

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition Nos.:** 45-041-02-1-4-00391  
45-041-02-1-4-00392  
**Petitioner:** NBD Bank Trust 401  
**Respondent:** Department of Local Government Finance  
**Parcel Nos.:** 003230905170024  
003230905170026  
**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 on January 23, 2004 in Lake County, Indiana. The Department of Local Government Finance ("DLGF") determined the Petitioner's property tax assessment for the subject properties and notified the Petitioner on March 12, 2004.
2. The Petitioner filed the Form 139L petitions on March 3, 2004.
3. The Board issued the notices of hearing to the parties dated May 26, 2005.
4. A hearing was held on June 28, 2005, in Crown Point, Indiana before Special Master Joan Rennick.

### Facts

5. The subject properties are two parcels of the Summertree Golf Club located at 2323 E. 101<sup>st</sup> Avenue, Crown Point, in Center Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Value of the subject properties as determined by the DLGF:

Petition No.	Parcel No.	Land	Improvements
45-041-02-1-4-00391	003230905170024	\$141,200	\$246,900
45-041-02-1-4-00392	003230905170026	\$813,100	-0-
8. Assessed Value requested by the Petitioner on the Form 139L petitions

Petition No.	Parcel No.	Land	Improvements
45-041-02-1-4-00391	003230905170024	\$ 7,000	\$246,900
45-041-02-1-4-00392	003230905170026	\$168,000	-0-

9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioner: Robert L. Kumpfer, Tax Representative

For Respondent: Steve McKinney, DLGF

### Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:

a) The land base rates used to value the non-golf course land of the subject properties are unreasonably excessive. The subject properties are not located near any retail or commercial development; they are surrounded by farm land.

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b) The primary commercial property has been assessed at a rate of \$133,000 per acre which is not representative of the actual market for this area. This is the one acre of land located underneath the club house. *Kumpfer testimony; Pet'r Ex. 2.*

c) The Petitioner has six comparable listings and assessments of two private golf courses which indicate the value of \$133,000 is unreasonable. *Kumpfer testimony.*

d) The Petitioner presented listings for six properties purported to be comparable to the subject parcels. The Petitioner stated the purported comparables are all located in more desirable locations than the subject properties. The Petitioner found the listing values range from a low of \$12,000 per acre to a high of \$79,229 per acre. The weighted average of the six listings is \$28,276 per acre. *Kumpfer testimony; Pet'r Exs. 2, 3.*

e) The Petitioner presented a property record card for Briar Ridge County Club which is a prominent gated residential golf community located in one of the most upscale areas of Lake County. The primary commercial acreage value assigned to the non-golf land is \$21,060. *Kumpfer testimony; Pet'r Ex. 4.*

f) The Petitioner presented a property record card for The Supervisor's Club in Hobart which is a private 27 hole country club for members only. The primary commercial acreage value assigned is \$58,806 per acre. *Kumpfer testimony; Pet'r Ex. 4.*

- g) The listings and assessments presented clearly indicate the value of \$133,000 per acre is unrealistic and excessive. The Petitioner respectfully requests that the land value for the primary acre on this parcel be set at \$28,276 per acre. *Kumpfer testimony.*

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- h) The useable undeveloped land on this parcel is valued at \$85,612 per acre which is not representative of the actual market for this area. *Kumpfer testimony; Pet'r Ex. 2.*
- i) The Petitioner stated the same arguments and evidence with regard to property listings apply to this parcel. The listings presented clearly indicate the value of \$85,612 per acre is unrealistic and excessive. The Petitioner respectfully requests that the land value for the primary acre on this parcel be set at \$28,276 per acre. *Kumpfer testimony; Pet'r Exs.2, 3.*
- j) In addition, 19.7 acres of this parcel are in a flood plain. This land has no potential for development. The land is currently assessed as useable undeveloped. The Petitioner contends the 19.7 acres should be valued as unusable undeveloped. The 19.7 acres is currently receiving a negative influence factor of 52%. The Petitioner requests a value of \$28,276 per acre with an influence factor of negative 80% for the 19.7 acres. *Kumpfer testimony; Pet'r Ex. 2.*
- k) Upon questioning by the Respondent, the Petitioner estimated that eight acres were in the flood plain and the remaining acres are located on the other side of the flood plain. *Kumpfer testimony.*

12. Summary of Respondent's contentions in support of the assessment:

- a) In looking at the land assessments as a total, the average per acre value overall is \$25,000. Looking at Petition No. 45-041-02-1-4-00391, the assessed value of the land is \$141,200 for 9 acres which averages to \$15,690 per acre ( $\$141,200 \div 9$ ). Petition No. 45-041-02-1-4-00392 has an assessed value for land of \$813,100 for 23.7 acres which averages to \$34,308 per acre ( $\$813,100 \div 23.7$ ). If you take the \$15,690 add the \$34,308 and divide by 2 you get an average of \$25,000 per acre. *McKinney testimony.*
- b) The Petitioner presented listings of commercial properties for sale. However, the Petitioner did not present property record cards of these same properties in order to be able to compare the land classifications and the pricing of land on those properties. *McKinney testimony.*
- c) While the Petitioner contends 19.7 acres of Petition No. 45-041-02-1-4-00392 is located in a flood plain, the land is being utilized by the golf course. It is functioning as commercial property and has value. The Respondent recognizes there may be some land in the flood plain. However, the Respondent is not sure that all 19.7 acres is in the flood plain. *McKinney testimony.*

