

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitioner: Theron Tarnowski
Respondent: Department of Local Government Finance
Assessment Year: 2002
Petition #s: **Parcel #s:**
45-016-02-1-5-00160 006141900860035
45-016-02-1-5-00161 006141900860034
45-016-02-1-5-00162 006141900860033
45-016-02-1-5-00162a 006141900860032

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

Procedural History

1. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held between the Petitioner and the Respondent on January 9, 2004. The Department of Local Government Finance (DLGF) determined the Petitioner's property tax assessment for the subject properties and notified the Petitioner on March 26, 2004.
2. The Petitioner filed the Form 139L petitions on April 26, 2004.
3. The Board issued the notices of hearing to the parties on October 22, 2004.
4. A consolidated hearing on all of the above referenced petitions was held on November 30, 2004, in Crown Point, Indiana before Special Master Peter Salvesson. For purposes of

Facts

5. The subject properties consist of single family dwelling and 4 parcels of land. The dwelling sits across the 2 parcels ending on 0032 and 0033. The remaining 2 parcels ending in 0034 and 0035 are vacant. The four (4) parcels are contiguous. Each parcel has a 25' frontage and 127' depth. Three of the parcels have an address of 2751 Cass Street and the remaining parcel has an address of 2749 Cass Street, Lake Station in Hobart Township.
6. The Special Master did not conduct an on-site visit of the properties.

7. Assessed value of subject properties as determined by the DLGF:

Petition #:	Parcel #:	Land:	Improvements:
45-016-02-1-5-00160	006141900860035	\$3,900	0
45-016-02-1-5-00161	006141900860034	\$3,900	0
45-016-02-1-5-00162	006141900860033	\$3,900	0
45-016-02-1-5-00162a	006141900860032	\$4,900	\$50,200

8. Assessed value of subject properties as requested by the Petitioner on the Form 139L petitions:

Petition #:	Parcel #:	Land:	Improvements:
45-016-02-1-5-00160	006141900860035	\$500	0
45-016-02-1-5-00161	006141900860034	\$500	0
45-016-02-1-5-00162	006141900860033	\$500	0
45-016-02-1-5-00162a	006141900860032	\$500	\$38,000

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: Theron Tarnowski, Owner
Deborah Tarnowski, Spouse

For Respondent: Everett D. Davis, DLGF

Issue

11. Summary of Petitioner's contentions in support of alleged errors in assessment:

- a) The assessed value of the subject dwelling should be reduced due to the dwelling's condition. The roof needs to be replaced and the siding is bad. The foundation footing is cracked, causing the whole house to settle. This has led to major structural damage. Due to sandy conditions, the drain tiles plug up causing the basement to be wet. The Petitioner presented photographs to show the condition of the house. *D. Tarnowski testimony; Pet'r Exs. 2A, 12A-C.*
- b) There are no curbs or sidewalks on the subject property's street. The neighborhood is a depressed area. *D. Tarnowski testimony; Pet'r Ex. 2A.*
- c) The Petitioner presented sales of two (2) homes which are located in the same area as the subject dwelling and which are close in size to the subject dwelling. Those homes are in better shape than the subject dwelling. The actual sales prices were \$49,000 and \$51,400, respectively. *T. Tarnowski testimony; Pet'r Exs. 3A-E.*

- d) All of the lots in the neighborhood are 25' wide. The city ordinance requires 60' in order to build. The Petitioner could not find any vacant lots in this area that sold for more than \$500. *D. Tarnowski testimony.* The Petitioner was told by a real estate agent that there were no 25' lots that sold other than at tax sales. *T. Tarnowski testimony.*
- e) These 25' lots are purchased from Treasurer's Tax Sales and Lake County Board of Commissioners' Sales. The Petitioner presented sale information for lots located right beside the subject home and down the street. *D. Tarnowski testimony; Pet'r Exs. 2A, 4, 5A-C, 6A-D, 7, 8.*
- f) The Petitioner purchased parcel 0034 for \$486.74 at a tax sale on August 30, 2000. *T. Tarnowski testimony; Pet'r Ex. 4.*
- g) The Petitioner purchased parcel 0035 for \$300 on September 12, 2000. This was a private sale. The owner had purchased the parcel at tax sale thinking he was buying the Petitioner's house due to an address mix-up. The Petitioner contacted the owner and offered him \$300. The owner signed a quit-claim deed. *T. Tarnowski testimony; Pet'r Ex. 5A-C.*
- h) Lots 36 & 37 were sold at tax sale for \$473.74 each on April 10, 2003. These parcels are directly beside the Petitioner. *T. Tarnowski testimony; Pet'r Exs. 6A-D, 7 A-D.*
- i) A Commissioners' Sale for October 6, 2004, listed two (2) properties located on Cass Street, which sold for \$10 and \$20, respectively. *T. Tarnowski testimony; Pet'r Ex. 8.* The Petitioner does not understand how the assessment can be correct when similar lots were purchased at tax sale for \$500 each and at Commissioners' Sale for \$10 and \$20. *T. Tarnowski testimony.*
- j) The Petitioner submitted newspaper articles regarding sales of properties that are delinquent in tax payments. The Commissioners' attorney was quoted saying the properties are not worth \$50. *D. Tarnowski testimony; Pet'r Ex. 9A-D.*
- k) Property owners could purchase 25' lots adjacent their properties for \$50 at the Commissioners' sales. If the Petitioner had not purchased the adjacent parcels for back taxes he could have purchased them at the Commissioners' sale for \$50 and had no tax liability. *T. Tarnowski testimony; Pet'r Ex. 9A-D.*
- l) The Petitioner submitted actual property sales in Lake Station. Nowhere is there a 25' lot. The sales have more square footage and are buildable lots. The subject parcels cannot be compared to the 25' lots. *T. Tarnowski testimony.*
- m) Due to the depressed area, condition of the house and the actual price of a 25' lot, the Petitioner contends the value of the house and all four (4) lots is no more than \$41,000. *D. Tarnowski testimony.* The Petitioner requested to amend his petitions to request a value of \$100 for each lot. *T. Tarnowski testimony.*

