

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-013-02-1-5-00180  
**Petitioner:** Lake County Trust #1673/Germaine Marquess  
**Respondent:** Department of Local Government Finance  
**Parcel:** 005-05-06-0215-0001  
**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. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$244,900 and notified the Petitioner on March 25, 2004.
2. The Petitioner filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated October 22, 2004.
4. Special Master Patti Kindler held the hearing in Crown Point on November 29, 2004.

### Facts

5. The subject property is located at 12132 Parrish Avenue, Cedar Lake. The location is in Hanover Township.
6. The subject property is a 2,712 square foot rural residence, with attached and detached garages and several outbuildings with 12 acres of land.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of the subject property as determined by the DLGF is:  
Land \$26,000      Improvements \$218,000      Total \$244,900.
9. The assessed value requested by the Petitioner is:  
Land \$20,000      Improvements \$170,000      Total \$190,000.

10. The following persons were sworn in at the hearing:  
    Germaine Marquess, owner,<sup>1</sup>  
    Tommy P. Bennington, assessor/auditor.

### **Issues**

11. Summary of Petitioner's contentions in support of alleged error in the assessment:
- a. The assessment for the subject property should be lowered because it is located in an unincorporated area without city water and sewers, storm sewers, public streetlights, and sidewalks. Without these amenities, the property would not sell for the assessed value of \$244,900. *Marquess testimony; Petitioner Exhibit 2.*
  - b. Further detriments to the property's value include being on a dangerous road and having an irregular shape, which makes the property unattractive to developers and unusable for farming. The condition and age of the improvements, as well as previous fire damage to the dwelling also result in lower value. *Id.*
  - c. Photographs show the cracked porch foundation, the deteriorated driveway, roof of the dwelling, the outbuildings, the barn roof, and the three-sided portable sheds. *Marquess testimony; Petitioner Exhibit 3.*
  - d. The three-sided barns are portable. They have no foundation and are uninhabitable. These buildings serve as horse shelters. They could be constructed for one hundred (\$100) dollars and should not be considered taxable. *Marquess testimony; Petitioner Exhibit 2.*
  - e. The property would not attract a typical buyer because costly repairs are required. The selling price would have to reflect repair allowances. A prospective buyer would see the road is not safe and the property does not benefit from public lighting or protection. *Id.*
  - f. Based on discussions with persons who have purchased rural properties, the Petitioner contended the valuation should be lowered to \$190,000. *Id.*

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<sup>1</sup> From the record, ownership status is ambiguous. The property record card identifies the owner as Lake County Trust 1673. The 139L Petition, page 1, lists the owner as both Lake County Trust 1673 and Germaine Marquess. On page 3 of the 139L Petition, Germaine Marquess signed as owner. Nothing in the record cleared up this ambiguity. While the validity of the filing might be debated because it is not clear what, if any, status Germaine Marquess had to sign and file it, the Respondent did not address this question. Therefore, the Board will decide the case on its merits, rather than on a possible procedural defect.

12. Summary of Respondent's contentions in support of the assessment:
- a. Petitioner did attend the informal hearing and at that time the assessment was lowered by \$33,400 to \$244,900. *Bennington testimony.*
  - b. A grid was developed showing two comparable ranch homes located in the subject's neighborhood at 11640 Parrish Avenue and 10216 Cline Avenue. The comparable grid compares the subject dwelling, attached garage and land to the comparable properties. The outbuildings are not included in the comparison. *Bennington testimony; Respondent Exhibit 4.*
  - c. The first highlighted comparable property at 11640 Parrish Avenue, sold for \$140,000 with a time adjusted sale price (TASP) of \$127,221. The price per square foot was \$79.51 ( $\$127,221/1,600$  square feet = \$79.51). *Respondent Exhibit 4.*
  - d. The second highlighted comparable property at 10216 Cline Avenue, sold for \$151,000 with a time adjusted sale price (TASP) of \$137,217 and a per square foot price of \$86.63 ( $\$137,217/1,584$  square feet = \$86.63). *Id.*
  - e. The value of the home-site land, \$25,000, was added to the dwelling and attached garage assessment. This total value was divided by the dwelling's square footage of 2,712 for a per square foot price of \$67.55 ( $\$183,200/2,712$  = \$67.55). *Bennington testimony; Respondent Exhibit 2.*
  - f. The calculation shows the square foot assessment of the subject property is lower than the square foot assessments of both of the comparable properties. Therefore, the assessment is in line with the neighborhood comparable properties. *Bennington testimony.*
  - g. The property record card shows four three-sided buildings that are used as horse shelters. They are assessable. *Id.*

