

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-002-02-1-5-00131  
**Petitioner:** Eugene S. and Leona M. Souther  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 002020301550064  
**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 5, 2003 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property should be \$145,300. The DLGF's Notice of Final Assessment was sent to the Petitioners on March 19, 2004.
2. The Petitioners filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated July 20, 2004.
4. A hearing was held on August 26, 2004, in Crown Point, Indiana before Special Master Alyson Kunack.

### Facts

5. The subject property is located at 289 Wildwood Road, Lowell, Cedar Creek Township, Lake County.
6. The subject property is a single-family residence located on water.
7. The Special Master did not conduct an on-site visit of the property.
8. The Assessed Values of subject property as determined by the DLGF are:  
Land \$25,000    Improvements \$120,300

Assessed Values requested by Petitioner per the Form 139L petition are:  
Land \$10,000 Improvements \$115,300

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: Eugene and Leona Souther, property owners

For Respondent: Larry Vales, Cole-Layer-Trumble, representing the DLGF

### Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:

- a) The Petitioners contend that the land valuation of the subject property greatly exceeds the assessed value and sale price of a nearby vacant lot – Lot 38.
- b) The Petitioners point to the following information in comparing the subject land and Lot 38:
  - Lot frontages - 50 feet (subject) versus 85 ½ feet (Lot 38);
  - Effective frontages - 50 feet (subject) versus 67 feet (Lot 38);
  - Influence factors applied – 0 (subject) versus 90% (Lot 38);
  - Lot sizes - .125 acre (subject) versus .212 (Lot 38);
  - Land assessed values - \$25,000 (subject) versus \$3,600 (Lot 38);
  - That Lot 38 sold for \$3,500 in April 1999;  
*Souther testimony & Petitioner Exhibits 4, 6, 8 and 9.*
- c) The Petitioners contend that the subject property and Lot 38 have the same amenities, although the Petitioners acknowledge that, unlike Lot 38, the subject property is on the lakefront.
- d) The Petitioners purchased the subject property and an adjacent vacant lot (Lot 65) for \$125,000 in April 1996.<sup>1</sup> The Petitioners also submitted an appraisal of the subject property and Lot 65 dated May 30, 1995. The appraisal reflects a total value of \$125,000 for the two properties. *Souther testimony & Petitioner Exhibit 7.*
- e) Eugene Souther testified that he made a lot of repairs to the subject house after the Petitioners purchased it. *Souther testimony.*

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<sup>1</sup> That vacant lot, parcel # 002-20301550065 (Lot 65) is the subject of a separate petition for review before the Board. Although the Administrative Law Judge conducted the hearings on the two appeals on the same day, the Board will enter a separate final determination with regard to the appeal concerning Lot 65.

- f) The Petitioners contend that a nearby property, Lot 39, recently sold for \$64,900 for the lot and house. *Souther testimony*
  - e) Although the Petitioners requested a value of \$115,000 for the improvements pursuant to their 139L petition, the Petitioners contend that the correct value is more in the range of \$105,000 for the improvements and \$10,000 for the land. *Souther testimony*.
12. Summary of Respondent's contentions in support of the assessment:
- a) The Respondent contends that the lots to which the Petitioners seek to compare the subject property are not lakefront properties. *Vales testimony & Respondent Exhibit 2 and 3.*
  - b) The Respondent contends that the subject lot is smaller but it is totally usable. Moreover, the subject lot is on the lake and is a good homesite lot. *Vales testimony.*
  - c) The Respondent contends that Lot 39 is assessed at \$61,200. According to the Respondent, that assessment is in-line with the sale price of \$64,900 for that property. *Vales testimony & Respondent Exhibit 4.*
  - d) Sales and assessment data from comparable properties show the assessment to be in line with market value. The Respondent submitted a listing of purportedly comparable properties. The Respondent highlighted two (2) properties on that list. The first highlighted property sold for \$126,000 in September 1999 (Parcel 14) and the other sold for \$100,000 in 2002 (Parcel 35). Both properties are smaller than the subject. The Respondent contends that these two properties were the best comparables available. *Vales testimony & Respondent Exhibit 3.*
  - e) The Respondent contends that the appraisal submitted by the Petitioners is too remote in time to January 1, 1999, to be used. In addition, the Petitioners testified that changes have been made to the improvement since the date of purchase. *Vales testimony.*

### **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. #386.
  - c) Exhibits:
    - Petitioners Exhibit 1: Form 139L Petition
    - Petitioners Exhibit 2: Form 11 – Notice of Assessment of Land and Structures
    - Petitioners Exhibit 3: Notice of Final Assessment

Petitioners Exhibit 4: County Plot Plan  
Petitioners Exhibit 5: Other parcels to be appealed  
Petitioners Exhibit 6: Information on Lot 38  
Petitioners Exhibit 7: Uniform Residential Appraisal Report for the subject property dated May 30, 1995  
Petitioners Exhibit 8: Property record card (PRC) for Lot 64  
Petitioners Exhibit 9: PRC for Lot 38  
Petitioners Exhibit 10: Printout of assessment details for Lot 38  
Petitioners Exhibit 11: Sales disclosure for Lot 38 dated April 22, 1999

