

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-001-02-1-4-00686  
**Petitioners:** William Levack/Robert Renslow  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 001254600890001  
**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 Petitioners received a Notice of Department Assessed Value Determination issued by the Department of Local Government Finance ("DLGF") on March 31, 2004. The DLGF determined the Petitioners' assessment to be \$146,900 based on a land rate change.
2. The Petitioners filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated March 11, 2005.
4. A hearing was held on April 13, 2005, in Crown Point, Indiana before Special Master Beth Hammer.

### Facts

5. The subject property is a commercial restaurant located at 8341 Locust Avenue, Gary, Calumet Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Value of subject property as determined by the DLGF:  
Land \$15,800            Improvements \$131,100            Total \$146,900
8. Assessed Value requested by Petitioners at the hearing:  
Land \$15,800            Improvements \$90,000            Total \$105,800
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioners: William Levack, Owner

For Respondent: Anthony Garrison, DLGF

**Issues**

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

- a) The Petitioners paid \$150,000 for the subject property in 2002. The Sales Agreement between the Petitioners and the seller provided a sale price of \$175,000. *Levack testimony; Pet'r Ex. 4.* The seller, however, financed the sale, and the agreement further provided for a discount of \$25,000 if the Petitioners paid off the balance within one year. *Levack testimony; Pet'r Ex. 4, at 2.* The Petitioners paid the balance prior to the expiration of the one-year period and received the \$25,000 discount. *Levack testimony.*
- b) The purchase price included inventory, equipment, a 3-way liquor license, and the business name. *Levack testimony; see also, Pet'r Ex. 4, at 1.*<sup>1</sup> Mr. Levack did not have any records to show the allocation of the purchase price between the various components of the sale. Mr. Levack estimated that the inventory was worth \$4,000 and the equipment was worth \$10,000 to \$15,000. *Levack testimony.* Mr. Levack further testified that the liquor license could be worth \$15,000 to \$20,000 and that the business, "Flamingo Pizza of Miller," is an established business of 60 years. *Levack testimony; Pet'r Ex. 4.*
- c) The subject building is an old block gas station in fair condition built in 1948. It is basically the same building, although the Petitioners constructed a small addition and performed some concrete work. *Levack testimony.*
- d) Surrounding commercial properties located on the same street corner as the subject property are assessed differently than the subject property is assessed. Three of the properties are restaurants and one is a convenience store that recently went out of business. Two of the restaurants have liquor licenses. Two of the properties recently sold. *Levack testimony; Pet'r Exs. 7 – 11, 14.*
- e) The property at 925 N. Shelby sold for \$147,000 with all fixtures and equipment. The building located on that property is larger than the subject building and has more land. *Levack testimony; Pet'r Ex. 9.*
- f) The property at 903 – 909 N. Shelby sold for \$395,000 with all equipment, inventory, a 3-way liquor license, business name, and two full apartments and office space on the second floor. The building located on that property is three times larger than the

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<sup>1</sup> The Sales Agreement does not reference "good will" or the use of the seller's business name. *Pet'r Ex. 4.*

subject building and has more than twice as much land as the subject property.  
*Levack testimony; Pet'r Ex. 9.*

12. Summary of Respondent's contentions in support of the assessment:
- a) The Respondent presented a property record card, photograph, plat map page, and land calculations for the subject property. *Garrison testimony; Resp't Exs. 1 - 4.*
  - b) The Petitioners attended the informal hearing and the assessment decreased from \$150,800 to \$146,900 due to a change in the land rate. *Garrison testimony.*
  - c) The Respondent presented a corrected property record card with proposed changes to the assessment. The Respondent made its proposed changes based on a "Plat of Survey" presented by the Petitioner at the informal hearing. The Respondent corrected the subject building sketch and square footage. The Respondent's proposed changes as reflected on the corrected property record card would result in an increase in the assessment of the subject property. *Garrison testimony; Resp't Ex. 5.*

### **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 #1461.
  - c) Exhibits:
    - Petitioner Exhibit 1: Form 139L Petition [modified by the Petitioners]
    - Petitioner Exhibit 2: Notice of Department Assessed Value Determination
    - Petitioner Exhibit 3: Notice of Hearing
    - Petitioner Exhibit 4: Sales Agreement
    - Petitioner Exhibit 5: Satisfaction of Mortgage
    - Petitioner Exhibit 6: Ticor Title Settlement Statement
    - Petitioner Exhibit 7: Property Record Card (PRC) for Beach Café, 903 N. Shelby
    - Petitioner Exhibit 8: PRC for Marquette Perk, 900 N Shelby
    - Petitioner Exhibit 9: PRC for Beach Mart, 925 N Shelby
    - Petitioner Exhibit 10: PRC for Flamingo Pizza (subject), 8341 Locust Avenue
    - Petitioner Exhibit 11: Map of Commercial Properties with 200 FT of each other
    - Petitioner Exhibit 12: Recent Sales Price of Beach Café, 903 to 909 N Shelby
    - Petitioner Exhibit 13: Recent Sales Price of Beach Mart, 925 N Shelby
    - Petitioner Exhibit 14: Summary of Petitioner's Argument
  
