

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-001-02-1-5-00113  
**Petitioners:** David R. Stalf and Lark M. Lile  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 001254703910006  
**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 24, 2004, in Lake County. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$13,200 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed the Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the party dated February 24, 2005.
4. Hearing was held on March 29, 2005, in Crown Point, Indiana before Special Master Jennifer Bippus.

### Facts

5. The subject property is a vacant residential lot located at 8506-10 Maple Avenue, Gary in Calumet Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Value of subject property as determined by the DLGF:  
Land: \$13,200
8. Assessed Value requested by Petitioners on the Form 139L petition:  
Land: \$6,000
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioners: David R. Stalf, Owner  
Lark M. Lile, Owner

For Respondent: Stephen Yohler, DLGF Representative

**Issue**

11. Summary of Petitioners' contentions in support of alleged error in assessment:

- a) The assessment is overstated and the land is not at market value. The subject property is an unimproved lot and not considered buildable due to the lot size. *Stalf testimony; Pet'r Ex. 3.*
- b) The subject property measures 45' x 117' equaling 5,265 square foot and cannot be built on. The minimum required size for construction is 50' width and a minimum of 6,000 square feet. *Stalf testimony; Pet'r Ex. 5.*
- c) The Petitioner presented sales data for three comparable properties which sold close to January 1, 1999. Each of the comparable properties is larger than the subject property and is considered buildable. Each of the comparables sold for less than the subject property. *Stalf testimony; Pet'r Ex. 6.*
- d) The comparable properties are in the same general area as the subject property and the sales are as follows:

6508 Miller Ave., Gary, IN	sold 5/5/98	\$4,000
7524 Harold, Gary, IN	sold 5/19/99	\$6,250
662 Pike St., Gary, IN	sold 4/21/00	\$10,500

*Stalf testimony; Pet'r Ex. 6.*
- e) The subject property was auctioned. The minimum bid for the subject property was \$1,370. The Petitioners were the only bidders and met the minimum bid. The auction was well advertised and attended. The Petitioners bid on the subject property because it is adjacent to their homes. The subject property was transferred to the Petitioners on December 6, 2000. *Stalf testimony; Pet'r Exs. 7, 8.*
- f) The Petitioners presented a Plat Map to substantiate platted dimensions and location. A Zoning Map was presented to show the classification of R-2 with restrictions and requirements. *Stalf testimony; Pet'r Exs. 9, 10.*
- g) The Petitioners keep a sump pump on the subject property for drainage. The subject property is located in an area that periodically floods after heavy rain. There is a storm drain located down from the property. This single drain gathers water and drains about four blocks. When there is a heavy rainfall, the storm drain combines with the sanitary drain. It backs into the street and runs into the lots. When the

- subject property was offered for sale, a neighbor hung a sign telling potential buyers how much water accumulates on the site after a heavy rainfall. *Stalf and Lile testimony.*
- h) The flooding can occur once or several times a year; or not at all in a couple of years. The flooding all depends on heavy rainfalls, over which the Petitioners have no control. *Stalf testimony.*
  - i) The subject property is not in a flood plain, but just floods periodically from heavy rains. There are categories on negative influence factors for flooded property, but the Petitioners are not sure how they work. *Stalf testimony.*
  - j) The Petitioners spoke with some people and a small lot like the subject usually sells for \$2,500. There is no evidence to substantiate this amount. *Stalf testimony.*
  - k) The Petitioners checked into combining the lots and found there are advantages and disadvantages. *Stalf and Lile testimony.*
  - l) The land commission's valuations are not accurate and the property is valued too high for this area. *Stalf testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) Every property in the neighborhood is assessed from the neighborhood land valuation order for that particular neighborhood. The subject property has been assessed at \$385 per front foot as the other properties have been. *Yohler testimony; Resp't Ex. 3.*
  - b) If the Petitioners check their neighbor's property record cards they would find that everyone in the neighborhood has the same values determined by the land commission. *Yohler testimony.*
  - c) The subject property record card shows a depth factor of 95% making the adjusted rate \$366 per front foot. *Yohler testimony; Resp't Ex. 2.*
  - d) The subject property also receives a negative influence factor of 20% for being undeveloped. *Yohler testimony; Resp't Ex. 2.*
  - e) The Petitioners could consider combining the lot with their other properties to create an excess frontage and the value would be lower. *Yohler testimony.*

