



9. Petitioners did not specify the assessed values they sought.
10. Persons sworn as witnesses at the hearing:  
Harlan Fugate, owner,  
Anthony Garrison, assessor/auditor.

### **Issues**

11. The Petitioners contend each of the lots is over assessed because they are not buildable due to the size of the individual lots. At least an acre is required to build in this area. *Fugate testimony*. The Petitioners originally sought review of another contiguous parcel that contains their house, but at the hearing, they withdrew that petition and accepted its current assessed value. *Id.*
12. The Respondent contends the value is fair and accurate as assessed. The parcels receive negative influence factors for being undeveloped and/or having excess frontage. The property is buildable. The parcels are contiguous and could be combined to meet a one-acre minimum size. *Respondent Exhibit 3; Garrison testimony; Fugate testimony*.

### **Record**

13. The official record for this matter is made up of the following:
  - a) The petition for each parcel,
  - b) The tape recording of the hearing labeled Lake County 823,
  - c) Petitioner Exhibit 1 – Adjoining Lot Sale Documents (2 pages),  
Respondent Exhibit 1 – Form 139L for each parcel,  
Respondent Exhibit 2 – Property Record Card for each parcel (except  
parcel 011-11-10-0042-0016),  
Respondent Exhibit 3 – Map,  
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.
15. The Petitioners failed to make a prima facie case to support their contentions. This conclusion was arrived at because:
- a) Testimony in this case established that code requires at least one acre to build in this area. The Respondent did not dispute this statement. Each of the lots owned by the Petitioner is less than one acre. Again, Respondent did not dispute this evidence.
  - b) Of the six lots under appeal, five are vacant and one has the Petitioners' garage on it. A seventh parcel, containing the Petitioners' house, was originally included with these appeals; however, Petitioners withdrew that one at the hearing. All these parcels (including the house and garage) are contiguous. Petitioners admitted that if they were to sell their home, they probably would sell all seven parcels together. They also admitted that the five vacant parcels could be combined to create a buildable property that would satisfy the one-acre minimum.
  - c) The parcel that already contains the garage is buildable because an improvement is on it. There are two main reasons that the Board will not determine that the remaining parcels are unbuildable. First, the undisputed evidence established that collectively the balance of the property is large enough to constitute a buildable lot. Second, the Petitioners admitted that if they sold their home they would probably sell all the parcels together.
  - d) The Petitioners failed to present probative evidence that the market value-in-use of these parcels is anything less than the current assessment.
  - 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. 2005).

**Conclusion**

- 16. The Petitioners 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. 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>>.