    - Respondent Exhibit 1: Subject Property Record Card (PRC)
    - Respondent Exhibit 2: Subject Photograph
    - Respondent Exhibit 3: Land Calculations/NBHD Land Summary Sheet

Respondent Exhibit 4: Plat Map Page  
Respondent Exhibit 5: Corrected Property Record Card

Board Exhibit A: Form 139L petition  
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 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 did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:

- a) The Petitioners rely on essentially two categories of evidence to support their contention that the subject property is assessed in excess of its market value-in-use: (1) the amount the Petitioners paid to purchase the subject property and other items in 2002; and (2) the assessments and sale prices for neighboring properties.

### Purchase Price

- b) The Petitioners purchased the subject property in May of 2002 for \$175,000. *See Pet’r Exs. 4-6*. The Petitioners paid \$70,000 at the time of purchase, and they received a \$25,000 discount for paying the balance of the purchase price within one-year. *Levack testimony; Pet’rs Ex. 4 – 5*.

- 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 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use evidence consistent with the Manual’s definition of true tax value, including the sale of the subject property, to rebut the presumption that an assessment is correct. *See* MANUAL at 5.
- d) The Petitioners bought the property for between \$3,100 and \$28,000 more than the current assessment of \$146,900. *See Pet’r Ex. 4* (listing an original sale price of \$175,000 with a \$25,000 discount for early payment). The sale, however, included items in addition to the real property at issue in this case. Thus, it is at least possible that, after subtracting the portion of the sale price attributable to the non-real property items, the sale price would be less than the current assessment. The Petitioners, however, did not present any evidence from which to quantify the amounts attributable to those non-real property items. At most, Mr. Levack provided his own conclusory estimations of the value of those items without any explanation of the basis underling those estimations. Conclusory statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998).
- e) Based on the foregoing, the sale price of the subject property is insufficient to establish that the current assessment is incorrect, or what the correct assessment should be.

#### Comparable Properties

- f) The Petitioners also submitted property record cards for the three neighboring properties located on the same corner as the subject property as well as sales information for two of those properties. *Pet’r Exs. 7 – 13*.
- g) In presenting that evidence, the Petitioners essentially rely on a sales comparison approach to establish the market value-in-use of the subject property. *See* MANUAL at 2 (stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”); *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469. The Board notes that the Petitioners seek to establish the value of the subject property by analyzing the *assessments* of purportedly comparable properties as well as the sale prices of those properties. The requirements for assigning probative value to evidence derived from a sales comparison approach are equally applicable regardless of whether a party relies upon sale prices or assessed values of purportedly comparable properties.
- h) In order to use the sales comparison approach as evidence in a property assessment appeal, the proponent of that approach must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or

“comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

- i) The Petitioners submitted property record cards of three neighboring properties, but they did not explain how the neighboring properties were comparable to the subject property other than Mr. Levack’s general comments regarding the relative sizes of the properties. This is clearly insufficient under *Long*. Moreover, the sales of the two neighboring properties occurred in 2004 and 2005, more than five years after the relevant valuation date for the 2002 general reassessment of January 1, 1999. *See MANUAL* at 4; *Long*, 821 N.E.2d at 471. Mr. Levack, however, made no attempt to relate the sale prices to the relevant valuation date. Therefore, the sales information provided by the Petitioners lacks probative value. *See Long*, 821 N.E.2d at 471-72 (holding that an appraisal indicating a property’s value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- j) Based on the foregoing, the Petitioner failed to establish a prima facie case for a change in assessment.

#### Respondent Recommendation

- k) The Respondent provided a corrected property record card at the hearing recommending changes to the measured areas of the subject land and building. Those changes would result in a net increase of the current assessment. *See Resp’t Ex. 5*.
- l) The Respondent, however did not discuss the proposed corrected property record card at the hearing, much less explain the basis for the calculations contained thereon. The requirement that a taxpayer walk the Board through every element of its analysis is equally applicable to assessors. *See Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005). Consequently, the Respondent failed to establish a prima facie case for an increase in assessment based upon its corrected property record card.

#### **Conclusion**

- 16. The Petitioner failed to make a prima facie case showing the assessment was incorrect. The Respondent failed to make a prima case for the recommended changes.

#### **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>>.