

REPRESENTATIVE FOR PETITIONER:

Paul J. Wallace, Attorney at Law, Bowers Harrison, LLP

REPRESENTATIVES FOR RESPONDENT:

Tammy Elkins, Vanderburgh County Deputy Assessor  
Candy Wells, Vanderburgh County Hearing Officer

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

LIN-GAS, INC.,	)	Petition No.:	82-030-02-1-4-00026
	)	Parcel:	0704009074058
Petitioner,	)		
	)		
v.	)		
	)	County:	Vanderburgh
SCOTT TOWNSHIP ASSESSOR,	)	Township:	Scott
	)	Assessment Year:	2002
Respondent.	)		

Appeal from the Final Determination of the  
Vanderburgh County Property Tax Assessment Board of Appeals

**March 24, 2005**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the “Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The issues presented for consideration by the Board were:

*ISSUE – Whether the land was correctly valued.*

### **PROCEDURAL HISTORY**

2. Pursuant to Ind. Code § 6-1.1-15-3, Mr. Paul J. Wallace of Bowers Harrison, LLP, filed a Form 131 Petition for Review on behalf of LIN-GAS, Inc. (LIN-GAS), petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on May 3, 2004. The determination of the Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA) was issued on April 8, 2004.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on September 30, 2004, in Evansville, Indiana, before Jennifer Bippus, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were sworn and presented testimony at the hearing:<sup>1</sup>

For the Respondent:

Tammy Elkins, Vanderburgh County Deputy Assessor

Candy Wells, Vanderburgh County Hearing Officer

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<sup>1</sup> Mr. Wallace was not sworn at the hearing.

5. The following exhibits were presented for the Petitioner:
  - Petitioner's Exhibit 1 – Real Property Assessment Manual at 8  
(incorporated by reference at 50 IAC 2.2-1-2).
  - Petitioner's Exhibit 2 – Offer from the Vanderburgh County Board of Commissioners to purchase a sewer easement.
  - Petitioner's Exhibit 3 – Offer from TQM Development Corporation to purchase 4.33 acres.
  
6. The following exhibits were presented for the Respondent:
  - Respondent's Exhibit 1 – Land Valuation Form for the subject property.
  - Respondent's Exhibit 2 – Aerial view of the subject land.
  - Respondent's Exhibit 3 – Copy of the property record card of the subject property.
  
7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
  - Board's Exhibit A – The Form 131 Petition.
  - Board's Exhibit B – Notice of Hearing dated August 25, 2004.
  - Board's Exhibit C – Notice of County Assessor Appearance as an Additional Party.
  - Board's Exhibit D – Letter of Authorization from the Scott Township Assessor, indicating the Vanderburgh County Assessor's office has authority to represent the Scott Township Assessor's office at the hearing.
  
8. The subject property is classified as a commercial property located on Highway 57 N., Evansville, Vanderburgh County.
  
9. The Administrative Law Judge did not conduct an on-site inspection of the subject property.

10. For 2002, the PTABOA determined the assessed value of the property to be:  
Land: \$275,700      Improvements: \$9,100      Total: \$284,800.
11. For 2002, the Petitioner contends the assessed value of the property should be:  
Land: \$47,200 (rounded)      Improvements: \$9,100      Total: \$56,300.

### **JURISDICTIONAL FRAMEWORK**

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

### **ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN**

13. 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).
14. 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”).

15. 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.

## ANALYSIS

### ISSUE – *Whether the land was correctly valued.*

16. The Petitioner contended the land should be valued at \$47,200 (rounded). *Board's Exhibit A; Form 131 petition.*
17. The Respondent contended the property is correctly assessed at its current value of \$275,700. *Elkins testimony.*
18. The Petitioner presented the following evidence in regard to this issue:
  - a. There have been two offers to purchase land from LIN-GAS. One offer was dated July 31, 1997, from the Vanderburgh County Board of Commissioners to purchase a sewer easement for twenty-five cents per square foot. The second offer was from TQM Development Corporation (TQM). This offer to purchase 4.33 acres for \$45,000 was dated May 9, 2000. This offer is for less than twenty-five cents per square foot. *Wallace argument; Petitioner's Exhibits 2 & 3.*
  - b. The offer from the Vanderburgh County Board of Commissioners indicated that twenty-five cents per square foot represents "the Fair Market Value for this property." *Wallace argument; Petitioner's Exhibit 2.*

