

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-032-02-1-4-00056  
**Petitioner:** Audrey R. Seberger  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 009121400080033  
**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 in Lake County, Indiana. The Department of Local Government Finance (the "DLGF") determined the Petitioner's property tax assessment for the subject property and notified the Petitioner on March 26, 2004.
2. The Petitioner filed the Form 139L on April 12, 2004.
3. The Board issued the notice of hearing to the parties dated March 8, 2005.
4. Special Master Kay Schwade held the hearing in Crown Point on April 8, 2005.

### Facts

5. The subject property is located at 1731 Sheffield Avenue, Dyer, Indiana.
6. The subject property is a vacant commercial lot measuring 27,966 square feet.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of subject property as determined by the DLGF:  
Land \$127,000 Total \$127,000.
9. The assessed value requested by Petitioner:  
Land \$80,000 Total \$80,000.

10. Persons present and sworn in at hearing:  
For Petitioner – Audrey R. Seberger, property owner,  
Jack R. Seberberger, agent,  
For Respondent – Stephen Yohler, DLGF.

### **Issue**

10. Summary of Petitioner’s contentions in support of an alleged error in the assessment:
- a) The value of the subject property should be \$80,000 rather than the current value of \$127,000. *J. Seberger testimony.*
  - b) The subject property has been for sale from 1999 to the present with the asking price at a high of \$116,000 and a low of \$80,000. *J. Seberger testimony.* The subject property has now been sold, contingent upon obtaining a variance, for \$87,900. *J. Seberger testimony; Petitioner Exhibit 4.*
  - c) The lack of interest in the subject property between 1999 and the 2005 sale was caused by the extension of Calumet Avenue. The anticipated change in traffic flow from Sheffield Avenue to Calument Avenue turned potential buyers away from the initial time the subject property was placed on the market in 1999. *J. Seberger testimony.*
  - d) The purchase price for the subject property is \$87,900. *J. Seberger testimony; Petitioner Exhibit 4.*
11. Summary of Respondent’s contentions in support of the assessment:
- a) The offer to purchase the subject property, which does not represent a sale, addresses 2005. *Yohler testimony.* The assessment of the subject property is based on 1999 values. *Yohler testimony.*
  - b) While understanding the Petitioner’s position, the DLGF contends that the valuation of the subject property must be based on the 1999 pricing schedules. The current value is correct based on the land order. *Yohler testimony.*

### **Record**

12. 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 1477,
  - c) Exhibits:  
Petitioner Exhibit 1 – A copy of the Form 11, Notice of Assessment,

Petitioner Exhibit 2 – A copy of the Form 139L,  
Petitioner Exhibit 3 – A summary of the Petitioner’s argument,  
Petitioner Exhibit 4 – A letter of intent to purchase the subject property,  
Respondent Exhibit 1 – The subject property record card,  
Respondent Exhibit 2 – The land calculations and neighborhood land summary sheet,  
Board Exhibit A – The Form 139L,  
Board Exhibit B – The Notice of Hearing,  
Board Exhibit C – The Sign in Sheet,

d) These Findings and Conclusions.

### Analysis

13. 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.

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

- a) The letter of intent to purchase shows that R & F Builders is purchasing the subject property for \$87,900 contingent upon receiving approval for a variance. *Petitioner Exhibit 4*. The evidence also shows that the subject property has been offered for sale for approximately 5 years, beginning in 1999, with asking prices above and below the agreed upon sale price of \$87,900. *J. Seberger testimony; Petitioner Exhibit 3*. This evidence is sufficient to show that the current assessment of \$127,900 is overstated and what the subject property’s value is. The burden has now shifted to the Respondent to present evidence rebutting the Petitioner’s evidence.

- b) The Respondent first points to the letter of intent to purchase noting that this letter does not represent an actual sale; rather it is merely an offer to purchase. *Yohler testimony*. If the letter of intent was the only evidence regarding the sale of the subject property, the Respondent's point may have been enough; however, the Petitioner also presented the testimony of Jack Seberger, the property owner's agent with first hand knowledge of the sale of the subject property, stating that the subject property was sold. *J. Seberger testimony*. Simply because the sale of the subject property was contingent upon obtaining a variance does not change the fact that the parties agreed to a purchase price and the sale of the subject property. The testimony of Mr. Seberger shows that the letter of intent to purchase is more than merely an offer to purchase. The evidence shows that the subject property is being purchased for \$87,900. *Petitioner Exhibit 4*.
- c) The Respondent also points out that, while the valuation date is 1999, the letter of intent to purchase addresses the year 2005. *Yohler testimony*. The Respondent is correct that evidence of value must be related back to the 1999 valuation date. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005). If the Petitioner did not or could not make a relationship between the 2005 value and the 1999 value, then the Petitioner's evidence would have no probative value. However, the Petitioner presented evidence that shows the conditions that currently exist and effect the value of the subject property also existed and affected the value of the subject property in 1999. This evidence revealed that potential buyers, from the time the subject property was initially put on the market in 1999, were put off by the anticipated change in traffic flow from Sheffield Avenue upon the completion and the 2004 opening of the Calumet Avenue extension. *J. Seberger testimony*. This evidence shows that, because the 2005 market was influenced by the same factors influencing the 1999 market, the value established by the 2005 sale of the subject property is relevant to the 1999 valuation date.
- d) The Respondent has failed to rebut the Petitioner's evidence showing that the current value of \$127,000 is overstated and that the correct value is \$87,900.<sup>1</sup>

### **Conclusion**

15. The Petitioner provided sufficient evidence to make a prima facie case. The Respondent failed to rebut the Petitioner's prima facie case. The Board finds in favor of the Petitioner.

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<sup>1</sup> Although the Petitioner requested an assessed value of \$80,000 for the subject property, in light of the Petitioner's own evidence, the assessed value should be \$87,900 rather than \$80,000.

### 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 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>.**