

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-016-02-1-5-00253  
**Petitioner:** Jean Kanost  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 006-27-18-0280-0007  
**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 Petitioner attended the informal hearing as described in Ind. Code § 6-1.1-4-33 on January 20, 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 \$89,200. The DLGF's Notice of Final Assessment was sent to the Petitioner on March 26, 2004.
- 2) The Petitioner filed a Form 139L on April 14, 2004.
- 3) The Board issued a notice of hearing to the parties dated October 18, 2004.
- 4) A hearing was held on November 19, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

### Facts

- 5) The subject property is located at: 905 E. 8<sup>th</sup> Street, Hobart, Hobart Township, Lake County.
- 6) The subject property is a single-family residence located on 0.223 acres of land.
- 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 \$26,100 Improvements \$63,100 Total \$89,200

- 9) Assessed Values requested by Petitioner per the Form 139L petition are:  
Land \$11,000 Improvements \$63,100 Total \$74,100
- 10) The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
- 11) Persons sworn in at hearing:
- For Petitioner: Jean Kanost, Petitioner
- For Respondent: Lori Harmon, DLGF Representative

### Issues

- 12) Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a. The land value is in error when compared to the assessments of two (2) other properties in the same subdivision. *Kanost testimony.*
  - b. The subject lot is .202 acres and is valued at \$26,100. The lot next door is .304 acres and is valued at \$16,600. The lot behind the subject is 1.0828 acres and is valued at \$29,900. *Kanost testimony; Petitioner Exhibits 6-7.* All three lots contain improvements. *Petitioner Exhibits 5-7.*
  - c. The properties are in the same neighborhood, have the same utilities, same curbs, and same city services. If the properties were listed for sale, the same rate would be used for the land value. *Kanost testimony.*
  - d. The Petitioner compared the subject property only to adjoining properties within the same neighborhood. If the rate for the property next door (903 E. 8th Street) were used to value the subject lot, the subject lot would be valued at \$11,030. *Kanost testimony.*
  - e. The subject lot was too small for the construction of a house under regulations for the Springdale subdivision. Those regulations were waived to allow the subject dwelling to be built. *Kanost testimony.*
- 13) Summary of Respondent's contentions in support of the assessment:
- a. The subject lot is valued fairly, and no change in the assessment is warranted. *Harmon testimony.*
  - b. The Respondent submitted information regarding three properties that are comparable to the subject property. *Respondent Exhibits 1-5.*

- c. The first comparable property, located at 1401 E. 10<sup>th</sup> Street, is in the same neighborhood as the subject property but contains a larger dwelling than the subject property. That property sold for \$109,900 in October 1999. The time adjusted sale price is \$105,760 or \$84.75 per square foot. The sale price for that property should be reduced by an additional \$6,700 to account for differences between it and the subject property. The other two (2) comparable properties are not in the same neighborhood as the subject property but are closer in size and age to the subject property. Those properties sold for \$83.00 and \$93.00 per square foot. These sales support the \$85 per square foot price at which the subject property is currently assessed. *Harmon testimony & Respondent Exhibit 1 – 5.*
- d. The Petitioner relied on printouts from an internet web site in support of her argument that the subject lot is over assessed in comparison with neighboring lots. Such printouts do not show how the land value was determined for any of the properties in question. *Harmon testimony.* It is necessary to have property record cards for all of the properties in question in order to engage in a valid comparison. *Id.*
- e. Land pricing is a tool used to arrive at value. There are other factors, such as neighborhood factors, that are used to account for any differences between the valuations of properties under the cost based mass appraisal system utilized by the Respondent and the actual sale prices of properties within a neighborhood. There are also issues that require assessing officials to make subjective judgments. One of those issues is how to assign land values in subdivisions that contain mature homes. *Harmon testimony.*
- f. One cannot look just at land value in determining a proper assessment; instead, one must look at the total value of the property in comparison to sales of similar properties. *Harmon testimony.*

### **Record**

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

- a. The Petition.
- b. The tape recording of the hearing labeled Lake Co. #287.
- c. Exhibits:

- Petitioner Exhibit 1: Form 139L Petition
- Petitioner Exhibit 2: Notice of Final Assessment
- Petitioner Exhibit 3: Summary of Argument
- Petitioner Exhibit 4: Subject Property Photographs
- Petitioner Exhibit 5: Assessment Record for Subject Property
- Petitioner Exhibit 6: Assessment Record for 903 E. 8th

Petitioner Exhibit 7: Assessment Record for 823 S. Linda St.  
Petitioner Exhibit 8: Plat Plan

Respondent Exhibit 1: Form 139L Petition  
Respondent Exhibit 2: Subject property record card (PRC)  
Respondent Exhibit 3: Subject Photograph  
Respondent Exhibit 4: Summary of three (3) comparable sales  
Respondent Exhibit 5: Comparable record cards & photographs  
Respondent Exhibit 6: Record card for 903 E. 8th

