

**INDIANA BOARD OF TAX REVIEW**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 45-028-02-1-4-00093  
**Petitioner:** Parcel C Partnership  
**Respondent:** The Department of Local Government Finance  
**Parcel:** 008-08-15-0468-0003  
**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 November 24, 2003. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$846,600 and notified Petitioner on March 31, 2004.
2. Petitioner filed Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated June 2, 2005.
4. Special Master Ellen Yuhan held the hearing in Crown Point on July 6, 2005.
5. Persons present and sworn as witnesses at the hearing:  
For Petitioner - James D. Combs, President,  
For Respondent - Stephen H. Yohler, Assessor/Auditor.

**Facts**

6. The subject property is 5.284 acres of unimproved commercial land located at 650 E. 86<sup>th</sup> Avenue in Merrillville. The location is in Ross Township.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed value as determined by the DLGF:  
Land \$846,600                      Improvements \$0                      Total \$846,600.
9. Assessed value requested by Petitioner:  
Land \$379,782                      Improvements \$0                      Total \$379,782.

## **Issues**

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
  - a) Petitioner contends the land value is excessive when compared to similar parcels in the area. For undeveloped, usable land, Petitioner calculated rates as low as \$11,567 per acre. The subject lot shows as primary land, even though it is vacant. It has an actual rate of \$160,333. *Petitioner Exhibits 3, 4; Combs testimony.*
  - b) The C-5 zoning requirements affect the land value. C-5 zoning requires 70% lot area coverage, which means more land is required for each use by a factor of 42.85%. Other similar zoning, C-2, C-2E, C-3 and C-4 allow for 100% lot coverage. *Petitioner Exhibit 4; Combs testimony.*
  - c) C-5 zoning also requires a floor area ratio (FAR) of .8, while similar zoning allows for a FAR of less than 1.3, meaning that more land area is required for a less dense use. *Id.*
  - d) Neighborhood codes for the area bordered by 81<sup>st</sup> Avenue, 93<sup>rd</sup> Avenue, Broadway and I-65 are not accurate. They are not representative of the true market values in the area. *Combs testimony.*
  
11. Summary of Respondent's contentions in support of the assessment:
  - a) Petitioner included only one other property from his neighborhood on Petitioner Exhibit 3. *Yohler testimony.*
  - b) The subject property currently is classified as undeveloped usable land. When they changed the land classification, they removed the 10% influence factor that had been applied for unimproved property. *Respondent Exhibits 2; Yohler testimony.*
  - c) The subject property is a 5.284-acre parcel. The standard lot size is one acre. Therefore, this property should have a 29% oversize parcel adjustment. This adjustment is noted on the property record card (PRC), but it was not applied. *Respondent Exhibits 4, 5; Yohler testimony.*

## **Record**

12. The official record for this matter consists of the following:
  - a) The Petition,
  - b) The tape recording of the hearing labeled Lake County 1616,

- c) Petitioner Exhibit 1 – Form 139L,  
 Petitioner Exhibit 2 – Property reports for the subject and 18 similarly situated properties,  
 Petitioner Exhibit 3 – Summary of similar properties,  
 Petitioner Exhibit 4 – Summary of arguments,  
 Petitioner Exhibit 5 – Merrillville development plan,  
 Respondent Exhibit 1 – Subject PRC,  
 Respondent Exhibit 2 – Plat map/location map,  
 Respondent Exhibit 3 – Land calculations/summary sheet,  
 Respondent Exhibit 4 – Corrected PRC showing classification change,  
 Respondent Exhibit 5 – Land calculation for undeveloped usable land,  
 Board Exhibit A – Form 139L,  
 Board Exhibit B – Notices of Hearing,  
 Board Exhibit C – Sign in Sheet,
- d) These Findings and Conclusions.

### Analysis

13. The most applicable governing cases and other rules 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.
  - d) The procedure for valuing commercial and industrial acreage tracts is similar to the procedure for other types of land. However, sales information for existing business properties is less reliable and less available. The township assessor must draw on the expertise within the community to establish the basis of valuing these types of tracts. The township assessor must delineate general neighborhood areas on the basis of characteristics that distinguish them from other areas. This delineation is normally based on such characteristics as:

- Zoning,
- Major roads or streets,
- Natural geographic features like waterways or lakes,
- Availability of certain modes of transportation.

These neighborhoods are the basis for establishing land values, as well as for reporting the values to the County Property Tax Assessment Board of Appeals. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 84.

