

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petitions #:** 45-001-02-1-5-00030, 45-001-02-1-5-00031, 45-001-02-1-5-00032  
**Petitioner:** Albert Terzarial  
**Respondent:** Department of Local Government Finance  
**Parcels #:** 001-15-26-0111-0001, 001-15-26-0111-0003, 001-15-26-0111-0004  
**Assessment Year:** 2002

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

### Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held on February 24, 2004. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the three subject properties was \$168,800 and subsequently notified the Petitioner. The Petitioner and the Respondent agreed an informal hearing was held on all parcels.
2. The Petitioner filed Form 139L petitions on April 14, 2004.
3. The Board issued a notice of hearing (re-schedule) to the parties dated May 28, 2004.
4. A hearing was held on July 8, 2004, in Crown Point, Indiana before Special Master Rick Barter. The subject property is comprised of three parcels that are adjacent and function as one unit. As a result, the hearing included all three subject parcels and respective appeals.

### Facts

5. The subject property is located at 503-509 S. Rensselaer, in Griffith, Indiana.
6. The subject property is improved residential. The single-family improvement is located on parcel 001-15-26-0111-0001. Parcels 001-15-26-0111-0003 and 001-15-26-0111-0004 are land-only parcels.
7. The Special Master did not conduct an on-site visit of the property.

8. Assessed Value of subject property as determined by the DLGF:

001-15-26-0111-0001:	Land \$25,300	Improvement \$123,300	Total \$148,600
001-15-26-0111-0003:	Land \$10,100	Improvement \$ 0	Total \$ 10,100
001-15-26-0111-0004:	Land <u>\$10,100</u>	Improvement <u>\$ 0</u>	Total <u>\$ 10,100</u>
	\$45,500	\$123,300	Total \$168,800

9. Assessed Value requested by Petitioner:

001-15-26-0111-0001:	Land \$25,300	Improvement \$100,600	Total \$125,900
001-15-26-0111-0003:	Land \$ 1,000	Improvement \$ 0	Total \$ 1,000
001-15-26-0111-0004:	Land <u>\$ 1,000</u>	Improvement <u>\$ 0</u>	Total <u>\$ 1,000</u>
	\$27,300	\$100,600	Total \$127,900

10. The persons indicated on the attached sign-in sheet were present at the hearing.

11. Persons sworn in at hearing:

For Petitioner: Albert Terzarial, Property Owner  
For Respondent: Larry Vales, Cole, Layer, Trumble Staff Appraiser

**Issues**

12. Summary of Petitioner's contentions in support of alleged error in assessment:

- a) Six comparable improved properties and six unimproved properties that sold between 1999 and 2002 demonstrate that the assessed value of the land and improvement is overstated. Petitioner identified those properties as comparable to his. All the improvements are two-story, flat-front barn-type houses in Griffith, Indiana. "These are square foot, design, they all represent the same type of home I live in. That's basically the evidence for the house." *Terzarial testimony; Petitioner's Exhibit 2 and 3.*
- b) The sales of the comparable properties ranged from a low of \$100,000 to a high of \$130,000. Sale dates range from September 1999 to September 2002. *Petitioner's Exhibit 1.*
- c) Comparable #6 was designated by the Petitioner as most comparable to the subject, with an identically sized lot and an improvement 136 square feet smaller than the subject. Both have garages. The subject has a car shed, but the comparable does not. The comparable sold on October 19, 2001, for \$130,000. *Petitioner's Exhibit 3; Respondent's Exhibit 2.*
- d) According to Petitioner, there was not a chance that this property would have sold for \$168,900 in 1999. *Terzarial testimony.*

- e) According to Petitioner, the fact that the property is insured for \$181,000 represents what it would take to rebuild the same property if it were completely destroyed and has nothing to do with its market value. *Terzarial testimony.*
- f) Petitioner also presented a copy of a portion of the Town of Griffith building code that requires 70-foot minimum lot width. He pointed out that his two land-only parcels are each 25-feet wide. Even when combined, they fall short of the 70-foot minimum. As such, the two parcels have little value to any other owner. *Terzarial testimony; Petitioner's Exhibit A-6.*
- g) The evidence of vacant land sales establishes several lots in Griffith that sold between the range of \$31,000 and \$22,000. Each of those lots exceeds the minimum width required by the building code. *Terzarial testimony; Petitioner's Exhibit 7.*

