

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

Petition #: 42-022-02-1-5-00002
Petitioner: Carl E. Lutkemeier
Respondent: Vincennes Township Assessor, Knox County
Parcel #: 022-012-VC01-035-007
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 Knox County Property Tax Assessment Board of Appeals (PTABOA) by written document dated Nov. 21, 2003.
2. Notice of the decision of the PTABOA was dated April 20, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on May 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 26, 2004.
5. The Board held an administrative hearing on August 17, 2004, before the duly appointed Administrative Law Judge Rick Barter.
6. Persons present and sworn in at hearing:

For Petitioner: Carl E. Lutkemeier, Taxpayer

For Respondent: Rose Goodwin, Vincennes Township Assessor

Facts

7. The property is classified as single-family residential, as is shown on the property record card for parcel #022-012-VC01-035-007. The Petitioner holds a life estate in the subject.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.

9. Assessed Value of subject property as determined by the Knox County PTABOA:
Land \$3,600 Improvements \$71,500 Total \$75,100

10. Assessed Value requested by Petitioner:
Land \$3,600 Improvements \$46,400 Total \$50,000

Contentions

11. Summary of Petitioner's contentions in support of an alleged error in assessment:
- a. The assessed value of the subject is over-stated considering the neighborhood, condition of surrounding properties and the fact that surrounding properties are leased to university students. *Lutkemeier testimony.*
 - b. At the hearing under questioning from the ALJ, Petitioner testified that he seeks an assessed value on the improvement of \$46,400 with land remaining at \$3,600 for a total of \$50,000.¹ *Lutkemeier testimony.*
 - c. Petitioner introduced as evidence either Real Property Maintenance Reports or property record cards for eight (8) properties near the subject intended to demonstrate similar properties with lower assessed values or sale prices lower than current assessments. *Lutkemeier testimony; Petitioner's Exhibits 1A-9B.*
 - d. Petitioner also introduced a photograph of the subject and testified that it "is the nicest house in the neighborhood." *Lutkemeier testimony*
12. Summary of Respondent's contentions in support of the assessment:
- a. The subject was assessed using the software approved by the state and the methods as outlined in the manual and subsequent directives from the Department of Local Government Finance; the assessment is correct. *Goodwin testimony.*
 - b. Respondent testified she agreed with Petitioner's statement that his property is the nicest in the neighborhood. *Goodwin testimony.*
 - c. The PTABOA granted the subject property eight (8) percent functional obsolescence as a result of the Form 130 appeal hearing. *Goodwin testimony.*

Record

13. The official record for this matter is made up of the following:
- a. The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
 - b. The tape recording of the hearing labeled BTR #5835.
 - c. Exhibits:
 - Petitioner Exhibit 1A: Sale data for 405-407 Shelby (022-012-VC01-035-008)
 - Petitioner Exhibit 1B through I: Photos of parcel 022-012-VC01-035-008
 - Petitioner Exhibit 2A: Sale data for 326-328 Hart (022-012-VC01-029-107)

 - Petitioner Exhibit 2B through G: Photos of parcel 022-012-VC01-029-107

¹ Petitioner failed to fill in the section on Page 2 of Form 131 indicating what he believes to be the correct assessed value for the subject.

Petitioner Exhibit 3A: Assessment data for 319 Shelby (022-012-VC01-029-111)
Petitioner Exhibit 3B through G: Photos of parcel 022-012-VC01-029-111
Petitioner Exhibit 4A: Assessment data for 704 N 4th St. (022-012-VC01-029-112)
Petitioner Exhibit 4B through D: Photos of parcel 022-012-VC01-029-112
Petitioner Exhibit 5A: Assessment data for 708 N 4th St. (022-012-VC01-029-113)
Petitioner Exhibit 5B through F: Photos of parcel 022-012-VC01-029-113
Petitioner Exhibit 6A: Sale data for 612 N 4th St. (022-012-VC01-029-108)
Petitioner Exhibit 6B: Photo of parcel 022-012-VC01-029-108
Petitioner Exhibit 7A: Assessment data for 713 N 4th St. (022-012-VC01-035-012)
Petitioner Exhibit 7B: Photo of parcel 022-012-VC01-035-012
Petitioner Exhibit 8A: Assessment data for 707 N 4th St. (022-012-VC01-035-011)
Petitioner Exhibit 8B: Photo of parcel 022-012-VC01-035-011
Petitioner Exhibit 9A: Real property maintenance report for subject 623 N 4th St.
Petitioner Exhibit 9B: Photo of subject parcel 022-012-VC01-035-007

Respondent Exhibit: None presented

d. These Findings and Conclusions.

Analysis

14. The most applicable governing case law is:

- a. A Petitioner seeking review of a determination of the PTABOA has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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); *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax Ct. 1997).
- 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. Wash. 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.
- d. Conclusory statements do not qualify as probative evidence. *Whitley Products, Inc., v. State Bd. of Tax Comm'rs* 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

15. The Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a. In order to meet the burden of establishing a prima facie case, the Petitioner must offer probative evidence concerning not only the errors in the existing assessment, but also what the correct assessment should be. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax Ct. 1998).
 - b. Petitioner presented eight properties he identified as representing the neighborhood and being similar or comparable to the subject. Some had been sold in recent years and others had not. *Petitioner exhibits 1A through 8B; Lutkemeier testimony*
 - c. Petitioner argues that the sales and assessments offered as exhibits demonstrate lower market values and assessed values, and therefore prove that the subject property assessment is over-stated. *Lutkemeier testimony*
 - d. While disparate treatment of similar properties in assessment can be used to make a prima facie case that an assessment is incorrect, Petitioner failed to demonstrate how the subject property is comparable to those offered as comparables. He offered no points of comparison, such as year of construction, effective age, total finished square feet, number of units, amenities, or grade and condition
 - e. The Petitioner failed to make the necessary connection between the information contained on the property record cards and photographs and what effect, if any, the comparable properties have on the assessed value of the subject property.
 - f. Petitioner's statements that the cited properties are used as rentals for students and said use lowers the values of all the neighborhood properties are conclusory and not supported by substantial evidence. *See Whitley Prods.* 704 N.E.2d at 1119.
 - g. Likewise, his testimony that many of the tenants in the cited properties are engaged in illegal activities is conclusory and not supported by substantial evidence. *Lutkemeier testimony*. Conclusory statements do not qualify as probative evidence. *Whitley Prods.* 704 N.E.2d at 1119.
 - h. As such, Petitioner has failed to make a prima facie case. Respondent was not required to rebut Petitioner's evidence because no prima facie case was made.
 - i. Respondent testified that the subject's assessment had been lowered as a result of the PTABOA action on the Form 130 appeal, by adding eight (8) percent external obsolescence. Since that issue was not raised on the Form 131 it has no relevance in this case.

Conclusion

16. The Petitioner failed to present a prima facie case. The Respondent was not required to rebut the Petitioner's evidence. The Board finds in favor of Respondent.

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.