

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-026-02-1-4-01132  
**Petitioner:** Daniel J. Poyer  
**Respondent:** Department of Local Government Finance  
**Parcel:** 007-26-37-0019-0039  
**Assessment Year:** 2002

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

### Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held. The Department of Local Government Finance (DLGF) determined that the tax assessment for the subject property is \$955,100 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated June 14, 2005.
4. Special Master Patti Kindler held the hearing in Crown Point on July 19, 2005.

### Facts

5. The subject property is located at 6611 Columbia Avenue in Hammond.
6. The subject property is a self-service commercial car wash facility built in 1997 and located on a 3.154-acre tract.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value as determined by the DLGF is:  
Land \$593,200      Improvements \$361,900      Total \$955,100.
9. The Petitioner did not specify a revised total value on his petition.
10. The following persons were present and sworn as witnesses at the hearing:  
Daniel J. Poyer, owner,  
Terry Knee, assessor/auditor.

## Issues

### 11. Summary of Petitioner's contentions that there are errors in the assessment:

- a) The land pricing on the property record card is incorrect because land types #11 (primary) and #13 (usable undeveloped) do not reflect the subject land use.<sup>1</sup> The .220-acre underground retention pond should be type #81, legal ditch. The rear parcel of .748 acres should be land type #13, undeveloped and usable. Two areas on the front lot are unusable because of an underground retention pond. They should be assessed as land type #14, undeveloped unusable. A public road that occupies .254 acres was mandated by the city and should be classified as land type #82, public road. *Poyer testimony; Petitioner's Exhibits 1, 3-5.*
- b) The retention pond and the public road required by the city prevent the full utilization of the land and restrict its development, which deflates the value of the commercial lot. *Poyer testimony; Petitioner's Exhibits 3-4.*
- c) North Township revised the land value for the 2004 assessment year and priced it with the .220-acre legal ditch, the .254-acre public road, and .253 acres of undeveloped unusable land. The 2002 assessment does not show these items. *Petitioner's Exhibits 6-7.* The total land value for 2004 was corrected from \$593,200 to \$485,500. The Petitioner would accept that amount for 2002 because there should not be such a disparity in land pricing between two assessment years. *Poyer testimony; Petitioner Exhibit 6.*
- d) Sales prices and information regarding four sales of commercial land in the subject's county show a range of \$.43 to \$2.50 per square foot for comparable vacant lots. *Petitioner Exhibit 2.* After adjustments, a unit value of \$.48 per square foot would be appropriate for the subject property. That amount results in an estimated "as is" value of \$60,500 for the entire parcel. *Id.*
- e) The wash bays identified on the property record card as ID #6 should be priced at \$20,400 for two water bays plus four additional bays priced at \$6,400 each for a total value of \$46,000 (six water bays priced as low cost structures). *Poyer testimony; Petitioner Exhibit 1.* The property record card currently shows the calculated cost for the wash bays at \$167,800, or \$121,800 more than it should be in accordance with the Real Property Assessment Guidelines. *Id.*

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<sup>1</sup> Four different property record cards were referenced during the appeals process. The property record card reflecting the original assessment and apparently used by Petitioner in the preparation of the Form 139L petition is not in the record. The property record card reflecting changes made after the informal hearing is *Respondent Exhibit 1*. The amended property record card prepared by Respondent at the hearing reflecting agreement with some of Petitioner's contentions is *Respondent Exhibit 5*. The property record card prepared by the North Township Assessor for 2004 is *Petitioner Exhibit 7*.

- f) The two dryer bays shown on the property record card as ID #5 are erroneously priced at \$28,000. *Poyer testimony; Petitioner Exhibit 1.* In accordance with the Guidelines, the dryer bays should be priced as additional bays at \$6,400 each for a total of \$12,800 because they are an extension of the self-serve wash bays. *Id.*

