

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-001-02-1-5-00696  
**Petitioners:** Jeanette C. Fage & Peter Giannini  
**Respondent:** The Department of Local Government Finance  
**Parcel #:** 001-25-43-0414-0017  
**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 February 12, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$14,600 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated January 28, 2005.
4. Special Master Kathy J. Clark held a hearing at 11:15 A.M. on March 3, 2005, in Crown Point, Indiana.

### Facts

5. The subject property is located at 2177-83 Rutledge Street, Gary. The location is in Calumet Township.
6. The subject property is a 50' by 123' vacant residential lot.
7. The Special Master did not conduct an on-site visit of the property
8. Assessed value of subject property as determined by the DLGF:  
Land \$14,600.
9. Assessed value requested by Petitioners is:  
Land \$1,000.

10. Persons sworn in as witnesses at the hearing:  
Peter Giannini, Owner,  
Diane Spenos, Assessor/Auditor, Department of Local Government Finance.

### **Issues**

11. Summary of Petitioners' contentions in support of an error in the assessment:
  - a. While the lot is considered "buildable" by City of Gary ordinance, there is little or no market for lots in Gary anywhere near the price for which the subject is assessed. *Giannini testimony.*
  - b. The subject lot is low lying and would require fill before building could occur. *Giannini testimony.*
  - c. Out of six sales the Petitioners were able to find in the vicinity of the subject, five were lots containing between 100' to 150' of frontage and were sold by the City of Gary/Department of Redevelopment for an average range of \$1,000 to \$1,500. Two of these sales were located on the same street as the subject and within one block. The sales date from March 1999 to March 2000 with the majority taking place in 1999. *Petitioner Exhibits 3, 5 – 8, 11; Giannini testimony.*
  - d. The lot at 2232-38 Rutledge, identical to the subject at 50' by 125', was sold by this group on September 9, 1999, for \$1,000. *Petitioner Exhibit 6; Giannini testimony.*
  - e. The City of Gary continues to market lots in the area to this day for as little as \$300 for lots with 60' frontage. With this kind of competition in the neighborhood it would be impossible to sell the subject lot for \$14,600. *Petitioner Exhibits 9, 10; Giannini testimony.*
  - f. Only one of the sales found in the area was by a private individual. This lot measures 60' by 125', which is slightly large than the subject lot in size. The seller listed the lot with a Realtor with an asking price of \$6,000 in November 2003 and sold the lot December 11, 2003, for only \$3,000. *Petitioner Exhibit 4; Giannini testimony.*
12. Summary of Respondent's contentions in support of the assessment:
  - a. The subject lot is "buildable" according to the ordinances of Gary. *Respondent Exhibit 3; Spenos testimony.*
  - b. The lot is currently assessed with a negative 20% land factor to compensate for being "unimproved". *Respondent Exhibit 2; 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 Lake County 1242,
  - c. Exhibits:
    - Petitioner Exhibit 1 – Notice of Final Assessment,
    - Petitioner Exhibit 2 – Form 139L Appeal,
    - Petitioner Exhibit 3 – Location map,
    - Petitioner Exhibit 4 – Agent Sales Report,
    - Petitioner Exhibit 5 – Sales Disclosure 2240-54 Rutledge Street,

- Petitioner Exhibit 6 – Sales Disclosure 2232-38 Rutledge Street,
- Petitioner Exhibit 7 – Sales Disclosure for 2334-48 Taney Place,
- Petitioner Exhibit 8 – Sales Disclosure for 2417-27 Taney Place,
- Petitioner Exhibit 9 – Legal Notice City of Gary for lot sales,
- Petitioner Exhibit 10 – Times newspaper article regarding lot sales,
- Petitioner Exhibit 11 -Sales Disclosure for 2311-25 Taney Place,
- Respondent Exhibit 1 – Form 139L Petition,
- Respondent Exhibit 2 - Subject property record card,
- Respondent Exhibit 3 – City of Gary Zoning Regulations,
- Board Exhibit A - Form 139L,
- Board Exhibit B - Notice of Hearing,
- Board Exhibit C – Hearing 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.
  
15. The Petitioners provided sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
  - a. The Petitioners offered six sales of vacant lots within close proximity to the subject. Two sales are located on the same street as the subject, within one block of the subject. Three others are within an approximate six-block range of the subject. *Petitioner Exhibit 3*.
  - b. While some of the lots sold cannot be considered comparable to the subject in the area of size, containing from 50’ to 100’ more frontage than the subject, these lots can be used to verify that an “active” market for vacant lots existed in the neighborhood between March 1, 1999, and March 3, 2000. *Petitioner Exhibits 4 – 8, 11*.
  - c. The sale of the lot located at 3324-30 W. 21<sup>st</sup> Place, measuring 60’ by 125’, for \$3,000 on December 11, 2003, is considered by the Board to be too distant from the valuation date of January 1, 1999, to be considered in its determination. *Petitioner Exhibit 4*.

- d. The sale of the lot located at 2232-38 Rutledge, a lot identical in size to the subject, for \$1,000 on September 22, 1999, is within one year of the assessment date. This sale is considered to be the best indication of value for similar vacant lots located in a neighborhood that appears, by a preponderance of the evidence, to have a market that was dominated by the City of Gary/Department of Redevelopment during that time.
- e. The Respondent offered no rebuttal to the sales information submitted by the Petitioners. *See American United Life Ins. Co.*, 803 N.E.2d at 276. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence.
- f. The Petitioners failed to provide sufficient evidence as to how the lot being low lying would affect its value. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc.*, 802 N.E.2d at 1018, 1022.
- g. The Petitioners and Respondent both agreed that, according to the Building Ordinances of the City of Gary, the lot is “buildable”. There is no issue for the Board to consider in this regard.
- h. The Board would also note for the record that the subject property is in neighborhood “02540”, which according to the Lake County Land Order has a base rate of \$240 per front foot; the subject was improperly assessed at \$400 per front foot
- i. The Board finds that the best indication of market value/value-in-use for the subject lot as of the assessment date of January 1, 1999, is the \$1,000 sale of a lot of identical size located at 2232-38 Rutledge on September 22, 1999. The Board finds for the Petitioner.

**Conclusion**

- 16. The Petitioners provided sufficient evidence to establish a prima facie case. The Respondent failed to rebut the Petitioners’ evidence. The Board finds for the Petitioners.

**Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$1,000.00.

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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.**