

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-001-02-1-5-00807  
**Petitioners:** J. Edward & Monica A. Johnston  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 001-25-43-0409-0011  
**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 January 15, 2004 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$18,500. The DLGF's Notice of Final Assessment was sent to the Petitioners on April 1, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated September 9, 2004.
4. A hearing was held on October 12, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

### Facts

5. The subject property is located at: 3245 Maryland Street, Gary, Indiana.
6. The subject property is a one-story single-family residence.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Values of subject property as determined by the DLGF are:

Land \$3,500    Improvements \$15,000    Total \$18,500

Assessed Values requested by Petitioner per the Form 139L are:

Land \$500    Improvements \$4,500    Total \$5,000

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:    Monica A. Johnston, Petitioner
  - For Respondent:    David Depp, Cole-Layer-Trumble (CLT), representing the DLGF
11. On February 25, 2005, Ken Daly, program director for the Board, sent a letter to the Petitioners (“Daly Letter”) requesting copies of any documents showing that they were responsible for the 2002 property taxes for the subject property. The letter requested the same information concerning parcel no. 001-25-43-0409-00808, which is the subject of a separate appeal. In response, the Petitioners provided a two page document identified as a property tax receipt for parcel number 001-25-43-0409-00808 for “provisional 2002 taxes payable in 2003” (“Receipt”). By Letter dated April 29, 2005 (“Pardo Letter”), David Pardo, senior administrative law judge for the Board, served upon the Respondent a copy of the Daly Letter together with a copy of the Receipt. The Board provided the Respondent with the opportunity to file a response through and including May 16, 2005. The Respondent did not file a response

### **Issues**

12. Summary of Petitioner’s contentions in support of an alleged error in the assessment:
  - a) The Petitioners bought the subject property on March 5, 2003, for \$5,000 from a family friend. *Johnston testimony*. The Petitioners had known the seller’s grandfather and they had employed his father as a handyman. *Id.* The seller had taken out home equity loans and the property was “in foreclosure” when the Petitioners purchased it. *Id.* The seller called the Petitioners and asked if they would be interested in purchasing the property. *Id.* The property had a lien on it when the Petitioners purchased it. *Id.*
  - b) The subject property is boggy river bottomland, located on an unlit and unpaved street. *Johnston testimony*. Vehicles that stray from the street sink into the land and become mired. *Id.* The property is swarmed by mosquitoes and is in danger of flooding. *Id.*
  - c) The subject house had an illegal electrical hook-up, no circuit breakers, and no gas service when the Petitioners purchased it. *Board Exhibit A.*
  - d) The subject property cannot be sold for \$18,000. *Johnston testimony.*

- e) The comparable properties relied upon by the Respondent are on paved streets with sidewalks and curbs and are in better neighborhoods than the subject property. *Johnston testimony.*

13. Summary of Respondent's contentions in support of the assessment:

- a) The petitioners did not purchase the property in an arms length transaction as required to determine a fair market value. *Depp testimony.* The sale was due to a home equity loan foreclosure. *Id.*
- b) The Respondent submitted information concerning the sale of three comparable properties. *Depp testimony; Respondent Exhibit 4.* The comparable properties do have basements, whereas the subject is on a crawlspace. *Id.* One comparable property is on the same street as the subject property, but it has a basement and detached garage. *Id.* The subject property does not contain either of those features. *Id.* Photographs of the comparable properties show that they were better maintained than the subject property. The three comparable properties sold for amounts between \$20,000 and \$42,000. *Id.* The Respondent feels that the assessed value for the subject property is good. *Id.*
- c) CLT was not permitted to enter properties to inspect interiors in valuing properties for the reassessment. *Depp testimony.*

### **Record**

14. The official record for this matter is made up of the following:

- a) The Petition, the Daly Letter, the Pardo Letter and the Receipt.
- b) The tape recording of the hearing labeled Lake Co. #230.
- c) Exhibits:

Petitioner's Exhibit 1: Sale Document of nearby land to River Commission  
Petitioner's Exhibit 2: Copies of photographs of subject dwelling and street

Respondent's Exhibit 1: Form 139L Petition  
Respondent's Exhibit 2: Subject property record card (PRC)  
Respondent's Exhibit 3: Copy of a photograph of subject dwelling  
Respondent's Exhibit 4: Three (3) comparable sales, PRCs, and photographs  
Respondent's Exhibit 5: Plat Map

Board Exhibit A: Form 139 L  
Board Exhibit B: Notice of Hearing on Petition  
Board Exhibit C: Sign in Sheet

d) These Findings and Conclusions.

### Analysis

15. As an initial matter, the Board notes that the Petitioners did not provide evidence that they had paid the 2002 taxes on the subject property. Nonetheless, the Respondent did not object to the Petitioner's standing or provide any indication that the previous owner had paid the 2002 taxes. The Board therefore will address the merits of this appeal.<sup>1</sup>
16. The most applicable governing cases/laws/regulations are:
- a) A petitioner seeking review of a determination of the DLGF 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.
17. The Petitioner did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioner presented a settlement statement showing that they purchased the property on March 5, 2003, for \$5,000.
  - b) The 2002 Real Property Assessment Manual (hereinafter “Manual”) provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on the sale of property occurring on a date substantially removed from January 1, 1999, must provide some explanation as to how the sale price demonstrates or is relevant to the property’s value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment

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<sup>1</sup> As noted in paragraph 11, the Petitioners did provide a receipt showing that they were responsible for the 2002 taxes on parcel no 001-25-43-0409-00808.

- of that property). The Petitioners did not provide any evidence relating the 2003 sale price of the subject property to its market value as of January 1, 1999.
- c) Even if the Petitioners had presented evidence to adjust the sale price to the relevant valuation date, there are additional issues that deprive the sale price of probative value. First, Monica Johnston testified that the subject property was burdened by a lien when the Petitioners bought it. *Johnston testimony*. She did not testify regarding the amount of the lien or whether the lien was discharged as a result of the purchase. To the extent that the property remained subject to the lien, the purchase amount would not reflect the actual market value of the subject property. Moreover, the Petitioners bought the property while it was in the process of foreclosure. *Johnston testimony*. In order to reflect a property's market value, the sale price must not be affected by undue stimulus. *MANUAL*, at 10. The threat of foreclosure normally constitutes an undue stimulus.
  - d) Monica Johnston also testified generally that the subject land is in a swampy condition, that it lacks access to a paved street, and that it is swarmed by mosquitoes. *Johnston testimony*. Ms. Johnston further testified that the neighborhood is sparsely populated and that not many people want to live there. *Id.* The Petitioners also provided evidence that the subject house had an illegal electrical hook-up, and that it lacked circuit breakers and gas service when they purchased it. *Board Exhibit A*.
  - e) The Petitioners did not provide any evidence to quantify the effect of those factors on the market value-in-use of the subject property. Consequently, the Petitioners did not show either that the current assessment is incorrect, or what the correct assessment would be. *See Meridian Towers*, 805 N.E.2d at 478.
  - f) Based on the foregoing, the Petitioners failed to establish a prima facie case for a change in assessment.

### **Conclusion**

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

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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>>.**