

REPRESENTATIVES FOR PETITIONER: No one appeared

REPRESENTATIVES FOR RESPONDENT: Mr. Robert Lewis, Township Assessor  
Ms. Gloria Coffey, Deputy Twp. Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

Paul W. Sparks, Petitioner	)	Petition for Review of Assessment
	)	Form 131
	)	
	)	Petition No.: 10-011-97-1-5-00003R
	)	County: Clark
v.	)	
	)	Township: Jeffersonville
	)	
Jeffersonville Township Assessor, Respondent	)	Parcel No.: 14824000
	)	
	)	Assessment Year: 1997
	)	

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On Remand from the Indiana Tax Court  
Cause No. 49T10-0206-TA-00077

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**April 10, 2003**

**FINAL DETERMINATION**

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Pursuant to Ind. Code § 6-1.1-15-3, Mr. Paul W. Sparks (Petitioner) filed a Form 131 petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on July 7, 1998. The determination of the Clark County Board of Review (BOR) determination on the underlying Form 130 petition was issued on April 16, 1998. The Board issued its final determination on May 10, 2002.
2. The Petitioner then sued the Board in the Indiana Tax Court. On December 10, 2002, the Indiana Tax Court remanded the case with instructions to conduct a new administrative hearing to establish a complete record regarding the alleged erroneous assessment.

### **Hearing Facts and Other Matters of Record**

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was scheduled for March 11, 2003 at 10:30 A.M. in Jeffersonville, Indiana<sup>1</sup>. Notice of said hearing (Board Ex. C) was mailed on January 28, 2003, to Mr. Sparks at the address listed on the petition.
4. On March 11, 2003, Administrative Law Judge Kay Schwade was present to conduct an administrative hearing on the Form 131 petition. Mr. Robert Lewis, Jeffersonville Township Assessor, and Ms. Gloria Coffey, Deputy Twp. Assessor, appeared to represent Jeffersonville Township. The Petitioner failed to appear at the scheduled hearing. Thus, no hearing was held.
5. The Petitioner did not contact the Board or the Administrative Law Judge prior to or on the scheduled hearing date and did not request a continuance of the March 11, 2003 hearing date.

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<sup>1</sup>Initially, with proper notice, the Board scheduled an administrative hearing for this matter on January 28, 2003. On January 24, 2003, the Petitioner contacted the Board, via telephone, seeking to reschedule the hearing due to health reasons. The Board granted the Petitioner's request and rescheduled the matter for March 11, 2003.

6. The Administrative Law Judge verified that notices of hearing were mailed, with proof of mailing (Board Ex. D), and verified that the notices were not returned to the Board as not deliverable.
7. The Remand Order from the Tax Court was made a part of the record and labeled as Board Exhibit A. The original Form 131 petition was made a part of the record and labeled Board Exhibit B. Notice of Hearing on Petition is labeled as Board Exhibit C, and proof of mailing receipt is labeled as Board Exhibit D.

### **Jurisdictional Framework**

8. This matter is governed by the provisions of Ind. Code § 6-1.1-15, 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.
9. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-8.

### **State Review and Petitioner's Burden**

10. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
11. 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 Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]

12. 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 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]
13. The State 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), and *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 State (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 State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]

### **Discussion of Issue**

14. In compliance with the Remand Order, the Board scheduled a new administrative hearing to review the alleged erroneous assessment. The Board gave proper notice of this administrative hearing to the Petitioner.
15. The Petitioner failed to appear at the new administrative hearing conducted pursuant to the Tax Court’s Remand Order and to present evidence of the alleged erroneous assessment. The Petitioner did not establish a ‘prima facie case’ regarding the alleged erroneous assessment.

### **Summary of Final Determination**

16. The Petitioner failed to appear at the administrative hearing and present evidence of the alleged erroneous assessment to establish a “prima facie case”. Thus, no change is to be made in the assessment as a result of this issue.

The above stated findings of fact and conclusions of law are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this 10<sup>th</sup> day of April, 2003.

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Chairman, Indiana Board of Tax Review

**IMPORTANT NOTICE**

**- APPEAL RIGHTS ON REMANDED CASE -**

**You may petition for judicial review of this final determination of corrected assessment pursuant to the provisions of Indiana Code § 6-1.1-15-9. 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.**