

INDIANA BOARD OF TAX REVIEW

**Final Determination
Findings and Conclusions
Lake County**

Petitions: 45-013-02-1-5-00014 45-013-02-1-5-00026
 45-013-02-1-5-00015 45-013-02-1-5-00027
 45-013-02-1-5-00016 45-013-02-1-5-00028
 45-013-02-1-5-00017 45-013-02-1-5-00029
 45-013-02-1-5-00018 45-013-02-1-5-00030
 45-013-02-1-5-00019 45-013-02-1-5-00031
 45-013-02-1-5-00020 45-013-02-1-5-00032
 45-013-02-1-5-00021 45-013-02-1-5-00034
 45-013-02-1-5-00022 45-013-02-1-5-00035
 45-013-02-1-5-00023 45-013-02-1-5-00036
 45-013-02-1-5-00024 45-013-02-1-5-00037
 45-013-02-1-5-00025

Petitioners: Willard & Naomi Wease

Respondent: Department of Local Government Finance

Parcels: 003-31-25-0164-0001 003-31-25-0158-0021
 003-31-25-0164-0002 003-31-25-0158-0022
 003-31-25-0164-0003 003-31-25-0158-0023
 003-31-25-0164-0004 003-31-25-0158-0024
 003-31-25-0158-0013 003-31-25-0158-0025
 003-31-25-0158-0014 003-31-25-0158-0026
 003-31-25-0158-0015 003-31-25-0158-0027
 003-31-25-0158-0016 003-31-25-0158-0028
 003-31-25-0158-0017 003-31-25-0158-0029
 003-31-25-0158-0018 003-31-25-0158-0030
 003-31-25-0158-0019 003-31-25-0158-0031
 003-31-25-0158-0020

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 the tax assessments for the subject parcels and notified the Petitioners on March 12, 2004.
2. The Petitioners filed 23 Forms 139L on April 8, 2004.

3. The Board issued notices of hearing to the parties dated February 21, 2005.
4. Special Master Rick Barter held the hearing in Crown Point on March 21, 2005.

Facts

5. The subject property is made up of 23 parcels, one of which is improved. The rest are vacant land. The parcels are located on Stevenson Street, Hobart Street and Wheeler Place in Cedar Lake. The location is in Center Township. The improved parcel is 38 front feet by 100 feet. All but one of the vacant parcels have identical dimensions that are 25 front feet by 100 feet deep. The remaining parcel, adjacent to the improved parcel, is 13 front feet by 100 feet.
6. The Special Master did not conduct an on-site inspection of the property.
7. The assessed values (AVs) of the subject parcels as determined by the DLGF are as follows:

Petition #s	Parcel #s	2002 AV Land	2002 AV Imprvs	Lot Size
45-013-02-1-5-00014	003-31-25-0164-0001	\$6,200	\$0	25X100
45-013-02-1-5-00015	003-31-25-0164-0002	\$6,200	\$0	25X100
45-013-02-1-5-00016	003-31-25-0164-0003	\$6,200	\$0	25X100
45-013-02-1-5-00017	003-31-25-0164-0004	\$6,200	\$0	25X100
45-013-02-1-5-00018	003-31-25-0158-0013	\$3,100	\$0	25X100
45-013-02-1-5-00019	003-31-25-0158-0014	\$3,100	\$0	25X100
45-013-02-1-5-00020	003-31-25-0158-0015	\$3,100	\$0	25X100
45-013-02-1-5-00021	003-31-25-0158-0016	\$3,100	\$0	25X100
45-013-02-1-5-00022	003-31-25-0158-0017	\$3,100	\$0	25X100
45-013-02-1-5-00023	003-31-25-0158-0018	\$3,100	\$0	25X100
45-013-02-1-5-00024	003-31-25-0158-0019	\$3,100	\$0	25X100
45-013-02-1-5-00025	003-31-25-0158-0020	\$3,100	\$0	25X100
45-013-02-1-5-00026	003-31-25-0158-0021	\$3,100	\$0	25X100
45-013-02-1-5-00027	003-31-25-0158-0022	\$3,100	\$0	25X100
45-013-02-1-5-00028	003-31-25-0158-0023	\$3,100	\$0	25X100
45-013-02-1-5-00029	003-31-25-0158-0024	\$3,100	\$0	25X100
45-013-02-1-5-00030	003-31-25-0158-0025	\$3,100	\$0	25X100
45-013-02-1-5-00031	003-31-25-0158-0026	\$3,100	\$0	25X100
45-013-02-1-5-00032	003-31-25-0158-0027	\$3,100	\$0	25X100
45-013-02-1-5-00034	003-31-25-0158-0028	\$3,100	\$0	25X100
45-013-02-1-5-00035	003-31-25-0158-0029	\$9,500	\$32,500	38x100
45-013-02-1-5-00036	003-31-25-0158-0030	\$1,600	\$0	13x100
45-013-02-1-5-00037	003-31-25-0158-0031	\$3,100	\$0	25X100

