

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-016-02-1-4-00359  
**Petitioners:** Timothy M. Sullivan & Patricia Berardo  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 006-14-19-0009-0049  
**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 Section 6-1.1-4-33 was held on November 5, 2003, in Lake County, Indiana. The Department of Local Government Finance ("DLGF") determined that the Petitioners' property tax assessment for the subject property was \$575,900, and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 19, 2004.
3. The Board issued a notice of hearing to the parties dated March 11, 2005.
4. A hearing was held on April 13, 2005, in Crown Point, Indiana before Special Master Joseph Stanford.

### Facts

5. The property is located at 2200 Central Avenue, Hobart Township, Lake County.
6. The subject property is a commercial storage building sitting on a 2.63-acre parcel of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$208,200 for the land and \$367,700 for the improvements.
9. The Petitioners requested that the assessed value of the land be reduced to \$14,900 and that the assessed value of the improvements remain at \$367,700.
10. Timothy M. Sullivan, owner of the property, was sworn in as a witness. Tommy Bennington, representing the DLGF, was also sworn in as a witness.

## Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
  - a. From 1995 to 2001, the assessed value of the subject parcel was only \$14,900, and the assessed value increased to \$208,200 in 2002. *Sullivan testimony*.
  - b. The Petitioners had an appraisal prepared on August 4, 2000, and the land and buildings were valued at \$500,000. *Petitioners Exs. 1-7*. The Petitioners purchased the subject property on contract in February 2000, for \$620,000. *Sullivan testimony*. The Petitioners contend that an acre of land in Gary is worth \$8,000-\$10,000. *Id.*
  - c. The Petitioners contend that sixty percent (60%) of the subject lot is vacant. *Id.* In addition, the subject property is located next to a railroad track and is below grade. *Id.*
  - d. The Petitioners claim that the schedules used to produce the 1999 true tax land value of \$14,900 should be used for the 2002 assessment and that the value should be time adjusted. *Sullivan argument*.
12. Summary of Respondent's contentions in support of the assessment:
  - a. The 2002 reassessment is based on 1999 market value, not 1999 true tax value. *Bennington testimony*.
  - b. A 20% negative influence factor was applied to the assessment of the subject parcel due to "shape and size." *Id.*
  - c. Correction of an error on the property record card concerning the standard lot size of the neighborhood lowers the true tax value of land to \$182,400. *Respondent Ex. 3*.

## Record

13. The official record for this matter is made up of the following:
  - a. The Petition.
  - b. The tape recordings of the hearing labeled Lake Co. – 1527.
  - c. Exhibits:<sup>1</sup>

Petitioners Exhibit 1L:	First page of Form 139L Petition
Petitioners Exhibit 2L:	Hearing notification letter
Petitioners Exhibit 1R-7R:	Appraisal of subject property
Petitioners Exhibit 8R:	2001 Property Record Card

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<sup>1</sup> Petitioners used "R" to denote Right Side and "L" to denote Left Side of the folder in which they submitted the exhibits.

Petitioners Exhibit 9R:	Page from 2002 Real Property Assessment Manual
Petitioners Exhibit 10R:	2002 Property Record Card
Respondent Exhibit 1:	Subject Property Record Card
Respondent Exhibit 2:	Neighborhood Land Value Summary Sheet
Respondent Exhibit 3:	Corrected Property Record Card
Board Exhibit A:	Form 139L
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Sign in Sheet

d. These Findings and Conclusions

**Analysis**

14. The most applicable laws are:

- a. A Petitioner seeking a review of a determination of the DLGF 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 E. & W. v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2002); *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 Am. 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 Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:

- a. The Petitioners contend that the schedules used to produce the 1999 true tax land value of \$14,900 should be used for the 2002 assessment and that the value should be time adjusted.
- b. The Petitioners are mistaken in their reliance on the 1999 assessment of the subject property. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct.

1991)). Thus, evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id.*

- c. Mr. Sullivan also testified that one acre of land in Gary is worth \$8,000 - \$10,000. *Sullivan testimony.* The Petitioners, however, did not present any evidence to support Mr. Sullivan's assertion. Consequently, Mr. Sullivan's testimony on that point is entirely conclusory. Conclusory statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998).
- d. The Petitioners further contend that that the assessment is incorrect because sixty percent (60%) of the subject land is vacant and the subject property is below grade and located next to a railroad track. The Petitioners, however, did not present any evidence to quantify the effect of those factors on the market value-in-use of the subject land.
- e. The Petitioners did submit evidence as to the market value of the subject property as a whole. Specifically, the Petitioners submitted a "Restricted Use Report – Limited Appraisal" prepared by Steven R. Ingram, a certified appraiser employed by Valuation Services, LLC. *Petitioners Exhibits 1R-7R.* Mr. Ingram estimated the market value of the subject property to be \$500,000 as of August 4, 2000.<sup>2</sup>
- f. Mr. Ingram did not include discussions as to the data, reasoning, or analyses that he used to formulate his opinion of value. *Petitioners Ex. 1.* This appears to be consistent with the terms of Mr. Ingram's engagement. *See id.* Nonetheless, because the Petitioners' did not provide any additional information from Mr. Ingram's work file to support his opinion, that opinion lacks probative value. *See Inland Steel Co. v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2001) (Expert gave conclusory testimony and failed to provide any explanation to support his findings, causing the Court to hold that the information lacked probative value).
- g. Moreover, the Manual requires that for the 2002 general assessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4. Consequently, in order to present evidence probative of a property's true tax value, a party relying on an appraisal should explain how the value estimated by that appraisal relates to the property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment). The appraisal presented was dated August 4, 2000, nineteen (19) months after the assessment date. The Petitioners failed to present evidence relating the appraisal back to the valuation date. Thus, the Petitioners failed to make a prima facie case that the assessment is in error.

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<sup>2</sup> Additionally, Mr. Sullivan testified that the Petitioners' purchased the property for \$620,000 in February, 2000. The sale price is actually higher than the current assessment, which would appear to undermine the Petitioners' request. Mr. Sullivan testified that the purchase was a "contract sale." Mr. Sullivan did not provide any further details of the purchase; consequently, the Board assigns little weight to this evidence.

- h. The Respondent, however, admitted that the assessment is partially in error. The assessment is based on a standard lot size of one (1) acre. The correct standard lot size should be .115 acre. Land in excess of the standard lot size is assessed at an incremental rate that is lower than the base rate for the standard lot. Thus, a larger portion of the subject lot is entitled to be assessed at the lower incremental rate than is currently being assessed at such rate. The Respondent testified that, after correcting the standard lot size, the assessment for the subject land should be lowered from \$208,200 to \$182,400. This lowers the total assessment from \$575,900 to \$550,100. *Bennington testimony; Respondent Ex. 2.*

### **Conclusion**

16. The Petitioners failed to make a prima facie case. The Respondent, however, conceded that assessment should be reduced to \$550,100.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: \_\_\_\_\_

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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>.**