

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

Petition #: 71-026-02-1-5-00030
Petitioners: John B. and Susan Feeney
Respondent: Portage Township Assessor (St. Joseph County)
Parcel #: 18-5137-4949
Assessment Year: 2002

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 St. Joseph County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated December 19, 2003.
2. The Petitioners received notice of the decision of the PTABOA on June 26, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on July 15, 2004. Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated December 15, 2005.
5. The Board held an administrative hearing on February 24, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: John B. Feeney, Property Owner
 - b) For Respondent: Rosemary Mandrici, Portage Township Assessor
Dennis Dillman, PTABOA Member
Ross Portolese, PTABOA Member
Kevin Klaybor, PTABOA Member

Terrance Wozniak appeared as attorney for Portage Township and the St. Joseph County PTABOA.

Facts

7. The property is a residential dwelling located at 215 West Marquette Avenue, South Bend, in Portage Township.
8. The ALJ did not conduct an inspection of the property.
9. The PTABOA determined the assessed value of the subject property to be \$17,300 for the land and \$90,800 for the improvements, for a total assessed value of \$108,100.
10. The Petitioners requested an assessment of \$17,300 for the land and \$84,600 for the improvements, for a total assessed value of \$101,900.

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The Petitioners contend the property is over-valued based on the assessments of neighboring properties. *Feeney testimony*. In support of their contention, the Petitioners presented photographs and assessment data for eighteen properties, (including the subject property) on the same block. *Petitioner Exhibit 1*.
 - b) The Petitioners contend that properties in the same neighborhood should be assessed utilizing the same sales data and therefore properties in the same neighborhood that are comparable should be assessed at approximately the same per square foot rate. *Feeney testimony*. In support of the Petitioners' requested valuation, the Petitioners presented a mathematical comparison of the per square foot assessments of neighborhood properties (representing eighteen properties of the thirty-one properties on the block) to show that the improvements on the subject property is assessed at \$56.98 per square foot while the other seventeen comparable properties average an assessed value of \$50.87 per square foot. *Petitioner Exhibit 1; Feeney testimony*. The Petitioners, therefore, argue that their house should be assessed for \$50.87 per square foot, or approximately \$84,000.
 - c) The Petitioners allege that the subject is comparable to others in the neighborhood because the township has classified "most" of the properties on their block as being in fair condition. *Feeney testimony*. According to the Petitioners, photographs of neighborhood properties also reflect the comparability of neighborhood properties with the subject. *Id.; Petitioner Exhibit 1*.
 - d) Finally, the Petitioners argue that two of the comparable properties were appealed to the St. Joseph County PTABOA and received significant reductions in their assessed values. *Feeney testimony*

12. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent contends that the conclusion determined in Petitioners' Exhibit 1 is too general to be useful in determining the assessed value of the subject property. *Dillman testimony.*
- b) The Respondent further contends that using multiple properties to determine an average per square foot value would never be acceptable in an appraisal. *Dillman testimony.*
- c) Finally, the Respondent argues that Petitioners' calculation makes no adjustment to the comparable properties for the age, the condition, or the style of the dwellings. *Dillman testimony.* According to the Respondent, an assessed value conclusion cannot be derived from the data submitted by the Petitioner. *Id.*

Record

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

- a) The Petition,
- b) The tape recording of the hearing labeled BTR # 6204,
- c) Exhibits:

Petitioner Exhibit 1: Photos and data of the subject property and seventeen other properties in the subject neighborhood,

Petitioner Exhibit 2: Summary narrative of Petitioner testimony,

Respondent submitted no documentary evidence.

Board Exhibit A: Form 131 Petition,

Board Exhibit B: Notice of Hearing dated December 15, 200,

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 provide sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:

Comparable Assessments

- a) The Petitioners contend that the subject property is over-assessed in comparison to seventeen properties located in the immediate neighborhood. In support of this contention, the Petitioners presented a computation showing the average assessed dollar value per square foot. *Petitioner Exhibit 1*.
- b) Indiana Code section 6-1.1-2-2 requires uniform and equal assessments. Thus, the Petitioners argue, to the extent that they prove that their property is not assessed uniformly or equal to comparable properties, their assessment should be equalized. However, “taxpayers are required to make a detailed factual showing at the administrative level.” *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, “the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence.” *Id.*
- c) To introduce evidence of comparable properties, a taxpayer must explain *how* the properties are comparable. *See Blackbird Farms Apts. v. Dep’t of Local Gov’t Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain *how* the properties were comparable). Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id.* *See also*,

Hoogenboom-Nofziger, 715 N.E.2d at 1024 (holding that taxpayer failed to make prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).

- d) In the case at bar, Petitioners have not met their burden. While the Petitioners identify that neighboring properties are assessed lower, the Petitioners did not make any attempt to explain why or how the properties are comparable to the subject property. Petitioners merely compared the size of the dwellings.¹ The Petitioners provided no comparison of features such as basements, decks, patios, fireplaces, and plumbing fixtures and no comparisons of size, age, or grade. This falls short of the type of analysis required to establish comparability under *Long* and falls far short of the burden Petitioners face. The Petitioners have only made a “de minimis factual showing” and have failed to “sufficiently link [their] evidence to the uniform and equal argument they raise.” See *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).
- e) In addition, the calculation method utilized by the Petitioners is merely a mathematical exercise and is not probative of the value of the subject property. The Petitioners evidence show that some homes are assessed higher than the Petitioners’ house and some homes are assessed lower. *Petitioner Exhibit 1*. According to the Petitioners’ Exhibit 1, the assessed value of the improvements range from \$70,800.00 to \$109,400. *Id.* Similarly, the cost per square foot of the improvements range from \$42.66 to \$61.89. *Id.* Some of the homes have higher square foot costs than the Petitioners’ and some homes have lower. *Id.* Ultimately, the calculations are meaningless as evidenced by the variation in values. Homes are unique in size, style and amenities. An individual house cannot be valued by any “average” computations.
- f) Because Petitioners did not meet their burden of presenting a prima facie case, the Assessor's duty to rebut Petitioners’ evidence was not triggered. See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998) (stating that once a taxpayer presents a prima facie case, it must be rebutted with substantial evidence).

Conclusion

16. The Petitioners failed to make a prima facie case. The Board finds in favor of the Respondent.

¹ The Petitioners further contend that two properties on the block received significant reductions in their assessed values after the owners appealed to the PTABOA. *Feeney testimony*. The Petitioner did not present any evidence to show why the two properties received a reduction or how those reductions were relevant to the assessed value of the subject property. The taxpayer must explain how each piece of evidence is relevant to the requested assessment. See *Indianapolis Racquet Club*, 802 N.E.2d 1018, 1022.

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>>. 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 days of the date of this notice.