

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #s:** 45-001-02-1-5-00166  
45-001-02-1-5-00181  
45-001-02-1-5-00182  
45-001-02-1-4-00183  
45-001-02-1-5-00184  
45-001-02-1-5-00185  
45-001-02-1-5-00186  
45-001-02-1-5-00187  
45-001-02-1-5-00188

**Petitioner:** Bruce E. Ayers Jr.  
**Respondent:** Department of Local Government Finance  
**Parcel #s:** 001254703960015  
001254703970015  
001254703970013  
001254703970014  
001254703960019  
001254703960020  
001254703960018  
001254703960016  
001254703960017

**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 February 17, 2004 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$11,800 for Petition ending in 00166, \$11,800 for Petition ending in 00181, \$11,800 for Petition ending in 00182, \$11,800 for Petition ending in 00183, \$11,800 for Petition ending in 00184, \$11,800 for Petition ending in 00185, \$13,500 for Petition ending in 00186, \$11,800 for Petition ending in 00187, and \$13,500 for Petition ending in 00188 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.

3. The Board issued a notice of hearing to the parties dated September 01, 2004.
4. A hearing was held on October 6, 2004 in Crown Point, Indiana before Special Master Kathy J. Clark.

### **Facts**

5. The property indicated on Petition ending in 00166 is located at: 8542 Indian Boundary, Gary, in Calumet Township. The property indicated on Petition ending in 00181 is located at: 8600 Indian Boundary, Gary, in Calumet Township. The property indicated on Petition ending in 00182 is located at: 8700 Indian Boundary, Gary, in Calumet Township. The property indicated on Petition ending in 00183 is located at: 8614 Indian Boundary, Gary, in Calumet Township. The property indicated on Petition ending in 00184 is located at: 8432 Indian Boundary, Gary, in Calumet Township. The property indicated on Petition ending in 00185 is located at: 8418 Indian Boundary, Gary, in Calumet Township. The property indicated on Petition ending in 00186 is located at: 8500 Indian Boundary, Gary, in Calumet Township. The property indicated on Petition ending in 00187 is located at: 8528 Indian Boundary, Gary, in Calumet Township. The property indicated on Petition ending in 00188 is located at: 8514 Indian Boundary, Gary, in Calumet Township.
6. All parcels are undeveloped lots measuring 90 feet by 125 feet and classified as Residential property.
7. The Special Master did not conduct an on-site visit of the property.
  - a) Assessed Value of subject property as determined by the DLGF:
    - For Petition ending in 00166: Land \$11,800
    - For Petition ending in 00181: Land \$11,800
    - For Petition ending in 00182: Land \$11,800
    - For Petition ending in 00183: Land \$11,800
    - For Petition ending in 00184: Land \$11,800
    - For Petition ending in 00185: Land \$11,800
    - For Petition ending in 00186: Land \$13,500
    - For Petition ending in 00187: Land \$11,800
    - For Petition ending in 00188: Land \$13,500
  - b) Assessed Value requested by Petitioner:
    - The Petitioner requested each Petition be valued at: Land \$3,375
8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
9. Persons sworn in at hearing:

For Petitioner: Bruce E. Ayers, Jr.  
For Respondent: Sharon S. Elliott, Staff Appraiser, CLT  
Diane Spenos, DLGF  
Terry Knee, DLGF  
Tommy P. Bennington, DLGF

### Issues

12. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) Petitioner has investigated the sales prices of lots in the immediate area. Because this lot has no utilities, no access (street), and difficult terrain, no similar lots sold through the GNIAR Multiple Listing Service. There are tax sales of comparable lots. *Petitioner's 139L appeal form. Petitioner's Exhibit 2.*
  - b) Petitioner believes that the aerial topographical maps, utility maps, and spread sheets detailing sales by type (MLS, tax, and commissioners) will prove that sales prices have been between .22 per square foot and .70 per square foot. *Petitioner's Exhibits 4, 6-8.*
  - c) Petitioner submitted an appraisal that presents the belief that because 77% of the sales that have occurred in this area were tax sales, tax sales should be used as comparables to determine market value. Petitioner stated that his appraiser told him that this approach would probably not be considered valid in Tax Court. *Ayers' testimony; Petitioner's Exhibit 5, page 7.*
  - d) Indian Boundary Avenue, Sullivan Street, and an alley that runs behind the properties exist only on plat maps. They are considered "paper streets" and there is currently no street access to the subject property. *Ayers' testimony.*
  - e) Petitioner stated that all parcels except the two with Petition numbers ending in 00186 and 00188 have received a 6% deduction for excess frontage.
13. Summary of Respondent's contentions in support of the assessment:
- a) Respondent stated that the subject property is receiving a deduction of 50% for its location on a "paper street." This is a standard percentage used in Lake County for assessment purposes. *Elliott testimony; Respondent Exhibit 2.*
  - b) Tax sales are not considered to be arms-length transactions and are therefore not considered valid sales representative of the market. *Elliott testimony.*

