

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-001-02-1-5-01246  
**Petitioner:** Harold T. Gorney, et al.  
**Respondent:** Department of Local Government Finance  
**Parcel:** 001-25-45-0179-0016  
**Assessment Year:** 2002

The Indiana Board of Tax Review (Board) issues this determination in the above matter. The Board finds and concludes as follows:

### Procedural History

1. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held. The Department of Local Government Finance (DLGF) determined the assessed value for the subject property is \$4,100 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated July 19, 2005.
4. Special Master Patti Kindler held the hearing in Crown Point on September 9, 2005.
5. Persons present and sworn as witness:  
Elaine Gorney, owner,  
Mildred Gorney, owner,  
Sharon Elliott, assessor/auditor.

### Facts

6. The subject property is an unimproved residential lot located at 20 West 49<sup>th</sup> Avenue in Gary.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value as determined by the DLGF is \$4,100.

9. The assessed value requested by the Petitioner is \$0.<sup>1</sup>

### **Issue**

10. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) The subject property is a vacant residential lot that is 30 feet wide. The minimum lot width allowed for constructing a structure is 50 feet according to Gary city officials and City Code R3163.053. *E. Gorney testimony.*
  - b) An adjacent lot is titled to the City of Gary and is 15 feet wide. That lot is assessed for \$1,200. This value shows the assessment of the subject to be incorrect and unfair. *E. Gorney testimony.* There are some other residential lots in the neighborhood valued at \$4,100, but they are large enough to build on. *M. Gorney testimony.*
  - c) A realtor came to the property, but refused to list it for sale. She felt it had no value due to the zoning restrictions and the declining neighborhood. She said the lot would not be marketable. The property would not sell for \$4,100. *E. Gorney testimony.*
11. Summary of Respondent's contentions in support of the assessment:
- a) No evidence was submitted at the informal hearing to show that a structure could not be built on the lot because of its size. The lot is assessed as an unbuildable, vacant lot with a negative 20% influence factor. *Elliott testimony.*
  - b) The adjoining lot referred to by the Petitioners with 15 feet of frontage is smaller and definitely cannot be built on. That lot probably has a 50% negative influence factor applied to it, which is the standard when no structure can be built on it according to zoning codes. *Elliott testimony.*
  - c) Although the Petitioners' realtor stated that the land was worthless, all land has some value. *Elliott testimony.*

### **Record**

12. The official record for this matter is made up of the following:
- a) The Petition,
  - b) A digital recording of the hearing,

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<sup>1</sup> At the hearing, the Petitioners testified that after filing the Form 139L they consulted with a realtor who told them the property was worthless because it could not be built upon. On the Form 139L, the Petitioners requested a value of \$1,500 for the land.

- c) Petitioner Exhibit 1 – Notice of Hearing and Form 139L with attachments, including Form 11, Notice of Final Assessment, property record card, the reconciliation tax bill for 2002, and an Affidavit of Title to Real Estate,<sup>2</sup>

Respondent Exhibit 1 – Subject property record card,

Respondent Exhibit 2 – Plat map of the subject lot,

Respondent Exhibit 3 – Notice of Final Assessment,

Board Exhibit A - Form 139L,

Board Exhibit B - Notice of Hearing,

Board Exhibit C – Hearing Sign in Sheet,

- d) These Findings and Conclusions.

### Analysis

13. The most applicable laws 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.

14. There is sufficient evidence to support an assessment change. This conclusion was arrived at because:

a) The subject property measures 30 feet by 120 feet. The realtor's refusal to list the property and her conclusory opinion that the property is not marketable do not constitute probative evidence. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The evidence fails to prove that the lot has no value.

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<sup>2</sup> Petitioners’ evidence consists of the Form 139L with attachments. It is identical to Board Exhibit A.

- b) The Petitioners testified that one cannot build on a lot measuring only 30 feet wide. Normally, testimony alone is not enough to show a property is not buildable. Nevertheless, the Respondent concedes the lot is not buildable with testimony that the subject lot currently has a 20% negative influence factor for that reason. The Respondent's concession establishes the lot is not buildable.
- c) The current assessed value (\$4,100) was calculated from a base of \$5,070 with a negative 20% influence factor, but a neighboring lot has a 50% negative influence factor because it is not a buildable lot. Respondent proved that unbuildable lots should have a negative 50% influence factor. Thus, the assessed value of the subject property must be changed to \$2,500. The Board finds in favor of the Petitioners.

**Conclusion**

- 15. The subject property was improperly assessed. It should have a 50% negative influence factor, rather than the 20% negative influence factor that was allowed. The Board finds in favor of the Petitioners.

**Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$2,500.

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. 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](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>.