

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00986
Petitioner: Stanley Augustyn, Jr.
Respondent: Department of Local Government Finance
Parcel #: 007-28-29-0068-0005
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 informal hearing as described in Ind. Code § 6-1.1-4-33 was held on December 29, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$74,500. The DLGF's Notice of Final Assessment was sent to the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated October 27, 2004.
4. A hearing was held on December 1, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at 1312 W. Fred Street, Whiting, in North Township.
6. The subject property is a single family residence on a 30' x 125' lot.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the property to be \$15,900 for the land and \$58,600 for the improvements for a total assessed value of \$74,500.
9. The Petitioner requested an assessed value of \$15,900 for the land and \$24,100 for the improvements for a total assessed value of \$40,000.

10. Stanley F. Augustyn and Val Augustyn, the owners of the subject property, and Tom Bennington, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) Although the subject property's assessment was lowered at the informal hearing, the Petitioner alleges it is still higher than other properties in the neighborhood. *Augustyn testimony.*
 - b) According to the Petitioner, similar properties with two car garages and three floors of living space are valued lower than the subject property that has no garage, no attic and an unfinished basement. *Augustyn testimony; Petitioner Exhibits 3 and 4.*
 - c) The Petitioner testified that he purchased the property in 1989 for \$33,500. *Augustyn testimony; Petitioner Exhibit 5*
 - d) The Petitioner further contends that there are errors on the subject property's property record card. According to the Petitioner, the number of bedrooms should be two and not three and the total number of rooms should be five and not six. There is no stairway to the attic. The only access to the attic is only a hole in the ceiling. Also, the attic is uninhabitable and there is no heat on the back porch. *Augustyn testimony.*
 - e) Finally, the Petitioner alleges, the foundation and the open masonry porch on the front have structural damage. *Augustyn testimony; Petitioner Exhibits 7 and 8.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The Respondent contends that the subject property's value is fair and accurate based on comparable properties. *Bennington testimony; Respondent Exhibits 4 and 5.*
 - b) Further, according to Respondent, Petitioner's allegations that there is no attic and the basement is unfinished were addressed at the informal hearing and are shown on the PRC accordingly. *Bennington 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 Lake County #917.
 - c) Exhibits:

Petitioner Exhibit 1: Photograph comparing three homes
Petitioner Exhibit 2: 1312 Fred Street property information
Petitioner Exhibit 3: 1310 Fred Street property information
Petitioner Exhibit 4: 1308 Fred Street property information
Petitioner Exhibit 5: Copy of title
Petitioner Exhibit 6: Notice of Assessment
Petitioner Exhibit 7: Photograph of foundation damage
Petitioner Exhibit 8: Photograph of porch crack
Petitioner Exhibit 9: Photograph of attic
Petitioner Exhibit 10: Notice of Final Assessment
Petitioner Exhibit 11: Photograph of attic opening
Petitioner Exhibit 12: Photograph of unfinished attic
Petitioner Exhibit 13: Photograph of unfinished basement
Petitioner Exhibit 14: Summary
Petitioner Exhibit 15: 139L Petition
Petitioner Exhibit 16: PRC (front page)

Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subject PRC
Respondent Exhibit 3: Subject Photograph
Respondent Exhibit 4: Comparable Sheet
Respondent Exhibit 5: PRCs and photographs of comparables

Board Exhibit A: Form 139 L Petition
Board Exhibit B: Notice of Hearing on Petition

d) These Findings and Conclusions.

Analysis

14. The most applicable laws 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 at 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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. *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 did not provide sufficient evidence to support the Petitioner's contentions. However, Respondent's evidence supported a reduction in assessment. This conclusion was arrived at because:

Comparables

- a) The Petitioner contends that the assessment of the subject dwelling is higher than comparable properties. The Petitioner submitted print-outs of property information for the subject property and two neighboring properties. Petitioner's evidence showed the address and parcel number, the types of improvements (dwellings, garages, sheds, and an above ground pool), the year of construction, the grade factor, the square footage of the dwellings, the replacement cost and the assessed value of each home. *Petitioner Exhibits 2, 3, and 4*. Based on this information and the fact that the subject dwelling is smaller in size than the other two, the Petitioner determined that the assessed value for the subject property was too high.
- b) Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. Thus to the extent that the Petitioner can prove that his property is not assessed uniformly or equal to comparable properties, Petitioner's 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, the Petitioner has not met his burden. While the Petitioner identifies two neighboring properties that are assessed lower, the Petitioner did not make any attempt to explain why or how the properties are comparable to the subject property.¹ The Petitioner merely provided information on the address and parcel number of the properties, the year of construction of the structures, and the grade factors and living area of the dwellings. This falls far short of the burden that 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” that he raises here. *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).