### Record

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

- a) The Petition and all subsequent submissions by either party.
- b) The tape recording of the hearing labeled BTR #266.
- c) Exhibits:
  - Petitioner Exhibit 1: Form 139L Petition
  - Petitioner Exhibit 2: Summary of Petitioner’s Arguments
  - Petitioner Exhibit 3: Hearing Notice
  - Petitioner Exhibit 4: Sewer Map Relevance/Lack of Sewers
  - Petitioner Exhibit 5: Appraisal Written by David R. Davies
  - Petitioner Exhibit 6: Tax and Commissioners Sales
  - Petitioner Exhibit 7: Tax and Commissioners A&B Auctions
  - Petitioner Exhibit 8: Topographic Aerial Photograph of Lots
  
  - Respondent Exhibit 1: Form 139L
  - Respondent Exhibit 2: Subject Property Record Card
  - Respondent Exhibit 3: Aerial Map
  
  - Board Exhibit A: Form 139 L
  - Board Exhibit B: Notice of Hearing
  - Board Exhibit C: Sign in Sheet
- d) These Findings and Conclusions.

**Analysis**

- 15. 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 Board of Tax Commissioners*, 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 Insurance Company 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 did not provide sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
- a) Indiana's assessment regulations state that for the 2002 general reassessment, a property's assessment was to reflect its value as of January 1, 1999. *See Manual* at 4. The appraisal, however, indicate property values for 2002. Consequently, the Petitioner was required to provide some explanation as to how these values demonstrate, or are relevant to, the subject property's value as of January 1, 1999. Because the Petitioner provided no such explanation, the appraisal does not carry any probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005).
  - b) Furthermore, the appraisal and Petitioner's Exhibits 6 and 7 are based on the assumption that tax sales can be used to determine the market value of a subject property. According to the INDIANA REAL PROPERTY ASSESSMENT GUIDELINES valid sales to be used for comparison purposes must be arms-length transactions. Specifically, tax and commissioners sales would be excluded for consideration because they are typically sold to recover real estate taxes owed by defaulting property owners and therefore are affected by undue influence. *Id. Petitioner's Exhibit 5*.
  - c) The appraiser could have presented information indicating these were the best sales to be used and that in his opinion they were arms-length transactions. Bank sales are generally unreliable because of the Banks desire to quickly pass along the property. However, under some circumstances a bank sale maybe an arms-length transaction. It is the duty of the Petitioner to present evidence indicating these sales were, in fact, arms length transactions. Without such evidence, the bank sales cannot be considered reliable.
  - d) In fact, the Petitioner's appraiser informed the Petitioner that his method of using bank sales would probably not be an acceptable method. *Ayres testimony*.
  - e) The Petitioner also testified that the properties were part of a wetland. However, no evidence was presented to substantiate these statements or to demonstrate the effect this may have on the market value-in-use of the properties. It is also noted that the David R. Davies appraisal submitted as Petitioner's Exhibit 5 makes no reference to the issue of wet conditions or wetlands that would render either property unsuitable for development. *Pet'r Ex. 5*.
  - f) The Respondent testified that the properties are currently receiving a 50% deduction because they are located on a "paper street" without access. This 50% deduction amount was used across Lake County for any parcels that were located on paper streets. *Elliott testimony. Respondent Exhibit 2*.
  - g) The Petitioner did present evidence indicating the parcels with Petition numbers ending in 00186 and 00188 should be receiving a 6% deduction for excess frontage. Even though each of these lots are the same size, these two parcels were not given

this deduction. The Petitioner presented the assessments of comparable lots showing they should be given deduction.

17. The Petitioner presented sufficient evidence proving an error in the assessment for Petitions ending in 00186 and 00188. These two parcels should be given a 6% deduction for excess frontage, making their assessed value \$11,800 each. The Petitioner failed to make a prima facie case with regard to any other parcels or issues. The Board finds in favor of the Petitioner in part, and in favor of the Respondent in part.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment for Petitions ending in 00186 and 00188 should be changed. The assessment for all other Petitions 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.**