

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-001-02-1-5-00898  
**Petitioner:** Calvin Kennedy Sr.  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 001-25-44-0087-0040  
**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 9, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$3,300 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated October 4, 2004.
4. A hearing was held on November 8, 2004 in Crown Point, Indiana before Special Master Peter Salvesson.

### Facts

5. The subject property is located at 527 Penn Street, Gary, in Calumet Township.
6. The subject property is a vacant residential lot consisting of 0.086 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the property is \$3,300 for the land. There are no improvements on the subject property.
9. The Petitioner requested a value of \$330 for the property.
10. Calvin Kennedy Sr., the owner of the property, and John Toumey, an assessor/auditor with DLGF, appeared at the hearing and were sworn as witnesses.

## **Issues**

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
  - a) The subject parcel is vacant, and is too small to be built upon. *Kennedy testimony.*
  - b) Lots in the area cannot be sold for the amount of the subject property's assessment. *Id.*
  - c) Petitioner paid \$500-\$1,000 for the subject property at a tax sale. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
  - a) The physical characteristics of the subject property are properly reflected on the property record card. *Toumey testimony; Respondent Ex. 2.*
  - b) The 20% negative influence factor properly accounts for the unimproved nature of the subject property. *Id.*

## **Record**

13. 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 Lake Co - 569.
  - c) Exhibits:

Respondent's Exhibit 1:	Form 139L Petition
Respondent's Exhibit 2:	Subject Property Record Card
Respondent's Exhibit 3:	Aerial Map
Board Exhibit A:	Form 139L Petition
Board Exhibit B:	Notice 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 at 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.
15. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) The Petitioner contends that the assessment of the subject parcel is too high. The Petitioner submitted evidence that the parcel was purchased at a tax sale in May 2002 for between \$500 and \$1,000. No evidence of this purchase or purchase price was submitted.
  - b) The 2002 Real Property Assessment Manual (the Manual) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4. While an actual sale of a property may be a good indicator of its actual market value, the sale must be an “arm’s-length transaction.” In other words, a sale does not necessarily indicate the market value of the property unless that sale happens in a competitive and open market under all conditions requisite to a fair sale, in which the buyer and seller are typically motivated. MANUAL at 10. “Fair market value’ is what a willing buyer, under no compulsion to buy, would pay a willing seller, under no compulsion to sell.” *Second National Bank of Richmond v. State*, 366 N.E.2d 694, 696 (Ind. Ct. App. 1977). A tax sale purchase of property does not satisfy the conditions of a competitive and open market, and the buyer and seller being typically willing, motivated and under no compulsion to buy or sell. Thus, the purchase price of property obtained in a tax sale – even if such evidence were submitted by Petitioner – is not, by itself, probative evidence of market value of a property.
  - c) The Petitioner also testified that the property is too narrow to be developed. Generally, land values in a given neighborhood are determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v.*

*State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier "that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel." GUIDELINES, glossary at 10. Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." See *Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). The DLGF did not dispute that the property was undevelopable, but testified that a 20% negative adjustment factor was applied to the property to reflect the unimproved nature of the lot. While Petitioner has made a prima facie case that the subject property is undevelopable (which is different than an influence factor for the property not being developed), he has not made a prima facie case as to the impact this would have on the market value of the property. Thus, while Petitioner has met his burden to produce evidence supporting "an application of a negative influence factor," he has not produced sufficient evidence of the "quantification of that influence factor." See *Talesnick*, 756 N.E.2d at 1108.

- d) For the reasons set forth, the Petitioner has failed to make a prima facie case that the assessment of the subject property is incorrect.

### **Conclusion**

16. The Petitioner did not make a prima facie case. The Board finds in favor of 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: \_\_\_\_\_

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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 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>.