

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

Petition: 89-011-05-1-5-00001
Petitioners: Scott and Amy Abney
Respondent: Franklin Township Assessor (Wayne County)
Parcel: 142700031100007
Assessment Year: 2005

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The Petitioners initiated their appeal with the Wayne County Property Tax Assessment Board of Appeals (the PTABOA) by filing a Form 130 dated August 12, 2005.
2. The PTABOA mailed notice of its decision to the Petitioners on October 6, 2005.
3. The Petitioners filed an appeal to the Board by filing a Form 131 on October 21, 2005, and elected small claims procedures.
4. The Board issued a notice of hearing to the parties dated February 7, 2006.
5. Administrative Law Judge Paul Stultz held an administrative hearing in Richmond on April 19, 2006.
6. Persons present and sworn as witnesses at the hearing:
For Petitioner: Scott Abney,
For Respondent: Marie Elstro,
Richard Lee,
Dan Williams,
Michael Statzer,
John Roll.

Facts

7. The property is a 2,530 square foot frame and brick home in Richmond.
8. The Administrative Law Judge (the ALJ) did not conduct an inspection of the property.

9. The assessed value as determined by the Wayne County PTABOA is:
- | | | |
|---------------|------------------------|------------------|
| Land \$21,900 | Improvements \$148,500 | Total \$170,400. |
|---------------|------------------------|------------------|
10. The assessed value requested by Petitioners is:
- | | | |
|---------------|------------------------|------------------|
| Land \$21,900 | Improvements \$142,000 | Total \$163,900. |
|---------------|------------------------|------------------|

Issue

11. Summary of the Petitioners' contentions in support of the alleged error:
- a. The township assessor and the Petitioner inspected the home and highlighted the grade specification table to reflect the house's features noted during the inspection. *Abney testimony; Pet'r Exhibit 1.*
 - b. Conceding to the features noted by the township assessor, six of the twenty-five features, or 24%, found in the grade specifications are above a "C" grade or a "B" grade. *Abney testimony; Pet'r Exhibit 1.* A "C+1" grade is a quarter interval between grades; a "C+2" is halfway between grade classifications. *Abney testimony.*
 - c. The Petitioner does not understand how the grade can be "C+2" when the grade specifications show the correct grade is "C+1". *Abney testimony.*
12. Summary of the Respondent's contentions in support of the assessment:
- a. Grade is a matter of judgment. *Roll testimony.* The current grade of "C+2" is a good grade because the current assessment is less than the appraised value. *Roll testimony.*
 - b. The sales disclosure for the property shows the property sold for \$189,000 in 2005. *Statzer testimony; Resp't Exhibit 1.* The difference between the 2005 purchase price and the current assessment of \$170,400 is roughly \$19,000. *Statzer testimony.*
 - c. Because grade is a judgment matter, the grade could be off. The end goal, however, is to arrive at the correct true tax value of the property. Therefore, the grade is almost immaterial. *Statzer testimony.* The current true tax value is below the property's purchase price. Because the assessment does not exceed the purchase price, the current assessment is close to the market value. *Statzer testimony.*

Record

13. The official record for this matter is made up of the following:
- a. The Petition,
 - b. A digital recording of the hearing,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Appendix A, pages 10, 11, 12, 13, and 14, from the Real Property Assessment Guidelines,
 - Respondent Exhibit 1 – A copy of the sales disclosure form for the 2005 purchase of the property,
 - Respondent Exhibit 2 – The property record card,
 - Board Exhibit A – Form 131 Petition,
 - 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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioners did not make a prima facie case for an assessment change.
- a. 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. 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.*
 - b. 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).
 - c. The Petitioners submitted a copy of the grade specification tables from the Guidelines as support for their position that the house should be graded a “C+1” rather than a “C+2”. *Pet’r Exhibit 1*. The Petitioners and the township assessor highlighted a grade description for each of the categories listed on the table. *Id.* The Petitioner testified that the highlighted portions represented the features of the house and the grade category into which those features should be assigned. For example, in the category for masonry siding, the entry for “brick or stone veneer” is highlighted. *Id.* The Petitioners’ did not offer any detailed descriptions 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.
 - d. The Petitioners merely pointed to the generic description provided in the tables, added up the number of features listed in the “B” grade classification and concluded that the features of the house were only 24%, or one-quarter, above the “C” grade classification. *Abney testimony*. The Petitioners argued that, because only six of the twenty-five features indicated “B” grade, the appropriate grade for the house is “C+1” or no more than 25% above a “C” grade. *Abney testimony*.
 - e. The Petitioners must do more than merely offer conclusory statements. *Whitley Prods.*, 704 N.E.2d at 1119. The Petitioners’ could have offered "specific evidence tied to the descriptions of the various grade classifications." *Id.* at 1119, n.12. The Petitioners, however, did not offer probative evidence relating to the specific features of the house. The Petitioners’ evidence consisted of conclusory statements based on highlighted sections of the grade table. This kind of

presentation does not make a case for any grade change. *Sterling Management v. State Bd. of Tax Comm'rs*, 730 N.E.2d 828, 838-840 (Ind. Tax Ct. 2000).

- f. Moreover, the Petitioners' claim that the features of the house are only 25% above a "C" grade lacks probative value. While twenty-two of the twenty-five features identified by the Petitioners are within the description of a "C" grade, many of those features also meet the descriptions of a "B" grade or even "A" grade. GUIDELINES, Appendix A at 10 – 14. For example, "brick or stone veneer" meets the masonry siding specifications for all three grades. *Id.*, at 10.
- g. The Petitioners failed to present probative evidence to establish what the appropriate grade of the house should be. *Sollers Pointe*, 790 N.E.2d at 191, n.11.

Conclusion

- 16. The Petitioners failed to make a prima facie case. The Respondent was not obligated to rebut petitioner's evidence or prove what the grade should be. The Board finds in favor of 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: _____

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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.