

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

Petition #: 46-023-02-1-5-00001
Petitioner: Theodore Burns Molden
Respondent: Michigan Township Assessor (LaPorte County)
Parcel #: 45-01-15-377-013
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 LaPorte County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated January 27, 2004.
2. The Petitioner received notice of the decision of the PTABOA on September 7, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on October 6, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated May 24, 2006.
5. The Board held an administrative hearing on July 25, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Persons present and sworn in at hearing:

For Petitioner: T. Craig Molden, Petitioner Representative

For Respondent: Terry Beckinger, Michigan Township Assessor
Carol McDaniel, County Assessor and PTABOA Member.

Marilyn Meighen appeared as counsel for the Michigan Township Assessor and the LaPorte County PTABOA.

Facts

7. The subject property is a single-family dwelling located at 1804 Lake Shore Drive in Long Beach, Indiana.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the subject property to be \$81,800 for the land and \$378,700 for the improvements, for a total assessed value of \$460,500.
10. The Petitioner requested an assessment of \$70,000 for the land and \$187,500 for the improvements, for a total assessed value of \$257,500.

Issue

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner contends that the assessed value of the property exceeds its market value-in-use. In support of this contention, the Petitioner testified that out of state buyers have driven up property values to an unrealistic level. *Molden testimony.*
 - b. The Petitioner further contends that the effort by the State of Indiana to reassess property in a more equitable manner resulted in people who have lived in the same communities for decades being assessed such that their taxes are higher than their budgets can tolerate. *Molden testimony.* According to the Petitioner, other states have taken steps to protect people from being taxed out of their homes, but Indiana has failed to take any such steps. *Id.*
 - c. The Petitioner testified that the lake level is at a low point in its lake level cycle. *Molden testimony.* The Petitioner contends that the prices being paid for property on the lake at the current time are not representative of sale prices when the lake level changes. *Id.*
 - d. The Petitioner further contends that the subject property is 80 years old with antiquated electrical and plumbing systems. *Molden testimony; Petitioner Exhibit 18.* Higher lake levels in the 1930's and the 1970's have "taken their toll" on the house. *Molden testimony; Petitioner Exhibits 11-15, and 19.* According to the Petitioner, there are foundation problems, not only due to age, but to waves battering the sea wall when the lake is at high level. *Molden testimony; Petitioner Exhibit 20.* The Petitioner also contends that necessary repairs to the roof, windows, soffits, cedar shake shingles, and brick in addition to updating the electrical system would cost between \$36,000 and \$45,000. *Board Exhibit A.*

- e. Finally, the Petitioner contends that the lot adjacent to the dwelling (and included in this appeal) has a 12” clay tile storm drain for the town of Long Beach which makes the lot unbuildable. *Molden testimony.*
12. The Respondent chose not to present a defense to the Petitioner’s contentions. *Meighen argument.* According to the Respondent, while it empathizes with the position of the Petitioner, the Petitioner nonetheless failed to make a prima facie case regarding the assessed value of the property. *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 # 6247,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Form 131 Petition,
 - Petitioner Exhibit 2 – Basis of belief that assessment is incorrect,
 - Petitioner Exhibit 3 – Letter to Senator Bayh dated August 17, 2004,
 - Petitioner Exhibit 4 – Water levels for Lake Michigan years 1918-2003,
 - Petitioner Exhibit 5 – Photographs from the Michigan City News Dispatch, dated March 18, 1973,
 - Petitioner Exhibit 6 – Photographs from the Michigan City News Dispatch dated March 18, 1973,
 - Petitioner Exhibit 7 – Photographs from the Michigan City News Dispatch dated March 18, 1973,
 - Petitioner Exhibit 8 – Photographs from the Michigan City News Dispatch dated March 18, 1973,
 - Petitioner Exhibit 9 – Photographs from the Michigan City News Dispatch dated March 18, 1973,
 - Petitioner Exhibit 10 – Photographs from the Michigan City News Dispatch dated March 18, 1973,
 - Petitioner Exhibit 11 – Photographs of storm damage during high lake levels on March 17, 1973 at 1804 Lake Shore Dr., Long Beach, Indiana,
 - Petitioner Exhibit 12 – Photographs of storm damage during high lake levels on March 17, 1973 at 1804 Lake Shore Dr., Long Beach, Indiana,
 - Petitioner Exhibit 13 – Photographs of storm damage during high lake levels on March 17, 1973 at 1804 Lake Shore Dr., Long Beach, Indiana,

