

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-032-02-1-5-00371  
**Petitioner:** Vick D. Brent  
**Respondent:** Department of Local Government Finance  
**Parcel:** 009-12-14-0212-0005  
**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 on December 19, 2003. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$474,200 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated September 2, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on October 7, 2004.

### Facts

5. The subject property is located at 836 Royal Dublin Lane in Dyer.
6. The subject property is a two story, single-family dwelling. It is located on a lot with 100 feet of effective frontage and a depth of 175 feet.
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 \$114,000 Improvements \$360,200.
9. The assessed value requested by Petitioner is:  
Land \$80,000 Improvements \$320,000.

10. Persons sworn as witnesses at the hearing:  
Vick D. Brent, owner,  
Sharon Elliott, staff appraiser, Cole-Layer-Trumble.

### Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:

#### Market Value

- a) Petitioner purchased Lot 31, Block 2, of Unit 12 Briar Ridge Planned Unit Development on June 26, 1995. The lot was improved and complete with underground utility services when he bought it. The purchase price was \$60,000. *Brent testimony; Petitioner Exhibit 1; Board Exhibit A at 6.* The closing statement dated February 28, 1998, (*Board Exhibit A at 8*) notes that Petitioner paid \$276,339 for the construction of the subject dwelling. *Id.* Petitioner contends that the land value as of January 1, 1999, should be \$80,000 and the dwelling value should be \$320,000 for a total assessed value of \$400,000. *Board Exhibit A at 2.*
- b) While lots located on the golf course sell for an average of \$105,000, those on the greenbelt sell for less. *Brent testimony.* The following are greenbelt lots that are located next to or near the subject lot on Royal Dublin Lane:
- Lot 30, Block 3 of Unit 12 located at 844 Royal Dublin Lane was purchased for \$85,000 on December 21, 2000. *Brent testimony; Petitioner Exhibits 1, 2.* The property record card lists the lot as having 100 feet of frontage and 175 feet of depth. Its current assessment is \$114,000. *Id.*
  - Lot 20, Block 1, Unit 12 located at 1998 Royal Dublin Lane sold for \$70,000 on October 4, 2000. *Brent testimony; Petitioner Exhibits 1, 3.* The lot size listed on the property record card is 100 feet of frontage and 175 feet of depth. The current assessment is \$114,000. *Id.*
  - Lot 29 located at 852 Royal Dublin Lane sold for \$80,000 on December 12, 2002. *Brent testimony; Petitioner Exhibits 1, 4.*
  - Lot 35, Block 2, Unit 12 located at 804 Royal Dublin Lane sold for \$70,000 on August 30, 2004. *Brent testimony; Petitioner Exhibits 1, 5.*
  - The subject lot, Lot 31, Block 2, Unit 12 located at 836 Dublin Lane was purchased for \$60,000 on June 26, 1995. The lot has 100 feet of frontage and 175 feet of depth as noted on an appraisal report that was prepared to secure financing for the purchase of the dwelling. *Brent testimony; Board Exhibit A at 6, 7; Petitioner Exhibit 1.*
- c) Other properties that are larger have sold for less than the current assessed value of the subject property.
- 1450 Muirfield in Briar Ridge PUD sold for \$405,000 on July 3, 2003. It contains more bedrooms than the subject, has more square footage, has a finished basement and sits on a larger lot. *Brent testimony; Board Exhibit A at 9.*

- 1343 Inverness Lane in Briar Ridge PUD sold for \$416,000 on December 12, 2003. It contains more bedrooms and bathrooms, has two fireplaces compared to the subject's one, has a finished basement, and sits on a larger lot. *Id.*
- 1425 St. Andrews in Briar Ridge PUD sold for \$345,000 on May 23, 2003. It has more bedrooms, a Florida room, and sits on a golf course lot that is larger than the subject property. *Id.*

#### Errors on the Property Record Card

- d) An appraisal that was prepared for financing purposes lists the square footage of the dwelling as follows:
  - the basement is 1,767 square feet,
  - the first floor is 1,767 square feet,
  - the second floor is 1,470 square feet. *Board Exhibit A at 7.*
 These figures vary greatly from the figures used for the new assessment. *Brent testimony.*
- e) Petitioner contends that the appraiser who performed the financing appraisal made an error in calling the dwelling a two-story when it is in fact a one and one half story dwelling. *Board Exhibit A, page 7.* The assessment also is in error by calling the dwelling a two-story dwelling. *Brent testimony.*
- f) The subject has three bedrooms, not four. *Brent testimony; Board Exhibit A at 7.*

