

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-026-02-1-4-00440  
**Petitioners:** Vernon & Sandra J. Sieb  
**Respondent:** Department of Local Government Finance  
**Parcel:** 007-16-27-0411-0009  
**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 that the tax assessment for the subject property is \$148,800 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated June 14, 2005.
4. Special Master Patti Kindler held the hearing in Crown Point on July 19, 2005.

### Facts

5. The subject property is located at 9951 Express Drive in Highland.
6. The subject property is a 5,000 square foot industrial building located on a 0.574 acre lot.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of subject property as determined by the DLGF is:  
Land \$82,300                      Improvements \$66,500                      Total \$148,800.
9. The assessed value requested by Petitioners on the Form 139L Petition is:  
Land \$69,000                      Improvements \$52,500                      Total \$121,500.
10. The following persons were present and sworn as witnesses at the hearing:  
For Petitioners – Vernon Sieb, property owner,  
For Respondent – Terry Knee, auditor/assessor.

## Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) The site currently assessed at \$82,300, should be reduced to approximately \$60,000 due to the subject's lack of a public access and its three foot proximity to Spring Ditch. *Sieb testimony; Petitioner Exhibit 2, 12.* The other industrial parcels of land in the neighborhood are assessed at \$68,500 to \$79,200 even though they have street frontage and are not negatively influenced by the ditch or lack of public ingress. *Petitioner Exhibit 2, 3, 4.*
  - b) The erosion from the ditch is so severe that the corner of the subject building was caving into the ditch. *Sieb testimony.* The site's value is further diminished because it has limited parking, is prone to flooding, and has no street frontage with ingress and egress solely through a private easement. *Sieb testimony; Petitioner Exhibit 12.*
  - c) If the private easement was closed off by a neighboring property owner, and problems with access have occurred in the past, we were advised by Highland city officials that the property could become landlocked according to local zoning laws. *Sieb testimony; Petitioner Exhibit 2, 12.*
  - d) We own a lot contiguous to the subject parcel, which is valued at \$73,200. *Sieb testimony; Petitioner Exhibit 4.* The subject land is assessed at \$82,300; higher than our contiguous lot even though Spring Ditch takes up much of the area, and is encroaching on the subject structure. *Sieb testimony; Petitioners Exhibit 4.*
  - e) Comparables structures that are Metallic or Star Steel buildings as is the subject structure, are assessed erratically from \$50,400 for a similar 5,000 square foot structure to \$117,300 for a 9,500 square foot structure. *Petitioner Exhibit 3.* This evidence shows the disparity in the assessment of the industrial buildings within the subject addition. *Sieb testimony.* The subject structure is somewhat "in line" with the comparable building assessments, but it "might be" assessed approximately 10% percent too high. *Sieb testimony.*
  - f) An appraisal was performed on the property, but only portions of the report are being submitted for the record because it erroneously includes a rear lot in the subdivision that we do not own, which is described on the page we submitted regarding real estate taxes. *Sieb testimony; Petitioner Exhibit 6, 10.*
  - g) The industrial building located on lot #8 has a superior site to the subject property, actual street frontage on the cul-de-sac, no ditch encroaching on the site, and has a land assessment of \$69,600. *Sieb testimony; Petitioner Exhibit 3.* Due to the lack of street frontage, and the other encumbrances to the lot, the subject should be valued lower than the comparable or any other land lots in the subdivision, many which have actual street frontage. *Sieb testimony.*

12. Summary of Respondent's contentions in support of the assessment:
- a) The pricing of properties in Indiana is based on their value-in-use and the use does vary from building to building within the subdivision based on each individual building's finish type, use, and various interior and exterior components. *Knee testimony.*
  - b) The land assessments are based on the same rate per square foot for all the lots located in the subdivision and the subject lot was priced accordingly. *Respondent Exhibit 3.* The square footage of the parcels and the difference in the land values is due to a difference in land sizes. *Knee testimony: Respondent Exhibit 3.*
  - c) The appraisal for the subject property referred to by the Petitioners should not be considered as evidence in this appeal because only portions of it were submitted for the record and the entire report cannot be reviewed. *Knee testimony.*

