

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-001-02-1-5-00693  
**Petitioner:** C. David Rose  
**Respondent:** Department of Local Government Finance  
**Parcels #:** 001-25-41-0256-0045  
**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 February 25, 2004. The Department of Local Government Finance (the "DLGF") determined that the property tax assessment for the subject property is \$21,700 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed the Form 139L petition on April 28, 2004.
3. The Board issued notice of hearing to the parties dated October 8, 2004.
4. Special Master Dalene McMillen held the hearing in Crown Point on November 15, 2004.

### Facts

5. The subject property is a vacant lot located at 7301 East 1<sup>st</sup> Avenue, Gary. The location is in Calumet Township.
6. The Special Master did not conduct an on-site visit of the property.
7. The assessed value of the subject property as determined by the DLGF:  
Land \$21,700                      Improvements -0-                      Total \$21,700.
8. The assessed value of the subject property as requested by the Petitioner:  
Land: \$2,500                      Improvements -0-                      Total \$2,500.

9. The following persons were sworn as witnesses at the hearing:  
For the Petitioner — C. David Rose, Owner,  
For the DLGF — Diane Spenos, Assessor/Auditor.

### **Issue**

10. Summary of Petitioner's contentions in support of alleged error in assessment:
- a. The assessed value is overstated in comparison with the market value of properties in the subject neighborhood. The subject property (lot 518) was purchased at a tax sale on May 19, 2001, for \$2,500. Therefore, the assessed value of the property should not exceed the purchase price. Further, in 1999 the subject's neighborhood was in a decline with trashed lots and run-down properties. The Petitioner requests the property be assessed at \$2,500. *Petitioner Exhibits 2, 3; Rose testimony.*
  - b. Petitioner presented photographs of the subject lot and comparable lots showing they are vacant wooded lots. *Petitioner Exhibits 7, 8.* A multiple listing sheet for lot 480 located at 7431 Ash Place shows a 75' x 200' lot sold April 16, 2001, for \$7,500. Lot 513, located at 7411 East 1<sup>st</sup> Avenue, sold in a private sale for \$17,500 on January 2, 2003. Petitioner also owned lot 513. Lot 513 was exposed to the open market through a yard sign and was sold in an arms-length transaction. Therefore it indicates the market value of a property in this neighborhood. *Petitioner Exhibits 2, 5, 6; Rose testimony.*
  - c. The property owned by a church located next door to the subject property is being assessed at \$13,900. The church lot is improved with a paved parking lot and is identical in size to the subject property. This indicates the subject property is being over-assessed. *Rose testimony.*
11. Summary of Respondent's contentions in support of assessment:
- a. The subject property is valued fairly and consistently for the subject area. A negative 20 percent influence factor has been applied to the land to account for the property being un-improved. *Spenos testimony.*
  - b. The subject property is being assessed consistently with property in the subject neighborhood. The Respondent submitted a comparable property located four lots away from the subject. This parcel is the same size, has a 20 percent negative influence factor applied for vacancy and is being assessed for \$21,700. *Respondent Exhibit 3; Spenos 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 Co. 636,
- c. Exhibits:
  - Petitioner Exhibit 1 – Form 139L,
  - Petitioner Exhibit 2 – Summary of Petitioner’s argument,
  - Petitioner Exhibit 3 – Tax sale purchase receipt,
  - Petitioner Exhibit 4 – Aerial plat map for the subject area,
  - Petitioner Exhibit 5 – The multiple listing data for 7431 Ash Place, Gary,
  - Petitioner Exhibit 6 – A settlement statement for the property located at 7411 East 1<sup>st</sup> Avenue, Gary,
  - Petitioner Exhibit 7 – Photographs of 7301 East 1<sup>st</sup> Avenue, Gary (subject) and 7411 East 1<sup>st</sup> Avenue, Gary (comparable),
  - Petitioner Exhibit 8 – A photograph of 7431 Ash Place, Gary (comparable),
  - Respondent Exhibit 1 – Form 139L,
  - Respondent Exhibit 2 – 2002 property record card for the subject property,
  - Respondent Exhibit 3 – Property record card for 7411 East 1<sup>st</sup> Avenue,
  - Respondent Exhibit 4 – Plat map and aerial map of the subject area,
  - Board Exhibit A – Form 139L petition,
  - Board Exhibit B – Notices of Hearing,
  - Board Exhibit C – Hearing sign-in sheet,
- d. These Findings and Conclusions.

### Analysis

- 13. 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.

14. The Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a. The Petitioner submitted the receipt for the payment of \$2,500 for the property to support the value requested. He bought the property in 2001 at tax sale. The Petitioner testified that tax sales are advertised for weeks in advance and purchases are made by bid with several bidders present. Petitioner believes that this makes the transaction evidence of market value.
  - b. Tax sales are not reliable indicators of true market value. *See 2002 REAL PROPERTY ASSESSMENT MANUAL* at 10 (defining Market Value as a price in a competitive and open market that is unaffected by undue stimulus). Tax sales are by their very nature not indicative of a competitive and open market. In a tax sale, the seller is not typically motivated. The sale of the property is for non-payment of taxes. The seller is attempting to sell the property in order to return the property to the county tax rolls. The required price for a tax sale property is a minimum bid. Ind. Code § 6-1.1-24-2.
  - c. The Petitioner testified the church lot located next to the subject lot is improved with a parking lot and is being assessed for less than the subject property. Respondent offered testimony that the parking lot was not assessed as residential property. The Petitioner failed to establish the church property is comparable to the subject property. In addition, Petitioner failed to prove how the value of the church parking lot indicates the market value-in-use of the subject property. Consequently, the assessment of the church parking lot is not probative evidence for the valuation of the subject property. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005).
  - d. Petitioner submitted photographs and testimony to prove that the lot is located in a declining neighborhood. The photographs do not prove that the lots are located in a declining neighborhood with run-down properties. Petitioner's testimony did not support his contention because he testified the neighborhood had somewhat turned around by 2002 and it was getting better. Furthermore, there is no probative evidence that establishes the extent of any negative impact those neighborhood problems might have on market value. Therefore, based on the allegedly declining neighborhood, Petitioner has not met his burden to prove what the correct assessment should be. *Meridian Towers*, 805 N.E.2d at 478.
  - e. The Petitioner presented evidence of two vacant land sales to show that the value of the subject lot should be considerably less than the assessed value. One sale in 2001 was for \$7,500; the other sale for \$17,500 occurred in 2003. The subject property and the comparable sales are all the same size and in the same neighborhood, with the \$17,500 property located on the same block as the subject. Although the presentation of sales data is a valid method of challenging an assessment, these sales occurred two to four years after the valuation date. Petitioner did not establish what the value of these properties would have been on January 1, 1999. Without that explanation, those sales lack probative value. *Long*, 821 N.E.2d at 471.

- f. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003).

### **Conclusion**

15. The Petitioner failed to make a prima facie case regarding any change in the assessment. The Board finds in favor of the 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: \_\_\_\_\_

\_\_\_\_\_  
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.**