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

- a) The land over the retention pond is paved. One can park on it and drive on it. Therefore, it meets the definition found in the Guidelines of primary land and appropriately is priced as primary usable land on the 2002 property record card. *Knee testimony.*
- b) The access road was constructed as an access for the fire department in accordance with the City of Hammond zoning laws. Despite the Petitioner's claims, it is not a public road. Nothing in the record supports the Petitioner's statements that the access road is a public road. *Knee testimony.*
- c) The building where the dryers are located is correctly assessed as a separate area from the car wash building. The \$6,400 per bay calculation suggested by the Petitioner is inappropriate because the washing and drying bays are separate. The price per bay is for do-it-yourself wash bays. The building with dryers lacks features for car washing. Consequently, that improvement should not be priced as wash bays. It is assessed correctly for \$16,500 as a utility shed, ID#8. *Knee testimony; Respondent Exhibit 5.*
- d) The car wash improvements were not calculated correctly. Correcting an error on the 2002 property record card would change the improvement value from \$361,900 to \$346,500. *Knee testimony; Respondent Exhibit 5.* No change should be made on the land assessment. *Id.* The changes made to the land on the property record card by North Township for 2004 are incorrect and irrelevant to this case. *Knee testimony.*

### **Record**

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

- a) Form 139L petition,
- b) The tape recording of the hearing labeled Lake County 1643,
- c) Exhibits:
  - Petitioner Exhibit 1: Form 139L with attached contentions,
  - Petitioner Exhibit 2: Eight pages of land sales data with map,
  - Petitioner Exhibit 3: Blueprints,
  - Petitioner Exhibit 4: Two photographs of the retention pond,
  - Petitioner Exhibit 5: City of Hammond Zoning Board letter,
  - Petitioner Exhibit 6: Form 11C/I, Assessment for 2004,
  - Petitioner Exhibit 7: 2004 property record card with revisions by the township,

Respondent Exhibit 1: Subject property record card,  
Respondent Exhibit 2: Subject photograph,  
Respondent Exhibit 3: Incremental/decremental land summary data and  
neighborhood valuation form,  
Respondent Exhibit 4: Four copies of subject plat,  
Respondent Exhibit 5: Proposed corrected property record card for 2002,  
Board Exhibit A: Form 139L,  
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.

### Land Classification and Pricing

15. The Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:

- a) The 2002 property record card shows a breakdown of the 3.154-acre parcel into land types as follows: 2.386 acres is land type #11 for primary land and .768 acre is land type #13 for undeveloped usable secondary land.
- b) The Petitioner claims the land type classifications for 2002 should be revised to the classifications found on the 2004 property record card prepared by the township assessor. The Petitioner supported this argument regarding the land use with photographs of the retention pond, plat maps, a 2004 property record card

and final determination, and a letter from the city zoning board regarding the required access road.

- c) The Respondent argues the 2004 revision is incorrect and irrelevant to the current appeal year. The Respondent is correct that the 2004 assessment does not prove that the land value for 2002 assessment is wrong. *See Barth v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 806 (Ind. Tax Ct. 1998) (each tax year stands on its own and where taxpayer challenges an assessment the resolution does not depend on how the property was previously assessed).
- d) The existence of the underground retention pond and the access road are not in dispute. The evidence established that the retention pond is paved. One can drive or park on it. Although the city required it, the access road is owned and maintained by the Petitioner. There is no probative evidence that the access road is a public right-of-way or that it is dedicated as a public road.
- e) There are four categories of commercial and industrial land, described as follows:
  - 1) Primary: (Land type 11) The primary building or plant site, which includes but is not limited to land located under buildings, regularly used parking areas, roadways, regularly used yard storage and necessary support land.
  - 2) Secondary: (Land type 12) Land used for purposes that are secondary to the primary use of the land, including parking areas that are not used regularly and yard storage that is not used regularly.
  - 3) Usable Undeveloped: (Land type 13) The amount of acreage that is vacant and held for future development.
  - 4) Unusable Undeveloped: (Land type 14) The amount of vacant acreage that is unusable for commercial or industrial purposes, and not used for agricultural purposes.

REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002, ch. 2 at 85 (incorporated by reference at 50 IAC 2.3-1-2).
- f) The Petitioner's proposed land subtypes are for agricultural support land.
  - 1) Land subtype #81 indicates a legal ditch. The area used and occupied as part of a legal drainage ditch is considered to have no value and is deducted from the total parcel acreage. This area also includes the area adjacent to the ditch that cannot be farmed because of the need for access to the ditch.
  - 2) Land subtype #82 indicates a public road. The right-of-way area dedicated for public roads is deducted from the total parcel acreage.