8. The Petitioners did not offer any specific contentions about what the exact assessed values should be.

9. The following persons were present and sworn as witnesses at the hearing:
Willard Wease, Petitioner,
Naomi Wease, Petitioner,
Martha Wheeler, Center Township (Lake County) Assessor,
Tommy P. Bennington, DLGF Assessor/Auditor.

Issues

The Dwelling

10. Summary of the Petitioners' contentions in support of an alleged error in the assessment:
- a) The house is currently assessed for \$32,500. *Respondent Exhibit 21/1.*
 - b) The house has no traditional foundation. Instead, it sits on a stump and three stacks of concrete blocks. The three corners supported by the concrete blocks have settled and the floors of the house are now uneven. *W. Wease testimony.* The Petitioners presented two photographs of the dwelling to substantiate the Petitioners' testimony that the residence is not built on a traditional foundation. *Petitioners Exhibits 1, 2.*
 - c) The roof is bowed and sagging. *W. Wease testimony.*
11. Summary of the Respondent's contentions in support of the assessment:
- a) The Respondent did not contest any of the Petitioners' testimony or exhibits.
 - b) The Respondent's witness was not familiar with the parcels under appeal. *Bennington testimony.*

Land Value

12. Summary of the Petitioners' contentions in support of an alleged error in the assessment:
- a) The current land assessment overstates the value of the Petitioners' parcels. The parcels have a drainage ditch running through them, causing the property to flood. One parcel, identified as lot 13, has no electric or sewer service. *W. Wease testimony.*
 - b) Center Township Assessor Martha Wheeler, on behalf of the Petitioners, testified the lots under appeal are part of a subdivision that was platted many years ago. Many of the streets were never built. People drive across each other's property to access their own lots. There is no street access to most of the Petitioners' lots. *Wheeler testimony.*
 - c) Ms. Wheeler presented a sales disclosure sheet and PRCs for 32 lots that sold for a total price of \$10,000 on August 13, 2002. Ms. Wheeler asserted that the sale price for each individual lot was therefore approximately \$300 per lot. *Petitioners Exhibit 16; Wheeler testimony.*

- d) The 32 lots are located in the same subdivision as the Petitioners' parcels. These lots are within feet of the Petitioners' property and are very comparable to the parcels under appeal. All of the parcels are basically 25 feet by 100 feet. Therefore, the subject parcels should be priced similarly. *Wheeler testimony.*
- e) The Petitioners contend that, to resolve an appeal between the DLGF and John P. & JoAnne Wilczynski, the parties reached a stipulated agreement. This stipulation resulted in a value substantially lower than the current AV of the Petitioners' parcels. Although not in the same neighborhood, the Wilczynski lots have similar front foot and acreage values and are very comparable to the Petitioners' parcels. *Petitioners Exhibit 14; Wheeler testimony.*