Respondent Exhibit 1: Form 139L Petition  
Respondent Exhibit 2: Subject's (Lot 64) PRC  
Respondent Exhibit 3: Listing of comparables and PRCs  
Respondent Exhibit 4: Plot map and PRCs  
Respondent Exhibit 5: Aerial photo/map of area

Board Exhibit A: Form 139 L Petition  
Board Exhibit B: Notice of Hearing on Petition  
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 the Department of Local Government Finance 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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) Real property in Indiana is assessed on the basis of its “true tax value.” *See* I.C. § 6-1.1-31-6(c). “True tax value” is defined as “[t]he 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 2 (2001 (incorporated by reference at 50 IAC 2.3-1-2)(hereinafter “Manual”).
  - e) The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, Cause No. 49T10-0404-TA-20, at 4 (Ind. Tax Ct. corrected original opinion dated January 28, 2005). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* 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.” *Id.*
  - f) However, in order to effectively 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. *See Long*, at 7. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties as well as how any differences between the properties affect the relative market values-in-use. *See Long*, at 8.
  - g) Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, at 8; Manual at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *See Long*, at 8.
15. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners provided essentially four pieces of evidence to establish that the subject property was improperly valued: (1) an appraisal of the subject property as of May 30, 1995; (2) the sale price for the subject property in April 1996; (3) information comparing the subject property to a nearby improved lot (Lot 39); and (4) information comparing the subject land to a nearby vacant lot (Lot 38).
  - b) The appraisal valued the subject property as of a date more than three-and-one-half ( $3^{1/2}$ ) years prior to relevant date of January 1, 1999. The Petitioners did not present any market evidence to demonstrate how the appraisal related to the subject property’s value on January 1, 1999. The only evidence that related the appraised value to a date past May 30, 1995 was Eugene Souther’s testimony the Petitioners

- purchased the subject property in April of 1996 for \$125,000 – the same as the appraised value. *Souther testimony*. At most, Souther’s testimony demonstrates that the value remained stable for approximately eleven (11) months following the appraisal valuation date. This does not sufficiently relate the appraised value to the subject property’s value as of January 1, 1999.
- c) Moreover, Indiana Code § 6-1.1-2-1 provides that “all tangible property which is within the jurisdiction of this state on the assessment date of a year is subject to assessment and taxation for that year.” Reading this statute together with the Manual, it is apparent that the goal to be reached under the 2002 general reassessment is to consider a property, as it physically exists on the assessment date of March 1, 2002, and assess that property in terms of what its market value-in-use would have been on January 1, 1999.
  - d) Eugene Souther testified that he made significant amounts of repairs to the subject property after the Petitioners purchased it. *Souther testimony*. Souther’s testimony supports an inference that the subject property was in better condition on the assessment date of March 1, 2002, than at the time of the appraisal. This further detracts from the probative value of the appraisal, because it is unclear whether the appraisal relates to the property as it physically existed on March 1, 2002.
  - e) The Petitioners’ evidence that they bought the subject property in April 1996 for \$125,000<sup>2</sup> lacks probative value for the same reasons discussed above with regard to the May 30, 1995, appraisal. The Petitioners have not explained the relationship between the sale price and the property’s value as of January 1, 1999.
  - f) The Petitioners also failed to present probative evidence to establish that the subject property was comparable to the improved lot (Lot 39) that recently sold for \$64,900. The Petitioners did not present sufficient evidence to explain the characteristics of the subject property and how those characteristics compare to those of Lot 39 or how any differences between the two affect their relative values. *See, Long, supra*, at 8. For example, the Petitioners pointed to key differences in the characteristics of the properties - such as the fact that the subject property is on the lakefront while Lot 39 is not - without explaining how those differences affect the relative values of the properties. *Souther testimony*.
  - g) The Petitioners’ attempt to compare the land assessment for the subject property to the assessment and sale price of Lot 38 fails for much the same reasons. Once again, the Petitioners did not discuss the characteristics of the two parcels other than to compare their relative sizes. Moreover, the Petitioners’ own evidence pointed to numerous differences between the two properties, including the subject property is on the lakefront while Lot 38 is not, and that Lot 38 has negative influence factors

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<sup>2</sup> Eugene Souther testified that the Petitioners bought the “lot and house” on April 17, 1996. *Souther testimony*. It is not clear from Souther’s testimony whether the “lot” to which he referred was the subject land or the vacant lot (Lot 65), which was the subject of a related appeal.

applied to it for traffic flow, excess frontage and “restrictions.” The Petitioners have done nothing to address those apparent differences or to explain how those differences affect the relative values of the two properties.

- h) Based on the foregoing, the Petitioners have failed to establish a prima facie case of error in the assessment of the subject property.

### **Conclusion**

- 16. The Petitioners failed to 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: \_\_\_\_\_

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