13. Summary of Respondent's contentions in support of assessment:

- a) Respondent submitted a list of twenty properties it considers comparable based on square footage and year built. The list shows calculations that the assessed value per square foot of the comparables ranges from \$44.54 to \$74.11, with an average of \$57.46 per square foot. The subject's value per square foot is calculated at \$59.43, the figure on which the Respondent bases its opinion that the assessment is correct. *Vales testimony; Respondent's Exhibit 4.*
- b) Respondent provided additional information (photographs and property record cards) for three of those twenty. *Respondent's Exhibits 5-10.*
- c) Only one property out of the list of twenty is an older type home located in the same neighborhood (code 3911) as the subject property, but that one was not among those for which Respondent provided a photograph or property record card. *Vales testimony; Respondents Exhibits 2 and 4.*
- d) The Respondent noted that on the Form 139L petition the Petitioner showed the property was insured for \$181,000. *Vales testimony; Respondent's Exhibit 1.*

**Record**

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

- a) The Petition, and all subsequent pre-hearing submissions by either party.
- b) The tape recording of the hearing labeled BTR #Lake Co-323.
- c) Exhibits:
  - Petitioner Exhibit A-1 through 7: A packet containing exhibits as detailed on the Petitioner's Exhibit Log.
  - Petitioner's Exhibit 1: Form 139L for parcel 001-15-26-0111-0001.

Petitioner's Exhibit 2: four color photographs of subject property.  
Petitioner's Exhibit 3: Listing/sales data from a multiple listing publication.  
Petitioner's Exhibit 4: Form 139L for parcel 001-15-26-0111-0004.  
Petitioner's Exhibit 5: Form 139L for parcel 001-15-26-0111-0003.  
Petitioner's Exhibit 6: Portions of the Griffith Building Code.  
Petitioner's Exhibit 7: Pages of property listings from a multiple listing service.

Respondent's Exhibit A-1 through 10: A packet containing 10 exhibits as detailed on the Respondent's Exhibit Log.  
Respondent's Exhibit 1: Form 139L and Form 11/Lake County for parcel 001-15-26-0111-0001.  
Respondent's Exhibit 2: Subject property record card (PRC).  
Respondent's Exhibit 3: Photograph of the subject.  
Respondent's Exhibit 4: List of twenty properties presented as comparables.  
Respondent's Exhibit 5: PRC for parcel 001-15-26-0153-0016.  
Respondent's Exhibit 6: A copy of a photograph of improvement on -0016.  
Respondent's Exhibit 7: PRC for parcel 001-15-26-0094-0026.  
Respondent's Exhibit 8: A copy of a photograph of improvement on -0026.  
Respondent's Exhibit 9: PRC for parcel 001-15-26-0176-0004.  
Respondent's Exhibit 10: A copy of a photograph of improvement on -0004.

d) These Findings and Conclusions.

### Analysis

15. The most applicable governing cases 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.

16. The Petitioner established a prima facie case in regard to the house, but he did not provide sufficient evidence to support his contentions in regard to the two unimproved lots. These conclusions were arrived at because:

#### The House

- a) Parcel 001-15-26-0111-0001 has .143 total acreage. *Respondent's Exhibit 2*. The house has three bedrooms. *Id.* It has one and a half baths. *Id.* It has 1876 square feet of living area. *Respondent's Exhibit 4*. Petitioner presented six properties that are comparable to his subject two-story, flat-front, barn-like improvement built in 1950. *Terzarial testimony; Petitioner's Exhibits 2 and 3, Respondent's Exhibit 2*. Petitioner used copies of listings from a multiple-listing real estate service as evidence. Each comparable's listing showed the listing price, sale price, date of sale, square footage of improvement, lot size, number and types of rooms with measurements of some, and additional information.
- b) After examining factors such as the number of bedrooms, bathrooms, square footage and specific features of each of these properties and the subject property, the Board concludes that Petitioner has offered substantial, probative evidence that between September 1999 and September 2002 several comparable houses in Griffith have sold for amounts between \$100,000 and \$130,000. This evidence is sufficient to establish that the assessment of the parcel with the home is wrong. Furthermore, the value of \$125,900 that Petitioner requested for this parcel falls within the range of established comparable sales. Therefore, those sales serve to satisfy the second part of Petitioner's burden because they provide some substantial evidence about what the correct assessed value should be for parcel 001-15-26-0111-0001. *Meridian Towers*, 805 N.E.2d at 475.
- c) In contrast to the specific facts about those six properties offered by Petitioner, the list of twenty comparables and statistics offered by Respondent provides little basis for any comparison beyond acreage, year built, style, and square footage of living area. *Respondent's Exhibit 4*. Those points, while helpful, are not enough for meaningful comparison of the properties. More information about the physical features of each property on the list is needed to establish the claim that they are comparable. *Blackbird Farms v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (mere conclusory statement that something is comparable does not constitute probative evidence). The sales on the list range from \$85,000 to \$143,000 and they took place between February 1998 and July 2002. Exhibit 4 failed to explain or establish how that information is in any way useful to establish the value of the subject property. Vales' testimony also provided no substantive explanation or probative facts to establish how these twenty properties actually compare to the

subject property.<sup>1</sup> Thus, the main conclusion from both Vale's testimony and the list of twenty comparables that favorably compares the square foot value of the subject property (\$59.43) to the average square foot value of the twenty listed properties (\$57.46) is meaningless and lacks any probative value to this case.

