

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-001-02-1-4-00170  
**Petitioners:** Joseph J. and Laurel V. Krol  
**Respondent:** Department of Local Government Finance  
**Parcel:** 001-01-39-0057-0015  
**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 on February 4, 2004. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$451,800 and notified Petitioners on March 31, 2004.
2. Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated March 8, 2005, setting the hearing for April 8, 2005. Petitioners did not appear at this hearing. The DLGF filed a motion to dismiss the petition on April 8, 2005.
4. Petitioners' attorney responded by mail on April 13, 2005, indicating he had not received notice of the hearing. Petitioners requested that the hearing be scheduled at a later date.
5. The Board issued a second notice of hearing to the parties dated June 6, 2005, effectively denying Respondent's motion to dismiss the petition.
6. Special Master Peter Salvesson held the hearing in Crown Point on July 7, 2005.

### Facts

7. The subject property is located at 5555 W. Ridge Road in Gary, Calumet Township.<sup>1</sup>

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<sup>1</sup> Petitioners testified the correct address is 5555 W. Ridge Road. Documents in the record identify the parcel as both 5555 and 5611 W. Ridge Road. The Board will refer to the property as 5555 W. Ridge Road based upon Petitioners' testimony.

8. The subject property is 2.838 acres of commercial land. The improvements consist solely of fencing.
9. The Special Master did not conduct an on-site inspection of the property.
10. The assessed value as determined by the DLGF is:  
land \$450,700                      improvements \$1,100                      total \$451,800.
11. Petitioners contended the total value should be \$60,480.
12. The following persons were sworn as witnesses at the hearing:  
Steven A Kurowski, attorney,  
Joseph J. Kroll II, property owner,  
Lori Harmon, Assistant Director, DLGF Assessment Division.

### **Issues**

13. Summary of Petitioners' contentions in support of an alleged error in the assessment:
  - a) The DLGF offered to settle the appeal for a total of \$60,480 on April 7, 2005. Petitioners did not respond to this offer until April 8, 2005, at which time they agreed to accept the offer. The DLGF informed Petitioners that, because Petitioners did not appear at the scheduled hearing earlier that day, a motion to dismiss the petition had been filed and the offer was withdrawn. *Kurowski testimony; Board Exhibit D.*
  - b) Petitioners bought the property for \$52,000 in April 1995. Petitioners presented the closing statement for the purchase of the subject property. *Petitioners Exhibit 11.* The property was purchased through a realtor, which indicates an arm's-length transaction. *Kurowski testimony.* Values remained the same or decreased in the neighborhood during the period 1995 through 1999. The correct 2002 assessed value should be \$45,000 to \$60,000. *Krol testimony.*
  - c) Petitioners' land currently is assessed at \$193,433 per acre, a greater amount than comparable properties in the same vicinity as the subject property. Petitioners presented evidence showing the assessed value per acre for the subject property and six comparable properties. *Krol testimony; Petitioners Exhibits 2 – 9, 12.*
14. Summary of Respondent's contentions in support of the assessment:
  - a) The current assessment is incorrect. The property neighborhood code was erroneously changed from 00194 to 00193 after the informal hearing. This change resulted in an increase in the assessed value from \$175,900 to \$451,800. The neighborhood code should be changed back to 00194, resulting in a new value of \$95,360 per acre. *Harmon testimony; Respondent Exhibit 6.*

- b) Two of the assessments presented by Petitioners are a golf course and a mobile home park, which both are subject to special assessment rules. As a result, these properties are not comparable to the subject property. The property across the street from Petitioners' parcel is residential. Evidence of the other parcels does not contain a classification of the land use types to establish the properties are comparable. *Harmon testimony.*
- c) The sale of a comparable property at 3535 Ridge Road occurred on April 10, 1999. This parcel is smaller than Petitioners' property. It sold for \$95,000, or \$69,700 per acre. *Respondent Exhibit 5.*