### **Record**

13. The official record for this matter is made up of the following:
- a) The Petition.

- b) The tape recording of the hearing labeled Lake #1333.
- c) Exhibits:
  - Petitioner Exhibit 1: Copy of Form 139L
  - Petitioner Exhibit 2: Notice of Final Assessment
  - Petitioner Exhibit 3: Summary of Petitioner’s Argument
  - Petitioner Exhibit 4: Outline of Evidence Explaining Relevance
  - Petitioner Exhibit 5: Zoning Ordinance
  - Petitioner Exhibit 6: Sales Data of Comparable Lots
  - Petitioner Exhibit 7: Auctioneer Worksheet
  - Petitioner Exhibit 8: Commissioner’s Deed
  - Petitioner Exhibit 9: Plat Map
  - Petitioner Exhibit 10: Zoning Map
  - Petitioner Exhibit 11: Photographs of Property
  - Petitioner Exhibit 12: Property Record Card
  
  - Respondent Exhibit 1: Copy of Form 139L
  - Respondent Exhibit 2: Copy of PRC of subject property
  - Respondent Exhibit 3: Residential Neighborhood Valuation Form
  
  - Board Exhibit A: Form 139L
  - Board Exhibit B: Notice of Hearing
  - Board Exhibit C: Sign in Sheet
- d) These Findings and Conclusions.

### **Analysis**

- 14. The most applicable governing cases and regulations 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 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 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 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 Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners contend the assessment of the subject property is overstated. The Petitioners support this contention by arguing the subject property is unbuildable, comparable sales, the purchase price, and flooding.
  - b) The Petitioners submitted the zoning rules to show the subject property is too small to build on. *Pet'r Ex. 5*. However, the subject property is adjacent to other properties owned by the Petitioners. The Petitioners purchased the subject property for that reason. The subject property could be combined with other properties owned by the Petitioners' and meet the zoning requirements. The Petitioners failed to show the subject property is unbuildable.
  - c) The Petitioners provided sales data for three lots in the same general area as the subject property. These lots were all larger than the subject property. The sales prices ranged from \$4,000 to \$10,500 and took place between May 1998 and April 2000. *Pet'r Ex. 6*.
  - d) In making this argument, the Petitioners essentially rely on a sales comparison approach to establish the market value in use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2)(stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”); *See also, Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
  - e) In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
  - f) The Petitioners pointed out the lots which sold were larger, but did not provide any explanation of how the lots were actually comparable to the subject property. The Petitioners statements that the properties are comparable are not probative evidence of comparability. *Long*, 821 N.E.2d at 470.
  - g) The Petitioners purchased the subject property at an auction. Based on the evidence it appears the subject property was auctioned for the Board of Commissioners of Lake

County. The Petitioners were the only bidders and paid the minimum bid price.  
*Pet'r Ex. 8.*

- h) Tax and Commissioners' 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 and Commissioners' sales are by their very nature not indicative of a competitive and open market. In this type of sale or auction, the seller is not typically motivated. The seller is attempting to sell the property in order to return the property to the county tax rolls. The purchase price from the Commissioners Sale or auction is not probative evidence of the market value-in-use of the subject property.
- i) The Petitioners final argument is that the subject property floods after heavy rains. The Petitioners stated the subject property could flood several times a year or not at all for several years. The Petitioners testified that the subject property is not in a flood plain. The Petitioners presented photographs showing the sump pump and the drain.
- j) While the Petitioners contend the flooding makes the subject property less desirable than other properties, the Petitioners have not attempted to quantify the effect of the flooding on its market value-in-use. Thus, the Petitioners' assertions in that regard amount to little more than conclusory statements. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).
- k) The Petitioners made several arguments as to why the assessment is overstated. However, the Petitioners have failed to prove the current assessment is incorrect.

### **Conclusion**

16. The Petitioners failed to make a prima facie case. 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. 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>>