

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

Petition No.: 63-011-07-1-5-00001
Petitioner: Nathaniel K. Willis
Respondent: Pike County Assessor
Parcel No.: 63-06-04-400-054.000-011
Assessment Year: 2007

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 Petitioner initiated an assessment appeal with the Pike County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated August 21, 2008, for tax year 2007.
2. The PTABOA issued its Form 115 Notification of Final Assessment Determination dated October 29, 2008.
3. The Petitioner initiated an appeal to the Board by filing a Form 131 dated November 12, 2008. The Petitioner elected to have his case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated March 2, 2009.
5. The Board held an administrative hearing on April 28, 2009, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner: Nathaniel K. Willis, Petitioner
 - b. For Respondent: Jody Hoover, Pike County Assessor
Wilma Jones, Pike County PTABOA

FACTS

7. The property under appeal is an improved residential parcel located at 2270 North County Road 150 West, Washington Township, Pike County, Petersburg, Indiana.
8. The ALJ did not conduct an on-site visit of the property.

9. For 2007, the PTABOA determined the assessed value of the subject property to be \$9,800 for the land and \$101,800 for the improvements, for a total assessed value of \$111,600.
10. The Petitioner requested a 2007 assessed value of \$9,800 for the land and \$81,500 for the improvements, for a total assessed value of \$91,300.

PETITIONER'S CONTENTIONS

11. The Petitioner contends his property is assessed for more than other comparable properties. *Willis testimony*. In support of this contention, the Petitioner presented evidence of the assessments of two similar properties. *Petitioner Exhibit 1 through 5*. According to Mr. Willis, the comparable properties are slightly smaller but “nearly identical” in every other way. *Willis testimony; Petitioner Exhibit 1*. Mr. Willis argues that the assessor determined the cost of the structures before any adjustments to be \$111,600 for his property and \$95,900 and \$85,700 for the smaller structures. *Id.* This, Mr. Willis contends, “is reasonable” but then a “C” grade is assigned to his building and the other two structures are assigned “D” grades resulting in an assessed value of \$101,800 for the Petitioner’s building and \$70,000 and \$62,500 for the other two structures. *Id.*
12. Mr. Willis also argues that the grade classifications, as dictated by the Indiana Assessment Manual, were not assigned appropriately and consistently. *Willis testimony; Petitioner Exhibit 6*. According to Mr. Willis, his building should be assigned a “D” grade like his “comparable” properties. *Willis testimony*. Mr. Willis testified that his house is built on a 4” concrete slab with 2x4 studs 24” on center. *Id.* Further, Mr. Willis testified, his building is a gable design with moderate to low pitch. *Id.* It has metal siding, metal shingles and a 12” overhang. *Id.* Mr. Willis contends that his building has wood doors, vinyl windows and painted drywall. *Id.* It has aluminum flashing and gutters, standard grade cabinets, a laminate counter top and a fiberglass tub. *Id.* In addition, the building has average inexpensive fixtures, central air, PVC pipe plumbing, a stainless steel sink, an average quality faucet, and an average vanity. *Id.* According to Mr. Willis, his home is “a rectangle home with a one pitch roof” which he concludes is “as standard as you get.” *Id.*
13. Mr. Willis further contends the county assessed his property based on an estimated total value he listed on a building permit that he filed prior to construction of the appealed improvement. *Willis testimony*. According to Mr. Willis, when he obtained the permit he estimated the costs higher than he expected them to be so that if his costs unexpectedly rose he would not have to amend the permit. *Id.*
14. Finally, the Petitioner contends that certain data on his property record card is incorrect and should be corrected in order to reflect an accurate assessment. *Willis testimony*. For

example, Mr. Willis argues, the property record card shows that his residence has four bedrooms when it only has two. *Id.*

RESPONDENT'S CONTENTIONS

15. The Respondent contends the 2007 assessed value is correct and that the grade assigned to the Petitioner's property is immaterial because it is just a tool used by the assessor to reach market value. *Hoover testimony.*
16. The Respondent also contends the assessment appropriately considers the \$100,000 improvement value listed by the Petitioner on the building permit filed before construction. *Hoover testimony, Respondent Exhibit 1.* Further, the Respondent contends, any discrepancy in the number of rooms listed on the property record card has no relevance to the 2007 assessment because the assessment is based on the market value-in-use of the property as reported by the Petitioner on his building permit. *Hoover testimony.*