### **Record**

- 15. 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. 1902,
  - c) Petitioners Exhibit 1 - First page of a residential appraisal,  
Petitioners Exhibit 2 - Real property maintenance report,  
Petitioners Exhibit 3 - Assessment for subject property,  
Petitioners Exhibit 4 - Assessment for 5608 W. Ridge Road,  
Petitioners Exhibit 5 - Assessment for the 3800 block of Whitcomb,  
Petitioners Exhibit 6 - Assessment for 3600 W. Ridge Road,  
Petitioners Exhibit 7 - Assessment for 3500 W. Ridge Road,  
Petitioners Exhibit 8 - Assessment for 3903 W. Ridge Road,  
Petitioners Exhibit 9 - Assessment for 3915 W. Ridge Road,  
Petitioners Exhibit 10 - Photographs of subject property,  
Petitioners Exhibit 11 - Closing statement for the purchase of the subject property,  
Petitioners Exhibit 12 - Assessment for 5974 – 5990 W. Ridge Road,  
Respondent Exhibit 1 - Subject property record card,  
Respondent Exhibit 2 - Photograph of the subject property,  
Respondent Exhibit 3 - Plat map,  
Respondent Exhibit 4 - Land calculations / neighborhood land summary sheet,  
Respondent Exhibit 5 - Land sale at 3535 Ridge Road,  
Respondent Exhibit 6 - Revised land calculations,  
Respondent Exhibit 7 - Closing statement for the purchase of the subject property,  
Board Exhibit A - Form 139L Petition,  
Board Exhibit B - Notices of Hearing,  
Board Exhibit C - Sign-in sheet,  
Board Exhibit D - Letter from Steven Kurowski to the Board,  
Board Exhibit E - Motion to dismiss.
  - d) These Findings and Conclusions.

## Analysis

16. 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.
17. Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) Petitioners contended they had accepted an offer to settle the appeal made by the DLGF. Undisputed testimony indicated the DLGF offered to settle the appeal for a total of \$60,480 on April 7, 2005. Petitioners did not respond to this offer until April 8, 2005, at which time they attempted to accept the offer. The DLGF informed Petitioners that, because Petitioners did not appear at the scheduled hearing, a motion to dismiss the petition had been filed and the offer was withdrawn. This testimony does not establish the offer was accepted prior to being withdrawn by Respondent. The Board concludes the parties did not reach a settlement agreement.
  - b) Petitioners presented no market evidence, such as an appraisal or evidence of the sales of comparable properties, to support the contention the market value of the property should be \$45,000 to \$60,000. Petitioners’ unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
  - c) Petitioners introduced evidence of the assessed values of six purported comparable properties. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the properties. A party seeking to rely on a comparison of assessments 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. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- d) Petitioners failed to explain how the alleged comparable properties are similar to their own. For example, one assessment is for a mobile home park, one is for a golf course, one is for a rear lot, two are classified as residential land, and one is for only movie theatre improvements. Petitioners also acknowledged the size of these parcels ranged from 1.591 acres to 45.96 acres. *Petitioners Exhibits 2 – 9, 12*. Petitioners have done nothing to address these obvious differences or to explain how these differences affect the relative values of the various properties. Petitioners' purported comparable assessments do not establish that their current assessment is incorrect. *Long*, 821 N.E.2d at 471.
  - e) Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on sales data to establish the market value-in-use of a property must provide some explanation as to how the data demonstrates, or is relevant to, the property's value as of January 1, 1999. *See Long*, 821 N.E.2d at 471.
  - f) Petitioners purchased their property for \$52,000 in April 1995. Petitioners contended values remained the same or decreased in the neighborhood during the period 1995 through 1999. *Krol testimony*. Petitioners presented no probative evidence for this conclusion. For example, Petitioners presented no sales data, no evidence of a market study, or testimony from a realtor to support this contention. Such unsubstantiated conclusory statements are not probative. *Whitley Products*, 704 N.E.2d at 1119.
  - g) Petitioners failed to establish any link between the purchase date of April 1995 and the valuation date of January 1, 1999. Petitioners failed to make a prima facie case that there is any error in the assessment.
  - h) Nevertheless, Respondent testified the subject property neighborhood code should not have been changed to 00193 after the informal hearing. This change resulted in an increase in the assessed value from \$175,900 to \$451,800. The neighborhood code should be changed back to 00194, resulting in a new value of \$95,360 per acre. *Harmon testimony; Respondent Exhibit 6*. Respondent further contended this value is supported by the sale of a parcel at 3535 Ridge Road for \$69,700 per acre. *Respondent Exhibit 5*.
  - i) A party seeking to rely on a comparison of two properties 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. Respondent offered no such comparison, except to testify that both properties are located on the same street. Respondent's sales data is therefore of no probative value. *Long*, 821 N.E.2d at 471.

- j) Clearly, if the only change that was made to increase the assessment is being reversed, the assessment must revert to the original value of \$175,900.

### **Conclusion**

18. Petitioners did not make a prima facie case. Respondent, however, agreed the original assessment was increased in error. The neighborhood code should be changed back to 00194 and the current total value should be changed back to \$175,900, which was the original assessment.

### **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

### **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>.