

REPRESENTATIVE FOR PETITIONERS:

Self-represented

REPRESENTATIVES FOR RESPONDENT:

Christina Phillips, Osolo Township Assessor; Jeff Phillips, Deputy Township Assessor;
and Cathy Searcy, Elkhart County PTABOA

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Albert & Nobue Koenig,	)	Petition No.:	20-027-02-1-5-00005
	)	Parcel:	20-02-34-254-007.000-027
Petitioners,)		
)		
v.)		
	)	County:	Elkhart
Osolo Township Assessor,	)	Township:	Osolo
	)	Assessment Year:	2002
Respondent.)		

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

December 23, 2004

FINAL DETERMINATION

The Indiana Board of Tax Review (the “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

ISSUE

1. The issue presented for consideration by the Board was:
Whether the grade factor applied to the property was incorrect.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, the Petitioners filed a Form 131 Petition for Review of Assessment, petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on February 25, 2004. The determination of the Elkhart County Property Tax Assessment Board of Appeals (PTABOA) was issued on February 18, 2004.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on June 29, 2004, in Goshen, Indiana before Patti Kindler, the duly designated Administrative Law Judge (the "ALJ") authorized by the Board under Ind. Code § 6-1.5-3-3.

4. The following persons were sworn and presented testimony at the hearing:

For the Petitioners:

Albert Koenig, Property Owner

For the Respondent:

Christina Phillips, Osolo Township Assessor

Jeff Phillips, Deputy Assessor, Osolo Township

Cathy Searcy, Secretary, Elkhart County PTABOA.

5. The following exhibits were presented for the Petitioners:

Petitioners' Exhibit 1 – Partial plat of East Lake Estates
Petitioners' Exhibit 2 – Photograph of the subject property
Petitioners' Exhibit 3 – Photograph of neighboring property on Lot #119

Petitioners' Exhibit 4 – Photograph of neighboring property on Lot #110
Petitioners' Exhibit 5 – Photograph of Lot # 15 East Lake Estates
Petitioners' Exhibit 6 – Photograph of comparable near Lot #15.

6. The following exhibits were presented for the Respondent:

Respondent's Exhibit 1 – Respondent's discovery materials, including:
a) Respondent's witness and exhibit list; b) Form 115, Form 130, & Form 131; c) photographs & property record cards (PRCs) for the five (5) properties referred to in Petitioners' appeal; d) data showing comparable photographs and descriptions of five (5) other "B" grade homes in neighborhood #0240 with PRCs and sales disclosures; e) aerial plat of East Lake Subdivision; f) partial plat of East Lake Subdivision with sales and grades highlighted; g) PRC for subject showing neighborhood code and photograph of the subject dwelling; h) PRC, photograph, & sales price for Lot #115; i) PRC, photograph, & sale price for Lot # 110;
j) PRC, sales disclosure & photograph for Lot #112; and, k) PRC, sales disclosure, and photograph for lot 56.

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

Board Exhibit A – The Petition
Board Exhibit B – Notice of Hearing dated March 30, 2004.

8. The subject property is assessed as a single-family residential dwelling located at 1533 Eastlake Drive West, Elkhart, Indiana. The ALJ did not view the property.

9. For 2002, the PTABOA determined the assessed value of the property to be:

Land: \$21,900 Improvement: \$98,300 Total: \$120,200.

10. The Respondent complied with the discovery provisions outlined in 52 IAC 2-7-1 by offering the Petitioner copies of documentary evidence and witness lists within the designated timeline. The Respondents asserted the Petitioner did not comply with the discovery provisions and did not attend the County PTABOA hearing. Therefore, the

Respondent made objections to the Petitioner's testimony and submissions at the Board hearing.

JURISDICTIONAL FRAMEWORK

11. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) 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. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

12. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals 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).
13. 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”).
14. 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.

ANALYSIS

Whether the grade factor applied to the property is incorrect.