#### 12. Summary of Respondent's contentions in support of the assessment:

##### Market Value

- a) There are two different neighborhoods within the Briar Ridge PUD. Each has a different base land price. Petitioner's comparables may be located in the neighborhood that has a lower base rate. *Elliott testimony.*
- b) The price Petitioner paid on February 28, 1998, \$276,339, was the cost paid to build the dwelling. It does not represent an arms-length transaction. *Elliott testimony.*
- c) A property located at 901 Royal Dublin Lane sold on April 21, 2000, and has a time adjusted sale price of \$500,279. It is the most comparable to the subject. It has a time adjusted sales value of \$136.09 per square foot. *Elliott testimony; Respondent Exhibit 4 at 1, 2.*
- d) A property located at 1233 Ballybunion Court sold on February 24, 2000, and has a time adjusted sale price of \$478,810. It is graded lower than the subject. The subject is graded an A+1 and this dwelling is graded an A-1. It has a time adjusted sales value of \$120.24 per square foot. *Elliott testimony; Respondent Exhibit 4 at 3, 4.*

- e) A property located at 1200 Royal Dublin Lane sold on May 15, 2001, and has a time adjusted sale price of \$372,575. It is graded quite a bit lower than the subject. This dwelling has a grade of B+2 while the subject is graded an A+1. It has a time adjusted sales value of \$113.38 per square foot. *Elliott testimony; Respondent Exhibit 4 at 5, 6.*

#### Errors on the Property Record Card

- f) Bedrooms do not add direct value to the assessment, but the number can be changed from four to three. *Elliott testimony; Respondent Exhibit 2.*
- g) Only certain sections of the subject dwelling are considered to be two stories. *Elliott testimony; Respondent Exhibit 2.*
- h) The square footage listed on the property record card is correct. The first floor square foot calculation is 2,279 square feet minus 305 square feet for an integral garage, which leaves 1,976 square feet of actual living area on that floor, the same as the basement. There is only 1,295 square feet listed for the second floor living area. *Elliott testimony; Respondent Exhibit 2.*

#### 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 236,
  - c) Petitioner Exhibit 1: Briar Ridge Planned Unit Development map,  
Petitioner Exhibit 2: Property record card for 844 Royal Dublin Lane – Lot 30,  
Petitioner Exhibit 3: Property record card for 1008 Royal Dublin Lane – Lot 20,  
Petitioner Exhibit 4: Sales Disclosure for 852 Royal Dublin Lane – Lot 29,  
Petitioner Exhibit 5: Sales Disclosure for 804 Royal Dublin Lane – Lot 35,  
Respondent Exhibit 1: Form 139L,  
Respondent Exhibit 2: Subject property record card,  
Respondent Exhibit 3: Subject photograph,  
Respondent Exhibit 4: Comparable property record cards and photographs,  
Board Exhibit A: Form 139L and the purchase agreement for subject lot, general information page from the appraisal, the closing statement, and the MLS Report with sales for three comparables,  
Board Exhibit B: Notice of Hearing,  
Board Exhibit C: Sign in sheet,
  - d) These Findings and Conclusions.

## Analysis

14. The most applicable 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. Petitioner provided sufficient evidence to establish a prima facie case. Respondent failed to rebut Petitioner’s evidence. This conclusion was arrived at because:
- a) Petitioner established that \$60,000 was the purchase price of the fully improved lot, complete with underground utility services, on June 26, 1995. This purchase is 42 months prior to the assessment date of January 1999. While Petitioner acknowledged market growth in the neighborhood between the date of purchase and the date of assessment by requesting an assessment for the land of \$80,000, Petitioner did not present probative evidence to show how he arrived at that value. The figure Petitioner proposes is an unsupported conclusion that is not probative evidence. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Petitioner must prove or explain how the evidence of value reflects value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
  - b) Petitioner presented two lot sales from October and December of 2000. Both of these lots are identical to the subject in size and shape. Lot 30 is located next door to the subject. Lot 20 is located on the same street, just nine lots from the subject. Both lots are greenbelt lots as is the subject. Both lots were fully improved and complete with the underground utility services when they sold. Petitioner offered no time adjustment method or value that would relate these two sales to the value as of January 1, 1999. Therefore, those sales do not help to prove what the land assessment should be. *Id.*

