

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-041-02-1-4-00183  
**Petitioner:** Ned Kovachevich  
**Respondent:** Department of Local Government Finance  
**Parcel:** 003-23-09-0522-0015  
**Assessment Year:** 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board finds and concludes as follows:

### Procedural History

1. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held on November 24, 2003. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the property is \$114,100 and notified the Petitioner on March 12, 2004.
2. The Petitioner filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing on March 3, 2005. The hearing was continued. A rescheduled notice of hearing was issued on June 14, 2005.
4. Special Master Patti Kindler held the hearing in Crown Point on July 18, 2005.

### Facts

5. The subject property is located at 1110 East 129<sup>th</sup> Avenue in Crown Point.
6. The subject property is assessed as 1.148 acres of leased commercial land for the use of cellular communication towers.<sup>1</sup>
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value as determined by the DLGF is \$114,100 for land.
9. The assessed value requested by the Petitioner on the Form 139L is \$25,000 for the land.
10. Ned Kovachevich, owner, and Terry Knee, assessor/auditor, were sworn as witnesses at the hearing.

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<sup>1</sup> The cellular towers, utility building and fencing located on the property are assessed on a separate property record card, number 003-23-09-0522-0017, and are appealed in Petition 45-041-02-1-4-00418.

## Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The property was zoned agricultural as of January 1, 1999, before it was annexed by Crown Point on July 2, 1999. *Petitioner Exhibits 3, 4.* The subject property and the surrounding neighborhood were rezoned as industrial after annexation. *Petitioner Exhibit 6.* The subject parcel is incorrectly classified as commercial and industrial land on the property record card. This classification results in an excessive assessment. *Kovachevich testimony.*
  - b) The subject parcel with 1.148 acres of bare ground leased to various cellular phone companies for the placement of cellular phone towers and communication equipment is priced excessively in comparison to neighboring parcels. *Kovachevich testimony.*
  - c) The assessments for eight neighborhood properties show the subject assessment is excessive when compared to other assessments in Center Township, most of which are located within the same industrial zone shown on the Crown Point zoning map. *Kovachevich testimony; Petitioner Exhibits 5, 7.* The most comparable assessment is a nearby property that is zoned industrial and located in the Gateway 65 Industrial Park. *Petitioner Exhibit 7 at 1; Petitioner Exhibit 8.* The comparable has over an acre of land that has been subdivided, and unlike the subject property, it can be built on without restriction. That comparable has a total assessed value of \$29,100. *Kovachevich testimony; Petitioner Exhibit 7 at 1.* Another comparable industrially zoned land assessment is the 2.851-acre L-shaped parcel located next to the subject property assessed as agricultural land at \$34,400. A neighboring industrial parcel with 48.07 acres and frontage on both 129<sup>th</sup> Avenue and Highway 53 is valued as agricultural land at \$46,300. *Petitioner Exhibits 7 at 3, 7; Petitioner Exhibit 8.*
  - d) Additional neighboring comparable assessments that are priced much lower than the subject property include a 29.141-acre parcel assessed as agricultural land at \$78,000 and a 13.72-acre parcel assessed as agricultural land at \$14,800. *Petitioner Exhibit 7 at 2, 9; Petitioner Exhibit 8.*
  - e) Comparable 1999 to 2004 sales of both industrial and agricultural land show the property is overvalued. These comparables include parcels with acreages ranging from 76 acres to 271.077 acres. No comparables of small acreages such as the subject property were found. The price per acre of these comparables ranges from a high of \$15,000 per acre for industrial land to a low of \$5,000 per acre for agricultural land. These amounts are well below the subject's assessment at \$114,100 for 1.148 acre of industrial zoned property. *Kovachevich testimony; Petitioner Exhibit 10.*
  - f) No industrial property sales were found in which the improved land assessment is even close to the subject's excessive land assessment. Whether the comparables are identified as industrial or agricultural, the sales prices were much lower per acre than the subject property. *Kovachevich testimony.*

g) A letter from the Crown Point Director of Planning and Building states that access to the ‘undeveloped’ subject property is via an access easement off of 129<sup>th</sup> Avenue. Furthermore, “lack of frontage on an improved City road and location of the communication facilities on the property may pose other obstacles in its development.” *Petitioner Exhibit 6.*

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

- a) The land is not vacant. It is improved with communication towers, equipment and structures. *Knee testimony.*
- b) The land was priced as commercial land because the property has a commercial use, not an agricultural use. *Id.*
- c) The portion of the land listed on the subject property record card that contains .248 acres priced as secondary land should have been valued differently. *Id.* That portion of the land should have been priced at \$58,094 rather than the \$93,100 shown on the property record card. This change would result in a total amended value of \$105,400 for the land. *Knee testimony; Respondent Exhibit 2-3.*

