

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #s:** 45-001-02-1-5-00814  
45-001-02-1-5-00815  
**Petitioners:** J. Edward & Monica A. Johnston  
**Respondent:** The Department of Local Government Finance  
**Parcel #s:** 001-25-43-0411-0012  
001-25-43-0411-0013  
**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 23, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessments for the subject properties are \$21,500 and \$3,000 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed Form 139L petitions on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated February 10, 2005.
4. Special Master Ellen Yuhan held the hearing on March 14, 2005, in Crown Point, Indiana.

### Facts

5. The subject properties are located at 700 E. 33<sup>rd</sup> Avenue and 708-714 E. 33<sup>rd</sup> Avenue, Gary in Calumet Township.
6. The subject properties consist of a single-family dwelling on a 55' by 150' lot and a vacant 50' by 130' lot.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of subject property to be \$4,400 for the land and \$17,100 for the improvements for a total assessed value of \$21,500 for parcel number

001-25-43-0411-0012 and \$3,000 for the land for parcel number 001-25-43-0411-0013. There are no improvements on parcel number 001-25-43-0411-0013.

9. The Petitioners request an assessed value of \$500 for the land and \$12,000 for the improvements for a total assessed value of \$12,500 for parcel number 001-25-43-0411-0012 and \$300 for the land on parcel number 001-25-43-0411-0013.
10. Monica A. Johnston, one of the owners of the subject properties, and Stephen H. Yohler with the DLGF, appeared at the hearing and were sworn as witnesses.

### **Issues**

11. Summary of Petitioners' contentions in support of an error in the assessment:
  - a. The Petitioners contend the property is over-assessed due to its isolated location and its proximity to a gang clubhouse. *Petitioner Exhibits 1-6, 7; Johnston testimony.*
  - b. The Petitioners bought a property three blocks away from the subject for \$11,000 in 2001. *Petitioner Exhibit 8; Johnston testimony.*
  - c. Lot 13 is a 40' lot, which is not considered buildable by the City of Gary. *Johnston testimony.*
12. Summary of Respondent's contentions in support of the assessment:
  - a. The Respondent testified that the improvements were assessed correctly and that the 45% obsolescence factor applied was in consideration for the neighborhood. *Respondent Exhibits 2 and 5; Yohler testimony.*
  - b. Lot 13 is over-valued. It should be valued as a rear lot with a value of \$1,000. The front lot should be valued at \$4,000 and then have a 20% negative influence factor for vacancy. The total for both lots should be \$4,200. *Yohler testimony.*

### **Record**

13. 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 1205.
  - c. Exhibits:

Petitioner Exhibit 1 - Map,<sup>1</sup>  
Petitioner Exhibits 2-6 - Photographs of the appealed properties,  
Petitioner Exhibits 6a-6b - Flowage Easement for 3249 Carolina Street,<sup>2</sup>  
Petitioner Exhibit 7 - Photograph,  
Petitioner Exhibit 8 - Quitclaim deed for 3314 Delaware,  
For petition 45-001-02-1-5-00814  
Respondent Exhibit 1 - Form 139L petition,  
Respondent Exhibit 2 - Subject property record card,  
Respondent Exhibit 3 - Subject photograph,  
Respondent Exhibit 4 - Plat map,  
Respondent Exhibit 5 - Comparable property record cards and photographs;  
For petition 45-001-02-1-5-00815  
Respondent Exhibit 1 - Form 139L petition,  
Respondent Exhibit 2 - Subject property record card,  
Respondent Exhibit 3 - Plat map,  
Board Exhibit A - Form 139L petitions,  
Board Exhibit B - Notices of Hearing,  
Board Exhibit C - Sign in Sheet,

d. These Findings and Conclusions.

### Analysis

14. 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.

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<sup>1</sup> Petitioner Exhibits 1, 2-6, 7 and 8 are for petitions 45-001-02-1-5-00811, 45-001-02-1-5-00812, 45-001-02-1-5-00813, 45-001-02-1-5-00814, and 45-001-02-1-815.

<sup>2</sup> This exhibit is for petition 45-001-02-1-5-00813 only.

15. The Petitioners did not provide sufficient evidence to establish a prima facie case for a reduction in value of their properties. However, the Petitioners and Respondent reached agreement on the value of the land. This conclusion was arrived at because:
- a. The Petitioners contend the properties are over-valued because of the location of the properties and because they purchased another property near the subject for \$11,000 in 2001. *Johnston testimony*. The Petitioners did not submit any evidence to show how the property purchased in 2001 was comparable to the subject properties or how that value was relevant to the subjects' value as of January 1, 1999. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 890 (Ind. Tax 1995). The Petitioners have not met their burden to raise a prima facie case that their properties were assessed incorrectly.
  - b. 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, 1221-1222 (Ind. Tax Ct. 2003).
  - c. The Respondent, however, testified that Lot 13 should have been valued as a rear lot and Lot 12 should receive a 20% influence factor for vacancy. Therefore, according to the Respondent, the total assessed value for the two lots should be \$4,200. *Yohler testimony*. The Petitioner accepted this valuation. Thus the parties reached agreement on the valuation of the land for parcel numbers 001-25-43-0411-0012 and 001-25-43-0411-0013.

### **Conclusion**

16. The Petitioners did not provide sufficient evidence to establish a prima facie case. However, the parties reached agreement on the valuation of the land for both parcels. Thus, the Board finds that the current assessment for the land should be changed to reflect this agreement.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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>.