

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-001-02-1-5-00896  
**Petitioner:** Calvin Kennedy Sr.  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 001-25-44-0083-0005  
**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 February 9, 2004, 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 \$125,600, and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated October 4, 2004.
4. A hearing was held on November 8, 2004 in Crown Point, Indiana before Special Master Peter Salvesson.

### Facts

5. The subject property is located at 520 Broadway Street, Gary, Calumet Township.
6. The subject property is a commercial building on 0.172 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the property is \$32,100 for the land and \$93,500 for improvements for a total assessed value of \$125,600 for the subject property.
9. The Petitioner requested a value of \$0 for the land and \$25,000 for the improvements for a total assessed value of \$25,000 for the subject property.

10. Calvin Kennedy Sr., the owner of the property, and Jim Hemming and John Toumey, assessor/auditors with 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 assessment is too high, as the subject property was purchased through a tax sale for \$10,600 on March 3, 1999. *Kennedy testimony* .
  - b) The value of the subject property is negatively impacted by the fact that the property has been vacant for 10-20 years. *Id.* The property was not in use on March 1, 2002. *Id.* No utilities are turned on at the property except for electric. *Id.*
  - c) The subject building's roof leaks, and the interior paint is peeling. *Id.* Petitioner estimates that it would require \$500,000 in repair. *Id.*
  - d) The value of the subject property is negatively impacted by the fact that the adjacent property has fire damage that has not been repaired. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The physical characteristics of the subject property are properly reflected on the property record card. *Hemming testimony; Respondent Ex. 2.*
  - b) The property is rated "fair" condition and a 50% negative adjustment to the structure of the property properly accounts for the long-term vacancy of the property. *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 Co - 566.
  - c) Exhibits:

Respondent's Exhibit 1:	Form 139L Petition
Respondent's Exhibit 2:	Subject Property Record Card
Respondent's Exhibit 3:	Subject Property Photo
Respondent's Exhibit 4:	Neighborhood Land Value Summary Sheet
Respondent's Exhibit 5:	Land Value Calculation Sheet

Board Exhibit A:	Form 139L Petition
Board Exhibit B:	Notice of Hearing

- 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 at 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 assessment of the subject parcel is too high. The Petitioner submitted evidence that the parcel was purchased at a tax sale in March 1999 for \$10,600.
  - b) The 2002 Real Property Assessment Manual (the Manual) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4. While an actual sale of a property may be a good indicator of its actual market value, the sale must be an “arm’s-length transaction.” In other words, a sale does not necessarily indicate the market value of the property unless that sale happens in a competitive and open market under all conditions requisite to a fair sale, in which the buyer and seller are typically motivated. MANUAL at 10. “Fair market value’ is what a willing buyer, under no compulsion to buy, would pay a willing seller, under no compulsion to sell.” *Second National Bank of Richmond v. State*, 366 N.E.2d 694, 696 (Ind. Ct. App. 1977). A tax sale purchase of property does not satisfy the

conditions of a competitive and open market, and the buyer and seller being typically willing, motivated and under no compulsion to buy or sell. Thus, the purchase price of property obtained in a tax sale is not, by itself, probative evidence of market value of a property.

- c) The Petitioner also testified that the roof leaks and the property is in need of \$500,000 in repair. Respondent testified that the property has been determined to be in “fair” condition. A commercial property in fair condition is “best described as badly worn.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002, Chap. 6, pg 57 (the GUIDELINES). “There is a substantial amount of repair needed to restore the facility. Many items need refurbishing, overhauling, or are inadequate for the demands of today’s market. There may be inadequate utilities such as wiring that is inappropriate or too light-duty for the demands of today’s structures; deferred maintenance is present.” *Id.* While Petitioner has testified that the property roof leaks and the building is in need of \$500,000 worth of repair, a “substantial amount of repair needed” is expected in a building in “fair” condition. Petitioner did not make a prima facie case that the subject property is in any condition other than “fair.”
- d) Finally Petitioner contended that the property has no water or sewer and only has electricity. The property has sat vacant for the past twenty years and the neighboring property is a burned-out shell. The Respondent testified that a 50% obsolescence factor has been applied to the property. Obsolescence is a “diminishing of a property’s desirability and usefulness brought about by either functional inadequacies or super-adequacies inherent in the property itself, or adverse economic factors external to the property.” GUIDELINES, glossary at 14. While the property’s lack of water and sewer and the neighborhood conditions are relevant to a property’s obsolescence, Petitioner did not present a prima facie case that the obsolescence factor was incorrect. Further, the Petitioner failed to show how these conditions impacted the market value-in-use of the subject property, or show what the actual market value of the property is. The Petitioner has the burden to establish a prima facie case proving both – that the current assessment is incorrect and also what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d at 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).
- e) For the reasons set forth, the Petitioner has failed to make a prima facie case that the assessment of the subject property is incorrect. When 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, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

16. The Petitioner did not 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: \_\_\_\_\_

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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>.