- c) Furthermore, all the comparables submitted by both Petitioner and Respondent are assessed at \$1,200 per front foot. The assessments are consistent within this 01219 neighborhood. Neither party has presented probative evidence that the current assessed value on this land should be changed or the amount to which it should be changed.
- d) Petitioner provided the closing statement for the subject property. The closing was on February 28, 1998, and establishes the total purchase price as \$276,339. This document is sufficient evidence to support his contention that the subject improvements are over-assessed. Petitioner requested an assessed value for the dwelling of \$320,000. Time elapsed from the closing to the valuation date is 10 months. Petitioner is therefore contending that there was an increase in the value, but he did not substantiate the \$320,000 value requested for the improvements.
- e) Respondent claims that this purchase price does not constitute an arms-length transaction. Respondent is incorrect. There is no evidence that the price paid to build the house was anything other than an arms-length transaction. Verifiable costs of construction are acceptable measurements of value-in-use. 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 IAC 2.3-1-2). "The taxpayer shall be permitted to offer evidence relevant to the fair market value-in-use of the property .... Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals that are relevant to the market value-in-use of the property, and any other information compiled in accordance with generally accepted appraisal principles." *Id.*
- f) Petitioner submitted sales of three properties as comparables, all located in the Briar Ridge PUD. The sales were all 2003 sales. Petitioner testified that these properties have larger lots and more bedrooms. Generally each one has specific differences from the subject. Petitioner failed to establish that these properties are comparable to the subject. Petitioner also failed to establish how the assessed value of his property should reflect those differences. *Long*, 821 N.E.2d at 470-471.
- g) Respondent also offered three properties from the same neighborhood as comparables. They are all slightly larger than the subject, but closer in age to the subject than those offered by Petitioner. Respondent failed to explain or present sufficient evidence to prove how these properties compare to the subject property. *Id.* at 470. Respondent contends that the time adjusted square foot costs of these comparable properties verify that the subject is assessed within an acceptable market

range.<sup>1</sup> There is very little probative evidence upon which to compare these properties with the subject. Nevertheless, Respondent presented them as evidence of value.

- Comparable #1 at 901 Royal Dublin Lane has a time adjusted per square foot cost of \$136.09.
- Comparable #2 at 1233 Ballybunion Court has a time adjusted per square foot cost of \$120.24.
- Comparable #3 at 1200 Royal Dublin Lane has a time adjusted per square foot cost according to the Respondent of \$113.38.
- The subject, though slightly smaller in square footage and lot size, is currently assessed at a per square foot cost of \$145.06, which is higher than any of the individual comparables and significantly higher than the average time adjusted per square foot cost of \$123.22.

Applying Respondent's average time adjusted per square foot cost of \$123.22 to the subject's square feet of living space as currently listed would result in a total assessed value of \$402,800. This evidence actually supports Petitioner's contention that the subject's total assessed value should be \$400,000 and is somewhat akin to an admission. Therefore, Respondent's failure to establish the elements of comparability is less significant than that failure might otherwise be.

- h) The purchase price of the improvements, \$276,339, plus the current land value, \$114,000, also supports a value of approximately \$400,000.
- i) Petitioner did not relate the purchase price of the improvements to the valuation date of January 1, 1999. For that reason, the value per square foot that is indicated by Respondent's time-adjusted sales, \$402,800, should be used along with the current land value to remain consistent with the neighborhood.
- j) The appraisal sheet offered by the Petitioner is an incomplete copy of a document that is undated and provides no signature of the appraiser. It is insufficient evidence to establish a prima facie case regarding the square footage. Petitioner himself contends it is in error as to the number of stories.
- k) Respondent agreed that the number of bedrooms is only three. Although this fact does not change the assessment, the correction should be made to the information on the property record card.

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<sup>1</sup> Respondent does not provide any authority or explanation for the conclusion that there is an acceptable market range for establishing the value of the property for assessment or what that range might be. Therefore, this conclusory statement does not qualify as probative evidence. *Lacy Diversified*, 799 N.E.2d at 1221; *Whitley Products*, 704 N.E.2d at 1119. Furthermore, because the taxpayer is specifically permitted to offer evidence relevant to the market value-in-use of a property that includes actual construction costs, sales and appraisals, Respondent's argument that the value determined from the cost approach in the guidelines is somehow close enough to be acceptable appears to be wrong. MANUAL at 5.

### Conclusions

16. Petitioner established a prima facie case regarding the market value of the improvements. The land assessment should be \$114,000 and the assessment of the improvements should be \$288,800. The Board finds in favor of Petitioner. As to the issue of listing errors on the property record card, the Board finds that Petitioner failed to establish a prima facie case. Respondent agreed to the change in the number of bedrooms to three.

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

\_\_\_\_\_  
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>.