RECORD

17. The official record for this matter is made up of the following:
 - a. Exhibits:
 - Petitioner Exhibit 1 – Summary of Petitioner's contentions and arguments,
 - Petitioner Exhibit 2 – Data sheet of Petitioner's property and comparables properties,
 - Petitioner Exhibit 3 – Property Record Card (PRC) of Petitioner's property, Parcel No. 63-06-04-400-054.000-011 and a copy of a photograph of the improvement,
 - Petitioner Exhibit 4 – PRC and a photograph of Parcel No. 63-06-09-100-030.000-011,
 - Petitioner Exhibit 5 – PRC and a photograph of Parcel No. 63-03-17-200-013.000-011,
 - Petitioner Exhibit 6 – Copy of Appendix A, pgs. 3 through 14, of the 2002 REAL PROPERTY ASSESSMENT MANUAL,
 - Respondent Exhibit 1 – Copy of a Pike County Building Permit for the property,
 - Board Exhibit A – Form 131 petition and its related attachments,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing sign-in sheet.
 - d. These Findings and Conclusions.

ANALYSIS

18. 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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
19. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in his assessed value. The Board reached this decision for the following reasons:
- a. Indiana assesses real property based on its “true tax value,” which the 2002 Real Property Assessment Manual defines 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 (MANUAL) (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. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES).
 - b. A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See MANUAL* at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom.; P/A Builders & Developers, LLC*, 842 N. E.2d 899 (Ind. Tax Ct. 2006). But 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 actual construction costs, sales information for the subject property or comparable properties

and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.

- c. The Petitioner first argues that his property is assessed differently than two comparable properties. *Willis testimony; Petitioner Exhibit 1*. According to Mr. Willis, the neighboring properties were both assigned a “D” grade while his structure was assigned a “C” grade despite the fact that the buildings were “nearly identical.” *Id.* Mr. Willis’ argument focuses solely on comparing the assessments of the two properties. This was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). In that case, the Tax Court held that 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 its assessed value does not accurately reflect the property’s market value-in-use. *Id.*
- d. Here the Petitioner presented no substantive evidence of the market value-in-use of his property beyond some general statements that his property would not sell for what he put into it. *Willis testimony*. Mr. Willis argues that it was inappropriate for the county to use the \$100,000 cost-to-construct figure that he reported on the building permit that was issued for the improvements under appeal. *Willis testimony*. According to Mr. Willis, he made a “high estimate” when he sought the permit. *Id.* Mr. Willis, however, refused to respond to the county’s question as to what he did, in fact, spend to construct the building. *Id.* The Manual specifically identifies actual construction costs as evidence of a property’s market value-in-use. MANUAL at 5. Therefore it was not an error for the assessing official to consider the Petitioner’s building permit in assessing the property. Had the Petitioner come forward with probative evidence that the cost to construct his residence was substantially different from its assessment or any other market evidence such as an appraisal, he might have prevailed – but he did not.
- e. The Petitioner also argued that his residence should have been assessed as a “D” grade structure because of the characteristics of the building. *Willis testimony; Petitioner Exhibit 6*. 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 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.* Here, Mr. Willis merely testified that his house was built on a 4” concrete slab with 2x4

studs 24” on center. *Id.* Further, he argues he has wood doors, vinyl windows, 12” overhangs, painted drywall walls, standard trim, standard grade cabinets, laminate counter tops, fiberglass tub, average inexpensive fixtures, central air and an average vanity, among other items. The Board notes that the majority of these features fall within both the “C” and the “D” grade categories. Without more than Mr. Willis’ conclusory testimony, the Board is unable to find that the assessment of the Petitioner’s residence as a “C” grade structure was in error.

- f. Further, even if the Petitioner had shown that the grade was incorrect on its assessment – which he did not – the Petitioner 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*”).¹
- g. The Board acknowledges that the Petitioner worked diligently to prepare and gather evidence, and present it at the hearing. Nonetheless, his efforts fall short of a proving his 2007 assessed value is incorrect. 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. v. Dep’t of Local Gov’t Fin.*, 799 N.E.1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

20. The Petitioner failed to raise a prima facie case that the appealed property was 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 the assessments should not be changed.

¹ The Petitioner also made vague references to “other errors” on the property record card such as the structure being assessed as having four bedrooms rather than two. To the extent such errors exist, they should be corrected. The Petitioner, however, gave the Board little evidence to determine what information was in error. Further, even if such errors exist, it is insufficient to warrant a change in the property’s assessment barring evidence that the assessment does not reflect the market value-in-use of the property. *Eckerling*, 841 N.E.2d at 678.

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 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>.