

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petitions:** 45-026-02-1-5-00017 and 45-026-02-1-5-00018  
**Petitioner:** Albert Terzarial  
**Respondent:** Department of Local Government Finance  
**Parcel:** 007-18-28-0057-0035 and 007-18-28-0057-0034  
**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 January 24, 2004. The Department of Local Government Finance (DLGF) determined the tax assessment for each of the two subject properties and sent notices to the Petitioner dated March 31, 2004.
2. The Petitioner filed two Form 139L petitions on April 14, 2004.
3. The Board issued hearing notices to the parties dated May 28, 2004.
4. A hearing was held on July 8, 2004, in Crown Point, Indiana before Special Master Rick Barter.

### Facts

5. The subject properties are located at 322-324 Gregory Avenue, in Munster, Indiana.
6. The subject properties are improved residential. The improvement is a duplex. Each half of the duplex is on a separate parcel. Petitioner and Respondent agreed to hold a single hearing for the two parcels.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Value as determined by the DLGF:  
007-18-28-0057-0035 (322 Gregory)—  
Land \$14,000 Improvement \$59,000 Total \$73,000  
007-18-28-0057-0034 (324 Gregory)—  
Land \$13,600 Improvement \$60,000 Total \$ 73,600.

9. Assessed Value requested by Petitioner:  
007-18-28-0057-0035 (322 Gregory) —  
Land \$14,000 Improvement \$49,100 Total \$63,100  
007-18-28-0057-0034 (324 Gregory)—  
Land \$13,600 Improvement \$49,500 Total \$63,100.
10. The persons indicated on the attached sign-in sheet were present at the hearing.
11. Persons sworn as witnesses at the hearing:  
For Petitioner — Albert Terzarial, owner  
For Respondent — Larry Vales, Cole-Layer-Trumble staff appraiser.

### Issues

12. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) The improvement at 322 Gregory has no fireplace and should have the assessed value reduced by \$2,400. The reduction was not made after the preliminary hearing. *Board Exhibit A; Petitioner's Exhibit 1.*
  - b) The detached garage was assessed on 322 Gregory, instead of being split between that parcel and the one on 324 Gregory. The situation was resolved by the informal hearing process. *Board Exhibit A; Petitioner's Exhibit 1.*
  - c) The value of both parcels is overstated. Four comparable improved properties that sold in 2000 and 2001 clearly show sold prices lower than the assessed value of the subjects. *Board Exhibit A; Petitioner's Exhibit 1; Terzarial testimony.*
  - d) Petitioner presented pages from a real estate multiple-listing service as evidence of four improved parcels he identified as comparable sales. All the improvements are row-type, in the same neighborhood and three have the same finished area of 864 square feet while the fourth is 1,188 square feet. *Petitioner's Exhibit 7.*
  - e) Comparable No.1 shows a sale of both sides of the duplex. Comparables No. 2, 3 and 4 were the sales of one half of a duplex. *Petitioner's Exhibit 7.*
  - f) The average sale price of the comparables was \$63,000 per half of duplex. This would add up to an average of \$126,200 per duplex versus the current \$146,600 assessed value of the subject. *Terzarial testimony.*
  - g) Petitioner presented a copy of an agreement to perform repair work at 324 Gregory and states that there is a structural problem that was not accounted for in the assessment. *Terzarial testimony; Petitioner's Exhibit 8.*
13. Summary of Respondent's contentions in support of assessment:
- a) Respondent pointed out that the property record card (PRC) for each half of the duplex no longer shows a fireplace or the \$2,400 assessed value referred to on the Form 139L. *Respondent's Exhibit 2.*
  - b) Respondent submitted a list of twenty properties it considers comparable. The list shows calculations that the assessed value per square foot of those alleged

comparables ranges from \$44.54 to \$74.11, with an average of \$57.46 per square foot. The subject's value per square foot is calculated at \$59.43, the figure on which the Respondent bases its evidence that the assessment is correct. *Respondent's Exhibit 4.*

- c) Respondent cited three of the twenty on its list as most comparable. It presented a spread sheet showing neighborhood number, style, year built, size, grade, condition, land value, dwelling value, total value, sale price, time adjusted sale price, sale date and dollar value per square foot of dwelling value, the difference between the subject and the other properties and total points. *Respondent's Exhibit 4.*
- d) The subject and comparables vary only in land value and the assessed value of the dwelling (improvement) and sale prices. The subject had no sales in the time range of the assessment under appeal. *Vales testimony.*