- Petitioner Exhibit 14 – Photographs of storm damage during high lake levels on March 17, 1973 at 1804 Lake Shore Dr., Long Beach, Indiana,
- Petitioner Exhibit 15 – Photograph of 1804 Lake Shore Drive, Long Beach, Indiana sea wall in the summer of 1974,
- Petitioner Exhibit 16 – Photograph of 1804 Lake Shore Drive, Long Beach, Indiana water depth in front of sea wall six feet (no beach) August 1986,
- Petitioner Exhibit 17 – US Army Corps of Engineers bulletin dated April of 2006, Vol. 163, “Water Level Changes of Great Lakes,”
- Petitioner Exhibit 18 – Photographs of 80 year old load center, electrical wiring and plumbing,
- Petitioner Exhibit 19 – Photographs of condition of cedar shake, soffit, window trim and roof damage,
- Petitioner Exhibit 20 – Photographs of foundation damage,
- Petitioner Exhibit 21 – Response letter from Evan Bayh dated September 2, 2004,
- Petitioner Exhibit 22 – Letter from doctor regarding Frances B. Molden dated January 7, 2004.

The Respondent submitted no exhibits.

- Board Exhibit A – Form 131 petition,
- Board Exhibit B – Notice of Hearing,
- Board Exhibit C – Notice of Appearance for Marilyn Meighen,
- Board Exhibit D – 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 Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
 - a. The Petitioner contends that the taxes resulting from the current assessment are prohibitive for some taxpayers and may serve to force people out of their homes.
 - b. The 2002 Real Property Assessment Manual defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2) (the MANUAL). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual’s definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Here, however, the Petitioner presented no evidence that the property’s assessment does not reflect the market value-in-use of the property. He only contends that as the property values increased, the taxes on the property increased.
 - c. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Department of Local Government Finance*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001), *citing Matonovich v. State Board of Tax Commissioners*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999); *Hoogenboom-Nofziger v. State Board of Tax Commissioners*, 715 N.E.2d 1018, 1021 (Ind. Tax Ct. 1999). By statute, the Board must conduct an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1. The Board has no jurisdiction over matters involving legislative tax policy. Thus, the Petitioner’s contentions relating to its increased tax burden fails to raise a prima facie case that its assessment was improper.
 - d. The Petitioner also presented testimony and other evidence related to the condition of the improvements. According to the Petitioner, the house is eighty years old. The plumbing and electrical systems are outdated, the roof and window frames are worn and the foundation is damaged. *Petitioner Exhibits 18-20*.
 - e. 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). Condition ratings range from “excellent” to “very poor” and are determined by relating the structure to comparable structures within the subject property’s neighborhood. *Id.* A property of “excellent” condition is in “near perfect condition.” *Id.* 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 structure in “very poor” condition is “unusable” and is “unfit for habitation or use.” *Id.* at 61.
- f. Here, however, the Petitioner presented no evidence as to the condition rating that the property is presently assigned.¹ Nor did he testify as to the condition rating that he alleges should be given to the structure. Further, the Petitioner did not submit a property record card. Therefore, the Board has no basis on which to make a determination as to whether the current condition rating is correct or how the condition of the subject improvements compare to other improvements in the subject property’s neighborhood. Thus, the Petitioner failed to meet both prongs of his burden. He has neither shown that the property is incorrectly assessed. Nor has he shown what the correct assessment should be. *See Meridian Towers East*, 805 N.E.2d at 478.²
- f. Where the Petitioner has not supported the 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 provide sufficient evidence to establish a prima facie case. The Board finds in favor of the Respondent.

¹ The Petitioner did testify that the grade assigned to the property for the tax year in question was a B+1, but he failed to testify as to the condition that the property was rated. The Petitioner further noted that the grade on the house has been lowered to C+1 for the March 1, 2006, assessment. Each assessment and each tax year, however, 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.*

² To the extent that the Petitioner can be seen as raising an argument that an influence factor should be applied to the property on the basis of the location of the town of Long Beach’s storm drain or the varying level of Lake Michigan, the Petitioner has also failed to raise a prima facie case. A Petitioner has the burden to produce “probative evidence that would support an application of a negative influence factor *and* a quantification of that influence factor.” *See Talesnick v. State Bd. of Tax Comm’rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001) (emphasis added). While the alleged use limitations on the property may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show how this condition would impact the market value of the subject property or to show what is the actual market value of the property. *See Talesnick*, 756 N.E.2d at 1108. The petitioner “must submit ‘probative evidence’ that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error.” *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).

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>.