

10. Persons present and sworn in at hearing:
For Petitioner – Marilyn Panice, property owner,
Linda Panice, owner’s daughter,
Victoria Panice, owner’s daughter,
For Respondent – Steve McKinney, DLGF.

Issue

10. Summary of Petitioner’s contentions in support of an alleged error in the assessment:
- a) The subject property was purchased for \$22,000 in 1989. *M. Panice testimony; Petitioner Exhibit 2.* The purchase was for only half of the lot. *M. Panice testimony.* In 1989, the asking price for the entire lot was \$43,000. *M. Panice testimony.*
 - b) The subject property cannot be sold for \$47,000. *M. Panice testimony.* The size of the subject property would discourage the purchase for industrial use because it would only be large enough for a pole barn, with no room for parking. *L. Panice testimony.* It is uncertain whether Cedar Lake would even issue permits for construction on the subject property due to its size. *L. Panice testimony.*
 - c) The subject property is located behind an adjoining property owned by the Petitioner. *M. Panice testimony; Petitioner Exhibit 3.* The subject property could only be sold if the adjoining property were sold as well because the adjoining property has an existing building. *V. Panice testimony.*
 - d) The subject property is 0.414 acres which is less than half an acre. *L. Panice testimony; McKinney testimony; Respondent Exhibit 1.* If industrial land is selling for \$74,000 an acre in the surrounding area, then the subject property value would be \$37,000 rather than \$47,000. *L. Panice testimony.*
11. Summary of Respondent’s contentions in support of the assessment:
- a) The land calculation shows that industrial land in the area sells for \$74,000 an acre. *McKinney testimony; Respondent Exhibit 2.* This value is prorated down for the subject property. *McKinney testimony.*
 - b) The DLGF uses a computer formula to determine land value. The land calculation and land summary sheet explains the land value calculations. *McKinney 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 1343,

- c) Exhibits:
 Petitioner Exhibit 1 – The Form 139L petition,
 Petitioner Exhibit 2 – A narrative explaining the Petitioner’s position and the subject property’s legal description,
 Petitioner Exhibit 3 – An outline of exhibits as follows:
1. A copy of a plat map with the subject property highlighted in orange,
 2. An aerial photograph showing the subject property and the adjoining property,
 3. A copy of a Form 122 effective for March 1, 1989,
 4. A copy of a temporary tax receipt pertaining to the subject property,
 5. A copy of the 2002 provisional tax bills for the subject property,
 6. Property tax information pertaining to the subject property,
 7. The subject property record card,
 8. A copy of a reconciliation tax bill pertaining to the subject property,
 9. A copy of the 2003 payable 2004 Tax Bill for the subject property,
- Respondent Exhibit 1 – The subject property record card,
 Respondent Exhibit 2 – The land calculation and neighborhood land summary sheet pertaining to the subject property,
 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 evidence shows that land base rate in the subject area is \$74,000 an acre. *L. Panice testimony; McKinney testimony; Respondent Exhibit 2*. The subject property is 0.414 acres. *McKinney testimony; Respondent Exhibit 1*. Because the subject property is less than a half acre, using a per acre rate of \$74,000, the value for the subject property should be \$37,000 rather than \$47,000. *L. Panice testimony*. This evidence is sufficient to show that the current assessment of \$47,000 is overstated.
 - b) Land value is determined, on an acreage basis, by multiplying the acreage of the land by the appropriate base rate. 2002 REAL PROPERTY ASSESSMENT MANUAL at 96 -98 (incorporated by reference at 50 IAC 2.3 -1-2). The Petitioner has made a prima facie case by presenting evidence showing that, based on the size of the subject property and the per acre land rate, the subject property is overvalued at \$47,100. The burden has shifted to the Respondent to present evidence rebutting the Petitioner's evidence. *American United*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.
 - c) The Respondent did not present any evidence rebutting the Petitioner's evidence. The Respondent merely stated that a computer formula is used to calculate land values. *McKinney testimony*. Simply stating that the land values established are generated using a computer formula is not enough to rebut the Petitioner's evidence when the Petitioner's case is made, in part, by the Respondent's own evidence. *Respondent Exhibit 1, 2*. The Respondent needed to show fault in the Petitioner's evidence and has failed to do so.

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.

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: _____

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>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.