- c. Both offers were for a much lower value than the \$2.00 per square foot that the County assessing officials have placed on the property. *Wallace argument.*
- d. LIN-GAS granted the sewer easement. The offer from TQM was not solicited and was rejected. *Wallace argument.*
- e. Using the value of twenty-five cents per square foot results in the requested value on the Form 131 petition. *Wallace argument.*

19. The Respondent presented the following evidence in regard to this issue:

- a. The County officials used the values indicated on the Commercial and Industrial Neighborhood Valuation Form. The front foot value for primary land for taxing district 8230 (the taxing district of the subject property) ranges from a low of \$2.00 per square foot to a high of \$12.00 per square foot. LIN-GAS has been placed on the low end of the scale at \$2.00 per square foot. *Elkins testimony; Respondent's Exhibit 1.*
- b. The price the Petitioner has suggested is not based on arm's-length transactions and therefore is not valid. The sewer easement purchased by the Vanderburgh County Board of Commissioners is not indicative of market value because there was no market exposure. The offer made by the private company was not accepted. It is therefore not considered valid evidence because there was no sale involved, just an offer to buy. *Elkins testimony.*
- c. The sales disclosure statement for the sewer easement was considered exempt and is not even considered in sales for the area. Since it was a County transaction, it is not included as a legitimate sale. *Elkins testimony.*

20. The Petitioner provided essentially two pieces of evidence to establish that the subject property was improperly valued: (1) an offer to purchase a sewer easement on the property dated July 31, 1997, and (2) an unsolicited offer to purchase the property dated May 9, 2000.

21. Market value is defined as:

The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- The buyer and seller are typically motivated;
- Both parties are well informed or advised and act in what they consider their best interests;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- The price is unaffected by special financing or concessions.

*Petitioner's Exhibit 1; 2002 REAL PROPERTY ASSESSMENT MANUAL at 10 (incorporated by reference at 50 IAC 2.3-1-2).*

22. The Petitioner contended an offer to purchase a sewer easement on the property dated July 31, 1997, established the value of the land at twenty-five cents per square foot. *Wallace argument; Petitioner's Exhibit 2.*

23. However, the document presented by the Petitioner clearly indicates the offer is to purchase only a sewer easement, rather than the land itself. The Petitioner did not explain the manner in which evidence of the value of an easement is also evidence of the value of the land.

24. As indicated, to represent market value, the property must have received exposure in the open market for a reasonable time. *MANUAL at 10.* The offer to purchase

- the easement contains no indication, and the Petitioner did not contend, that the property had received any exposure in the open market.
25. Further, the offer clearly indicates: “If our offer is not accepted, the Vanderburgh County Board of Commissioners will take actions authorizing the County Attorney to institute eminent domain proceedings.” *Petitioner’s Exhibit 2.*
  26. As indicated, to represent market value, the sale price must not be affected by undue stimulus. MANUAL AT 10. Clearly, the promise of legal action should the offer be rejected is an undue stimulus not typically associated with the sale of property.
  27. The Petitioner has therefore failed to demonstrate that the offer to purchase a sewer easement is probative evidence of the market value of the land.
  28. The Petitioner also presented an unsolicited offer from TQM to purchase the property. This offer was rejected by the Petitioner. *Wallace argument; Respondent’s Exhibit 3.*
  29. Implicit in the definition of market value is the consummation of a sale. MANUAL at 10. Because the offer from TQM was rejected and no sale was consummated, this offer does not satisfy the definition of market value.
  30. As previously indicated, to represent market value, the property must have received exposure in the open market for a reasonable time. MANUAL at 10. The offer from TQM was unsolicited. The offer contains no indication, and the Petitioner did not contend, that the property had received any exposure in the open market.
  31. The Petitioner has therefore failed to establish that the offer from TQM is probative evidence of the market value of the land.



32. Accordingly, the Petitioner has failed to make a prima facie case of error.

### **SUMMARY OF FINAL DETERMINATION**

ISSUE – *Whether the land was correctly valued.*

33. The Petitioner failed to make a prima facie case of error. The assessment is not changed as a result of this issue.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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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.**