- d) Respondent selected three properties from the list and provided photographs and property record cards for each of them. *Respondent's Exhibits 5-10*. There is, however, no substantial explanation of why those three were selected. In addition, Vales testified that the one older type home that is in the same neighborhood as the subject was not included among these three. Without such information, the information Respondent offered has no probative value and remains only unsubstantiated opinions that are not persuasive rebuttal or evidence of market value. *Sterling Mgmt. v. State Bd. of Tax Comm'rs*, 730 N.E.2d 828, 838 (Ind. Tax Ct. 2000) (conclusory statements do not constitute probative evidence).
- e) Respondent did not offer probative evidence to rebut or dispute that the six sales offered by Petitioner were comparable to the subject house. Similarly, Respondent did not offer probative evidence to rebut the evidence that the proper value for the subject house should fall somewhere within the range established by those sales.
- f) Furthermore, Respondent did not explain the relevance of the amount of insurance carried on the house, nor did Respondent offer any rebuttal of Petitioner's testimony that the insurance represented replacement value for the property (what it would cost to rebuild the current structure if it were completely destroyed), but not its market value. Under these circumstances it is not possible to give any weight to the amount of insurance carried on the property. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.

#### The Unimproved Land

- g) The record in this case does not contain property record cards for either of the unimproved parcels. Petitioner testified that each of those parcels is only twenty-five feet wide and that they are contiguous with the house parcel. But more information about the subject parcels is required before any kind of valid comparison can be made between them and the other vacant land sales. *Petitioner's Exhibit 7*. Without more information, the range of those other lot sales (between \$22,000 and \$33,000) does

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<sup>1</sup> Respondent simply presented its "Top 20 Comparables and Statistics" (Exhibit 4) without explaining its contents. *See Vales testimony*. The Board cannot accept this exhibit as probative evidence without a detailed explanation regarding what it is and what is supposed to prove. *See Indianapolis Racquet Club*, 802 N.E.2d at 1022. Respondent or Cole, Layer, Trumble often presents a similar document in each of their cases before the Board. Perhaps they explained it in a prior hearing to one of the Board's ALJs and assumed that explanation need not be given again. Nevertheless, a party before the Board cannot rely on explanation of evidence given in one case to "carryover" to an entirely independent appeal. The parties need to explain every piece of evidence to the Board at each hearing. The administrative record for each case must be developed by the parties and must include detailed explanations of the evidence. *See Indianapolis Racquet Club*, 802 N.E.2d at 1022 (The Tax Court has rejected attempts to put forth evidence, such as photographs, calculations, or assessment rules, without explanation. Each party is "required to make a careful, methodical, and detailed factual presentation to both the Indiana Board and [the Tax] Court.").

not prove that the assessed value for each of Petitioner's unimproved lots is wrong or that a correct value would only be \$1,000 as Petitioner requests.

- h) Petitioner opined that these two lots were almost worthless to anybody but him because they were too narrow for building. Such testimony does not constitute probative evidence of market value. *Sterling Mgmt.* 730 N.E.2d at 838.
- i) The Petitioner failed to make the necessary connection between the information contained on the copies of listing sheets and what relationship, if any, the comparable properties have to the assessed value of the unimproved parcels. Finally, he did not provide evidence that would enable him to make a comparison between assessed values of his comparables and the unimproved parcels property. Thus, Petitioner did not submit any probative evidence to support his opinion that the current assessments on the unimproved lots are incorrect or what those assessments should be. Therefore, Petitioner failed to meet his initial burden of proof for parcels 001-15-26-0111-0003 and 001-15-26-0111-0004. *Meridian Towers*, 805 N.E.2d at 478.

### **Conclusion**

- 17. In this case the record requires a different result for the parcel with the house than it does for the two land only parcels.
  - a) The Petitioner presented a prima facie case that the assessed value of parcel 001-15-26-0111-0001 with his house was wrong and that it should be lowered to a total of \$125,900 (land \$25,300 and improvement \$100,600) as he requested.
  - b) The Petitioner failed, however, to make a prima facie case regarding the two land only parcels, 001-15-26-0111-0003 and 001-15-26-0111-0004. The Respondent failed to rebut the prima facie case presented regarding the parcel with the home, but Respondent was not required to rebut the Petitioner's case regarding the two unimproved parcels.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment of parcel 001-15-26-0111-0001 should be lowered from \$148,600 to \$125,900, but the assessments on parcels 001-15-26-0111-0003 and 001-15-26-0111-0004 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.**