### **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 Co. 1640,
- c) Petitioner Exhibit 1 – Memorandum to wireless companies from the Petitioner,  
Petitioner Exhibit 2 – Copy of an aerial map,  
Petitioner Exhibit 3 – Pre-annexation zoning map,  
Petitioner Exhibit 4 – Annexation data,  
Petitioner Exhibit 5 – Zoning map,  
Petitioner Exhibit 6 – Letter from the Crown Point Director of Planning and Building,  
Petitioner Exhibit 7 – Real Property Maintenance Reports for eight other assessments and the subject property,  
Petitioner Exhibit 8 – Aerial map,  
Petitioner Exhibit 9 – Plat map showing Center Township,  
Petitioner Exhibit 10 – Data regarding six sales,  
Respondent Exhibit 1 – Form 139L,  
Respondent Exhibit 2 – Subject property record card,  
Respondent Exhibit 3 – Neighborhood land summary sheets,  
Respondent Exhibit 4 – Aerial map/photograph,  
Board Exhibit A – Form 139L,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Rescheduled Notice of Hearing,

Board Exhibit D – 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 evidence is not sufficient to support the Petitioner's contentions because:
- a) Real property is assessed on the basis of its "true tax value." Ind. Code § 6-1.1-31-6(c). This term is defined as "[t]he 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) (MANUAL).
  - b) The Petitioner argues that the subject land should be priced as agricultural land because it had been assessed that way in the past. That point, however, has no relevance to the 2002 reassessment. "In assessing or reassessing land, the land shall be assessed as agricultural land only when it is devoted to agricultural use." Ind. Code § 6-1.1-4-13(a). The land is not currently used as agricultural land and cannot be assessed as agricultural land.
  - c) There is no dispute between the parties that the property has communications towers and equipment on it. The Petitioner argues the land should be priced as unimproved land in accordance with the letter from the Director of Planning and Building of Crown Point, which identifies the land as "undeveloped". Regardless of the letter, the evidence clearly establishes that the land is not "undeveloped." The land is used for commercial gain and is properly assessed as commercial property.

- d) The Petitioner also contends the assessment is excessive in comparison to other assessments in the same area. The Petitioner submitted real property maintenance reports for the subject property and eight purportedly comparable assessments from Center Township. *Petitioner Exhibit 7 at 1-9*. The exhibits indicate that the other assessments are valued less per acre than the subject property. The Petitioner failed to establish comparability of the subject property with the other properties. Of the eight other assessments submitted, one parcel represents improved agricultural land pricing, two parcels represent vacant agricultural land pricing, two parcels are priced as improved residential, one parcel is priced as residential vacant land, and two parcels do not show a pricing class at all. *Petitioner Exhibit 7 at 1-5, 7-9*. The subject land use is improved commercial. The Petitioner contends the best comparable is a subdivided lot zoned industrial with over an acre of land that can be developed without restrictions. *Petitioner Exhibit 7 at 1*. This comparable however, is unimproved land and there is no pricing class or lot size listed on the real property maintenance report.
- e) Statements that another property is similar or is comparable are nothing more than conclusions. They do not constitute probative evidence. *Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Specific reasons must be provided as to why a property is comparable. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2001). Furthermore, the Petitioner is responsible for explaining the characteristics of his own property, how those characteristics compared to those of purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties. *Long v. Wayne Twp. Assessor*, 821 N.E. 2d 466,471 (Ind. Tax Ct. 2005). In the present case, the Petitioner provided minimal comparison. The Petitioner did not present probative evidence about how any differences in size, location, or use affected the relevant market value-in-use. The Petitioner did not establish the properties submitted were comparable. Consequently, that evidence has no relevance or probative value. *Id.*
- f) The Petitioner submitted six sales of properties that he claims range in price from \$5,000 to \$15,000 per acre. The comparable sales include large tracts of 76 acres to 271 acres of land, which sold between the years 1999 to 2004. The record fails to establish enough similarities between the subject and the comparable properties or to explain their differences to make them relevant or probative evidence for this case. Only one of the comparables is listed as industrial land. The remaining comparables either represent tillable vacant agricultural land, improved agricultural land, or the land use is not listed. The subject's use is improved commercial land with 1.148 acres. There are substantial differences between the Petitioner's smaller improved tract and the comparables that were not explained. For the same reasons as above, the Petitioner failed to establish the comparability of the subject to the purported comparables and failed to explain how any differences affected the relevant market value-in-use of the properties. *Id.*

- g) The Petitioner argues that the lack of street frontage and the ingress and egress to his property by way of an easement negatively affects its value. In order for the Petitioner to meet its burden of establishing a prima facie case, he must offer probative evidence establishing the correct value. The Petitioner has not done so. The Petitioner merely claims lack of frontage affects the value of the property and does not offer any evidence indicating how the lack of frontage affects the property and to what degree. His conclusory statements do not constitute probative evidence. *See, Whitley, 704 N.E.2d at 1119.*
- h) The Petitioner failed to establish a prima facie case that there is an error in the current assessment. The burden never shifted to the Respondent to rebut. Nevertheless, the Respondent stated there is a land value error. *Knee testimony; Respondent Exhibit 2.* The Respondent established that the 0.248 acres identified as secondary land should be assessed with a lower base rate of \$58,094 per acre. This correction would change the assessed value from \$114,100 to \$105,400.

**Conclusion**

- 16. The Petitioner failed to make a prima facie case. Nevertheless, the Respondent admitted the land value should be changed from \$114,100 to \$105,400.

**Final Determination**

In accordance with the above findings and conclusions the Board determines that the assessment should 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>.