### **Record**

13. The official record for this matter is made up of the following:
- a) The Form 139L Petition,
  - b) The tape recording of the hearing labeled Lake County 1642,
  - c) Exhibits:
    - Petitioner Exhibit 1 – Subject Form 139L petition,
    - Petitioner Exhibit 2 – Summary of Petitioners' arguments,
    - Petitioner Exhibit 3 – Data regarding comparable properties,
    - Petitioner Exhibit 4 – Plat showing location of comparables,
    - Petitioner Exhibit 5 – Front and rear view photographs of the subject,
    - Petitioner Exhibit 6 – A page from a certified appraisal report describing site improvements, history, estimated exposure time, and appraisal development for the subject property,
    - Petitioner Exhibit 7 – Notice of Final Assessment from informal hearing and property record card,
    - Petitioner Exhibit 8 – Letter from the Board regarding preparation for hearings,
    - Petitioner Exhibit 9 – Notice of hearing,
    - Petitioner Exhibit 10 – A page from the certified appraisal,
    - Petitioner Exhibit 11 – Plat survey of lots 7-10 located on Express Drive,
    - Petitioner Exhibit 12 – Plat survey showing subject building's location relative to ditch,
    - Respondent Exhibit 1 – Subject property record card,
    - Respondent Exhibit 2 – Subject front view photograph,
    - Respondent Exhibit 3 – Neighborhood land valuation form and incremental/decremental land pricing data,

Board Exhibit A – Form 139L,  
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.

### *Land Valuation*

15. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:

- a) The Petitioners claim the land valuation should be reduced to an approximate value of \$60,000 because the site has no frontage, has access by a private easement only, and Spring Ditch infringes on the integrity of the improvement. *Sieb testimony; Petitioner Exhibit 12*. The plat maps show the location of the Spring Ditch in relation to the commercial building, as well as, the limited access area to and from the property. *Petitioner Exhibit 4, 12*.
- b) To show that the lack of street frontage and the ditch have a negative affect on the property’s value, the Petitioners argued the subject property has received disparate treatment in comparison to other properties without similar restrictions and encroachments. The Petitioners’ submission of nine assessments within the industrial subdivision lists land valuations that range from \$68,500 to \$79,200 for

the platted lots, which vary widely in size. *Petitioner Exhibit 3*. One of the comparables submitted represents the lot just north of the Petitioners' land, which appears to be a rear lot like the subject lot, with the ditch on site and without public ingress and egress. *Petitioner Exhibit 4*. The Petitioners' evidence shows this lot is assessed at \$79,200, which is only \$3,100 less than the Petitioners' land assessment of \$82,300. *Petitioner Exhibit 4*.

- c) The Petitioners further argue that the subject property is valued disparately compared to the contiguous lot. The subject property is valued approximately \$10,000 higher than the \$73,200 assessment for the contiguous lot, which is not adversely affected by proximity to Spring Ditch. *Sieb testimony; Petitioner Exhibit 4*.
- d) Petitioners are required to show an error in the assessment and what the correct assessment should be. *See Meridian Towers*, 805 N.E.2d at 478. If there should be a greater negative influence factor, Petitioners must prove what it should be. *See Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d at 1099 (Ind. Tax Ct. 1999) (Petitioner must present probative evidence that would support the application of a negative influence factor and a quantification of that influence factor at the administrative level.) The Petitioners have failed to do so.

#### *Improvement Valuation*

16. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners claimed that the improvement assessment is too high in comparison to neighboring properties. The Petitioners argued that, while the building value was "in line" with the values of other buildings in the area, the value could be reduced by 10 percent. The Petitioners did not present probative evidence that the current building value is incorrect or what the correct building value should be.
  - b) Even though the Petitioners presented numerous alleged comparable properties, the record lacks the necessary connections such as exterior and interior photographs, property record cards, construction costs, and percentage of finished divided space and interior finish between the subject and comparable properties to determine whether they are indeed comparable. Without this information, true comparability of the structures was not determined. The Petitioners ambiguous and conclusory statements do not in themselves constitute probative evidence of an error. The Petitioners submitted assessments for comparable structures located in the subdivision. Only two of the purportedly comparable structures are valued lower than the subject structure, while the remaining seven comparables are assessed higher than the subject property. This evidence is not probative and it does not support Petitioners' claim.

18. Where Petitioners fail to make a prima facie case for any change to their assessment, the Respondent's burden to support the current assessment with probative evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products v. Dep't of Local Gov't Fin.*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

### **Conclusion**

19. The Petitioners failed to make a prima facie case. The Board finds in favor of the Respondent.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the land assessment should not 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](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>.