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IN THE
INDIANA TAX COURT

RICHARD M. ROST
and MARGARET A. ROST,
Petitioners,
v.

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Cause No. 71T10-0107-TA-65

DEPARTMENT OF LOCAL
GOVERNMENT FINANCE,¹

Respondent.

ON APPEAL FROM A FINAL DETERMINATION OF
THE STATE BOARD OF TAX COMMISSIONERS

NOT FOR PUBLICATION

July 14, 2005

FISHER, J.

¹ The State Board of Tax Commissioners (State Board) was originally the Respondent in this appeal. However, the legislature abolished the State Board as of December 31, 2001. 2001 Ind. Acts 198 § 119(b)(2). Effective January 1, 2002, the legislature created the Department of Local Government Finance (DLGF), see Indiana Code Annotated § 6-1.1-30-1.1 (West Supp. 2004-2005)(eff. 1-1-02); 2001 Ind. Acts 198 § 66, and the Indiana Board of Tax Review (Indiana Board). IND. CODE ANN. § 6-1.5-1-3 (West Supp. 2004-2005)(eff. 1-1-02); 2001 Ind. Acts 198 § 95. Pursuant to Indiana Code Annotated § 6-1.5-5-8, the DLGF is substituted for the State Board in appeals from final determinations of the State Board that were issued before January 1, 2002. IND. CODE ANN. § 6-1.5-5-8 (West Supp. 2004-2005)(eff. 1-1-02); 2001 Ind. Acts 198 § 95. Nevertheless, the law in effect prior to January 1, 2002 applies to these appeals. A.I.C. § 6-1.5-5-8. See *also* 2001 Ind. Acts 198 § 117. Although the DLGF has been substituted as the Respondent, this Court will still reference the State Board throughout this opinion.

Richard M. and Margaret A. Rost (the Rosts) appeal from the final determination of the State Board of Tax Commissioners (State Board) valuing their residential dwelling for the 1995 tax year. The sole issue for the Court to decide is whether the State Board erred in assigning their residence a grade of "B - 1." The Court AFFIRMS the State Board's final determination for the following reasons.

FACTS AND PROCEDURAL HISTORY

On October 11, 1996, the Rosts timely filed a Petition for Review of Assessment (Form 131) with the State Board challenging the 1995 assessment of their Fishers, Indiana residence. In their Form 131, the Rosts claimed that, *inter alia*, the "B -1 " grade assigned to their residence was overstated and that the assessment was unconstitutional.² The State Board conducted an administrative hearing on April 22, 1998, which neither the Rosts nor their property tax consultant, Stephen Hay (Hay) of Landmark Appraisals, Inc., attended. Prior to the hearing, however, Hay submitted evidence to the State Board via mail. In its final determination, the State Board denied the Rosts' request for relief.

On July 10, 2001, the Rosts initiated an original tax appeal. The Court heard the parties' oral arguments on January 31, 2003. Additional facts will be supplied as necessary.

² The Rosts raised six issues before the State Board; of the six issues, the Rosts sought judicial review of two: grade and the constitutionality of the assessment. (See Cert. Admin. R. at 3-4; Pet'r Br. at 3-10.) During oral argument in this cause, the Rosts withdrew their constitutional claims. (Oral Arg. Tr. at 4.)

ANALYSIS AND OPINION

Standard of Review

This Court gives great deference to final determinations of the State Board when it acts within its scope of authority. See IND. CODE ANN. § 33-26-6-3(b) (West 2005); *Grider v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1239, 1240-41 (Ind. Tax Ct. 2003). Consequently, the Court will reverse a final determination of the State Board only if it is unsupported by substantial evidence, arbitrary, capricious, constitutes an abuse of discretion, or exceeds statutory authority. *Hamstra Builders, Inc. v. Dept of Local Gov't Fin.*, 783 N.E.2d 387, 390 (Ind. Tax. Ct. 2003).

The party seeking to overturn the State Board's final determination bears the burden of proving its invalidity. See IND. CODE ANN. § 33-26-6-4(a) (West 2005); *Grider*, 799 N.E.2d at 1241. In order to meet that burden, the party seeking reversal must have submitted, during the administrative hearing process, probative evidence regarding the alleged assessment error. *Osolo Township Assessor v. Elkhart Maple Lane Assocs. L.P.*, 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003) (footnote omitted). Probative evidence is evidence sufficient to establish a given fact that, if not contradicted, will remain sufficient. *Id.* Once the party seeking reversal demonstrates a prima facie case, the burden shifts to the other party to rebut that evidence. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d at 1230,1233 (Ind. Tax Ct. 1998).

Discussion

The Rosts contend that the State Board erroneously graded their real property. Specifically, the Rosts maintain that the current grade of "B - 1" is exaggerated and that

the grade should be reduced to “C.”³ (Cert. Admin. R. at 25-27.) In response, the State Board argues that the Rosts did not present a prima facie case demonstrating that the “B - 1” grade was in error.