## **Record**

13. The official record for this matter is made up of the following:

a) The Petitions,

b) The tape recording of the hearing labeled BTR #1799,

c) Exhibits:

For Petition No. 45-041-02-1-4-00391

Petitioner Exhibit 1: Petitioner's Form 139L,

Petitioner Exhibit 2: Summary of Arguments,

Petitioner Exhibit 3: Comparable Sales Listings,

Petitioner Exhibit 4: Comparable Assessments,

Respondent Exhibit 1: Subject Property Record Card,

Respondent Exhibit 2: Commercial/Industrial NBHD Valuation Form,

Board Exhibit A: Forms 139L petition,

Board Exhibit B: Notice of Hearing,

Board Exhibit C: Sign in Sheet,

For Petition No. 45-041-02-1-4-00392

Petitioner Exhibit 1: Petitioner's Form 139L,

Petitioner Exhibit 2: Summary of Arguments,

Petitioner Exhibit 3: Comparable Sales Listings,

Petitioner Exhibit 4: Flood Plain Map (discussed at the hearing, but too large submit),

Respondent Exhibit 1: Subject Property Record Card,

Respondent Exhibit 2: Commercial/Industrial NBHD Valuation Form,

Board Exhibit A: Forms 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 Township 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 Township 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 did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) The Petitioner contends the land base rates used to value the subject properties are unreasonably excessive and not representative of the actual market value for the area.
  - b) The Petitioner presented listings of six commercial and industrial land properties. The Petitioner computed the price per acre for each of the listings and found the values range from \$12,000 to \$79,229 per acre. *Pet’r Ex. 3*.
  - c) In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value in use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2)(stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”); *See also*, *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
  - d) In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
  - e) The Petitioner presented the listings and a summary of the listings showing the Address, Acreage, Listing Price, Price per Acre, and Notes. However, the Petitioner did not engage in any significant comparison of the features of the purportedly comparable properties and the subject properties. Nor did the Petitioner explain how

- the differences affected the relative market values-in-use. While the listing sheets submitted by the Petitioner contain a property description of the purportedly comparable properties, a Petitioner must do more than simply present raw data. Instead, he must explain the relevance of that information to his contentions. *See Indianapolis Racquet Club*, 802 N.E.2d at 1022 (“[I]t is the taxpayer’s duty to walk the Indiana Board ... through every element of the analysis”).
- f) The Petitioner also presented property record cards showing the assessments of two private golf courses. The property record cards show the primary commercial acreage valued at \$21,060 and \$58,806. *Pet’r Ex. 4*.
  - g) Again, the Petitioner is essentially relying on the sales comparison approach except the Petitioner is analyzing the *assessments* of purportedly comparable properties rather than the *sale prices* of those properties. Nevertheless, the requirements for assigning probative value to evidence derived from a sales comparison approach are equally applicable to the assessment comparison approach used by the Petitioner in this case.
  - h) The Petitioner did not engage in any significant comparison of the features of the purportedly comparable properties and the subject properties. Nor did the Petitioner explain how the differences affected the relative market values-in-use.
  - i) The Petitioner contends the 19.7 acres on Petition No. 45-041-02-1-4-00392 is located in a flood plain and should be valued as unusable undeveloped and given a negative 80% influence factor. *Pet’r Ex. 2*. This parcel contains a total of 23.7 acres. There are 3.340 acres assessed as golf course and .666 acres of ditch which is not assessed. The remaining 19.7 acres is currently valued as useable undeveloped and given a negative influence factor of 52%. *Resp’t Ex. 1*.
  - j) The 2002 Real Property Assessment Guidelines describes useable undeveloped land as acreage that is vacant and held for future development. Unusable undeveloped land is described as vacant acreage this is unusable for commercial or industrial purposes, and not used for agricultural purposes. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 85, Table 2-14 (incorporated by reference at 50 IAC 2.3-1-2).
  - k) The Petitioner failed to present evidence to show the 19.7 acres could not be used for commercial or industrial purposes. The Petitioner contends the subject property is in a flood plain. However, the Petitioner was unable to show how much of the 19.7 acres was in the flood plain and could only estimate that 8 acres were in the flood plain. The Petitioner did not present any evidence to show how much of the land floods and how often the land floods. The Petitioner has not shown the 19.7 acres should be classified at unusable undeveloped.

- l) The Petitioner requests a negative 80% influence factor be applied to the 19.7 acres on Petition No. 45-041-02-1-4-00392. The Petitioner did not present any evidence to explain or support the requested negative 80% influence factor.
- m) An influence factor is a “multiplier that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel. The factor may be positive or negative and is expressed as a percentage.” GUIDELINES, glossary at 10. To prevail on the issue of an influence factor, the taxpayer must present probative evidence that would support an application of a negative influence factor and a quantification of that influence factor. *Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099, 1106 (Ind. Tax Ct. 1999).
- n) A negative 52% influence factor has been applied. The parties are therefore in agreement that there are characteristics peculiar to the parcel sufficient to support an application of a negative influence factor. Accordingly, the first requirement of the two-prong *Phelps Dodge* test has been satisfied, but Petitioner failed to satisfy the second prong of the *Phelps Dodge* test. The Petitioner failed to present any evidence to quantify the requested influence factor of negative 80% for the 19.7 acres. The Petitioner’s unsubstantiated conclusory statement that a negative 80% influence factor be applied does not constitute probative evidence. *Whitley Products*, 704 N.E.2d at 1120.

**Conclusion**

- 16. The Petitioner failed to make a prima facie case. The Board finds in favor of 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: \_\_\_\_\_

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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>>.