

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

<b>Petitions:</b>	<b>45-042-03-2-5-00428</b>	<b>Parcels:</b>	<b>003-31-25-0061-0012</b>
	<b>45-042-03-2-5-00429</b>		<b>003-31-25-0061-0013</b>
	<b>45-042-03-2-5-00430</b>		<b>003-31-25-0061-0014</b>
	<b>45-042-03-2-5-00431</b>		<b>003-31-25-0061-0015</b>
<b>Petitioner:</b>	<b>Sarah Hermann Trust</b>		
<b>Respondent:</b>	<b>Department of Local Government Finance</b>		
<b>Assessment Year:</b>	<b>2002</b>		

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 March 22, 2005. The Department of Local Government Finance (the DLGF) determined the tax assessments for the subject properties and notified the Petitioner on Oct. 3, 2003.
2. The Petitioner filed a Form 139L on April 19, 2004.
3. The Board issued a notice of hearing to the parties dated Feb. 18, 2005.
4. Special Master Rick Barter held the hearing in Crown Point on March 22, 2005.

### Facts

5. The subject property is located at 7011 through 7031 W. 128<sup>th</sup> Avenue in Cedar Lake. The location is in Center Township.
6. The subject property includes four residential lots (parcel #-0012 is 25-feet-by-100-feet, parcel -0013 is 13-feet-by-100-feet, parcel -0014 is 13-feet-by-100-feet, and parcel -0015 is 25-feet-by-100-feet) with a manufactured home on a permanent foundation. The \$44,200 assessed value of the improvement is not in dispute in this appeal.
7. The Special Master did not conduct an on-site inspection of the property.

8. Assessed values as determined by the DLGF:
- |                                     |  |
|-------------------------------------|--|
| Parcel – 003-31-25-0061-0012        | Land \$6,300, Improvements \$0,        |
| Parcel – 003-31-25-0061-0013        | Land \$4,100, Improvements \$0,        |
| Parcel – 003-31-25-0061-0014        | Land \$4,100, Improvements \$44,200,   |
| <u>Parcel – 003-31-25-0061-0015</u> | <u>Land \$7,900, Improvements \$0,</u> |
| Totals                              | \$22,400 \$44,200                      |
9. Assessed values requested by Petitioner:
- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| Parcel – 003-31-25-0061-0012        | Land \$2,500, Improvements \$0,       |
| Parcel – 003-31-25-0061-0013        | Land \$1,300, Improvements \$0,       |
| Parcel – 003-31-25-0061-0014        | Land \$1,300, Improvements \$44,200,  |
| <u>Parcel – 003-31-25-0061-0015</u> | <u>Land \$2,500, Improvements \$0</u> |
| Totals                              | \$7,600 \$44,200                      |
10. Persons sworn as witnesses at the hearing:  
 Neil Wingate, Petitioner’s POA,  
 Tommy P. Bennington, DLGF

**Issues**

11. Summary of Petitioner’s contentions in support of an alleged error in the assessment:
- a) The 2002 assessed value of the land on the four parcels is over-stated when compared to sales, listings and assessments of comparable lands.
  - b) The subject property is composed of four contiguous parcels, two with 25 feet of frontage and two with 12.5 feet of frontage for a total frontage of 75 feet. All are 100 feet deep, for a total of 7,500 square feet. *Respondent Ex. 2.*
  - c) Considered individually, each parcel is unbuildable, according to Town of Cedar Lake Zoning Code, since buildable sites are required to include 7,500 square feet and 80 front feet. If you lose an improvement on a non-conforming lot through fire, flood or storm, you might not be able to rebuild under zoning codes. That effects the value of the land negatively. *Petitioner Ex. 11, Wingate testimony.*
  - d) In order to be considered a buildable lot, groups of parcels are often sold together as buildable parcels. The value of those blocks is \$10,000 to \$12,000 in that older area of Cedar Lake. *Wingate testimony.*
  - e) According to a real estate multiple listing report, a 75-foot-by-100-foot property at 6822 128<sup>th</sup> Lane, just one block from the subjects, sold on December 9, 2002 for \$12,150. *Petitioner Ex. 5, Wingate testimony.*
  - f) A group of three lots with twenty-five-foot frontage at 14230 Laubrmans, in the Oakdale subdivision, sold on Oct. 2, 2002 for \$10,000, or \$3,333 each. *Pet’r Ex 7, Wingate testimony.*

- g) A group of five (5) twenty-five-foot lots at 14333 Morse St., in the subject area, sold on June 19, 2004, for \$15,000, or \$3,000 each. *Pet'r Ex 8, Wingate testimony.*
  - h) Two vacant lots assessed for 2002 at \$4,100, just as two of the subject lots, had the assessments reduced during the local pre-appeal process, to \$2,600. They were parcels #005-30-24-0091-0055 and -0056, in Oakdale subdivision. *Pet'r Ex 9 & 10. Wingate testimony.*
  - i) Photographs of adjoining properties and their improvements show the poor conditions which make this a less than desirable area. This has a negative impact on the value of the subject lots. *Wingate testimony*
12. The Respondent contends the 2002 assessed value of the land on the four parcels was calculated correctly according to the land order.

