

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-01010  
**Petitioner:** Stanley Augustyn, Jr.  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007-28-29-0068-0001  
**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 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$61,000 and notified 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 1300 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 \$45,100 for the improvements for a total assessed value of \$61,000.
9. The Petitioner requested an assessed value of \$15,900 for the land and \$25,000 for the improvements for a total assessed value of \$40,900.

10. Patricia Augustyn and Stanley 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) According to the Petitioner, the porch was deemed uninhabitable at informal hearing yet has been added to living area on the property record card. *Augustyn testimony; Petitioner Exhibit 4*. In addition, the attic and basement are unfinished and the total of number of rooms in the house is 5 not 6. *Id.*
  - b) Further, the Petitioner alleges, the attic and basement both have structural damage. *Augustyn testimony; Petitioner Exhibits 8-13*. Also, the basement has water damage from seepage. *Id.*
  - c) The Petitioner also contends that the property is over-assessed based on assessed values for a neighboring property. *Augustyn testimony; Petitioner Exhibits 15-16*.
  - d) Finally, the Petitioner alleges that the property was purchased of \$40,000 on October 23, 1998. *Petitioner Exhibit 2*.
12. Summary of Respondent's contentions in support of the assessment:
  - a) The Respondent contends that the value of the subject property is fair and accurate as assessed. *Bennington testimony*.
  - b) Further, in support of the assessment, the Respondent provided sales data for three comparable properties. *Bennington testimony; Respondent Exhibits 4-5*.

### **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: 2002 Assessed Value Statement
    - Petitioner Exhibit 2: Copy of title
    - Petitioner Exhibit 3: Informal Hearing Notice
    - Petitioner Exhibit 4: Property Record Card
    - Petitioner Exhibit 5: Form 139L

Petitioner Exhibit 6: Photograph of home  
Petitioner Exhibit 7: Summary of arguments  
Petitioner Exhibit 8: Photograph of unfinished based  
Petitioner Exhibit 9: Photograph of basement structural damage  
Petitioner Exhibit 10: Photograph of structural damage  
Petitioner Exhibit 11: Photograph of unfinished attic  
Petitioner Exhibit 12: Photograph of attic ceiling  
Petitioner Exhibit 13: Photograph of attic wall deterioration  
Petitioner Exhibit 14: Governmax.com printout  
Petitioner Exhibit 15: Governmax.com printout for 1310 Fred Street  
Petitioner Exhibit 16: Photograph of 1310 Fred Street garage

Respondent Exhibit 1: Form 139L Petition  
Respondent Exhibit 2: Subject Property Record Card  
Respondent Exhibit 3: Subject photograph  
Respondent Exhibit 4: Comparable sales summary  
Respondent Exhibit 5: Comparable sales PRCs and photographs

Board Exhibit A: Form 139 L  
Board Exhibit B: Notice of Hearing  
Board Exhibit C: Sign in sheet

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 provided sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:

*Comparables*

- a) The Petitioner contends that the assessment of the subject dwelling is too high based on a comparable property. The Petitioner submitted print-outs of property information for the subject property and a neighboring property. Petitioner's evidence showed the address and parcel number, the types of improvements, the year of construction, the grade factor, the square footage of the dwellings, the replacement cost and the assessed value of each home. *Petitioner Exhibit 15*. Based on this information and the fact that the subject dwelling is smaller in size than the "comparable" property, the Petitioner alleged that the assessed value for the subject property is 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. Petitioner's "comparable" property is assessed higher than the subject property. Further, the Petitioner did not make any attempt to explain why or how the properties are comparable. 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).

#### *Assessment of the Subject Property*

- e) The Petitioner also alleges that the property’s assessment contained errors. According to the Petitioner, the attic and basement both have structural damage. *Augustyn testimony; Petitioner Exhibits 8-13*. Also, the basement has water damage from seepage. *Id.* We interpret this to be an argument that the condition of the subject dwelling was improperly assessed. Also, the Petitioner contends the porch was deemed uninhabitable at informal hearing yet has been added to living area on the property record card. *Augustyn testimony; Petitioner Exhibit 4*. Further, the attic and basement are unfinished and the total of number of rooms in the house is 5 not 6. *Id.*
- f) 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, (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.*
- g) While Petitioner has presented evidence that the basement and attic have crumbling masonry, this type of repair is normal in a house built in 1918. Petitioner has presented no evidence that 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 number of bedrooms was corrected to two and the living area was corrected to 672. *Bennington testimony*.

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.

### *Purchase of Property*

- h) The Petitioner also submitted a settlement statement from the purchase of this property on October 23, 1998, for \$40,000 in further support of his argument that the subject property is over-valued. *Petitioner Exhibit 5*.
- i) 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 \$40,000 in October of 1998 (only 68 days prior to the valuation date) is sufficiently proximate in time to January 1, 1999, to be probative evidence of the subject property’s value as of the assessment date. Further, the Petitioner testified that the property was purchased from an unrelated party. Thus, the Board holds that the Petitioner has raised a prima facie case that the property is over-assessed.
- j) Where the Petitioner raises a prima facie case, the burden shifts to the Respondent to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Respondent’s only evidence was information on the sale of three allegedly “comparable” properties. This is insufficient, however, to rebut evidence related to the sale of the actual property. Further, Respondent provided no information related to *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). Thus, the Petitioner did not impeach or rebut the Petitioner’s evidence.

### **Conclusion**

- 16. The Petitioner made a prima facie case that the value of the subject property is \$40,000. The Respondent failed to rebut this evidence. Therefore, the Board finds in favor of the Petitioner.

### **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: \_\_\_\_\_

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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](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>>.