15. The Petitioners contend the grade factor applied to the subject dwelling should be lowered from a “B” to a “B-1”. Petitioners contend the Osolo Township Assessor agreed to lower the grade to a “B-1” prior to the PTABOA hearing, but rescinded her decision because the Petitioners wanted the grade adjustment made for the preceding three years.
16. The Respondent acknowledged she considered changing the grade prior to the PTABOA hearing as part of a proposed settlement agreement, but the Petitioners refused to settle. The Respondent now contends that the assessment is reasonable and that without evidence of error the “B” grade factor should stand.
17. The Petitioners presented the following evidence and testimony in regard to this issue:
 - A. The grade factor applied to the subject property is arbitrary and incorrect in comparison to surrounding neighborhood properties. (Koenig testimony).
 - B. The grade factor has been incorrect, according to the Petitioners, for the past three (3) reassessments, but this is the first opportunity to address it. (Id.)
 - C. The Osolo Township Assessor agreed to change the grade for the subject property for the year 2002 from a “B” to a “B-1” via a telephone call. (Koenig testimony; Board Exhibit A, Form 130, page 4) (Petitioners played a recording from their answering machine of this telephone call from the Township Assessor onto the record, but did not submit the actual tape.)
 - D. Petitioners did not sign the agreement for the 2002 grade change; instead they requested that the grade be changed retroactively for the preceding three years and a refund issued for the grade error. The Township officials would not agree to take this action. (Koenig testimony).
 - E. Petitioners attended the PTABOA hearing, but the PTABOA members were over thirty minutes late. (Koenig testimony). The Elkhart County PTABOA consultant advised Mr. Koenig to leave if angry due to the delay and the petition

would be forwarded to the State. (Koenig testimony; Board Exhibit A).

- F. Petitioners presented evidence at the Board hearing, which included a copy of a partial plat of East Lake Estates (Petitioners' Exhibit 1) and photographs of the subject and four purported comparable properties (Petitioners' Exhibits 2-6).
- G. Petitioners compared the grade factors for the subject and four purported neighborhood comparable properties for the assessment years 1993, 1995 and 2003. (Koenig testimony; Board Exhibit A, Form 130, page 2). The four neighboring properties referred to by the Petitioners are Lot #110, Lot #119, and Lot #15, all with purported "B-1" grade factors, and Lot #7 with a grade factor of "B".
- H. Petitioners opined that all the grades of the comparable properties, including the subject property, have dropped at least one grade level between 1993 and 2003, and the grade factor for two (2) of the neighborhood properties dropped two grade levels. (Id).
- I. Petitioners submitted recent photographs of the subject property and properties identified as Lot #15, Lot #110, and Lot #119, and an unidentified lot located "next to Lot #15". (Koenig testimony; Petitioners' Exhibits 2-6). Petitioners contend the Respondent's photographs are several years old and do not show the updates made to the comparable properties. (Koenig testimony).
- J. The properties down the street from the subject property are either "C+2" homes or "B-1" homes; only one other "B" grade home is located on the subject's immediate block. (Koenig testimony; Petitioners' Exhibit 1). The Petitioners opine that most of the "B" grade homes directly behind them are larger two story dwellings and custom built homes. (Id).
- K. Petitioners contend the Osolo Township Assessor's comparable properties are located in the Greenleaf Manor Subdivision, and none of her properties are as comparable to the subject as the neighboring properties offered by the Petitioners. (Koenig testimony).
- L. Petitioners assert that the home next to them, which is graded a "B-1", has new siding, new windows, and a new roof. This differs from the subject dwelling, which has not been remodeled since its construction. (Koenig testimony;

Petitioners' Exhibit 4).

- M. The subject property's driveway is badly cracked, the shutters have rotted, and the roof requires replacement. Petitioners contend this shows the subject dwelling's grade should be less than the updated neighboring properties. (Koenig testimony; Petitioners' Exhibit 2).
- N. Prior appeals were filed on the property in other reassessment years, but the grade was never addressed properly. (Koenig testimony). Therefore, Petitioners contend they should be able to go back three years to correct an ongoing error in the grade factor. (Id).
- O. Petitioners claim their evidence is superior to that submitted by Osolo Township officials because they have addressed the subject property's immediate neighborhood, in which the dwellings were consistently graded a "B-1" or lower, except for the custom homes. (Koenig testimony).
- P. Petitioners state that they do not have an argument with the assessed value for the property, but they contend that the grade factor is incorrect and arbitrary; with the current law there is no need for grade factors. (Koenig testimony).

18. The Respondent presented the following evidence and testimony in regard to this issue:

- A. The Osolo Township Assessor "reluctantly agreed" to lower the grade from a "B" to a "B-1" during the Township preliminary conference if Mr. Koenig would sign the settlement offer. (Christina Phillips testimony).
- B. Petitioners refused to sign the settlement offer, contending the grade was in error during the past reassessment. (Christina Phillips testimony). Respondents testified the Petitioners filed Petitions for the Correction of Error (Forms 133), insisting the assessment be corrected for the prior three (3) years and the taxes be refunded for the grade errors, which the local officials could not legally comply with. (Christina Phillips testimony; Respondents' Exhibit 1).
- C. Respondents claim they informed Petitioners that there was no way to go back on an issue such as grade in a reassessment, and the Form 133 is not allowed for subjective issues such as the grade factor. (Christina Phillips testimony; Respondents' Exhibit 1).

