

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

Petition #: 71-026-02-1-5-00038
Petitioner: George Robert Blakey
Respondent: Portage Township Assessor (St. Joseph County)
Parcel #: 18-6105-3745
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 Petitioner initiated an assessment appeal with the St. Joseph County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated December 11, 2003.
2. The Petitioner received notice of the decision of the PTABOA on June 28, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on July 20, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated December 19, 2005.
5. The Board held an administrative hearing on February 23, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Persons present and sworn in at hearing:
 - a. For Petitioner: G. Robert Blakey, Property Owner
 - b. For Respondent: Kevin Klaybor, PTABOA Member
David Wesolowski, PTABOA Member
Dennis Dillman, PTABOA Member
Rosemary Mandrici, Portage Township Assessor

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

Facts

7. The subject property is a one and one-half story dwelling located at 1341 E. Wayne Street North in South Bend, Indiana.
8. The ALJ did not conduct an inspection of the subject property.
9. The PTABOA determined the assessed value of the subject property to be \$7,900 for the land and \$151,800 for the improvements, for a total assessed value of \$158,900.
10. The Petitioner requested an assessment of \$7,900 for the land and \$101,000 for the improvements, for a total assessed value of \$108,900.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a. The Petitioner admits that the subject property and all other properties in the neighborhood are valued at less than their market values. *Blakey testimony*. The Petitioner contends, however, that his property is valued more closely to the market value than other properties and is therefore comparatively overvalued relative to neighboring properties. *Id.* According to the Petitioner, that "comparative over-valuation" results in the Petitioner incurring a disproportionate share of the tax burden. *Id.* The Petitioner further contends that his comparative over-valuation argument is supported in *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 488 U.S. 336. *Id.*; *Petitioner Exhibit 2*.
 - b. The Petitioner contends that the subject property is assessed inequitably when compared to six similar or superior houses in the subject neighborhood. *Blakey testimony*. According to the Petitioner, one of the "comparables" is assessed higher than the subject property and five of the "comparables" are assessed lower. *Id.* The Petitioner testified that the subject property and all six "comparable" properties are brick exterior. *Petitioner's Exhibit 1, p 5 and Blakey testimony*. According to the Petitioner, all six "comparables" have garages but the subject property does not. *Id.* Further, the Petitioner testified, the subject dwelling and all of the Petitioner's "comparables" are either 1.5 story or 2 story dwellings, have 3 or 4 bedrooms and 1.5 to 3.5 baths. *Id.*
 - c. The Petitioner contends that only one of the "comparable" properties is assessed higher than the subject property. *Blakey testimony*. According to the Petitioner, the differences in assessment range from \$28,000 to \$78,000. *Id.* The Petitioner contends that the Board should "split the difference" in the assessed valuations and lower the value of the subject property by \$50,000. *Id.* The Petitioner contends that, only after this reduction, would the property be closer to the valuations of the other "comparables." *Id.*

- d. Finally, the Petitioner argues that the valuation of the subject property increased from \$64,890 in 2001 to \$158,900 in 2002 and that this represents a 145% increase in valuation in one year. *Blakey testimony*. According to the Petitioner, the subject property's net taxes increased 48% from \$2,493.12 in 2001 to \$3,687.90 in 2002. *Id.*

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

- a. The Respondent claims that the data supplied by the Petitioner is not representative of an appraisal and therefore does not establish a market value in use for the subject property. *Dillman testimony*.
- b. The Respondent contends that an appraisal would compare the characteristics of the subject property with the characteristics of the comparables and make adjustments to the comparable sale prices. *Dillman testimony*. According to the Respondent, the Petitioner has compared the subject property to the assessed value of the comparables without indicating whether or not the comparables actually sold and if so, what the sale price was. *Id.*
- c. The Respondent argues that the Petitioner failed to meet his burden of proof in establishing that the assessment of the subject property is not correct. *Dillman testimony*.

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 # 6203,
- c. Exhibits:

Petitioner Exhibit 1: Narrative of Petitioner testimony,
Petitioner Exhibit 2: *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*,
Petitioner Exhibit 3: Map of subject area,
Petitioner Exhibit 4: Ten pages of photographs of Petitioner's comparables,

Respondent submitted no written evidence.

Board Exhibit A: Form 131 Petition with attachments,
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 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 Petitioner failed to provide sufficient evidence to support a reduction in value for the subject property. This conclusion was arrived at because:

2001 Assessment

- a. The Petitioner contends the subject property is over-assessed based upon an earlier assessment. According to the Petitioner, in 2001, the subject property was assessed for only \$64,890. In 2002, the assessment was changed to \$158,900. *Petitioner Exhibit 1; Blakey testimony*. The Petitioner is mistaken in his reliance on the subject property’s 2001 assessment. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property’s assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id.* The Board, therefore, finds that the Petitioner has failed to raise a prima facie case that his property is over-assessed based upon its 2001 assessment.

