
**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

GERRY A. HOLIHAN	,)	Petition for Review of Assessment, Form 131
)	
)	Petition No.: 04-004-02-1-5-00002
Petitioner,)	
)	County: Benton
v.)	
)	Township: Center
CENTER TOWNSHIP ASSESSOR,)	
)	Parcel No.: 081522105000004
)	
Respondent.)	Assessment Year: 2002

Appeal from the Final Determination of the
Benton County Property Tax Assessment Board of Appeals

September 21, 2004

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Procedural History

1. Pursuant to Ind. Code § 6-1.1-15-3, Gerry A. Holihan (Petitioner) filed a Form 131, Petition for Review of Assessment, petitioning the Board to conduct an administrative hearing of the above petition. The Form 131 petition was filed on February 8, 2004. The determination of the Property Tax Assessment Board of Appeals (PTABOA) was issued on January 8, 2004.

Hearing Facts and Other Matters of Record

2. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was scheduled for July 19, 2004 at 12:45 P.M. in Fowler, Indiana. The Notice of Hearing on Petition was mailed to the Petitioner at the address listed on the Form 131 petition. The Notice of Hearing was mailed, with proof of mailing, on June 9, 2004.
3. On July 19, 2004, Joan Rennick, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3, was present to conduct the hearing on the Form 131 petition. The Petitioner did not appear at the hearing. Janet C. Guimond, Benton County Assessor, Phyl Olinger, Indiana Assessment Service, representing the Center Township Assessor, and Kelly Rose, Benton County Reassessment Director, were present to represent Benton County and Center Township respectively.
4. The Petitioner did not contact the Board or the ALJ prior to the scheduled hearing date and did not request a continuance of the hearing.
5. The ALJ verified that the Notices of Hearing were mailed with proof of mailing. The ALJ also verified that the Notices of Hearing were not returned to the Board as not deliverable.
6. The following items are officially recognized as part of the record of proceedings:
 - [A] Form 131 petition
 - [B] Notice of Hearing on Petition
 - [C] Proof of mailing

Jurisdictional Framework

7. This matter is governed by the provisions of Ind. Code §§ 6-1.1, 6-1.5, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.

8. The Board is authorized to issue this final determination, findings of fact and conclusions of law pursuant to Ind. Code § 6-1.5-4-1.

Board Review and Petitioner's Burden

9. The Board does not undertake to reassess property, or to make the case for the petitioner. The Board bases its decision upon the evidence presented and the issues raised during the hearing. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118-1119 (Ind. Tax Ct. 1998).
10. 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*, 704 N.E.2d at 1119; *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
['Probative evidence' is evidence that serves to prove or disprove a fact.]
11. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. *See Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1024-1025 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
12. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the Board in its evaluation of the evidence. *See generally, Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
13. The Board will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case' and, by a 'preponderance of the evidence' proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax 1998); *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*,

689 N.E.2d 765 (Ind. Tax 1997). [A ‘prima facie case’ is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the Board (as the fact-finder) to conclude that the petitioner’s position is correct. The petitioner has proven his position by a ‘preponderance of the evidence’ when the petitioner’s evidence is sufficiently persuasive to convince the Board that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]

Summary of Final Determination

14. The Form 131 petition is denied for the failure of the Petitioner to appear at the hearing and present evidence in support of the alleged errors of assessment.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

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.