- D. After the Petitioners refused to sign the grade settlement for 2002, the Osolo Township Assessor reviewed the assessment further and recommended no change in the grade to the PTABOA without a complete interior inspection of the subject property. (Christina Phillips testimony; Board Exhibit A, Form 130, page 4).
- E. The Township officials would have requested a tour of the subject dwelling to review the grade factor for the 2002 assessment year at the PTABOA hearing, but the Petitioners angrily left before the PTABOA hearing because the scheduled hearing was delayed. (Christina Phillips testimony).
- F. There was no evidence submitted with the Form 130 appeal to prove that the grade was in error, therefore the PTABOA stood on the recommendation of the Township Assessor that the grade remain at a “B”. (Searcy testimony; Attachment to Board Exhibit A, Form 115).
- G. Respondents contend the Petitioners’ assertions that some of the Respondents’ comparable properties were from the Greenleaf Manor Subdivision were incorrect; all the comparable properties were from the subject’s own East Lake Subdivision. (Jeff Phillips testimony; Respondents’ Exhibits 1(d)(e)(h)(i)(j) & (k)).
- H. The subject property does not, according to Respondents, appear to be substandard in grade to the comparable “B” grade properties, which were presented for the record. (Jeff Phillips testimony; Respondents’ Exhibit 1(d)).
- I. The Respondents’ comparable sales show the sales price and the assessments were usually within ten percent (10%) of each other for properties located in the subject neighborhood. (Jeff Phillips testimony; Respondents’ Exhibits 1(d)). Many “B” grade houses in the neighborhood were assessed closely to their sale price, indicating that the “B” grade applied to the comparable properties and the subject is appropriate. (Jeff Phillips testimony).
- J. Other factors besides grade, such as the neighborhood factor bring the assessment in line with the market. (Christine Phillips testimony). Sales disclosures forms are used to determine neighborhood factors (.71 in this case) to adjust the homes closer to the market value. (Id).
- K. Respondents contend that no evidence or testimony was brought forth to warrant a

grade change for the property. (Searcy testimony). Some of the testimony indicates the condition of the home is more the issue than grade. (Id).

- L. Respondents contend a dwelling cannot be graded by merely referring to photographs or the exterior of a home; the State issued grade specification charts from the 2002 Real Property Assessment Manual, which assessors must consider when grading properties. (Searcy testimony).
 - M. The subject, a 1650 square foot brick ranch house with a full basement, has an assessed value of \$120,000, which seems reasonable to Respondents according to the sales listed on the plat map of its neighborhood. (Jeff Phillips testimony; Respondent Exhibit 1(f)).
19. The Petitioners' sole contention is that the grade factor of "B" applied to the subject property is incorrect.
20. "For each of the types of improvements ... a model has been defined to summarize the elements of construction quality that are typical of the majority of that type improvement. This typical model has been assigned a "C" quality grade for residences The characteristics of these typical models can be thought of as construction specifications for an improvement that was built with average quality materials and workmanship." Real Property Assessment Guideline, Version A, Book I, Appendix A, page 4.
21. The assessor must first determine a base quality grade for the residential neighborhood, which becomes a starting point in determining the actual quality grade for each improvement within that neighborhood. Two methods are presented in the Version A Guidelines as a means of assigning quality grades to residences in accordance with the guidelines.
- Method 1:
- The assessor first finds several improvements that are typical for the type of materials, workmanship, and design found in the majority of improvements within the neighborhood...the assessor selects the quality grade that the representative improvements most closely resemble. This then becomes the base quality grade

to be used as a starting point in determining the actual quality grade for each improvement within that neighborhood.

Method II:

A second method of establishing the base quality grade for a neighborhood is to compare the actual construction costs of the improvements in the neighborhood, trended to January 1, 1999, to the construction costs given in the manual (Version A). If the trended actual costs match the costs in the table of this manual, then the base quality grade for the neighborhood is “C”. If the trended costs are higher or lower than the costs in the tables of this manual, then the base quality grade for the neighborhood would be something other than a quality grade of “C”. In this case, the base quality grade would be determined by dividing the trended actual costs by the costs determined from the manual. The result of this calculation should be compared to the quality grade factors in Table A-1 and Table A-2 to determine the corresponding quality grade.

