

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #s:** 45-001-02-1-5-00697  
45-001-02-1-5-00698  
**Petitioners:** Jeanette C. Fage & Peter Giannini  
**Respondent:** The Department of Local Government Finance  
**Parcel #s:** 001-25-47-0399-0021  
001-25-47-0399-0019  
**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 12, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessments for the subject properties were \$6,900 each and notified the Petitioners on March 31, 2004.
2. The Petitioners filed Form 139L petitions on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated January 28, 2005.
4. Special Master Kathy J. Clark held a hearing at 11:15 A.M. on March 3, 2005, in Crown Point, Indiana.

### Facts

5. The subject properties are located at 3713 W. 24<sup>th</sup> Place and 3737 W. 24<sup>th</sup> Place, Gary. The location is in Calumet Township.
6. The subject properties are two vacant residential lots each measuring 75' by 160'.
7. The Special Master did not conduct an on-site visit of the properties
8. Assessed values of subject properties as determined by the DLGF:  
Land \$6,900,  
Land \$6,900.

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9. Assessed values requested by Petitioners are:  
Land \$1,500,  
Land \$1,500.
10. Persons sworn in as witnesses at the hearing:  
Peter Giannini, Owner,  
Diane Spenos, Assessor/Auditor, Department of Local Government Finance.

### **Issues**

11. Summary of Petitioners' contentions in support of an error in the assessments:
  - a. While the lots are considered "buildable" by City of Gary ordinance, there is little or no market for lots in Gary anywhere near the price at which the subjects are assessed. *Giannini testimony.*
  - b. A private individual, using a Realtor, offered a 60' by 125' lot at 3324-30 W. 21<sup>st</sup> Place for sale at \$6,000 in November 2003. The lot sold December 11, 2003, for only \$3,000. *Petitioner Exhibit 4; Giannini testimony.*
  - c. A private individual, using a Realtor, sold a 75' by 185' lot at 3600-10 W. 23<sup>rd</sup> Avenue for \$2,500 on December 28, 2000. *Petitioner Exhibit 7; Giannini testimony.*
  - d. The City of Gary continues to market lots in the area to this day for as little as \$300 for lots with 60' frontage. With this kind of competition in the neighborhood it would be impossible to sell the subject lots for \$6,900 each. *Petitioner Exhibits 8,9; Giannini testimony.*
12. Summary of Respondent's contention in support of the assessments:
  - a. Each lot is currently receiving a negative 20% influence factor for being "unimproved" and a negative 10% influence factor for having an excess of frontage as compared to the standard set for the neighborhood. This accurately reflects their assessed values as they relate to other properties within the neighborhood. *Respondent Exhibit 2; Spenos testimony.*
  - b. The subject lots are buildable according to the Zoning Ordinances of the City of Gary and are correctly assessed as such. *Respondent Exhibit 3; Spenos testimony.*

### **Record**

13. The official record for this matter is made up of the following:
  - a. The Petitions,
  - b. The tape recording of the hearing labeled Lake County 1242,
  - c. Exhibits:
    - Petitioner Exhibit 1 - Notice of Final Assessment,
    - Petitioner Exhibit 2 - Form 139L Appeal,
    - Petitioner Exhibit 3 - Location map,
    - Petitioner Exhibit 4 - Agent sales report,
    - Petitioner Exhibit 5 - Sales Disclosure 3224-28 W. 22<sup>nd</sup> Ave,
    - Petitioner Exhibit 6 - Sales Disclosure 2386-94 Noble Street,

- Petitioner Exhibit 7 - Sales Disclosure 3600-3610 W. 23<sup>rd</sup> Ave,
- Petitioner Exhibit 8 - Legal Notice City of Gary selling lots,
- Petitioner Exhibit 9 - *Times* article regarding lots,
- Respondent Exhibit 1 - Form 139L Petition,
- Respondent Exhibit 2 - Subject property record card,
- Respondent Exhibit 3 - City of Gary Zoning Ordinance,
- Board Exhibit A - Form 139L,
- Board Exhibit B - Notice of Hearing,
- Board Exhibit C - Hearing Sign In Sheet,
- d. These Findings and Conclusions.

### Analysis

14. 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 Com'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 failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
  - a. The Petitioners contend the subject properties are over-assessed when compared to the market values for the area. *Giannini testimony*.
  - b. The Petitioners submitted a sales report and three sales disclosures for properties in the area. *Petitioner Exhibits 4-8*.
  - c. The sale of the lot located at 3324-30 W. 21st Place measuring 60’ by 125’ is considered by the Board to be too distant from the valuation date of January 1, 1999 to be considered probative. *Petitioner Exhibit 4*.
  - d. Valuation date is the date as of which the true tax value of the property is estimated. In the case of the 2002 general reassessment, this would be January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL, at 12 (incorporated by reference at 50 IAC 2.3-1-2.).
  - e. Indiana’s assessment regulations state that a property’s assessment was to reflect the value as of January 1, 1999. If documentation is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how these

- values demonstrate, or are relevant to, the subject value as of January 1, 1999, is required if those documents are to have probative value. *William & Dorothy Long v. Wayne Twp Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005)
- f. Of the two lots sold by the City of Gary/Department of Redevelopment, the sales disclosure for 3224-28 W. 22<sup>nd</sup> Avenue is unclear as to the sales amount. While the date is interpretable as July 1997, it is unclear whether the sales amount is \$300 or \$3,000. The second sale is for a lot half the size of the subjects and therefore deemed not comparable. *Petitioner Exhibits 5, 6.*
  - g. While the final sale submitted by the Petitioners as Exhibit 7 is relatively close to the valuation date of January 1, 1999, the Petitioners have drawn no conclusion as to how a lot larger than the subjects is comparable to the subjects. Again, in making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc.*, 802 N.E.2d at 1018, 1022.
  - h. 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 Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

16. The Petitioners failed to provide sufficient evidence to establish a prima facie case. The Board finds for the Respondent.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.**