

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-001-02-1-3-00234  
**Petitioner:** Grand Trunk Western Railroad, Inc.  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 001152600010010  
**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 Petitioner received a Notice of Department Assessed Value Determination issued by the Department of Local Government Finance ("DLGF"). The Notice was dated April 2, 2004, and postmarked May 6, 2004. The DLGF determined the Petitioner's assessment to be \$168,100.
2. The Petitioner filed a Form 139L petition on May 24, 2004.
3. The Board issued a notice of hearing to the parties dated March 11, 2005.
4. A hearing was held on April 13, 2005, in Crown Point, Indiana before Special Master Beth Hammer.

### Facts

5. The subject property is vacant land located at 400 S. Arbogast, Griffith, Calumet Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Value of subject property as determined by the DLGF:  
Land \$168,100
8. Assessed Value requested by Petitioner at the hearing:  
Land \$84,000
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioner: Robert Black, Sr. Property Tax Analyst

For Respondent: Anthony Garrison, DLGF

**Issues**

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a) The Petitioner's use of the subject property is severely limited by groundwater contamination and groundwater extraction operations, which include monitoring wells, piezometers, pumping apparatus, and a groundwater extraction trench. *Black testimony; Pet'r Exs. 5-6.* The contamination of, and remediation operations on, the subject property greatly reduce its market value. *Id.*
- b) The Petitioner has granted American Chemical Service, Inc. ("ACS") a permit to operate and maintain cleanup facilities on the subject property. *Black testimony; Pet'r Exs. 1, 6.* Those cleanup operations could take 25 to 30 years to complete. *Id.* The original operations began around 1994. *Id.*
- c) Because of the contamination and cleanup operations, the subject land has very limited use and improvements cannot be constructed upon property. The subject land is dotted with equipment. In February 2005, ACS requested access to install additional wells and piezometers. *Black testimony.*
- d) The Respondent assigned a negative influence factor of 50% to the subject property to account for the size and shape of the lot. *Garrison testimony.* A railroad right-of-way bisects the subject property. The property therefore should be split into two separate parcels. *Black testimony.*
- e) The Petitioner requests that an additional negative influence factor of 25% be applied to the subject property to account for the contamination and cleanup operations. *Black testimony.* Applying a total negative influence factor of 75% to the original land value would result in an assessed value of \$84,000. *Black testimony; Pet'r Ex. 5.*

12. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent presented the property record card and Neighborhood Land Summary Sheet for the subject property. *Garrison testimony; Resp't Exs. 1, 2.*
- b) The subject land is priced as undeveloped unusable commercial land and has been given a negative influence factor of 50%. *Garrison testimony.*

## 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 BTR #1463.
- c) Exhibits:

- Petitioner Exhibit 1: Form 139L Petition
- Petitioner Exhibit 2: Notice of Final Determination
- Petitioner Exhibit 3: Valuation [Property] Record Card
- Petitioner Exhibit 4: General Site Plan
- Petitioner Exhibit 5: Summary of Petitioner's Arguments
- Petitioner Exhibit 6: Documentation of Superfund Cleanup

- Respondent Exhibit 1: Subject Property Record Card (PRC)
- Respondent Exhibit 2: Neighborhood Land Summary Sheet

- Board Exhibit A: Form 139L petition
- Board Exhibit B: Notice of Hearing
- Board Exhibit C: Sign in Sheet

- d) These Findings and Conclusions.

## Analysis

14. 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.

15. The Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:
- a) The Petitioner contends that the subject land is entitled to a negative influence factor of 25% to account for groundwater contamination and extraction operations to remove the contamination. *Black testimony*.
  - b) An influence factor is a “multiplier that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel. The factor may be positive or negative and is expressed as a percentage.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, glossary at 10 (incorporated by reference at 50 IAC 2.3-1-2). To demonstrate its entitlement to a negative influence factor, a taxpayer must introduce probative evidence both to support the application of a negative influence factor and to quantify the amount of that influence factor. *Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099, 1106 (Ind. Tax Ct. 1999).
  - c) Here, the Petitioner arguably demonstrated characteristics unique to the subject property - the groundwater contamination and remediation operations - for which the Respondent has not accounted in its assessment of the property. The Petitioner, however, failed to present any evidence from which to quantify the effect of such contamination on the market value-in-use of the subject property. Instead, the Petitioner relied solely upon Mr. Black’s conclusory statement that the subject property was entitled to the application of an additional negative influence factor of 25% to account for the contamination and remediation operations. Conclusory statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998).
  - d) Based on the foregoing, the Petitioner failed to establish a prima facie case of error in assessment.

### **Conclusion**

16. The Petitioner failed to establish 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: \_\_\_\_\_

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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/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>>.