

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01038
Petitioners: Stanley & Patricia Augustyn
Respondent: Department of Local Government Finance
Parcel #: 007-28-29-0068-0002
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 Petitioners' property tax assessment for the subject property is \$96,700 and notified the Petitioners on March 31, 2004.
2. The Petitioners 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 1304 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 \$80,800 for the improvements for a total assessed value of \$96,700.
9. The Petitioners requested an assessed value of \$15,900 for the land and \$50,000 for the improvements for a total assessed value of \$65,900.

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 Petitioners' contentions in support of an alleged error in the assessment:
 - a. The Petitioners allege that the house needs many improvements to bring it up to the assessment value. *Augustyn testimony.*
 - b. According to the Petitioners, the house needs a new roof and the bathroom redone. The foundation is cracked and the stairs outside are crumbling. Further, the Petitioners contend, the roof leaked and damaged the upstairs ceiling. *Augustyn testimony; Petitioner Exhibits 4-7.*
 - c. The Petitioners also contend that the property is over-assessed based on assessed values for neighboring properties. *Augustyn testimony; Petitioner Exhibits 8-9.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent contends the value is fair and accurate as assessed and provided comparable sales data to support the assessment. *Bennington testimony.*
 - b. The Respondent submitted three comparable properties in support of the assessment. *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 #901.
 - c) Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition
 - Petitioner Exhibit 2: Summary of arguments
 - Petitioner Exhibit 3: Outline of evidence
 - Petitioner Exhibit 4: Photograph of bedroom ceiling
 - Petitioner Exhibit 5: Photograph of unfinished basement
 - Petitioner Exhibit 6: Photograph of unfinished back porch
 - Petitioner Exhibit 7: Photograph of cracked foundation
 - Petitioner Exhibit 8: Assessment and picture for 1310 Fred Street
 - Petitioner Exhibit 9: Assessment for 1308 Fred Street

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 Petitioners did not provide sufficient evidence to support the Petitioners’ contentions. However, Respondent’s evidence supported a reduction in assessment. This conclusion was arrived at because:

Comparables

- a) The Petitioners contend that the assessment of the subject dwelling is higher than comparable properties. The Petitioners submitted print-outs of property information for two neighboring properties. Petitioners’ evidence showed the address and parcel number, the total land value, the total structure value and the total assessed value for the property. *Petitioner Exhibits 8 - 9*. Based on this information, the Petitioners determined 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 Petitioners can prove that their property is not assessed uniformly or equal to comparable properties, Petitioners' 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 Petitioners have not met this burden. While the Petitioners identify two neighboring properties that are assessed lower, the Petitioners did not make any attempt to explain why or how the properties are comparable to the subject property.¹ The Petitioners merely provided information on the address and parcel number of the properties and the assessment values of each property. This falls far short of the burden that 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" that they raise 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 Petitioners also alleged that the property's assessment contained errors. According to the Petitioners, the house needs a new roof and the bathroom redone. The foundation is cracked and the stairs outside are crumbling. Further, the

¹ One of the properties that the Petitioners allege is "comparable" to their single family home is actually a "three flat apartment building." *Augustyn testimony*.

Petitioners contend, the roof leaked and damaged the upstairs ceiling. *Augustyn testimony; Petitioner Exhibits 4-7*. We interpret this to be an argument that the condition of the subject dwelling was improperly assessed.

- 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 the Petitioners have presented evidence that the house has settled and caused cracks in the foundation and the outside stairs, this type of repair is normal in a house built in 1915. While Petitioners have alleged that the roof needs to be replaced and a leak has damaged an upstairs ceiling, the Petitioners have 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 Petitioners provided no evidence that the condition of the subject property differs from other dwellings in the subject property’s neighborhood. Therefore, the Board finds that the Petitioners have failed to raise a prima facie case that there are “errors” in the subject property’s current assessment.

Respondent’s Evidence

- k) While Petitioners’ evidence regarding comparable sales was insufficient to raise a prima facie case, Respondent through its evidence has effectively admitted that Petitioners’ property is over-valued. The three properties that Respondent alleges are “comparable” to the subject property have time-adjusted sales prices of \$78,458, \$64,967 and \$76,776 respectively. *Respondent Exhibit 4*. Based on Respondent’s evidence, the Board therefore finds that the assessment of \$96,700 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 \$73,400.

Conclusion

16. The Petitioners failed to make a prima facie case that the subject property is over-valued. However, based on Respondent’s effective admission, the Board finds in favor of the Petitioners and holds that the assessed value of the subject property is \$73,400.

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>>.