### **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 1251,
  - c) Petitioner Exhibit 1 – Summary of contentions,  
Petitioner Exhibit 2 – Data sheet for subject parcel ending -0013,  
Petitioner Exhibit 3 – Data sheet for subject parcel ending -0014,  
Petitioner Exhibit 4 – Data sheet for subject parcel ending -0015,  
Petitioner Exhibit 5 – Comparative market analysis for subject area,  
Petitioner Exhibit 6 – Listing summary for vacant land in subject area,  
Petitioner Exhibit 7 – Closing statement for 3 lots in subject area,  
Petitioner Exhibit 8 – Land contract for sale of 5 lots in subject area,  
Petitioner Exhibit 9 – Notice of assessment change for 005-30-24-0091-0055,  
Petitioner Exhibit 10 – Notice of assessment change for 005-30-24-0091-0056,  
Petitioner Exhibit 11 – Copies of Cedar Lake zoning codes,  
Petitioner Exhibit 12 – Photograph of property behind subject,  
Petitioner Exhibit 13 – Photograph of property just west of subject,  
Petitioner Exhibit 14 – Photograph of property behind subject,  
Petitioner Exhibit 15 – Photograph of subject improvement on lots,  
Petitioner Exhibit 16 – Photograph of property just east of subject,  
Petitioner Exhibit 17 – Photograph of property just east of subject, view 2,  
Petitioner Exhibit 18 – Copy of Power of Attorney,  
Respondent Exhibit 1 – Copy of Form 139L from state for each Petition,  
Respondent Exhibit 2 – Copy of subject property record cards,  
Respondent Exhibit 3 – Copy of photograph of subject,

Respondent Exhibit 4 – Highlighted map of subdivision including subject,  
Board Exhibit A-1 through A-4 – Form 139L’s,  
Board Exhibit B-1 through B-4 – Notices 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.
- d) For the 2002 general reassessment, the assessment of a property is to reflect its value as of January 1, 1999. When an independent appraisal indicates values for 2003, 2004, or later, there must be some explanation as to how that value opinion demonstrates or is relevant to the value of the subject property as of January 1, 1999. Without such an explanation, that appraisal has no probative value. *Long v. Wayne Twp. Assessor*, No. 49T10-0404-TA-20, slip op. at 8 (Ind. Tax Ct. January 28, 2005).
- e) Conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax 1998).

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

- a) The Petitioner presented sales of similarly-sized properties located near the subject property. *Pet’r Exs. 5-7*. These properties, with square footages similar to that of the subject property, sold for between \$9,500 and \$12,150. *Id.*

- b) The sale prices for these lots are significantly higher than the assessed total assessed value of the subject properties. The Petitioner has made a prima facie case and the burden now shifts to the Respondent to rebut the Petitioner's evidence.<sup>1</sup>
- c) Respondent's testimony that the assessments were performed using values set forth in the land order and calculated using the state's recommendations failed to counter Petitioner's prima facie case. The Respondent did not present any sales information nor did the Respondent present any evidence indicating the Petitioner's evidence was unreliable.

**Conclusion**

16. The Petitioner made a prima facie case. The Respondent did not rebut or impeach Petitioner's evidence. The Board finds in favor of Petitioner.

**Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessmentS should be changed to:

Parcel 003-31-25-0061-0012	Land \$2,500	Improvements \$0
Parcel 003-31-25-0061-0013	Land \$1,300	Improvements \$0
Parcel 003-31-25-0061-0014	Land \$1,300	Improvements \$44,200
Parcel 003-31-25-0061-0015	Land \$2,500	Improvements \$0

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

\_\_\_\_\_  
 Commissioner,  
 Indiana Board of Tax Review

<sup>1</sup> Because the Board finds the sales information to be determinative in this case and results in the change the Petitioner was seeking, the Board does not address the other arguments put forth by the Petitioner.

## 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>.