### **Record**

- 14. The official record for this matter is made up of the following:
  - a) The Petition and all submissions by either party.
  - b) The tape recording of the hearing labeled Lake Co-321.
  - c) Exhibits:
    - Petitioner's Exhibit 1: Form 139L for 322 Gregory
    - Petitioner's Exhibit 2: Form 139L for 324 Gregory
    - Petitioner's Exhibit 3: Property Record Card (PRC) for 322 Gregory for 1995 and 1996
    - Petitioner's Exhibit 4: 2002 PRC for 322 Gregory, pre-informal hearing
    - Petitioner's Exhibit 5: PRC for 324 Gregory for 1995 and 1996
    - Petitioner's Exhibit 6: 2002 PRC for 324 Gregory, pre-informal hearing
    - Petitioner's Exhibit 7: Sheets from MLS book offered as comparables
    - Petitioner's Exhibit 8: A copy of agreement for repairs at 324 Gregory
    - Respondent's Exhibit 1a and 1b: Form 139L, a Form 11/L and a Notice of Final Assessment resulting from the informal hearing for each parcel
    - Respondent's Exhibit 2a and 2b: A copy PRC for each parcel
    - Respondent's Exhibit 3a and 3b: Photographs of the two subjects
    - Respondent's Exhibit 4a and 4b: A list of 20 properties cited as comparables with a spreadsheet of the subject and top three comparables for each subject
    - Respondent's Exhibit 5: PRC for parcel 007-18-28-0063-0029
    - Respondent's Exhibit 6: Photograph of improvement on -0029
    - Respondent's Exhibit 7: PRC for parcel 007-18-28-0063-0034
    - Respondent's Exhibit 8: PRC for parcel 007-18-28-0062-0021
    - Respondent's Exhibit 9: Photograph of improvement on -0021
    - Respondent's Exhibit 10: A copy of the informal hearing sheet
    - Respondent's Exhibit 11: A copy of the hearing worksheets
  - d) These Findings and Conclusions.

## Analysis

15. 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.
16. Petitioner's assessment should not be changed. This conclusion was arrived at because Petitioner did not provide sufficient evidence to constitute a prima facie case on any of the issues he raised. Therefore, no rebuttal was required of Respondent. More specific reasons for this determination are as follows:

### Fireplace

- a) The pre-informal hearing PRC for 322 Gregory included a fireplace that does not exist. *Petitioner's Exhibits 1, 4*. Petitioner alleged that the fireplace error was not corrected by the informal hearing, but he offered no probative evidence to establish that fact. No fireplace is included for the assessment of either parcel according to the current PRCs. Accordingly, any erroneous inclusion of a fireplace already was corrected. *Respondent's Exhibits 2a and 2b*.

### Garage

- b) Petitioner stated that the error in how the garage was split between the two parcels was corrected by the informal hearing. This point is confirmed by the PRCs that list a 13 x 22 detached garage on one parcel and a 26 x 22 detached garage on the other. *Respondent's Exhibits 2a and 2b*. No dispute remains on this issue.

## Comparables

- c) Petitioner presented evidence of four sales of duplexes that he asserted were comparable to his property. Petitioner used copies of listings and sales from a multiple-listing real estate service as evidence. The limited information Petitioner provided is not enough to prove comparability. “[Petitioners’] conclusory statement that something is comparable does not constitute probative evidence. Because [Petitioners] did not present evidence that the [other properties] were comparable to its own, [they] did not present a prima facie case.” *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). “A taxpayer's statements that another property "is similar" or "is comparable" are nothing more than conclusions. Conclusory statements do not constitute probative evidence. Rather, specific reasons must be provided as to why a taxpayer believes a property is comparable.” *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005) (citations omitted).
- d) Petitioner’s comparables show sales of duplexes for less than the assessed value of his duplex, but he fails to analyze or explain significant differences between his duplex and the comparables. For instance, Comparable 1, according to the listing sheet, has a one-car garage and a fenced yard. Later in the information it indicates a two-car garage. Comparables 2 and 3 do not list garages, but Comparable 2 has a deck. Comparable 4 has a one-car garage. Comparables 1 and 4 sold for \$65,000 and \$66,600, respectively. Comparables 2 and 3 for \$59,000 and \$60,000. *Petitioner’s Exhibit 9*. Without a better explanation, the Board will not reach any conclusion about value based on the sales price of the other properties. *Clark v. Dep't of Local Gov't Fin.*, 779 N.E.2d 1277, 1282 (Ind. Tax Ct. 2002) (taxpayer has duty to walk through every element of analysis).

## Basement Floor Problem

- e) The fact that Petitioner paid \$1,550 in March 2003 to repair the floor at 324 Gregory was established, but Petitioner did not offer any probative evidence that this repair caused the market value of this property to be any less. In fact, Petitioner admitted that the repair had been done. This fact is not probative evidence that the market value of the property or the assessment should be lower.

## Conclusion

17. Petitioner failed to make a prima facie case on any issue. Therefore, Respondent was not required to rebut Petitioner’s case.

**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.**