12. Summary of Respondent's contentions in support of assessment:
- a) The Respondent presented comparable sales to support the current assessment of the house. *Davis Testimony; Resp't Ex 4.*
 - b) The Respondent presented the property record card (PRC) showing that the subject dwelling is listed as being in "fair" condition. *Davis Testimony; Resp't Ex. 2.*
 - c) The Respondent recommended combining the two (2) parcels on which the house sits. *Davis Testimony.*
 - d) The Respondent agreed the two (2) vacant parcels cannot be built upon and indicated that a negative influence factor of 90% would be appropriate to account for that fact. *Davis testimony.*
 - e) The tax sale purchases of the properties were not arms-length transactions and the sale prices were not the result of sufficient exposure to the market. There are rules for sales to be valid indicators of market value. *Davis Testimony.*

Record

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

- a) The Petitions.
- b) The tape recording of the hearing labeled Lake Co. #850.
- c) Exhibits:

- Petitioner Exhibit 1: Form 139L Petition
- Petitioner Exhibit 2: Summary of Arguments
- Petitioner Exhibit 3A-E: Appraisals
- Petitioner Exhibit 4: Tax Deed
- Petitioner Exhibit 5A-C: Deed
- Petitioner Exhibit 6A-D: Deed
- Petitioner Exhibit 7A-D: Deed
- Petitioner Exhibit 8: Commissioners Sale
- Petitioner Exhibit 9A-D: Newspaper Articles
- Petitioner Exhibit 10A-C: Listing of Vacant Land that Sold
- Petitioner Exhibit 11: Maps
- Petitioner Exhibit 12A-D: Pictures

- For Petition # 45-016-02-1-5-00162A
- Respondent Exhibit 1: Form 139L Petition
- Respondent Exhibit 2: Subject Property Record Card

Respondent Exhibit 3: Subject Property Photo
Respondent Exhibit 4: Comparables Sales Sheet
Respondent Exhibit 5: Comparable Property Record Cards & Photos
Respondent Exhibit 6: Maps

- For Petition # 45-016-02-1-5-00160; 00161; 00162
Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subject Property Record Card

Board Exhibit A: Form 139L Petition
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. *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 provided sufficient evidence to support a reduction in value with regard to the vacant lots. The Petitioner did not provide sufficient evidence to support any further reduction in the current assessment. This conclusion was arrived at because:
- a) The Petitioner contends the subject dwelling is overvalued due to its deteriorated condition. The Petitioner identified several problems with the subject dwelling. The Petitioner stated the roof needs to be replaced, the siding is bad, and the basement is wet. The Petitioner also contends that the foundation is cracked, which has caused major structural damage to the dwelling. *Tarnowski testimony; Pet’r Ex. 12.*

- b) The Petitioner did not present any evidence to quantify the effect of those conditions on the market value-in-use of the subject dwelling. Nonetheless, the Petitioner's contentions fairly may be construed as a claim that the Respondent applied an incorrect condition rating in assessing the subject dwelling.
- c) The Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”) recognize that similar structures tend to depreciate at roughly the same rate over their economic lives. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 6 (incorporated by reference at 50 IAC 2.3-1-2). However, the manner in which owners maintain structures can influence their rate of depreciation. *Id.* Consequently, the Guidelines require assessing officials to assign a condition rating to each structure they assess. *Id.* at 6-7. The condition rating, in turn, affects the amount of depreciation applied to each structure. For example, a structure with a condition rating of “fair” depreciates at a slower rate than does a structure with a condition rating of “poor.” *Id.* at 6-13.
- d) The Guidelines provide descriptions to assist assessing officials in determining the proper condition rating to apply to a structure. The following two descriptions are relevant to this appeal:

Fair Marked deterioration is evident in the structure. It is rather unattractive or undesirable but still quite useful. This condition indicates that there are a substantial number of repairs that are needed. Many items need to be refurbished, overhauled, or improved. There is deferred maintenance that is obvious.

