

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-013-02-1-5-00051  
**Petitioner:** Lowell National Bank Trust #273  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 005-30-24-0033-0006  
**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 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$44,500 and notified the Petitioner on March 25, 2004.
2. The Petitioner filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated February 5, 2005.
4. A hearing was held on March 9, 2005, in Crown Point, Indiana before Special Master Barbara Wiggins.

### Facts

5. The subject property is located at: 14046 Lauerman, Cedar Lake, Indiana.
6. The subject property is a residential single family one-story ranch on .07 acres.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$8,500 for the land and \$36,000 for the improvements for a total assessed value of \$44,500.
9. The Petitioner request a total assessed value of \$31,500.
10. Neil Wingate, representative for the property owner, and Diane Spenos, representing the DLGF, appeared at the hearing and were sworn as witnesses.

## **Issues**

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
  - a) The Petitioner contends that the property is overvalued. According to the Petitioner, the property is over assessed because the zoning ordinance in Cedar Creek would restrict them from rebuilding the home if anything destroyed the home. *Wingate testimony*. Further the Petitioner contends that similar lots in nearby neighborhoods are selling between \$2,500 and \$3,300 in 2005, which would have been less in 1999. *Id.*
  - b) The Petitioner testifies that the subject property's basement leaks and that this would have to be disclosed at the time of sale, which would reduce the market value of the home. *Id.*
  
12. Summary of Respondent's contentions in support of the assessment:
  - a) The Respondent testified that the subject property was given a 50% negative influence factor to compensate for the property's location and the subject property was given a D +1 grade. *Spenos testimony*. Further, when looking at the comparables the Petitioner's land for the subject property is assessed significantly lower than either of the comparables. *Id.*
  - b) The Respondent also testified that the comparables that the Petitioner submitted are not comparable because they are in a different neighborhood than the Petitioner's land. *Id.*

## **Record**

13. The official record for this matter is made up of the following:
  - a) The Petition, and all subsequent submissions by either party.
  - b) The tape recording of the hearing labeled Lake County #1249.
  - c) Exhibits:
    - Petitioner Exhibit 1: Power of Attorney
    - Petitioner Exhibit 2: Hearing Notice
    - Petitioner Exhibit 3: Evidence Summary
    - Petitioner Exhibit 4: Zoning Ordinance
    - Petitioner Exhibit 5: Non-Conforming Ordinance
    - Petitioner Exhibit 6: Recorded Land Contracts for Sale
    - Petitioner Exhibit 7: Appeal
    - Petitioner Exhibit 8: Appeal

Petitioner Exhibit 9: Residential Agent Detail Report for Property on Surrey St.

Respondent Exhibit 1: Form 139L Petition

Respondent Exhibit 2: Subject Property Record Card

Respondent Exhibit 3: Subject Photo

Respondent Exhibit 4: Comparable Summary, PRC's and Photos

Respondent Exhibit 5: Vacant Parcel PRC

Respondent Exhibit 6: Land Value Summary Sheet

Board Exhibit A: Form 139 L

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 the DLGF 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 the Petitioner’s contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the subject property is over assessed. He testifies that the zoning ordinance of Cedar Creek, that requires a minimum of 80 feet of frontage for a one story home, would restrict the rebuilding of the home if anything happened to the home. *Wingate testimony* and *Petitioner’s Exhibit 4*. The Petitioner states that because of this restriction subject property has a lower market value. *Wingate testimony*.

- b) Generally, land values in a given neighborhood are determined through the application of a Land Order developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to 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." PROPERTY ASSESSMENT GUIDELINES OF 2002, glossary at 10. Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). The DLGF testified that the subject property's assessment was reduced by a 50% negative influence factor. *Spenos testimony*. While the restriction on the subject may be relevant to whether a different negative influence factor should apply here, the Petitioner failed to show how these conditions would impact the market value-in-use of the subject properties, or show what the actual market value of the properties are. *See Talesnick*, 756 N.E.2d at 1108. Furthermore, the Petitioner failed to show that a different tape influence factor or a larger negative influence factor should be applied to the subject property.
- c) The Petitioner also contends that similar lots in that area are selling for \$2,600 to \$3,300 in 2005, therefore the value of the same lot would have been less in 1999. *Wingate testimony*. To support this, the Petitioner provided a sales agreement for thirteen (13) lots for \$30,000. *Petitioner's Exhibit 6*. The Petitioner also provided two notices of reassessment for properties that have an assessed value of \$2,600 and \$2,700. *Petitioner's Exhibits 7 and 8*. The Petitioner contends that these properties are similar to the subject property. *Wingate testimony*. Thus, to the extent that Petitioner proves his property is not assessed uniformly or equal to comparable properties, Petitioner's assessment must be equalized.
- c) However, "taxpayers are required to make a detailed factual showing at the administrative level." *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, "the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence." *Id.* To introduce evidence of comparable properties, a taxpayer must explain *how* the properties are comparable. *See Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain *how* the properties were comparable). Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. The proponent likewise must explain how any differences between the properties affect their relative

market values-in-use. *Id. See also, Hoogenboom-Nofziger*, 715 N.E.2d at 1024 (holding that taxpayer failed to make prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).

- d) In the case at bar, Petitioner has not met his burden. While Petitioner identifies neighboring lots that are assessed lower, Petitioner did not make any attempt to explain why or how the properties are comparable to the subject property. This falls far short of the burden Petitioners face. Petitioner has only made a “de minimis factual showing” and has failed to “sufficiently link [his] evidence to the uniform and equal argument [he] raise[s].” *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).
- e) Because Petitioner did not meet his burden of presenting a prima facie case, the Assessor's duty to rebut Petitioner’s evidence was not triggered. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998) (stating that once a taxpayer presents a prima facie case, it must be rebutted with substantial evidence).

### **Conclusion**

- 16. The Petitioner failed to make a prima facie case. The Board finds in favor of 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: **November 2, 2005**

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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>>.