

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-016-02-1-5-00357  
**Petitioners:** Mike T. & Angela Lazo  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 006-27-17-0017-0094  
**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 this property is \$32,500 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 19, 2004.
3. The Board issued a notice of hearing to the parties dated October 18, 2004.
4. Special Master Peter Salveson held the hearing in Crown Point on November 18, 2004.

### Facts

5. The subject property is located at 504 N. Washington Street in Hobart.
6. The subject property is a detached garage on a small piece of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of subject property as determined by the DLGF is:  
Land \$26,000                  Improvements \$6,500                  Total \$32,500.
9. The assessed value requested by Petitioner is \$5,000 total for land and improvements.
10. Persons sworn as witnesses at the hearing:  
Mike T. and Angela Lazo, owners,  
Diane Spenos, assessor/auditor.

## **Issues**

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
  - a. The garage is over 20 years old. The door and frame needs to be replaced. *M. Lazo testimony.*
  - b. The assessment should not include lots 2, 3, 4 and 5 as indicated on the Plat of Survey. *M. Lazo testimony; Petitioner's Exhibit 1.*
  - c. The current assessment is incorrect because it does not consider the fact that the subject property is land locked. *M. Lazo testimony; Petitioner's Exhibits 1, 2.*
  - d. Petitioners offered testimony that \$26,000 is too much for approximately 6,000 square feet of land, but also admitted that they did not know what the appropriate value of the land might be. Based on discussions with a realtor, there are no properties listed for sale that have the same characteristics as the subject property. *M. Lazo testimony.*
  
12. Summary of Respondent's contentions:
  - a. The Petitioner is not being assessed for lots 2, 3, 4, and 5. The parcel is only being assessed for .142 acres of land and the residential garage. *Spenos testimony; Respondent's Exhibit 2.*
  - b. The subject property should be assessed as a rear lot. *Spenos testimony.*
  - c. The Respondent found no comparable property to aid in valuing subject parcel. *Spenos 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 BTR 797,
  - c. Exhibits:
    - Petitioner Exhibit 1: Plat of Survey,
    - Petitioner Exhibit 2: Eight photographs of the property,
    - Petitioner Exhibit 3: Summary of Argument,
    - Petitioner Exhibit 4: Reconciliation Tax Bill,
    - Respondent Exhibit 1: Form 139L,
    - Respondent Exhibit 2: Subject property record card (PRC),
    - Respondent Exhibit 3: Subject property photo,

Respondent Exhibit 4: Plat map,  
Respondent Exhibit 5: Aerial map,  
Board Exhibit A: Form 139L,  
Board Exhibit B: Notice 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.
  - d. A party challenging an assessment must offer probative evidence concerning the alleged error. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 468 (Ind. Tax Ct. 2005). Conclusory statements are not probative evidence. *Id.* at 470; *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

#### Issue 1. - Is the garage assessed correctly?

15. The Petitioners did not provide probative evidence to support their contentions. This conclusion was arrived at because:
- a. The Petitioners made no attempt to prove that the assessment guidelines were applied improperly in assessing the garage. Petitioner simply stated the garage needed the door and frame replaced. This statement has no probative value to the contention that the garage was not properly assessed. Perhaps the garage door would be a factor to consider regarding condition, which currently is identified as fair, but Petitioners made no claim or argument that the condition of the garage was anything less.

- b. Similarly, the Petitioners offered no probative evidence regarding how much the door and frame issue might reduce the market value of the garage. The Petitioners failed to explain how this evidence is relevant to the assessment they requested. Again, the statement lacks probative value in this case.
- c. The Petitioners did not present a prima facie case, therefore the burden did not shift to the Respondent to rebut or impeach the evidence presented. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N. E. 2d 1215, 1222 (Ind. Tax Ct. 2003). There is no change in the assessment regarding this issue.

Issue 2. - Is the land assessed correctly?

16. There is sufficient evidence to support a change in assessment because:
- a. The Petitioners point out that their PRC and their tax bill both contain references to lots 3, 4 and 5, which they do not own. The evidence does not explain what the reference to those lots means in the description of the property, but the evidence is clear that those lots are not included in the land assessment of this parcel. Therefore, no change is required to remove them.
  - b. The PRC presented by the Respondent shows total area assessed is .142 acres. The subject parcel has 6,125 square feet (SF). Therefore, the correct acreage is .141 acres. The Board based this determination on dividing the 6,125 SF by 43,560 SF.<sup>1</sup>
  - c. The assessment must be changed and based on corrected acreage of .141 acres.
  - d. Petitioners testified that a local realtor advised them the parcel is not saleable due to the obstructions that limit use of parcel. The Petitioners presented a plat map to support their contention the subject parcel is land locked. Eight photos submitted by Petitioners show this parcel has no street frontage. Nevertheless, the evidence established that Petitioners have access and are able to use the garage for its intended purpose. The evidence does not support the Petitioners' claim that the land has no value.
  - e. If access problems diminish the market value-in-use of the property, the Petitioners had the burden to provide probative evidence to quantify that amount. They failed to do so. The Petitioners failed to present probative evidence to establish what the correct assessment should be.
  - f. The Respondent submitted plat and aerial maps that verify parcel is a rear lot. Respondent claimed parcel should be assessed as a rear lot with consideration given to its limited use. The Respondent failed, however, to state or prove any amounts to be associated with such considerations.

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<sup>1</sup> There are 43,560 square feet in one acre.

- g. Even though both parties seem to agree that the current assessment is too high, there was no agreement on what the correct assessment should be and neither party presented probative evidence that would establish a correct value. Therefore, the only change that can be made is to correct the size of the land.

### **Conclusions**

17. The Petitioners did not present a prima facie case regarding the garage assessment. The evidence supported Petitioners' contention that the land size should be corrected. The Petitioners did not make a prima facie case for any other change regarding the land. The only change will be correcting the land size to .141 acres.

### **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: \_\_\_\_\_

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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>.