

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-032-02-1-5-00393A  
**Petitioners:** Ronald & Patricia Hunter  
**Respondent:** Department of Local Government Finance  
**Parcel:** 009-12-14-0212-0001  
**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. Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$414,300 and notified Petitioner on March 31, 2004.
2. Petitioner filed Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated November 5, 2004.
4. Special Master Barbara Wiggins held the hearing in Crown Point on December 8, 2004.

### Facts

5. The subject property is a single-family residence located at 940 Royal Dublin in Dyer.
6. The Special Master did not conduct an on-site visit of the property.
7. The assessed value as determined by the DLGF:  
Land \$114,000      Improvements \$300,300      Total \$414,300.
8. The Petitioners did not request a specific assessed value.
9. Persons present and sworn as witnesses at the hearing:  
Ronald and Patricia Hunter, property owners,  
Sharon Elliott, assessor/auditor.

## **Issue**

10. Summary of Petitioners' contentions in support of an alleged error in assessment:
  - a) The land assessment is too high because a sanitary lift station is located on the property. It has a negative impact on market value. *Hunter testimony*. There is no dispute about the assessment of the improvements. *Id.*
  - b) Petitioners bought their lot for \$55,000 on April 30, 1993. *Petitioner Exhibit 2; Hunter testimony*. They received approximately a 10% reduction in purchase price when they bought the property because of the lift station. *Hunter testimony*.
  - c) The other lot next to the lift station has a similar view of it and as of the date of the hearing it still has not been sold. *Hunter testimony*.
  - d) Comparable property sold for \$60,000 in 1999. This fact shows that the market value of these lots did not increase substantially between 1993 and 1999. *Id.; Petitioner Exhibit 6*.
11. Respondent contends the assessment is fair and there should be no change. *Elliott 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 929,
  - c) Exhibits:
    - Petitioner Exhibit 1 – 1993 Property Letter,
    - Petitioner Exhibit 2 – 1993 Purchase Agreement,
    - Petitioner Exhibit 3 – Plat of Survey,
    - Petitioner Exhibit 4 – Inspection Report,
    - Petitioner Exhibit 5 – Six Photographs,
    - Petitioner Exhibit 6 – 1999 Sales Disclosure Form for 1225 Ballybunion Court,
    - Respondent Exhibit 1 – Form 139L,
    - Respondent Exhibit 2 – Subject Property Record Card,
    - Respondent Exhibit 3 – Subject Photograph,
    - Respondent Exhibit 4 – Comparable Summary Sheet,
    - Respondent Exhibit 5 – Comparable PRC's and Photographs,
    - Board Exhibit A – Form 139L,
    - Board Exhibit B – Notice of Hearing,
    - Board Exhibit C – Sign in Sheet,

d) These Findings and Conclusions.

### Analysis

13. The generally applicable law is:

- a) A Petitioner seeking review of a determination of the DLGF 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.

14. Petitioners did not provide sufficient evidence to support their contention. This conclusion was arrived at because:

- a) Petitioners established that a sanitary lift station is situated on a back corner of the Petitioners' lot and on an adjacent lot. *Hunter testimony; Petitioner Exhibit 4*. The equipment produces no odor, but makes noise approximately one half hour per day. Petitioners claim it decreases the marketability of their property. *Hunter testimony*.
- b) To make a prima facie case, Petitioners would need to present probative evidence that the lift station lowers the market value of their property and what the market value of their property was. Conclusory statements do not qualify as probative evidence. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- c) In addition, the 2002 general reassessment must reflect value as of January 1, 1999. Consequently, Petitioners are required to explain how their evidence demonstrates, or is relevant to, the subject property's value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

- d) Petitioners' testimony that the lift station lowers the market value of their lot is not entirely a conclusory opinion. The fact that Petitioners got a 10% discount on the lot when they bought it is supportive of that opinion. Based on the unrebutted evidence in this case, the Board accepts that the lift station could have some negative impact on the market value of this particular lot. That point alone, however, is not sufficient to change the current assessment. Petitioners must prove what the impact is.
- e) Petitioners did not claim what the correct market value of their land should be when they filed their petition, but they apparently believe the assessed value should be something close to the \$55,000 that they paid for the lot. They did not present probative evidence at the hearing that established a market value as of January 1, 1999.
- f) Petitioners offered testimony that the lots in the area did not substantially increase in value from the time of their purchase in 1993 through January 1, 1999. By itself, this statement is simply conclusory testimony, not probative evidence. *Lacy Diversified*, 799 N.E.2d at 1221; *Whitley Products*, 704 N.E.2d at 1119.
- g) As support for that testimony, Petitioners offered evidence that another property they identified as similar sold for \$60,000 on February 15, 1999. They provided the sales disclosure form to document that sale. Nevertheless, Petitioners failed to prove that property is comparable to their own. "A taxpayer's statements that another property 'is similar' or 'is comparable' are nothing more than conclusions. Conclusory statements do not constitute probative evidence. Rather, specific reasons must be provided as to why a taxpayer believes a property is comparable." *Long*, 821 N.E.2d at 470 (citations omitted).
- h) Furthermore, Petitioners offered no probative evidence regarding the market value of the allegedly comparable property in 1993. Without that information, the 1999 selling price provides no probative evidence to support the conclusory testimony that the market value of lots in this area did not increase substantially during that six-year period. Accordingly, the evidence Petitioners offered is not enough to make a prima facie case regarding the market value of their lot as of January 1, 1999.
- i) 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*, 799 N.E.2d at 1222.

### **Conclusion**

15. Petitioners failed to 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

### - 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>.