GUIDELINES, ch. 2 at 105.
- g) The Petitioner failed to present probative evidence that any of the subject property meets the definitions and requirements for being valued as legal ditch or public road. The Petitioner failed to provide authority or explanation to establish how agricultural land classification might apply to his property. Petitioner's conclusory testimony in support of those classifications is not probative evidence. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind.

Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- h) The Petitioner further argues the front portion of the subject lot (.253 acres) is unusable because of the underground retention pond and should be considered unusable undeveloped land (land type #14). Furthermore, the Petitioner claims .748 acres at the rear of the lot that he set aside for future development should be classified as undeveloped usable land (land type #13).
- i) The Petitioner is incorrect. The land above the retention pond should not be considered unusable undeveloped. Undisputed testimony from both parties established that the underground retention pond is covered with asphalt paving. Driving across and parking on the area makes it primary usable land for the car wash. Further, the 2002 assessment already shows .768 acre of undeveloped usable land (land type #13). There was no probative evidence that the .768 acres should be reduced to .748 acres. Furthermore, doing so would result in an increase for the amount of primary land.
- j) The Petitioner also contends that four purportedly comparable 1995-1996 land sales range from \$.44 to \$.50 after adjustments. This evidence, however, lacks relevance or probative value because the Petitioner failed to establish comparability. The Petitioner was responsible for explaining to the Indiana Board the characteristics of his property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties. The record is devoid of such explanation, and therefore the comparable sales have no probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- k) Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *Id.* Consequently, a party relying on sales data performed substantially before January 1, 1999, must provide some explanation as to how the sale's value demonstrates or is relevant to the property's market value-in-use as of January 1, 1999. The Petitioner stated that the comparable sales were adjusted for elapsed time, but no data was submitted to support that statement. Again, such conclusory testimony is not probative evidence. The comparable sales lack probative value because they do not relate to the proper valuation date, January 1, 1999. *Id.*
- l) The Petitioner failed to make a prima facie case regarding the land classification or pricing. There will be no change on the land assessment.

## Improvements

16. The Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) Low cost do-it-yourself car wash bays are priced per item with a 2-bay building at \$20,400 and each additional bay priced at \$6,400. GUIDELINES, app. G at 36.
  - b) The Petitioner argues there are errors in the pricing of the improvements on sketch ID #5 and ID #6 on the property record card. The Petitioner submitted a detailed breakdown of the purported correct pricing of the structures. The Petitioner testified that there are six do-it-yourself bays that should be priced in accordance with the Guidelines at \$20,400 for the first two bays and \$6,400 for each additional bay for a total replacement cost of \$46,000. *Poyer testimony; Petitioner Exhibit 1*. The proposed property record card does exactly that.
  - c) In addition, two dryer bays are in a detached building and are not a part of the car wash building. Clearly, these two dryer bays are a separate improvement that must be valued. The Petitioner's proposal to use the value for additional bays must be denied for at least two reasons. First, the cost for additional bays would be in the same structure, which these are not. Consequently, if the 2-bay base price for this separate structure were to be used, the value would increase from \$16,500 to \$20,400. Second, those prices are identified for "car wash buildings," but the evidence established that there was no washing equipment in these two bays. Consequently, those values would not correspond to the structure in question. The evidence is sufficient to support the assessment of the separate building that houses the drying bays. The Petitioner has not established that the building containing the drying bays should be assessed in any different manner.
  - d) The Respondent submitted a revised property record card for the improvements that reduces the current assessment. *Respondent's Exhibit 5*.
  - e) The Petitioner's evidence is insufficient to make a prima facie case regarding the pricing errors on the 2002 property record card. The Respondent's submission of the corrected property record card for 2002 will be considered in this appeal. A change will be made in accordance with the values reported on the corrected property record card. Accordingly, the improvement value is decreased from \$361,900 to \$346,500.

## **Conclusions**

17. The Petitioner failed to make a prima facie case regarding the land assessment. The Board finds in favor of the Respondent regarding the land assessment.
18. The Petitioner also failed to make a prima facie case regarding the improvements. The Board finds in favor of the Respondent. Nevertheless, Respondent admitted that a

change should be made that is favorable to the Petitioner. Therefore, the improvement value will be reduced to \$346,500.

### **Final Determination**

In accordance with the above findings and conclusions the Board now determines that the assessment should be changed to reflect the changes on the corrected 2002 property record card proposed by the Respondent.

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>.