Purchase of Property

- e) The Petitioner also presented a settlement statement from the purchase of his property in 1989 for \$33,500 in further support of his argument that the subject property is over-valued. *Petitioner Exhibit 5*.
- f) The sale of a subject property is often the most compelling evidence of its market value. However, for the 2002 general reassessment, real estate is to be valued as of January 1, 1999. *See 2002 REAL PROPERTY ASSESSMENT MANUAL 4* (incorporated by reference at 50 IAC 2.3-1-2). The purchase price of \$33,500 in 1989 is less than half of the assessed value of \$74,500 in 1999. *Id.* This suggests that the current assessed value is incorrect or the market saw phenomenal growth.
- g) However, Petitioner submitted no evidence that related his 1989 purchase price to the 1999 valuation date. Absent evidence on the issue, the Board cannot determine what the appropriate appreciation rate would be. Thus, the Board holds that the sale of the property in 1989, without evidence relating that sales price to 1999, has no probative value to the determination of the propriety of the assessed value in 1999.

Assessment of the Subject Property

- h) The Petitioner also alleged that the property’s assessment contained errors. According to the Petitioner, the foundation of the dwelling is crumbling and the masonry porch is cracked. *Petitioner Exhibits 7 and 8*. We interpret this to be an argument that the condition of the subject dwelling was improperly assessed. Further, the Petitioner testified that the attic and basement are unfinished and the attic is inaccessible except by stepladder. *Petitioner Exhibits 9, 11 and 13*.
- i) A condition rating is a “rating assigned each structure that reflects its effective age in the market.” *See REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A, app. B, at 5*,

¹ One of the properties that the Petitioner alleges is “comparable” to his single family home is actually a “three flat apartment building” according to Petitioner’s exhibit. *Augustyn testimony; Petitioner Exhibit 14*.

(incorporated by reference at 50 IAC 2.3-1-2). A condition rating is determined by relating the structure to comparable structures within the subject property's neighborhood. *Id.* Presently, the dwelling is assessed as an "average" dwelling. A property of "average" condition has "normal wear and tear" for the neighborhood. *Id.* at Chap. 3, pg. 60. In an "average" dwelling, "there are typically minor repairs that are needed along with some refinishing." *Id.* However, "most of the major components are still viable and are contributing to the overall utility and value of the property." *Id.* A property in "fair" condition, on the other hand, shows "marked deterioration" in the structure. *Id.* "There are a substantial number of repairs that are needed" and "many items need to be refurbished, overhauled, or improved." *Id.* A dwelling in "fair" condition has "deferred maintenance that is obvious." *Id.*

- j) While Petitioner has presented evidence that the house has settled and caused cracks in the foundation and brick porch, this type of repair is normal in a house built in 1912. Petitioner has presented no evidence that the heating, plumbing or electrical components of the house are not still viable or that the types of repairs needed on the dwelling are not the type of repair normally expected in a house of its age. Repairs and the need for refinishing are anticipated in a dwelling of "average" condition. GUIDELINES, at Chap. 3, pg. 60. Further, the Petitioner provided no evidence that the condition of the subject property differs from other dwellings in the subject property's neighborhood. Finally, the Respondent testified that many of Petitioner's concerns were addressed subsequent to the informal hearing, including that the total number of rooms was corrected to five and the total number of bedrooms was corrected to two and the half story and attic were removed resulting in a reduction in assessed value on the dwelling from \$81,900 to \$58,600. Therefore, the Board finds that the Petitioner has failed to raise a prima facie case that there are "errors" in the subject property's current assessment.

Respondent's Evidence

- k) While Petitioner's evidence regarding comparable sales was insufficient to raise a prima facie case, Respondent through its evidence has effectively admitted that Petitioner's property is over-valued. The three properties that Respondent alleges are "comparable" to the subject property have time-adjusted sales prices of \$68,708, \$65,319 and \$65,418 respectively. *Respondent Exhibit 4.* Thus, based on Respondent's evidence, the Board finds that the assessment of \$74,500 on the subject property is incorrect. Absent better evidence of the value of the subject property, the Board hereby determines that the average time-adjusted sales price of the three "comparable" properties submitted by Respondent is the best evidence of the subject property's value. Thus, the Board finds that the value of the subject property is \$66,500.²

² The average of the three comparable sales values (\$68,708, \$65,319 and \$65,418) actually equals \$66,481.66. We have chosen to round this value up to \$66,500.

Conclusion

16. The Petitioner failed to make a prima facie case that the subject property is over-valued. However, the Respondent, in essence, admitted that the property was over-valued. Therefore, based on Respondent's effective admission, the Board finds in favor of the Petitioner and holds that the assessed value of the subject property is \$66,500.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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>>.