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

- 15) The most applicable laws 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 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 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.
- 16) The evidence in the record supports the Petitioner’s contentions. This conclusion was arrived at because:
- a. The Petitioner submitted evidence concerning the assessment of two adjoining properties within the same neighborhood as the subject property. One adjoining lot, which consists of .304 acres, is assessed for \$16,600, or approximately 64% of the assessed value of the subject property. This is true despite the fact that the neighboring lot is actually larger than the subject lot. *Kanost testimony; Petitioner*

- Exhibits 5-8.* The other adjoining lot, while approximately 4 1/2 times the size of the subject lot, is assessed for only \$3,800 more than the subject lot. The Respondent presented a property record card for a third property in the same neighborhood. That lot consists of .379 acres and is assessed for only \$19,100.
- b. With regard to the three properties for which the parties provided property record cards, it appears that the subject lot was assessed on a front foot basis, while the other two lots were assessed on an acreage basis at a base rate of 29,500 per square foot. *Respondent Exhibits 2, 5-6.* This difference in method of assessment apparently is what led to the disparity in land valuations.
  - c. The Petitioner, however, testified that the subject property and its neighbors all have the same curbs, utilities and city services. In addition, the properties are all within the same assessment neighborhood. *Kanost testimony; Respondent Exhibits 2, 5-7.* In short, the properties are comparable to each other. *See Blackbird Farms Apartments, LP v. Dep't of Local Gov't Fin., 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002)* (“[P]roperties within each geographic area, subdivision, or neighborhood in a land order are presumed to be comparable, both in distinguishing characteristics and market value.”).
  - d. Based on the foregoing, the Petitioner established a prima facie case of error in assessment and that the subject property should be assessed at the base rate of \$29,200 per acre – the same base rate as the other identified properties within the same assessment neighborhood.
  - e. The burden therefore shifted to the Respondent to impeach or rebut the Petitioner’s evidence of error. The Respondent testified that the subject land was valued similarly to other land in the Springdale development proper, and that the lots next to and behind the subject were valued differently because they are unplatted and are not part of the same development. *Harmon testimony.* The Respondent, however, did not explain how either of those facts affected the relative market values of the properties. In fact, the Respondent’s position runs counter to its decision to include the lots within the same neighborhood for assessment purposes.
  - f. The Respondent also attempted to support the overall assessment with information concerning the sales of purportedly comparable properties. In making this argument, the Respondent essentially relies on a sales comparison approach to establish the market value-in-use of the subject property. *See 2002 REAL PROPERTY ASSESSMENT MANUAL 2* (incorporated by reference at 50 IAC 2.3-1-2)(stating that 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.”); *See also, Long v. Wayne Twp. Assessor, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).*
  - h. 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. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

- i. The Respondent identified three properties that sold for \$109,900, \$88,000, and \$99,000 in 1999. One of the purportedly comparable properties had more land than the subject property. All of the dwellings were between 1040 square feet and 1248 square feet and were constructed between 1952 and 1967. Two of the three purportedly comparable properties were located in different neighborhoods than the subject property. *Respondent Exhibit 4.*
- j. While the Respondent compared at least some of the relevant characteristics of the properties, it fell short of engaging in the type of comparison contemplated by *Long*. The Respondent's analysis falls short under *Long* in another respect as well. The Respondent did not attempt to explain how any significant differences between the properties affect their relative market values. The Respondent did indicate that it adjusted the sale price of one of its purportedly comparable properties downward by \$6,700 to account for differences between its characteristics and those of the subject property. *Harmon testimony; Respondent Exhibit 4.* The Respondent, however, did not identify the characteristics upon which it based its adjustment or how it arrived at \$6,700.
- k. Based on the foregoing, the preponderance of the evidence establishes that the land portion of the current assessment is incorrect, and that the subject land should be assessed based upon a base rate of \$29,500 per acre.
- g. Any adjustments to the base rate, such as an adjustment for the subject property being a small acreage tract, must be made in accordance with the Real Property Assessment Guidelines for 2002 Version – A. The Board also notes that the Petitioner testified that the subject property consists of .202 acres, while the property record card for the subject property indicates that it consists of .223 acres. The Petitioner testified that she had gotten the number from the township assessor and that it was “written on a piece of paper.” The Petitioner's testimony on this point lacks sufficient specificity to support a finding that the measured acreage of the subject property should be changed.

### **Conclusion**

- 17) The preponderance of the evidence demonstrates that the land portion of the current assessment is in error. The Board finds for the Petitioner on this issue.

## Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be changed and that the land portion of the subject property should be recalculated using a base rate of \$29,500 per acre.

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>.