### **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 Co. 766.
  - c. Petitioner Exhibit 1: Subject Form 139L Petition,  
Petitioner Exhibit 2: Reasons for appeal,  
Petitioner Exhibit 3: Photographs of buildings as proof of condition,  
Respondent Exhibit 1: Subject Form 139L Petition,  
Respondent Exhibit 2: Subject Property Record Card (PRC),

Respondent Exhibit 3: Subject photographs, front & street views,  
Respondent Exhibit 4: Comparable grid,  
Respondent Exhibit 5: Photographs and PRCs for comparable properties located  
at 11640 Parrish Avenue and 10216 Cline Avenue,  
Board Exhibit A: Form 139L Petition,  
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. Petitioner did not provide sufficient evidence to establish that any change should be made to this assessment. This conclusion was arrived at because:
- a. Based on the lack of property amenities, as well as the parcel’s topography and location, Petitioner asserted the land value should be reduced to \$20,000. Petitioner presented no market data, such as an appraisal or evidence of the sale of comparable properties, to support this proposed value. Conclusory statements concerning value do not represent probative evidence of an error in the assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax 1998).

- b. "Condition" is defined as "[a] rating assigned each structure that reflects its effective age in the market. It is determined by inspection of the structure and by relating the structure to comparable structures within the subject's neighborhood." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 5 (incorporated by reference at 50 IAC 2.3-1-2).
  - c. The condition rating of the Petitioner's home is average: "Normal wear and tear is apparent in the building. It has average attractiveness and desirability. There are typically minor repairs that are needed along with some refinishing. In this condition, most of the major components are still viable and are contributing to the overall utility and value of the property." *Id.*, ch. 3 at 60.
  - d. Although Petitioner identified alleged deficiencies in the dwelling, the Petitioner made no connection between these purported deficiencies and any other condition rating. Further, Petitioner did not offer any estimates of the cost to cure the claimed deferred maintenance or explain how the claimed deficiencies affect the assessed value applied to the property. In addition, Petitioner contended one storage building also needed repairs. Petitioner did not identify which building, or offer evidence of any proposed value. Therefore, there will be no change regarding the condition rating of the property.
  - e. Petitioner contends the horse sheds should not be assessed because they are not on a foundation. Real property is defined, in relevant part, as "a building or fixture situated on land located within this state." GUIDELINES, glossary at 17. Portable utility sheds are specifically identified as real property. *Id.*, ch. 1 at 11. Three-sided pole framed general purpose buildings (Type 3 barns and sheds) are also specifically identified as assessable real property. *Id.*, app. C at 18. Petitioner failed to establish the horse sheds were non-assessable.
  - f. Finally, Petitioner contended the total value for the property should be \$190,000. This conclusion was based on discussions with persons who have purchased rural property. None of these unidentified individuals appeared at the hearing. No analysis of these purported sales was presented to establish they represent transactions involving comparable properties. As previously indicated, no appraisal for the subject property was presented to support this proposed value. Such conclusory statements concerning value are not probative evidence of an error in the assessment. *Whitley*, 704 N.E.2d at 1119.
16. Where Petitioner has not supported the claim with probative evidence, 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).

### **Conclusion**

17. Petitioner 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: \_\_\_\_\_

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Commissioner,  
Indiana Board of Tax Review

- 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>.