

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petitions #:** 45-001-02-1-5-00690  
45-001-02-1-5-00691  
**Petitioner:** C. David Rose  
**Respondent:** Department of Local Government Finance  
**Parcels #:** 001-25-46-0097-0042  
001-25-46-0097-0041  
**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 hearings as described in Ind. Code § 6-1.1-4-33 were held February 25, 2004. The Department of Local Government Finance (the "DLGF") determined that the property tax assessments for the subject properties are \$7,500 each and notified the Petitioner on March 31, 2004.
2. The Petitioner filed the Form 139L petitions on April 28, 2004.
3. The Board issued notices of hearing to the parties dated October 8, 2004.
4. Special Master Dalene McMillen held a hearing in Crown Point on November 15, 2004.

### Facts

5. The subject properties are vacant lots measuring 25 feet by 125 feet. They are located at 7716 and 7720 Locust, Gary. The location is in Calumet Township.
6. The Special Master did not conduct an on-site visit of the property.
7. The assessed value as determined by the DLGF:

For Parcel #001254600970042	Land \$7500	Total \$7500,
For Parcel #001254600970041	Land \$7500	Total \$7500.

8. The assessed value as requested by the Petitioner:
- |                             |             |               |
|-----------------------------|-------------|---------------|
| For Parcel #001254600970042 | Land \$1200 | Total \$1200, |
| For Parcel #001254600970041 | Land \$1000 | Total \$1000. |
9. The following persons were present and sworn as witnesses at the hearing:  
For the Petitioner – C. David Rose, property owner,  
For the DLGF – Diane Spenos, Assessor/Auditor.

### **Issue**

10. Summary of Petitioner’s contentions in support of alleged error in assessment:
- a) The subject properties are overvalued in comparison to other properties in the neighborhood. A sale of four comparable lots located at 7616 Maple sold for \$20,000 (\$5,000 per lot) in 2004. *Petitioner Exhibit 5; Rose testimony.*
  - b) The subject properties were purchased through tax sale in 2001. The assessments for the subject properties should not exceed the purchase price of \$1,600 for Parcel 001254600970042 and \$1,000 for Parcel 001254600970041. *Petitioner Exhibit 3; Rose testimony.*
  - c) The zoning requirements for minimum frontage in the City of Gary prevent any construction on the subject properties as individual lots. The City of Gary zoning for residential property requires a minimum of 50 feet of frontage, while the subject properties have only 25 feet frontage for each lot. *Petitioner Exhibit 2, 6; Rose testimony.*
11. Summary of Respondent’s contentions in support of assessment:
- a) The Respondent testified the subject properties are valued fair and consistent for the subject area. *Spenos testimony.*
  - b) A negative 20 percent influence factor was applied to the land value because the subject properties are unimproved. *Spenos testimony.*

### **Record**

12. 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 634,

- c) Exhibits:
- Petitioner Exhibit 1 – A copy of the Form 139L petitions,
  - Petitioner Exhibit 2 – Summary of Petitioner’s argument,
  - Petitioner Exhibit 3 – Tax sale purchase receipts for the subject properties,
  - Petitioner Exhibit 4 – A copy of the plat map for the subject area,
  - Petitioner Exhibit 5 – The multiply listing sheet for comparable property located at 7616 Maple Avenue, Gary, Indiana,
  - Petitioner Exhibit 6 – A letter from the City of Gary Department of Planning,
  - Petitioner Exhibit 7 – Two photographs of the subject lots,
  - Respondent Exhibit 1 – A copy of the Form 139L petitions,
  - Respondent Exhibit 2 – A copy of C. David Rose’s 2002 property record cards,
  - Respondent Exhibit 3 – A copy of a plat map and aerial map of the subject area,
  - Board Exhibit A – Form 139L petitions, dated April 28, 2004,
  - Board Exhibit B – Notices of Hearing on Petition, dated October 8, 2004,
  - Board Exhibit C – Hearing sign-in sheets,
- d) These Findings and Conclusions.

### **Analysis**

13. 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.

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

- a) While the Petitioner presented the tax sale receipts as evidence of the purchase price for the subject properties, the Petitioner did not establish that the tax sale price was representative of the market. The Petitioner merely offered the receipts and said that the assessment should be no more than the amount paid for the subject properties. Tax sales are not reliable indicators of true market value. *See 2002 REAL PROPERTY ASSESSMENT MANUAL* at 10 (defining Market Value as a price in a competitive and open market that is unaffected by undue stimulus). Tax sales are by their very nature not indicative of a competitive and open market. Merely pointing to the tax sale receipts and concluding what the value should be is merely conclusory testimony and it is of no weight in the evaluation of the evidence. *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
- b) The sale listing for the four lots located at 7616 Maple shows that the total sale price was \$20,000. The sale was May 27, 2004. Although the sale price for the four lots located at 7616 Maple was \$5,000, the Petitioner has not established how or why these lots are comparable to the subject properties. The Petitioner has merely pointed to the fact that these lots are the same size and in the same area as the subject property to conclude that they are comparable. Lacking any evidence establishing comparability, the Petitioner's claim of comparability is an unsubstantiated conclusion that does not constitute probative evidence. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005) (requiring specific reasons for comparison).
- c) Even if the Petitioner had established comparability between the four lots at 7616 Maple and the subject properties, the Petitioner did not explain how or why the 2004 sale price relates to the valuation established for the 2002 Reassessment. Lacking such explanation, the sales information from a period five years after the valuation date has no probative value. *Long*, 821 N.E.2d at 471.
- d) These two lots are contiguous. Together they have sufficient size to be buildable because they satisfy the minimum frontage required by the City of Gary. Petitioner failed to prove the value must be change to because the lots are unbuildable.
- e) 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 Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003).

**Conclusion**

- 15. The Petitioner failed to make a prima facie case. The Board finds in favor of 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: \_\_\_\_\_

\_\_\_\_\_  
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.**