

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-001-02-1-5-01684  
**Petitioner:** Margaret Alice Wright Trustee  
**Respondent:** The Department of Local Government Finance  
**Parcel #:** 001-15-26-0059-0011  
**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 Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$59,000.
2. The Petitioner filed a Form 139L on August 9, 2004.
3. The Board issued a notice of hearing to the parties dated June 30, 2005.
4. Special Master Kathy J. Clark held a hearing at 8:15 A.M. on September 8, 2005, in Crown Point, Indiana.

### Facts

5. The subject property is located at 315 E. Main Street, Griffith. The location is in Calumet Township.
6. The subject property consists of a one-story, frame, single-family dwelling.
7. The Special Master did not conduct an on-site visit of the property
8. Assessed value of subject property as determined by the DLGF:  
Land \$25,300            Improvements \$33,700            Total \$59,000.
9. Assessed value requested by Petitioner is as follows:  
Total \$38,400.
10. Persons sworn in as witnesses at the hearing:  
John K. Austgen, Tax Representative,

Margaret Alice Wright Trustee  
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Jeanne Austgen, secretary for Tax Representative,  
Phillip E. Raskosky, II, DLGF.

### Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
  - a) The guiding principles of determining real estate value are 1) location; 2) neighborhood; and 3) utility to the Petitioner (owner). *John Austgen testimony.*
  - b) Following those principles, the subject property is a residential property surrounded by commercial establishments. The commercial establishments result in limited parking availability to serve the subject, it is noisy day and night, and access to the subject property is difficult which contributes to the difficulty in leasing the subject. *Petitioner Exhibits 1 and 8; John Austgen testimony.*
  - c) Properties in subject's neighborhood received a 1.27% neighborhood factor. Residential properties just outside the subject's neighborhood received only a 1.13% neighborhood factor. *Petitioner Exhibits 1, 4 and 5; John Austgen testimony.*
  - d) A similar property at 710 W. Main Street sold July 13, 2003, for \$52,500. *Petitioner Exhibit 2; John Austgen testimony.*
  - e) A summary of cash rental income and expenses, using the subject property's existing mortgage rate of 10%, results in a true tax value derived from income of only \$20,000. *Petitioner Exhibit 3; John Austgen testimony.*
  - f) Following precedent set by the Board in the past in regards to negative land influences and structure obsolescence, the Petitioner has applied a negative 50% influence factor to the subject's land to account for the negative commercial aspects of the neighborhood resulting in a discounted land true tax value as of January 1, 1999 of \$12,650. Applying a negative 50% obsolescence factor to the improvements for the same reasons, and also in support of the income generated (or utility) by the subject property, results in a discounted improvement true tax value of \$16,850. The combination of these two adjustments results in a correct January 1, 1999 true tax value total of \$29,500 (rounded to \$30,000). *Petitioner Exhibit 6; J. Austgen testimony.*
  - g) Another approach to value, the IRV formula, used in conjunction with the 2003 sale of the property at 710 W. Main, results in a January 1, 1999, value of the subject property of \$38,400. *Petitioner Exhibit 7; John Austgen testimony.*

12. Summary of Respondent's contentions in support of the assessment:
- a) The commercial aspects of the subject's neighborhood existed when the Petitioner originally purchased the property and no special consideration should be expected in the present assessment. *John Austgen testimony; Raskosky testimony.*
  - b) The subject is located on E. Main in neighborhood #03911. *Respondent Exhibit 1.* This neighborhood is defined on the Residential Neighborhood Valuation Form as being an "area near small village of Griffith off of Broad Street". *Respondent Exhibit 6; Raskosky testimony.*
  - c) The Petitioner offered a property at 710 W. Main as a comparable sale yet offers no documents to determine its location relative to the subject. *Petitioner Exhibit 2.* The property at 133 N. Lafayette is in neighborhood #01517, not the subject's neighborhood. *Petitioner Exhibit 5; Raskosky testimony.*
  - d) A sales report shows three single family residential sales from within the subject's neighborhood (#03911). These dwellings are similar in lot size, age, and square footage. All three are graded slightly higher (D+2) than the subject (D+1) and considered in slightly better condition (average) than the subject (fair). The sales values of the three properties range from \$71.66 per square foot to \$121.35 per square foot. Allowing that the subject's grade and condition are assessed as being slightly less than the three comparable sales, the subject's \$69.41 per square foot assessed value is an acceptable indicator of market value and considered by the Respondent to be accurate. *Respondent Exhibits 1, 4, and 5; Raskosky 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 Lake County 1919,
  - c) Exhibits:
    - Petitioner Exhibit 1 – Sketch of neighborhood of subject property,
    - Petitioner Exhibit 2 – Synopsis of 7/18/03 Sales Disclosure Form – comparable property sold at 710 W. Main Street, Griffith,
    - Petitioner Exhibit 3 – Schedule of historical net operating income of subject property,
    - Petitioner Exhibit 4 – Property record card for 311 W. Main, a residential property,
    - Petitioner Exhibit 5 – Property record card for 133 N. Lafayette, a residential property,
    - Petitioner Exhibit 6 – Calculations of adjusted true tax value,
    - Petitioner Exhibit 7 – Calculations of adjusted true tax value, conclusion,