Poor Definite deterioration is obvious in the structure. It is definitely undesirable or barely useable. Extensive repair and maintenance are needed on painted surfaces, the roof and the plumbing and heating systems. There may be some functional inadequacies or substandard utilities. There is extensive deferred maintenance.

GUIDELINES, ch. 3 at 60.

- e) The problems identified by the Petitioner indicate the need for a substantial number of repairs, but it appears that the dwelling is still quite useful. This is consistent with the Guidelines' description of a dwelling in “fair” condition,” which is the condition rating currently assigned to the subject dwelling. *Resp't Ex. 2 (Petition # 45-016-02-1-5-00162A)*. The Petitioner did not establish the need for extensive repairs to plumbing and heating systems or that the dwelling is barely useable, as set forth under the description of a dwelling in “poor” condition. Therefore, the Petitioner did not establish a prima facie case that the subject house was entitled to a reduction in condition rating.
- f) The Petitioner also presented sales information for two (2) houses in the neighborhood that he alleged are in better shape than the subject dwelling. The

- houses sold for \$49,000 and \$51,400, respectively. The Petitioner testified that those houses are located in the same area as the subject dwelling and that they are comparable in size to the subject dwelling. *T. Tarnowski testimony; Pet'r Exs. 3A-E.*
- g) The Petitioner is essentially relying on a sales comparison approach to establish the market value in use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2)(stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”); *See also, Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
- h) In order to use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. 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. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- i) The Petitioner did not engage in any significant comparison of the features of the purportedly comparable properties and the subject property as required by *Long*. While the Agent Detail Reports submitted by the Petitioner contain some information concerning features of the purportedly comparable houses, a petitioner must do more than simply present raw data. Instead, he must explain the relevance of that information to his contentions. *See Indianapolis Racquet Club*, 802 N.E.2d at 1022 (“[I]t is the taxpayer’s duty to walk the Indiana Board ... through every element of the analysis”).
- j) The Petitioner also contends the land value for each of the subject parcels is overstated. The Petitioner presented evidence to show that 25’ lots on the subject street were sold at tax sales or Commissioners’ sales for prices ranging from \$10 to \$487. The Petitioner purchased two (2) vacant lots (0034 and 0035). He purchased one lot (0034) at tax sale for \$486.74 on August 30, 2000. He purchased the second lot (0035) for \$300 from an individual on September 12, 2000. *T. Tarnowski testimony; Pet'r Exs. 4, 5A-C, 6A-D, 7, 8.*
- k) The Board finds the evidence insufficient to conclude that the transactions pursuant to which the Petitioner bought the two vacant lots (0034 & 00s5) were indicative of their respective market values. The 2002 Real Property Assessment Manual provides the following definition of “market value”:

“The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgably, and assuming the price is not

affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing for title from seller to buyer under conditions whereby:

- i. The buyer and seller are typically motivated;
- ii. Both parties are well informed and advised and act in what they consider their best interests;
- iii. A reasonable time is allowed for exposure in the open market;
- iv. Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- v. The price is unaffected by special financing or concessions.”

2002 REAL PROPERTY ASSESSMENT MANUAL 10 (incorporated by reference in 50 IAC 2.3-1-1(a)).

- l) The two sales described by the Petitioner do not meet the indicia of a market value transaction as described by the Manual. Tax sales normally do not involve a typically motivated seller or commercially reasonable exposure to the market. Similarly, the private sale described by the Petitioner did not involve any exposure of the property to the market. Instead, the Petitioner simply called the seller and asked if he would like to sell the lot, which he agreed to do. *T. Tarnowski testimony.*
- m) Both parties, however, agreed that a city ordinance requires lots to be at least 60’ in order to be built upon, and that the two (2) vacant parcels (0034 and 0035) are too small to be built upon under that ordinance. The Respondent stated there was an adjustment for unbuildable land; however, the adjustment was not reflected on the Petitioner’s property record cards. The Respondent recommended the Special Master consider applying a negative influence factor of 90% to the two vacant parcels in order to reflect that buildings cannot be constructed upon them. *Davis testimony.*
- n) Consequently, the Board finds that a negative influence factor of 90% should be applied to the two vacant parcels (0034 and 0035). As set forth above, however, the Petitioner failed to establish a prima facie case for any further reduction in the assessment of the subject property.

Conclusion

16. The preponderance of the evidence demonstrates that the two vacant lots (0034 and 0035) are each entitled to a negative influence factor of 90%. The Petitioner failed to establish a prima facie case for any further reduction in 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: _____

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>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.