

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-00438
Petitioner: Robert O'Drobinak
Respondent: The Department of Local Government Finance
Parcel: 007-28-29-0007-0020
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. The Department of Local Government Finance (the DLGF) determined that the assessment for the subject property is \$61,600 and notified the Petitioner on April 1, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated November 10, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on December 14, 2004.

Facts

5. The subject property is located at 2410 Schrage Avenue, Whiting. The location is in North Township.
6. The subject property consists of a one-story, frame dwelling.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of subject property as determined by the DLGF:
Land \$13,900 Improvements \$47,700 Total \$61,600.
9. Assessed value requested by Petitioner:
Land \$5,500 Improvements \$47,700 Total \$53,200.
10. Persons sworn as witnesses at the hearing:
Robert O'Drobinak, Owner,
Phillip E. Raskosky, Assessor/Auditor.

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Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The land is valued too high. The value would be negatively influenced by the commercial/industrial business across the street such as a B.P. oil refinery, a truck fueling depot and a tank field. These businesses also cause noxious fumes affecting the air quality. Crime is escalating and the neighborhood is becoming run down, almost slum like. *O'Drobinak testimony.*
 - b. A lot across the street from the subject has been for sale for over a year. This fact shows there is no interest to invest in the neighborhood. *O'Drobinak testimony.*
 - c. There is a 22' by 27' concrete slab at the rear of the property that was installed simply as an off-street parking spot for two cars. This slab is being assessed as a detached patio when it should be considered driveway. *O'Drobinak testimony; Respondent Exhibit 2.*
 - d. The aluminum siding on the dwelling is pitted from the chemicals in the air produced by the refinery across the street. *O'Drobinak testimony.*

12. Summary of Respondent's contentions in support of the assessment:
 - a. Although the subject property is classified as a two family residence, due to evidence presented by the Petitioner at the informal hearing showing that the basement unit was completely gutted and uninhabitable, all value relating to the second unit was removed. *Respondent Exhibit 2; Raskosky testimony.*
 - b. A comparison of the subject as a single family home was done with properties that sold near the assessment date of January 1, 1999. These properties are comparable to the subject in the areas of lot size, age, condition, grade and size. The two most comparable properties are in the subject's neighborhood. This analysis demonstrates that the two most comparable properties have square foot market values of \$62.40 and \$61.16 respectively. The subject property has a current assessed value of \$58.33 per square foot. The Respondent contends that this is probative evidence that the subject's current assessment is within market range. *Respondent Exhibits 2, 4, 5; Raskosky testimony.*

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 1019,

c. Exhibits:

Petitioner presented no exhibits,
Respondent Exhibit 1 – Form 139L petition,
Respondent Exhibit 2 – Subject property record card,
Respondent Exhibit 3 – Subject photographs,
Respondent Exhibit 4 – Comparable analysis sheet,
Respondent Exhibit 5 – Comparable property record cards & photographs,
Board Exhibit A – Form 139L,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – 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. The Petitioner must submit ‘probative evidence’ that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, are not sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax Ct. 1998).
- d. 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. This conclusion was arrived at because:

- a. The Petitioner’s contentions that outside influences negatively impacted the value of the subject property were unsubstantiated by probative evidence. Mere allegations,

unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products*, 704 N.E.2d at 1119; *Herb*, 656 N.E.2d 1230. “Conclusory statements do not constitute probative evidence.” *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005) (citing *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003)).

- b. Essentially, the petitioner must do two things. (1) Petitioner must prove that the assessment is incorrect. (2) Then Petitioner must prove what the correct assessment should be. In this case, Petitioner failed to meet either of these burdens. *Meridian Towers*, 805 N.E.2d at 478; *Clark*, 694 N.E.2d 1230.

Conclusion

- 16. Petitioner failed to establish a prima facie case. The Board finds for Respondent.

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

- 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>.