Petitioner Exhibit 8 – Photographs detailing commercial influence on subject property,  
Respondent Exhibit 1 – Subject property record card,  
Respondent Exhibit 2 – Subject photograph,  
Respondent Exhibit 3 – Form 11,  
Respondent Exhibit 4 – Top 20 comparable sales sheet,  
Respondent Exhibit 5 – Comparable property record cards and photographs,  
Respondent Exhibit 6 – Residential neighborhood valuation form,  
Respondent Exhibit 7 – Plat map,  
Board Exhibit A - Form 139L,  
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. *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 failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:

- a) The Petitioner’s claims that surrounding commercial businesses negatively impact the subject property were not supported by probative evidence. The Petitioner offered no comparison of the subject’s utility as a residential rental property located in a commercial area to rental properties located in strictly residential neighborhoods. The Petitioner did not claim that there were vacancy issues associated with the location nor was it established that the rent charged was lower than for other similarly situated properties. Mere allegations, unsupported by factual evidence, will not be

considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. Of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998).

- b) The Petitioner cited several conditions that impacted the subject because of its location in a commercial area. Those conditions include limited parking availability, constant noise, and difficulty of access. The property is located on a main street, so there is no difficulty accessing it and Respondent Exhibit 2 shows vehicles parked on the side drive of the house and in front of it. The Petitioner failed to establish that the alleged conditions exist or that they negatively impact the subject.
- c) The Petitioner contends that the Board has set precedent in applying a 50% negative influence factor to the land and 50% obsolescence to the improvements of similar properties to account for the negative aspects of the commercial location. The Petitioner again makes an allegation that is unsupported. It is the burden of each Petitioner appealing a value before the Board to prove any negative monetary burden placed on the property under appeal by outside influences; each case stands on its own merits. In order to prevail on this issue, the taxpayer must meet a two-prong burden of proof. The taxpayer must prove that obsolescence exists and the taxpayer must quantify the obsolescence. *Clark*, 694 N.E.2d 1230, 1233.
- d) The Petitioner presented evidence that a residential property in the area had a lower neighborhood factor than the subject. The fact that different neighborhoods have different neighborhood factors is not proof of an error in the subject's assessment. The Petitioner drew no conclusions and offered no testimony or other evidence regarding the neighborhood factors other than that they exist and that the factor for the subject's neighborhood #03911 is 1.27% and that the factor for neighborhood #01517 is 1.13%. Again, it is the taxpayer's duty to walk the Board through every element of the analysis. *Indianapolis Racquet Club, Inc.*, 802 N.E.2d 1018, 1022.
- e) The Petitioner presented 2003 sales data for a property at 710 W. Main. No evidence was provided that would allow the Board to understand how the property at 710 W. Main is comparable to the subject.<sup>1</sup> . *Petitioner Exhibit 2; John Austgen testimony*.
- f) The "history" of cash income and expenses for the subject property, submitted as Petitioner Exhibit 3 and presented by Mr. Austgen, contains insufficient detail and is therefore of no value in establishing an error in the subject's assessment or in determining exactly what that assessment should be.
- g) Similarly, Petitioner Exhibit 7 is deficient for the same reasons as noted above. The calculation presented is allegedly based on the IRV concept, (Income/ R= Value). The Petitioner used the true tax value of the subject and the mortgage rate, and then

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<sup>1</sup> Furthermore, the sale took place in July 2003 ,several years after the valuation date of January 1, 1999. A property's assessment for March 1, 2002, is to reflect value as of January 1, 1999. If documentation is submitted that establishes a value for a date other than the statutory valuation date, an explanation of how these values demonstrate, or are relevant to, the subject value as of January 1, 1999, is required if those values are to have probative value. . *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005)

proceeded to discount it back 4½ years because the property at 710 W. Main sold 4½ years after the valuation date. The Board fails to see the logic in this calculation.

- h) The Petitioner's representative offered several concepts he considered in order to reach a value conclusion for the subject property. This testimony and other evidence appeared to result in value conclusions of \$20,000 (Petitioner Exhibit 3); \$30,000 (Petitioner Exhibit 6); and \$38,400 (Petitioner Exhibit 7). In conjunction with conclusions set forth earlier in these findings, the Board determines that the Petitioner failed to prove the current assessment is incorrect and specifically what the correct assessment would be. *Meridian Towers*, 805 N.E.2d 475, 478.
- 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 Indus. V. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

16. The Petitioner failed to establish a prima facie case. The Board finds for 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: January 25, 2006**

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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>.