Comparable Assessments

- b. The Petitioner further contends that six comparable properties demonstrate that the subject property is disproportionately over-valued. The Petitioner claims the properties are comparable or superior to the subject property but are assessed substantially less or similar to the subject property. In support of this contention, the Petitioner presented an information grid and photographs of the subject property and

the allegedly “comparable” properties. *Petitioner Exhibits 1 and 4; Blakey testimony.*

- c. Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. 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.* 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.*
- d. Here, the Petitioner presented an information grid and photographs to show that the subject property and the purportedly “comparable” properties were similar in characteristics, but had disparate assessments. While the Petitioner identifies the size of the structure, the number of bedrooms and bathrooms and lot sizes, the Petitioner provided no comparison of features such as basements, decks, patios, and fireplaces, and no comparison of the age, grade or condition of the structures. Similarly, the Petitioner offered no evidence regarding the value of any differences in the properties. Further, contrary to showing that his property is over-assessed compared to the assessment of neighboring homes, the Petitioner’s evidence merely shows that four smaller homes assessed for less than the subject property and one larger home assessed for more than the subject property.¹ Thus, the Petitioner’s information grid is insufficient to prove comparability of the neighboring properties.
- e. Likewise, the Petitioner’s photographs fail to prove comparability. Mere reference to photographs is insufficient to raise a prima facie case. *Indianapolis Racquet Club*,

¹ The Petitioner alleges that the living space of three of the smaller homes was in error according to conversations that the Petitioner had with an unnamed realtor. The Petitioner, however, provided no evidence that the homes were larger than reported other than this vague, conclusory testimony. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113 (Ind. Tax 1998); and *Herb v. State Bd. of Tax Comm’rs*, 656 N.E.2d 1230 (Ind. Tax 1998). The Petitioner’s chart did identify a single home with more living area that assessed for less than the subject property but the Petitioner provided insufficient evidence to prove the home was comparable in age, grade and condition. Further, it would require far more than evidence of a single assessment for this Board to determine that the subject property is “comparatively over-assessed” to other homes in his neighborhood.

Inc., 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”). *See also Hoogenboom-Nofziger*, 715 N.E.2d 1018, 1024 (Ind. Tax Ct. 1999) (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). This falls short of the type of analysis required to establish comparability under *Long* and falls far short of the burden that the Petitioner faces. The Petitioner has only made a “de minimis factual showing” and has failed to “sufficiently link [his] evidence to the uniform and equal argument” he raises. *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).²

- f. The Petitioner also argues that, based on the United States Supreme Court ruling in *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 488 U.S. 336, 109 S. Ct. 633, 102 L.Ed.2d 688 (1989), his constitutional rights are being violated because he is paying a proportionately larger share of taxes based on his property being comparatively over-assessed. The Indiana Supreme Court recently addressed this issue regarding Indiana’s property assessment statutes (which differ from the West Virginia statutory scheme at issue in *Allegheny Pittsburgh*) in *Dep’t of Local Gov’t Fin. v. Commonwealth Edison Co. of Ind., Inc.*, 820 N.E.2d 1222 (Ind. 2005). In that case the Indiana Supreme Court held that that “while there is no state constitutional right to ‘an equalization adjustment, a taxpayer is not foreclosed from pursuing any equalization adjustment provided by existing statute or regulation.’” The Court, then, found that Commonwealth Edison was entitled to seek an adjustment to the assessed value of its distributable property based on the existing statutes particular to utility assessments. Here the Petitioner has presented no statute or regulation that would allow an individual taxpayer to seek an equalization adjustment based on the assessment of residential property. Further, to the extent that the Petitioner could seek any individual equalization adjustment based on a “comparative over-assessment” under the *Commonwealth Edison* decision, we find that the Petitioner has failed to show that any “comparative over-assessment” has, in fact, occurred.

² Even if the Petitioner had shown that comparable homes were assessed for less than the subject property, the Petitioner failed to provide probative evidence of the value of that difference. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003) (the Petitioner has the burden to establish a prima facie case, proving that the current assessment is incorrect, and specifically what the correct assessment would be). Here, the Petitioner presented no evidence of the market value of the subject property or of all of the “comparable” properties to show there is a “comparative” over-assessment. The Petitioner merely testified that the difference in assessments ranged from \$28,000 to \$76,000. The Petitioner contends that if one were to split the difference (\$50,000), it would be consistent with the assessed values in the neighborhood. The fact that different properties have different assessments, however, is not proof of error. Further, the Board is unaware of any appraisal or assessment methodology that allows for simply “splitting the difference.”

- g. 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.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to make a prima facie case. 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 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.