

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-013-02-1-5-00063  
**Petitioners:** Scott & Carla Bourrell  
**Respondent:** Department of Local Government Finance  
**Parcel:** 005-30-24-0116-0009  
**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. On March 31, 2004, the Department of Local Government Finance (the DLGF) issued a Notice of Department Assessed Value Determination increasing the 2002 assessed value for the subject land from \$40,200 to \$103,200.
2. The Petitioners filed a Form 139L petition on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated October 22, 2004.
4. Special Master Patti Kindler held the hearing on November 29, 2004, in Crown Point.

### Facts

5. The subject property is located at 12644 Wicker Avenue in Cedar Lake.
6. The subject property is a 5,160 square foot commercial building on .461 acres.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of subject property as determined by the DLGF is:  
Land \$103,200      Improvements \$167,700      Total \$270,900.
9. The assessed value requested by Petitioners on the Form 139L petition is:  
Land \$ 25,600      Improvements \$167,700      Total \$193,300.
10. The following persons were sworn in at the hearing:  
Carla Bourrell, Owner  
James S. Hemming, Assessor/Auditor,  
Tommy P. Bennington, Assessor/Auditor.

## Issues

11. Summary of Petitioners' contentions in support of the alleged errors in assessment:
  - a. The Notice of Department Assessed Value Determination indicates the land assessment was changed from \$40,200 to \$103,200 based on a change made in the neighborhood assignment. *Bourrell testimony; Board Exhibit A.*
  - b. Petitioners contacted assessment officials from Lake County, Cole-Layer-Trumble, and the State seeking an explanation for this change. No one could explain what the adjustment, shown as a "change in the neighborhood assignment," meant or why the adjustment was warranted. *Bourrell testimony.*
  - c. Petitioners presented assessment information for purported comparable properties located at 12610 Wicker Avenue and 12640 Wicker Avenue, adjacent to the subject. These two lots are the same size as Petitioners' parcel, and all three parcels are zoned B-3, a business zoning classification. Although the two adjacent parcels are zoned B-3, currently there are residential dwellings on both parcels. The land assessment for each of these two adjacent parcels is \$25,600. The assessed values of all three parcels should be \$25,600 because of similar size and zoning. *Bourrell testimony; Petitioners Exhibits 1, 2.*
  - d. The condition rating of the concrete paving is in error. The paving is not new and currently has a condition rating of "good." Repairs have not been made. *Bourrell testimony; Respondent Exhibit 2.* Petitioners submitted photographs purporting to show that the concrete paving is not in good condition. *Petitioners Exhibit 3.*<sup>1</sup>
  
12. Summary of Respondent's contentions in support of the assessment:
  - a. The DLGF made an administrative correction to the subject's original commercial land assessment and sent the required notification to the taxpayer. The neighborhood code was changed to commercial code 03093. The original 2002 property record card indicated the property was in a completely different neighborhood. *Hemming testimony; Respondent Exhibit 2.*
  - b. The property located at 12640 Wicker Avenue is a residential property, not a commercial property like the subject property. *Hemming testimony; Respondent Exhibit 4.*
  - c. The assessed value of \$270,900 is appropriate and this total assessed value has not effectively been challenged by the Petitioners. *Hemming testimony.*

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<sup>1</sup> These photographs were marked as Exhibits 6-12. Petitioners presented only two other exhibits. Therefore, the Board will refer to the photographs collectively as Petitioners Exhibit 3.

## 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 Co. 768,
  - c. Petitioners Exhibit 1: Assessment data for 12640 Wicker Avenue,  
Petitioners Exhibit 2: Assessment data for 12610 Wicker Avenue,  
Petitioners Exhibit 3: Seven photographs of the asphalt and concrete paving,  
Respondent Exhibit 1: Subject Form 139L,  
Respondent Exhibit 2: Subject property record card (PRC),  
Respondent Exhibit 3: Aerial photograph for the subject neighborhood,  
Respondent Exhibit 4: Assessment data and PRC for the Petitioners' comparable property located at 12640 Wicker Avenue,  
Board Exhibit A: Subject Form 139L,  
Board Exhibit B: Notice of Hearing,  
Board Exhibit C: Hearing Sign-in sheet,
  - d. These Findings and Conclusions.

## Analysis

14. The applicable rules and case law governing this issue 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.

15. Petitioners did not provide sufficient evidence to support their contentions the land pricing is in error. This conclusion was arrived at because:
- a. The land value was changed by the DLGF from \$40,200 to \$103,200 via an administrative correction. Petitioners submitted assessment information for two properties located adjacent to the subject property. There are homes on both neighboring properties. Petitioners asserted the neighboring properties have the same lot dimensions and business zoning classification. Therefore, they claim the land values should be the same.
  - b. Petitioners did not establish the comparability of those properties. 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 v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005). Instead, the party must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties as well as how any differences between the properties affect the relative market values-in-use. *Id.*
  - c. The record established the property under appeal has a commercial usage. Petitioners failed to explain how residential properties are comparable to their commercial property. Without a basis for comparing the properties and their values, that evidence is not probative. Petitioners’ comparables do not establish an error in the subject commercial assessment.
  - d. 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, 1222 (Ind. Tax Ct. 2003).
  - e. There is no change to the land assessment.
16. Petitioners provided sufficient evidence to support the Petitioners’ contentions the condition rating of the paving is in error. This conclusion was arrived at because:
- a. The property record card reports an assessment of 5,332 square feet of concrete paving, constructed in 1987, in “good” condition. Concrete paving has a 15 year life expectancy. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (GUIDELINES), app. F at 30 (incorporated by reference at 50 IAC 2.3-1-2). The result of this good rating allows 42% physical depreciation for the paving.
  - b. “Good” condition is described as “[n]o obvious maintenance required with few signs of deterioration but not everything is new.” “Average” condition is described as “[n]o evidence of deferred maintenance; need for a few minor repairs along with some refinishing.” “Fair” condition is described as “Evidence of deferred maintenance; need for replacement or major overhaul ....” *Id.* at 23.

- c. Petitioners presented seven photographs of the paved and concrete areas of the subject parcel. Those photographs show substantial deterioration and support the testimony that maintenance has been deferred. It is readily apparent from the photographs that 58% of the useful life of this paving does not remain.
- d. Petitioners established a prima facie case that their paving demonstrates evidence of deferred maintenance and a need for replacement or major overhaul. The paving is, at best, in fair condition. Respondent failed to impeach or rebut that case. Consequently, the condition rating for the concrete paving must be changed to fair.

**Conclusion**

- 17. Petitioners failed to make a prima facie case regarding their land assessment, but they made a case regarding their paving. The Board finds that the condition rating on the concrete paving should be reduced to fair.

**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: \_\_\_\_\_

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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>.