

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 44-010-02-1-5-00043  
**Petitioner:** Pak Realty, LLC  
**Respondent:** Johnson Township Assessor (LaGrange County)  
**Parcel:** 010-32400-08  
**Assessment Year:** 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board finds and concludes as follows:

**Procedural History**

1. The Petitioner initiated an assessment appeal with the LaGrange County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated November 20, 2003.
2. The PTABOA mailed notice of its decision to the Petitioner on June 22, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 on July 23, 2004, and elected small claims procedures.
4. The Board issued a notice of hearing to the parties dated April 27, 2006.
5. Administrative Law Judge Patti Kindler held an administrative hearing in LaGrange on June 29, 2006.
6. Persons present and sworn as witnesses at the hearing:  
For Petitioner – Roland C. Kerr, property owner,  
For Respondent – Lori Carney, LaGrange County Assessor,  
John H. Russell, Johnson Township Assessor.

**Facts**

7. The subject property is a vacant residential lot measuring 1.02 acres in Wolcottville.
8. The Administrative Law Judge (the ALJ) did not conduct an inspection of the property.
9. The assessed value as determined by the PTABOA is \$9,700 (land only).
10. The assessed value requested by the Petitioner is \$2,100.

## Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) The current assessed value of the subject property is excessive when compared to the assessed value of two other properties and the statement of value prepared by a local realtor. *Kerr testimony; Pet'r Ex. 1, 4, 5.*
  - b) The subject property cannot be built on as indicated on the Replat of Bert's Addition prepared by the county surveyor. *Kerr testimony.* The value of the lot is reduced greatly because it is unbuildable. *Kerr testimony.* The subject property is low land with water drainage problems that would require correction, if the county would change the status to a residential building lot. *Kerr testimony.*
  - c) A local realtor valued the subject property at \$2,100 per acre based on the sale of 45 acres of low farmland for \$2,100 per acre. *Kerr testimony; Pet'r Ex. 1.* The subject property is not used as farmland, but \$2,100 an acre is less than the current assessment of \$9,700. *Kerr testimony.*
  - d) The property owned by Rex and Susan Pranger (Pranger property) is a vacant residential lot measuring 0.086 acres overlooking Adams Lake. It is buildable and is assessed for \$100. *Kerr testimony; Pet'r Ex. 4.* That value demonstrates that the subject property is over valued. *Kerr testimony.*
  - e) The property owned by David and Amanda Hays (Hays property) is adjacent. The Hayes property is 15 acres of non-tillable farmland valued for an average of \$170 per acre. *Kerr testimony; Pet'r Ex. 5.* The value shows that the current assessed value of the subject property is overstated. The subject property and the Hays property are non-tillable acreage, but the subject property is valued at \$9,700 for just over an acre. *Kerr testimony.*
  - f) The Ort property is not comparable to the subject property because the Ort property has residential structures on it, but the subject property is unbuildable. *Kerr testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The subject property is assessed using a front foot base rate of \$165 for off-water platted lots as shown in the Neighborhood Valuation Form. *Carney testimony; Resp't Ex. 5.* The subject property has a negative 50% influence factor because it is a vacant lot with no water or sewer. The subject property has an additional negative 30% influence factor to account for excessive frontage along County Road 150 East. *Carney testimony; Resp't Ex. 1, 2, 4.* The rear part of the subject property is a wetland area that has an adjusted front foot rate of \$3. *Carney testimony.*

- b) The property owned by Martina and Mike Ort (Ort property) is located near the subject property in Crestview Addition. Both are off-water properties. *Carney testimony*. The Ort property has a land assessment of \$28,200 based on a front foot rate of \$165 and a 40% negative influence factor for excessive frontage. *Carney testimony; Resp't Ex. 6, 8*. The Ort property sold for \$90,000 in March 1999 and it is assessed for \$92,900. *Carney testimony; Resp't Ex. 8, 9*. This sale shows that the assessment is fair because the sale price is within 10% of the assessment. *Carney testimony; Resp't Ex. 8, 9*.
- c) The Pranger property probably has the developer's discount, which explains why the undeveloped land is priced at only \$100. *Carney testimony*. The Hays property includes a 1-acre home-site valued at \$16,300. *Carney testimony*.
- d) The plat states that the subject property can be used as an accessory lot for the construction of a garage or shed. *Carney testimony; Resp't Ex. 1*. It also could be used for parking and recreational purposes for adjacent residential lots. It could be filled-in and a request could be made to the county for reconsideration of its status. *Carney testimony*. Therefore, the assessment of \$9,700 is appropriate for the subject property within its neighborhood. *Carney testimony*.

