were comparable to the subject property. *Id.*
- c. Finally, Mr. Reller argues, the assessor's change of grade on the house was proper. *Reller argument.* According to Mr. Reller, the Petitioners' listing sheet states that the house has been "completely updated." *Id.*; *Respondent Exhibit 1.* In fact, Mr. Reller argues, the grade and the effective age are still too low given the market value of the property. *Id.*

### **RECORD**

13. The official record for this matter is made up of the following:

- a. The Petition and all other submitted documents.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – Copies of listing sheets for the subject property,  
Petitioner Exhibit 2 – Property record card for 620 Main Street,  
Petitioner Exhibit 3 – Property record card for 182 South County Road 400 West,  
Petitioner Exhibit 4 – Multiple Listing Service (MLS) data sheets and property  
record card for four other Spencer County properties,

Respondent Exhibit 1 – MLS data sheets for the subject property,

Board Exhibit A – Form 131 Petition and related attachments,  
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 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).
  - 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 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”).
  - 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
  
15. The Petitioners failed to raise a prima facie case for a reduction in the assessed value of his property. The Board reached this decision 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers have traditionally 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. Indiana assessing officials generally assess 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); *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.

- c. 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, 2008, assessment, the valuation date was January 1, 2007. 50 IAC 21-3-3.
- a. The Petitioners first contend that the assessor improperly changed the grade of their house from C-1 to C+2 because they offered the property for sale for \$339,000.<sup>1</sup> *Schulte 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 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 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.*
- d. 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 Petitioners presented no evidence of the quality of their home. They merely contend that "nothing had changed" since 1995. To the contrary, however, their listing stated that the house had been completely updated with built in cabinets, hardwood floors and cathedral ceilings. *Petitioners Exhibit 1*. Therefore, the Petitioners failed to sufficiently show that their house's grade was assessed in error.

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<sup>1</sup> Mr. Schulte argues that it is improper for the assessor to value the Petitioners' property based on the property's listing price. Mr. Schulte, however, is incorrect. According to the Manual, "True tax value may be thought of as the ask price of property by its owner, because this value more clearly represents the utility obtained from the property, and the ask price represents how much utility must be replaced to induce the owner to abandon the property." MANUAL at 2. While Mr. Schulte may present market value-in-use evidence to show that the Petitioners' property was not worth its asking price, it would not have been an error for the assessor to consider the property's listing price in determining the property's market value-in-use.

- e. Even if the Petitioners had shown that the Assessor erred in changing the grade of their improvements, the Petitioners failed to show that the assessment 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*”).
- f. The Petitioners also contend their property is over-valued based on the assessment of other properties in the county. *Schulte argument*. According to Mr. Schulte, the assessed value of the Petitioners’ property increased; whereas other properties decreased in value. *Id.* However, it is not enough for a taxpayer to show that its property is assessed higher or differently than other comparable properties. *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer’s lack of uniformity and equality claim where the taxpayer showed neither its own property’s market value-in-use nor the market values-in-use of purportedly comparable properties). Instead, the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property’s market value-in-use. *Id.*
- g. Further, the Petitioners failed to show the comparability of those neighboring parcels. By comparing their assessed value to the assessed value of other properties, the Petitioners essentially rely 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 explain how any differences between the properties affect their relative market value-in-use. *Id.* Here, Mr. Schulte made no attempt to compare the properties. He merely argued that they were other properties in the county that were listed for sale. Thus, the assessed values of the Petitioners’ “comparable” properties fail to prove the value of the Petitioners’ property.
- h. To the extent the Petitioners can be seen as arguing that their assessment should be lowered because the assessed values of other properties are lower than the properties’ listing prices, the Petitioners also fail to make a case that their assessment should be reduced. A taxpayer has the right to show that other properties are assessed below

their market values and thus the taxpayer's "property taxes were higher than they would have been had other properties been properly assessed." *Indiana Dep't of Local Gov. Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005). The relief sought in that type of claim is often termed an "equalization adjustment." However, the assessment and listing price information that the Petitioners submitted is based on only four sales – all of which were outside the time for sales that are properly considered in determining 2008 assessments. 50 IAC 21-3-3. Moreover, the Petitioners failed to establish that their data constituted a statistically reliable sample or that any assessment to sale ratio could be determined from the information according to professionally acceptable standards. Therefore, the evidence is not sufficient to make any legitimate conclusion about uniformity and equality of assessments in this case. Most importantly, the assessment to listing price information the Petitioners submitted appears to support the equality of the assessed value of their property. While the Petitioners' property was listed for \$339,000 and assessed for \$214,000 in 2008; one of the Petitioners' "comparable" properties was listed for \$319,000 and assessed for \$233,400 in 2008.

- i. Finally, each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Evidence of a property's assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id.* Therefore, regardless of how much the property's assessment increased or whether the neighboring properties' assessments decreased between tax years, the Petitioners needed to show that their property was assessed in excess of its market value-in-use for the tax year at issue.
- j. Where 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 that his property is over-valued. 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: \_\_\_\_\_

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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

- 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>.