

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-01685  
**Petitioner:** Ewell E. Long  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007-26-36-0226-0029  
**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 Department of Local Government Finance (the "DLGF") determined that the tax assessment for the subject property is \$135,000 and notified the Petitioner.
2. The Petitioner filed a Form 139L on July 15, 2004.
3. The Board issued a notice of hearing to the parties dated March 28, 2005.
4. Special Master Peter Salvesson held the hearing in Crown Point on April 28, 2005.

### Facts

5. The subject property is located at 5418-26 Oakley Avenue in Hammond.
6. The subject property is a 22,752 square foot commercial lot with chain link fencing and asphalt paving.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed value as determined by the DLGF:  
Land \$128,400                      Improvements \$6,600                      Total \$135,000.
9. Assessed value requested by Petitioner:  
Land \$20,000                      Improvements \$6,600                      Total \$26,600.
10. Persons present and sworn as witnesses at the hearing:  
For Petitioner – Ewell E. Long, property owner, and John Duey, accountant,  
For Respondent – Terry Knee, assessor/auditor.

## Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The property at 58 Douglas Street is comparable to the subject property because it is a commercial parking lot and is no different than the subject property. This property is located within 200 yards of the subject property. The comparable property at Douglas Street is valued at a land base rate of 70 cents per square foot. The subject property should be valued using the same land base rate as the comparable assessment. *Duey testimony; Petitioner Exhibit 1.*
  - b) The land sales of 5 other properties within the general vicinity range from \$0.48 to \$1.32 per square foot of land area. These sales (4 are vacant land) are within one mile of the subject property and show that the current base rate for the subject property is incorrect. *Duey testimony.*
  - c) One sale was for a 27,000 square foot vacant commercial lot with asphalt and sold for \$13,000, or 48 cents a square foot, in 1999. Another sale, located on Willow Court, was for a 25,000 square foot commercial lot and sold for \$19,300, or 77 cents a square foot, in 1999. The next sale, located at 548 Conken Street, was for a 3,125 square foot vacant commercial lot with fencing and sold for \$3,000, or 96 cents a square foot, in 1998. The sale located at 4928 Hohman Avenue, which is a superior location, was for an 80,150 square foot commercial lot with several buildings and sold for \$105,850, or \$1.32 a square foot, in 1999. The last sale, located along Hohman Avenue, was for 9.23 acres, or 402,102 square feet, of commercial land and sold for \$353,850, or 88 cents a square foot. *Duey testimony; Petitioner Exhibit 2.*
12. The Respondent contends that the property record card, plat map, land calculations, and neighborhood summary sheet show that the value of the subject property is correctly based on \$5.94 a square foot for secondary commercial land. *Knee testimony; Respondent Exhibit 3.*

## 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 1545,
  - c) Exhibits:
    - Petitioner Exhibit 1 – A copy of the subject property record card and the property record card for the property located on Douglas Street,

Petitioner Exhibit 2 – Sales information for 5 properties in the area,  
Respondent Exhibit 1 – Subject Property Record Card,  
Respondent Exhibit 2 – Plat Map,  
Respondent Exhibit 3 – Land Calculations/Neighborhood Land Summary,  
Board Exhibit A – Form 139L Petition,  
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 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.

15. The Petitioner provided sufficient evidence to support the his contentions. This conclusion was arrived at because:

- a) The evidence presented by the Petitioner indicates that vacant commercial land within the general vicinity of the subject property sold for a low of 48 cents a square foot to a high of 96 cents a square foot. *Duey testimony; Petitioner Exhibit 2 at 1, 2, 3, 5*. The evidence also indicates that these properties are within close proximity of the subject property. *Duey testimony*.
- b) The Petitioner presented a considerable amount of evidence regarding land base rates for the area. *Petitioner Exhibit 1, 2*. While the sales information offered by the Petitioner shows that vacant land is valued at rates far lower than the current

\$5.94 a square foot, the Petitioner has not given sufficient evidence to establish true comparability.

- c) Although the evidence shows that 4 of these properties are vacant commercial land<sup>1</sup>, the evidence does not show that these properties are located in the same neighborhood as the subject property. It is not enough to say that the comparables are within the “general vicinity” to establish a similarity in location. The fact that one of the Petitioner’s comparable sales sold for \$1.32 a square foot, but that sale included the value of improvements representing the market value of both the land and the improvements for this property rather than the market value of vacant commercial land. As such, it does not represent a sale that is truly comparable to the subject property. *Petitioner Exhibit 2 at 4.*
- d) The evidence presented by the Petitioner also shows a neighboring property located on Douglas Street within 200 yards of the subject property and is like the subject property in that it is a vacant commercial lot used for parking, is assessed using a land base of 70 cents a square foot. *Duey testimony; Petitioner Exhibit 1 at 2.* The evidence establishes that this property is similar to the subject property in use and is located on the same street as the subject. The Petitioner has shown that the neighboring property is comparable to the subject property and that the neighboring property is valued based on a different land base rate than the subject property.
- e) The Petitioner has presented evidence sufficient to show that the land base rate of \$5.94 a square foot used to establish the current value is incorrect and what the correct land base rate should be. The burden has shifted to the Respondent to present evidence rebutting or impeaching the Petitioner’s evidence. *American United, 803 N.E.2d 276; Meridian Towers, 805 N.E.2d at 479.*
- f) The Respondent presented the subject property record card, a plat map, the land calculations, and the neighborhood summary sheet. The Respondent maintained that this evidence establishes the subject property was valued using the correct land base rate. The subject property record card, plat map, land calculations, and neighborhood summary sheet do not rebut the evidence that the current base rate of \$5.94 a square foot is incorrect and prove that the correct land base rate of the subject property should be 70 cents a square foot. *Knee testimony; Respondent Exhibit 3.*

### **Conclusion**

- 16. The Petitioner made a prima facie case. The Respondent did not rebut the Petitioner’s evidence. The Board finds in favor of Petitioner.

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<sup>1</sup> The subject property is considered vacant. The only improvements assessed on it are fencing and asphalt paving.

## 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: \_\_\_\_\_

\_\_\_\_\_  
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>>.