### **Record**

13. The official record for this matter is made up of the following:

- a) The Petition,
- b) The digital recording of the hearing,
- c) Exhibits:
  - Petitioner Exhibit 1 – Statement of value,
  - Petitioner Exhibit 2 – Form 131, page 1,
  - Petitioner Exhibit 3 – Letter from the LaGrange County Plan Commission,
  - Petitioner Exhibit 4 – Property record card for Pranger property,
  - Petitioner Exhibit 5 – Property record card for Hays property,
  - Petitioner Exhibit 6 – Newspaper article from The Journal Gazette,
  - Respondent Exhibit 1 – Plat showing the property,
  - Respondent Exhibit 2 – Property record card with an aerial map,
  - Respondent Exhibit 3 – Reassessment worksheet for the property,
  - Respondent Exhibit 4 – Excess Frontage Influence Graph,
  - Respondent Exhibit 5 – Neighborhood Valuation Form for the area of Witmer Lake off the water,
  - Respondent Exhibit 6 – Property record card for Ort property,
  - Respondent Exhibit 7 – Plat map of Witmer Crestview Addition with the location of the Ort property highlighted,
  - Respondent Exhibit 8 – Reassessment worksheet for the Ort property,
  - Respondent Exhibit 9 – Sales disclosure form for the Ort property,

Respondent Exhibit 10 – Notice of County Assessor Representation,  
Board Exhibit A – Form 131 with attachments,  
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 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. *Fidelity Fed. Sav. & Loan v. Jennings Co. Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005); *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 did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:
- a) Real property is assessed based on its "true tax value," which does not mean fair market value. It means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter MANUAL) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A* (hereafter GUIDELINES). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer may offer evidence relevant to market value-

in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

- b) For the 2002 reassessment, an assessment is to reflect value as of January 1, 1999. MANUAL at 4. Should a Petitioner present any evidence of value relating to a different time, the Petitioner is required to provide some explanation about how those values demonstrate, or are relevant to the value of the subject property as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c) In order to establish probative evidence based on comparability, one must explain the characteristics of the subject property, how those characteristics compare to those of the purportedly comparable properties, and how any differences affect the market value-in-use of the properties. *Long*, 821 N.E.2d at 471. Without such a comparison, statements that the properties are similar or comparable are conclusory and they have no probative value. *Id.*; *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- d) The Petitioner offered a statement of value (incorrectly identified as an appraisal) from a local realtor. It estimates the value of the subject property at \$2,100 per acre by comparing the subject property to 45 acres of low ground that sold for \$2,100 per acre. *Pet'r Ex. 1*. While the Petitioner can prove a case with many types of evidence relevant to the market value-in-use of the subject property, the evidence must be in accordance with generally accepted appraisal practices. MANUAL at 5. The letter stating the realtor's opinion of value does not provide substantial explanation for the opinion or establish how the subject property and the purportedly comparable 45 acres compare, other than stating both are unbuildable, low land properties. The opinion in the letter fails to conform to generally accepted appraisal practices. This letter has no probative value.
- e) This opinion in the letter lacks probative value for a second reason. The Petitioner must establish how its evidence is relevant to the valuation date, January 1, 1999. *Long*, 821 N.E.2d at 471. The statement of value, however, fails to relate value to January 1, 1999, or any other date. *Pet'r Ex. 1*.
- f) The Petitioner also relied on the assessments of the Pranger property and the Hays property to show that the current value for the subject property is excessive. *Pet'r Ex. 4, 5*. While information for comparable properties may be used as evidence of market value-in-use, the Petitioner must establish how the characteristics of the comparables and the subject property compare and how any differences between the properties affect the market value-in-use. *Long*, 821 N.E.2d at 471. Other than characterizing the properties as "vacant," the Petitioner failed to explain why the properties are comparable to the subject property or how any differences may affect the value. In fact, some evidence shows that the properties are not

comparable. For instance, the Pranger property overlooks a lake while the subject property is “off-lake.” *Kerr testimony*. Also, the Hays property is not vacant. It has a house on 15 acres of farmland. *Pet’r Ex. 5*. As such, this evidence lacks probative value.

- g) The Petitioner failed to establish the market value-in-use of the subject property or to show that it is assessed for more than comparable properties. The Petitioner failed to establish a prima facie case.
- 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 Local Gov’t Fin.*, 799 N.E.2d at 1221, 1222 (Ind. Tax Ct. 2003).

### **Conclusion**

- 16. The Petitioner 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: September 27, 2006

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Commissioner,  
Indiana Board of Tax Review

### **IMPORTANT NOTICE**

**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>.