

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-016-02-1-5-00363  
**Petitioner:** Roger H. & Russell H. Landolt  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 006-19-21-0087-0006  
**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 did not participate in the informal hearing described in Ind. Code § 6-1.1-4-33. The Petitioner did not receive a Notice of Assessment from the Department of Local Government Finance (the "DLGF"). The Petitioner is assumed to be appealing the assessment of the property from the tax bill.<sup>1</sup>
2. The Petitioner filed a Form 139L on July 16, 2004.
3. The Board issued a notice of hearing to the parties dated February 24, 2005.
4. A hearing was held on March 29, 2005, in Crown Point, Indiana before Special Master Brian McKinney.

### Facts

5. The subject property is located at 3100 Kosciusko in New Chicago, Indiana (Lake County, Hobart Township).
6. The subject property is a 0.204-acre vacant residential lot.
7. The Special Master did not conduct an on-site visit of the property
  - a) Assessed Value of subject property as determined by the DLGF:  
Land \$15,700, Improvements \$0.
  - b) Assessed Value requested by Petitioner:

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<sup>1</sup> The Petitioner did not attend the hearing, but mailed evidence to the Board prior to the hearing. Therefore, the Petitioner could not be questioned as to what prompted the filing of the Form 139L.

The Petitioner did not request a specific value.

8. Prior to the hearing, Roger Landolt phoned the Board's office seeking permission to mail evidence to be considered for this hearing. Mr. Landolt stated that both property owners live out of the state, and did not plan on making the trip to Indiana for this hearing.
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
10. Persons sworn in at hearing:

For Petitioner: No one appeared on behalf of the Petitioner

For Respondent: Diane Spenos, DLGF

### **Issue**

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
  - a) The Petitioner contends his lot is over assessed. The Petitioner states in a letter that "based on our experience in trying to sell this property over the past 7 years and the lack of offers at even much lower asking prices than the current assessed value, the assessed value does not appear to reflect the true market value." *Landolt's Letter*.
  - b) Petitioner contends that over the past seven years, the property has been listed numerous times for between \$7,000 and \$15,000, and no offers have been received. *Pet'r Ex. 2*.
12. Summary of Respondent's contentions in support of the assessment:
  - a) First, the Respondent filed a motion to dismiss the petition because the Petitioner failed to appear at the hearing. *Resp't Ex. 3*.
  - b) The Respondent also presented the subject property's property record card at the hearing. *Resp't Ex. 2*.

### **Record**

13. The official record for this matter is made up of the following:
  - a) The Petition, and all subsequent submissions by either party.
  - b) The tape recording of the hearing labeled BTR # 1279.
  - c) Exhibits:<sup>2</sup>

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<sup>2</sup> A letter coversheet from the Petitioner was read into the record at the hearing. This letter is not labeled as an exhibit. It is attached to the Petitioner's exhibits and will be referred to as Landolt's Letter.

Petitioner Exhibit 1: Form 139L petition  
Petitioner Exhibit 2: Letter to Ms. Pam Nix  
Petitioner Exhibit 3a: Order to Verify Participation in Informal Hearing  
Petitioner Exhibit 4: Three pages from Mapquest.com showing location of property.

Respondent Exhibit 1: Form 139L petition  
Respondent Exhibit 2: Property Record Card for subject property  
Respondent Exhibit 3: Motion to Dismiss

Board Exhibit A: Form 139 L, Order to Verify Participation in Informal Hearing  
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 Township 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 Township 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 Insurance Company 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 Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:

- a) The Respondent presented a Motion to Dismiss at the hearing on March 29, 2005, due to the fact that the Petitioner failed to appear. Because the Petitioner phoned the Board’s office prior to the hearing, and mailed evidence in support of its case to be considered at the hearing, the Respondent’s Motion to Dismiss is denied.
- b) The Petitioner contends that the assessment is too high.

- c) The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.
- d) The Petitioner did not present sufficient evidence to indicate an error in the assessment. Specifically, the Petitioner did not present any evidence indicating either that the subject property was assessed higher than comparable lots, or that the market value of the subject property is less than the assessed value.
- e) The Petitioner’s evidence regarding the listing of the property and the fact that there were no offers does not indicate what the actual market value of the property would be. The fact that the property has not sold when listed at or below the current assessed value does not indicate an error in the assessment.
- f) Because the Petitioner did not present a prima facie case, the burden of proof never shifted to the Respondent to defend the assessment. As a result, the Board hereby determines that no change in the assessment is warranted.

**Conclusion**

- 16. The 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

## 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>.