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

- a) The Respondent did not contest any of the Petitioners' testimony, exhibits, or proposed revised values.
- b) The Respondent's witness is not familiar with the parcels under appeal. *Bennington testimony.*
- c) The Respondent presented evidence the current minimum building lot size in Cedar Lake is 50 feet x 100 feet. *Respondent Exhibit 1.*

Record

14. The official record for this matter is made up of the following:

- a) The Petitions,
- b) Exhibits:
 - Petitioners Exhibit 1: Photograph of a portion of the improvement,
 - Petitioners Exhibit 2: Photograph of the improvement showing the side and roof,
 - Petitioners Exhibit 3: Photograph of the land, partially wooded, with a ditch,
 - Petitioners Exhibit 4: Photograph of the land, partially wooded, with a ditch,
 - Petitioners Exhibit 5: Photograph of the land, partially wooded, with a ditch,
 - Petitioners Exhibit 6: Photograph of the land, partially wooded, with a ditch,
 - Petitioners Exhibit 7: Photograph of the land, backyard,
 - Petitioners Exhibit 8: Photograph of the land, backyard,
 - Petitioners Exhibit 9: Photograph of the land, side yard,
 - Petitioners Exhibit 10: Photograph of the land, side yard,
 - Petitioners Exhibit 11: Photograph of the land, backyard,
 - Petitioners Exhibit 12: Photograph of the land, wooded, with a ditch,
 - Petitioners Exhibit 13: Photograph of the land, backyard,
 - Petitioners Exhibit 14: Memorandum from the Center Township Assessor,

- Petitioners Exhibit 15: Neighborhood valuation form for Neighborhood 03115 in Cedar Lake,
- Petitioners Exhibit 16: Sales disclosure statement dated August 13, 2002, for 32 lots for \$10,000,
- Petitioners Exhibit 17: Property Record Card (PRC) for a comparable parcel with an AV of \$8,800,
- Petitioners Exhibit 18: PRC for a comparable parcel with an AV of \$31,000,
- Petitioners Exhibit 19: PRCs for the Petitioners' 23 parcels,
- Respondent Exhibit 1: Cover sheet, Form 139L, PRC, map, lot sheet for petition -00014,¹
- Respondent Exhibit 2: Cover sheet, Form 139L, PRC, map, lot sheet for petition -00015,
- Respondent Exhibit 3: Cover sheet, Form 139L, PRC, map, lot sheet for petition -00016,
- Respondent Exhibit 4: Cover sheet, Form 139L, PRC, aerial map for petition -00017,
- Respondent Exhibit 5: Cover sheet, Form 139L, PRC, aerial map for petition -00018,
- Respondent Exhibit 6: Cover sheet, Form 139L, PRC, aerial map for petition -00019,
- Respondent Exhibit 7: Cover sheet, Form 139L, PRC, aerial map for petition -00020,
- Respondent Exhibit 8: Cover sheet, Form 139L, PRC, aerial map for petition -00021,
- Respondent Exhibit 9: Cover sheet, Form 139L, PRC, aerial map for petition -00022,
- Respondent Exhibit 10: Cover sheet, Form 139L, PRC, aerial map for petition -00023,
- Respondent Exhibit 11: Cover sheet, Form 139L, PRC, aerial map for petition -00024,
- Respondent Exhibit 12: Cover sheet, Form 139L, PRC, aerial map for petition -00025,
- Respondent Exhibit 13: Cover sheet, Form 139L, PRC, map, lot sheet for petition -00026,
- Respondent Exhibit 14: Cover sheet, Form 139L, PRC, map, lot sheet for petition -00027,
- Respondent Exhibit 15: Cover sheet, Form 139L, PRC, map, lot sheet for petition -00028,
- Respondent Exhibit 16: Cover sheet, Form 139L, PRC, map, lot sheet for petition -00029,
- Respondent Exhibit 17: Cover sheet, Form 139L, PRC, map, lot sheet for petition -00030,
- Respondent Exhibit 18: Cover sheet, Form 139L, PRC, aerial map for petition -00031,

¹ For brevity, the Board will refer to only the last five digits of the petition number.