22. The assessor should emphasize the quality of materials and workmanship used in the construction of the improvement when conducting this analysis and place less reliance on the pictures of graded improvements shown in this manual. “Photographs alone cannot be used to determine construction quality grade since the front elevation may not truly represent the overall construction quality of both the interior and exterior of the improvement.” Real Property Assessment Guideline, Version A, Book 1, Appendix A, page 5.
23. Quality grade factors for residential dwelling units are listed in the Real Property Assessment Guideline, Version A, Book 1, Appendix A, Table A-2, page 8. Table A-3 located on page 9 of the Guideline provides a list of the typical construction materials and design elements found in dwelling units of each full construction quality grade. “This table is designed to assist the local assessing official in determining the appropriate quality grade to assign to dwelling units in his/her jurisdiction.”
24. The foundation upon which the March 1, 2002 reassessment is built should result in the

appropriate true tax value for the property. True tax value, defined, is “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.” Real Property Assessment Manual, pages 2 & 12.

25. The Petitioners testified that their issue was with the state’s method of determining grade factors. He asserted they had no problem with the final “bottom-line” assessed value for the subject property and were satisfied with the assessment, except for the arbitrary grade factor application. The Petitioners did not dispute that the property’s value-in-use was incorrect or overstated. Therefore, the assessment meets the requirements set forth in the Real Property Assessment Manual for determining True Tax Value.
26. Because the Petitioners’ own testimony establishes that no error exists in the overall assessment, the Board will only briefly address the balance of the Petitioners’ arguments.
27. In support of their position, the Petitioners presented documentary evidence including plat maps and photographs. However, the Petitioners failed to provide any detailed analysis to establish that the properties are truly comparable.
28. For example, the plat map submitted by the Petitioners refutes the Petitioners’ own testimony that their home is one (1) of only two (2) “B” grade homes on the block. (Koenig testimony; Petitioners’ Exhibit 1.) The plat map shows a range of grades on the eleven lots located in the subject’s immediate block. The plat map shows the immediate neighborhood property grades include: two (2) “C+2” grades; three (3) “B-1” grades, and six (6) “B” grade properties.
29. The Petitioners also presented no detailed comparison between the dwelling’s construction specifications and the construction specifications for the purported comparable grade properties. For example, the Petitioners offered no discussion concerning the listed features found in the Quality Grade Specification Tables. *See* Property Assessment Guideline, Version A, Book 1, Appendix A, page 9. The grade specification table details quality construction specifications for both *interior and*

exterior features such as foundation type, framing, roof design, doors and windows, flooring, cabinets, bath finish, kitchen and bath fixtures, trims, and built-ins. Therefore, exterior photographs of the subject property or comparable properties are not sufficient to determine the overall quality for the comparable properties. Photographs without explanation are merely conclusory statements and not probative evidence. *Bernacchi v. State Bd. of Tax Comm'rs*, 727 N.E.2d 1133 (Ind. Tax Ct. 2000).

30. Because the Petitioners did not offer evidence that the purported comparable properties were comparable to their own property, they did not present a prima facie case. *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E. 2d 711, 715 (Ind. Tax Ct. 2002).
31. The Petitioners further opine the grades of the comparables, as well as the subject property, have dropped at least one grade level between 1993 and 2003, which indicates the grades are arbitrary and subject to variations and change. The Petitioners do not explain how this relates to the subject property. Further, the Petitioners' statement that the grades were lowered on all four (4) of the comparable properties, as well as the subject property, during the last two reassessments is immaterial in determining the appropriate grade for the assessment year 2002 for the subject property. In Indiana, each year is separate and distinct. Evidence of prior years' assessments is not probative in this appeal. *Williams Industries v. State Bd. of Tax Comm'rs*, 648 713 N.E.2d (Ind. Tax Ct. 1995).
32. Finally, proposed adjustments offered by the local officials during attempts to negotiate a settlement of the appeal do not constitute probative evidence. Parties may elect to settle disputes for various reasons, and offers made during negotiations do not constitute admissions of error.
33. For all the reasons set forth above, the Petitioners have failed to meet their burden in this appeal. Therefore, no change in the assessment is made as a result of this issue.

OTHER

34. Respondents objected to the evidence submitted by the Petitioners at the Board hearing because the items were not shared via discovery or submitted prior to the PTABOA hearing. Other objections were noted regarding the Petitioners' discussion of appeals from prior reassessments, and the playing of a tape-recorded message that was not submitted for the hearing record. (Jeff & Christina Phillips testimony).

35. These objections concern evidentiary procedures discussed in 50 IAC 17-7-1 and discovery requirements discussed in 52 IAC 2-7-1. The Board declines to conduct an in-depth analysis of the procedural rules as they pertain to this appeal as such an analysis would have no bearing on the outcome of this determination.

SUMMARY OF FINAL DETERMINATION

Whether the grade factor applied to the property is incorrect.

36. The Petitioners failed to meet their burden in this appeal. The assessment is not changed as a result of this issue.

The Indiana Board of Tax Review issues this Final Determination of the above captioned matter on the date first written above.

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.