Under Indiana’s true tax value system, residential dwellings are assigned various grades based on their design, workmanship, and quality of materials used in construction. IND. ADMIN. CODE tit. 50, r. 2.2-7-6(c) (1996); *Grider*, 799 N.E.2d at 1241. The assessor has the discretion to use his subjective judgment when selecting the appropriate grade to be applied to a dwelling. 50 IAC 2.2-7-6(c). To ascertain a dwelling’s appropriate grade, however, the assessor must use the State Board’s grade specification table as a guide to evaluate how the subject dwelling’s grade deviates from the norm. See 50 IAC 2.2-7-6(b).

The State Board’s regulations describe various characteristics that help assessors distinguish between grades. For example, “B’ grade dwellings are architecturally attractive and constructed with good quality materials and workmanship. The design emphasizes convenience, and the detailing is balanced and harmonious without being excessive.” 50 IAC 2.2-7-6(d)(2). In contrast, “C’ grade dwellings are moderately attractive and constructed with average quality materials and workmanship. They have minimal to moderate architectural treatment.” 50 IAC 2.2-7-6(d)(3). A dwelling, however, may fall between two grade classifications. 50 IAC 2.2-7-6(g). When a dwelling falls at an intermediate grade level, it also receives a classification of

³ The Rosts base their petition for grade reduction on a market value comparison. The law governing assessments for the tax year under appeal, however, maintains that market value and true tax value are not necessarily coterminous. IND. ANN. CODE § 6-1.1-31-6(c) (West 2005); *State Bd. of Tax Comm’rs v. Town of St. John*, 702 N.E.2d 1034, 1038.

plus or minus (+/-) one or two. See *id.* Thus, for example, a grade of “B -1” indicates that the dwelling’s quality and design is slightly less than “B” (good construction), but substantially more than “C” (average construction). *Id.*

When a taxpayer challenges a grade assigned to a residential dwelling, he must offer probative evidence concerning the alleged assessment error. See *Deer Creek Developers, Ltd. v. Dep’t of Local Gov’t Fin.*, 769 N.E.2d 259, 262 (Ind. Tax Ct. 2002). Consequently, the Rosts bore the burden to submit probative evidence showing that the State Board either improperly gave their home a “B - 1” grade or improperly denied their home a “C” grade. See *id.* at 265-66. As this Court has previously held, however, neither references to photographs nor citations to State Board regulations, without explanation, qualify as probative evidence with respect to grading issues. *Lacy Diversified Indus., Ltd. v. Dept of Local Gov’t Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003).

Upon examination of the evidence presented to the State Board during the administrative process, the Court determines the Rosts did not meet their burden of proof as to this issue. The evidence the Rosts submitted to the State Board included, among other things, photocopied pictures of the dwelling’s exterior; a highlighted copy of the Grade Specification Table from the regulations; and photocopied pictures from Indiana Administrative Code title 50, rule 2.2-7-10 which represent various grade classifications for “C” residential dwellings.⁴ (Cert. Admin. R. at 41-44.) See *also* IND. ADMIN. CODE tit. 50, r. 2.2-7 (1996). While this is a good start, the Rosts failed to offer

⁴ The other evidence submitted, a highlighted photocopied page from the 1996 *Report of the Indiana Fair Market Value Study* and an assessment to sales ratio study of surrounding neighborhood dwellings, were to support the constitutional claims the Rosts later withdrew. (Cert. Admin. R. at 36.)

any explanation for the evidence presented. That is, the Rosts provided no explanation which linked the “C” description of residential dwelling grade classifications to their own home. See *Lacy*, 799 N.E.2d at 1221.

As the State Board explained, the highlighted grade specification table, which contains features appearing in more than one grade category, does not establish that local assessors misapplied the tax system. (Cert. Admin. R. at 27.) As the Court has held in previous opinions, “[]marks on the grade specification table, without further explanation [] are conclusory.” *Kemp v. State Bd. of Tax Comm’rs*, 726 N.E.2d 395, 401 (Ind. Tax Ct. 2000) (footnote omitted). Conclusory evidence does not qualify as probative evidence. *Id.* Accordingly, the Rosts’ request for a grade reduction must fail.

The Rosts have failed to (1) identify any homes that are similarly situated to their own and (2) establish disparate tax treatment between other similarly situated homes and their own with probative evidence. See *Clark*, 694 N.E.2d at 1234 (citing *Western Select Properties*, 639 N.E.2d 1068, 1075 (Ind. Tax Ct. 1994)). Neither the Court nor the State Board has the duty to make a case for the taxpayer. See *Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001), *review denied*; *Sterling Mgmt-Orchard Ridge Apartments v. State Bd. of Tax Comm’rs*, 730 N.E.2d 828, 839 (Ind. Tax Ct. 2000). Accordingly, the State Board’s determination of a “B - 1” grade for the Rosts’ home is affirmed.

CONCLUSION

The Rosts failed to provide probative evidence in support of their claim for a reduction from a “B - 1” to a “C” grade for their home. Thus, the Court AFFIRMS the determination of the State Board.