14. Petitioner did not establish a prima facie case, but Respondent testified that there was an error that should be corrected. This conclusion was arrived at because:
- a) Petitioner contends that the land value is excessive when compared to other assessments in the area. On the Form 139L, Petitioner alleged the Bank One building located across the street is assessed at \$2.07 per square foot. Allegedly, Bank One has a superior location. Petitioner bases his requested assessment on 80% of Bank One's rate, which would be \$1.65 per square foot. *Petitioner Exhibits 1; Board Exhibit A; Combs testimony.* Bank One has 15 acres of land, 13.5 acres primary land with a 43% influence factor and 1.5 acres undeveloped unusable with a 29% influence factor. The subject parcel is only 5.284 acres that are considered usable undeveloped. Both properties are in the same neighborhood, but Petitioner failed to establish the comparability of the Bank One property to his property. Therefore, this evidence lacks probative value. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
  - b) Petitioner presented "property reports" for 19 parcels<sup>1</sup> in 3 neighborhoods. Petitioner presented a spreadsheet of land values for 17 of those properties (including the subject). The parcels are primary, undeveloped usable, and undeveloped unusable. Petitioner calculated the "actual rates" of the properties by dividing the assessed value by the acreage. *Petitioner Exhibits 2, 3.*
  - c) Petitioner first compared the subject to 8800 Virginia Place, which is 7.98 acres at a rate of \$11,567 an acre. The subject value is \$160,333 per acre. The property at 8800 Virginia Place is located in Broadfield, neighborhood 0897, which is described as commercial and industrial property located in a residential/rural area. The portion of land Petitioner uses for comparison is classified as undeveloped usable<sup>2</sup> as is the subject. The comparable, however, is not in the same neighborhood as the subject. Petitioner failed to establish the comparability of 8800 Virginia Place to his property. This evidence lacks probative value. *See Long*, 821 N.E.2d at 471.

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<sup>1</sup> The Petitioner submitted 19 reports, including one for the subject parcel. Two of the properties were not included on the spreadsheet.

<sup>2</sup> This parcel is shown on the spreadsheet three times, one time for each of the three land classifications.

- d) Petitioner also references 430 E. 90<sup>th</sup>, which is a smaller parcel in Broadfield. The actual rate for this 1.53-acre parcel is \$19,411. The base rate is \$31,793, but there is a 39% influence factor applied. Again, this property is located in neighborhood 0897, not the subject neighborhood. Petitioner failed to establish comparability to his property. This evidence lacks probative value. *Id.*
- e) Petitioner's spreadsheet does show a wide range of values; however, the properties represent three different neighborhoods with varying base rates. Those base rates for each neighborhood were then adjusted, based on an individual parcel's size as compared to the standard lot size for each commercial neighborhood, by using incremental/decremental percentages. (Incremental/decremental pricing addresses the fact that land is not usually bought at a flat rate, but on a sliding rate based on the size of the lot. The larger the lot, the greater the value, but the less the property is valued per unit.) It is not the Board's responsibility to review all the documentation submitted to determine whether those properties were indeed comparable. Petitioner failed to provide probative evidence or explanation that compares the subject property to the purported comparables. Therefore, this evidence lacks probative value. *Id.*
- f) Petitioner did not meet the burden of proof. Petitioner did not establish that the base rate for the subject property was incorrect or prove that the requested rate of \$2.07 per square foot was correct. *Meridian Towers*, 805 N.E.2d at 479.
- g) The subject parcel is zoned C-5. Petitioner testified about the differences between various types of zoning as far as the percentage of allowable land use and the floor area ratio. Petitioner testified that the C-5 zoning, which requires 30% of the parcel to be landscaping, means more land is required for less density of use. Petitioner admitted, however, that he is not aware of any difference in market value related to a difference in the zoning.
- h) Commercial neighborhoods are established as noted in ¶13 (d) above. Zoning is considered in establishing neighborhoods. Petitioner did not prove that the subject parcels are assessed inequitably with other parcels in the same neighborhood or prove that C-5 zoning resulted in a reduced market value for the subject property.
- i) Similarly, Petitioner failed to present probative evidence to support his claim that the neighborhood codes for his property or other areas were not accurate or not representative of true market values in the area. Petitioner's conclusory statements about this point are not probative evidence. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). This claim does not establish a basis for change.
- j) Respondent agreed the subject property is usable undeveloped land. The land valuation data for the subject neighborhood provides for a reduction in the base rate for parcels over the standard, which in this case is one acre. Base rate for the first

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<sup>3</sup> The Petitioner cited this parcel, but used the data for 320 E. 90<sup>th</sup>.

acre of undeveloped usable land is \$211,701.60. The other 4.28 acres are valued at 70% of that rate, or \$148,191.12 per acre, for a total of \$634,851. The total of both figures is \$846,552. Respondent submitted the incremental/decremenal pricing showing this calculation. *Respondent Exhibit 5.*

- k) The subject property also is entitled to an adjustment because it is over five acres. The notation on the corrected PRC shows that a negative 29% factor should have been applied, but it was not. Respondent agreed that the current assessment should get a further 29% reduction. *Respondent Exhibits 1, 4, 5; Yohler testimony.* This reduction would make the land value and the assessed value \$601,100.

### **Conclusion**

- 15. Petitioner did not provide sufficient evidence to establish a prima facie. Nevertheless, Respondent testified that a further negative adjustment should have been made. The Board accepts Respondent's concession. A negative 29% influence factor will be applied.

### **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>.