- Respondent Exhibit 19: Cover sheet, Form 139L, PRC, map, lot sheet for petition -00032,
- Respondent Exhibit 20: Cover sheet, Form 139L, PRC, map, lot sheet for petition -00034,
- Respondent Exhibit 21: Cover sheet, Form 139L, PRC, subject photograph, top 20 comparable sheet, comparable PRCs and photographs for petition -00035,
- Respondent Exhibit 22: Cover sheet, Form 139L, PRC, map, lot sheet for petition -00036,
- Respondent Exhibit 23: Cover sheet, Form 139L, PRC, map, lot sheet for petition -00037,
- Board Exhibit A: Form 139L Petitions,
- Board Exhibit B: Notices of Hearing,
- Board Exhibit C: Sign-in sheet,
- Board Exhibit D: Hearing tape labeled Lake Co. 1250,

d) These Findings and Conclusions.

Analysis

15. 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 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.

The Dwelling

16. The Petitioners did not provide sufficient evidence to support their contentions of an error in the assessment. This conclusion was arrived at because:

- a) The Petitioners presented no market data such as an appraisal or evidence of the sales of comparable properties to support a lower value.

- b) Although there is testimony about the lack of traditional foundation and roof problems, the Petitioners failed to present probative evidence that those factors were not already sufficiently taken into consideration by the grade (D) and condition (average) factors assigned for the current assessment. The Petitioners' unsubstantiated conclusions concerning the proposed value do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- c) The Petitioners failed to make a prima facie case regarding the assessed value of the dwelling.

Land Value

17. The Petitioners provided sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The stipulation agreement referred to by the Petitioners was between parties not involved in this appeal and therefore is of no probative value. Settlement terms or even settlement negotiations may not be used to prove a claim. *Dep't of Local Gov't Fin. v. Commonwealth Edison*, 820 N.E.2d 1222, 1227 (Ind. 2005). "[T]o allow the Taxpayers to use the settlement would have a chilling effect on the incentive of all assessing officials to resolve cases outside the courtroom." *Id.* at 1228 (citing *Boehning v. State Bd. of Tax Comm'rs*, 763 N.E.2d 502, 505 (Ind. Tax Ct. 2001)).
 - b) The Petitioners proved that comparable lots sold for approximately \$300. The Center Township Assessor presented a sales disclosure sheet and PRCs for 32 lots that sold for a total price of \$10,000 on August 13, 2002. The sale of these 32 comparable lots established the market value of the Petitioners' parcels was approximately \$300 per lot.
 - c) Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). Accordingly, the record must contain some explanation as to how the market evidence demonstrates or is relevant to the property's value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - d) The list of comparable sales provided by the Respondent included adjustments made to reflect the time differences between the sale dates of the properties and the valuation date of January 1, 1999. *Respondent Exhibit 21*. The Respondent's time adjustments to the sale prices appear to be minimal, suggesting the values in the neighborhood are relatively stable. The sale of the 32 comparable lots is therefore probative of the January 1, 1999, market value of the Petitioners' parcels.
 - e) The Petitioners made a prima facie case regarding land values.

- f) The DLGF did not dispute any evidence presented by the Petitioners or contest the proposed revised values. The DLGF failed to rebut the Petitioners' prima facie case.

Conclusion

18. The Petitioners did not make a prima facie case of error regarding dwelling value. The Board finds in favor of the Respondent. There will be no change on the improvements assessment.
19. The Petitioners made a prima facie case concerning the AV of the land on each of the 23 petitions. The DLGF did not rebut the Petitioners' evidence. The Board finds in favor of the Petitioners. The land assessments should be changed. The lot on parcel -0030 is approximately half the size of most of the Petitioners' lots. Therefore, its assessed value should be changed to \$150. The lot on parcel -0029 is approximately half again bigger than most of the Petitioner's lots. Therefore, its assessed land value should be changed to \$450. The remaining 21 lots in this group should be changed to \$300 each.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review determines that the assessments should be changed.

ISSUED: _____

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