

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-016-02-1-5-00165  
**Petitioner:** Sharon Tarnowski  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 006-14-19-0129-0012  
**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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held between the Petitioner and the Respondent on January 9, 2004. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$47,200 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L Petition for Review of Department of Local Government Finance Action for Lake County Residents (Form 139L petition) on April 26, 2004.
3. The Board issued a notice of hearing to the parties on October 22, 2004.
4. A hearing was held on November 30, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

### Facts

5. The subject property is a single family dwelling located at 3565 Old Hobart Road, Lake Station in Hobart Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Value of the subject property as determined by the DLGF:  
Land \$27,400            Improvements \$19,800            Total \$47,200
8. Assessed Value requested by the Petitioner on Form 139L petition:  
Land \$15,000            Improvements \$15,000            Total \$30,000

9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
10. Persons sworn in at hearing:

For Petitioner: Theron Tarnowski, Petitioner Representative<sup>1</sup>  
Deborah Tarnowski, Petitioner Representative

For Respondent: Everett D. Davis, DLGF

### Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) The assessment is too high. The subject property is pie shaped with busy roads on two sides of the property. There is a 75-foot setback for state highways and a 30-foot setback for all other streets. Those setbacks restrict the use of the property. The subject property does not have curbs or sidewalks. *D. Tarnowski testimony; Pet'r Ex. 3.* The Petitioner requested that negative influence factors be applied to the land to reflect its excessive frontage, shape and size, use restrictions, traffic flow, and the fact that it is a corner lot. *D. Tarnowski testimony.*
  - b) The adjacent property (Lot 13) is assessed for less than the subject property. Lot 13 is 1½ acres and fronts State Road 51. *D. Tarnowski testimony; Pet'r Ex. 5.* About ½ of an acre of Lot 13 consists of a hill, and the property slopes down into a ravine. *T. Tarnowski testimony.*
  - c) A more desirable property down the street has an assessed value of \$11,700. *D. Tarnowski testimony; Pet'r Ex. 6.* That property is approximately ½ acre. *D. Tarnowski testimony.*
  - d) The subject land originally was valued at \$21,900. After the informal hearing the land value was raised to \$27,400. The reason for the increase was not explained. *T. Tarnowski testimony; Pet'r Ex. 1D.*
  - e) A recent listing advertises a 125' x 200' rectangular corner lot in Lake Station for sale at \$15,000. The subject lot, by contrast, is pie shaped and located on two busy roads. *T. Tarnowski testimony; Pet'r Ex. 7.*

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<sup>1</sup> The Petitioner, Sharon Tarnowski Shimel, as "trustee," executed a document purporting to give her brother, Theron Tarnowski, authority to prosecute the appeal on her behalf. *Board Ex. A; Pet'r Ex. 1E.* Theron Tarnowski signed the Form 139L petition as the Petitioner's tax representative. *Pet'r Ex. 1E.* Theron Tarnowski did not demonstrate that he is a certified tax representative or that he otherwise met the requirements for practice as a tax representative before the Board. *See 52 IAC 1-2.* Nonetheless, the Respondent did not object to the Petitioner's failure to appear at the hearing either in person or by properly authorized representative. In addition, the Petitioner indicated that Theron Tarnowski purchased the subject property on March 3, 2003. *Id.* Given those circumstances, the Board will address the merits of Petitioner's claims.

- f) The Petitioner submitted a listing of several vacant lots in Lake Station. Some of the lots sold for \$7,000 and \$8,000. *T. Tarnowski testimony; Pet'r Ex. 8A-C.*
- g) Lake Station has only a volunteer fire department and in the event of an emergency or fire there is a longer response time. *D. Tarnowski Testimony.*
- h) At the hearing, Theron Tarnowski stated that the Petitioner was not contesting the value of the home. The Petitioner, however, maintained that with the busy streets and setbacks, the subject land is not worth more than \$10,000. *T. Tarnowski testimony.*

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

- a) The Respondent presented 3 comparable sales to support the current assessment. *Davis testimony; Resp't Ex. 4.*
- b) The property record card shows that the subject property already receives a negative influence factor of forty-five percent (45%) for excess frontage. *Davis testimony; Resp't Ex. 2.*
- c) The land value is based on sales in the area. There were some errors found in the neighborhood and some assessments were changed. *Davis testimony.*

**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. #871.
- c) Exhibits:

- Petitioner Exhibit 1A-E: Form 139L Petition
- Petitioner Exhibit 2A-C: Summary of Arguments
- Petitioner Exhibit 3: Map of Subject Property
- Petitioner Exhibit 4: Highway Setbacks
- Petitioner Exhibit 5: Comparable Property
- Petitioner Exhibit 6: Comparable Property
- Petitioner Exhibit 7: Comparable Property
- Petitioner Exhibit 8A-C: Sold Comparable Property
- Petitioner Exhibit 9: Photographs

- Respondent Exhibit 1: Form 139L Petition
- Respondent Exhibit 2: Subject Property Record Card (PRC)
- Respondent Exhibit 3: Subject Property Photo
- Respondent Exhibit 4: Comparables Sales Sheet

Respondent Exhibit 5: Comparable PRCs & Photos

Board Exhibit A: Form 139L Petition

Board Exhibit B: Notice of Hearing

Board Exhibit C: 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 Petitioner did not provide sufficient testimony to support her contentions. This conclusion was arrived at because:

- a) The Petitioner first contends that the assessment is too high because the subject lot is pie shaped, borders on two busy roads, and it is subject to setback requirements that restrict the use of the property. The Petitioner contends that the subject lot is entitled to negative influence factors to account for those factors.
- b) An influence factor refers to condition peculiar to a property that dictates an adjustment to its estimated value. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A*, ch. 2 at 89-90 (incorporated by reference at 50 IAC 2.3-1-2); *American United Life Ins. Co. v. Maley*, 803 N.E.2d 276, 285 (Ind. Tax Ct. 2004). A taxpayer seeking a negative influence factor must submit probative evidence that (1) identifies the property’s deviation from the norm, and (2) quantifies the effect of that deviation. *See Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). Market evidence may be used to quantify influence factors. *Maley*, 803 N.E.2d at 285.

- c) The Petitioner did not present any evidence to quantify the effect of the above-identified factors on the market value of the subject property. Consequently, the Petitioner failed to establish a prima facie case that negative influence factors should be applied to the subject property.
- d) The Petitioner also presented sales and assessment information for various properties in Lake Station that the Petitioner contends are comparable to the subject property. *Pet'r Exs. 5, 6, 7, 8A-C.*
- e) In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value in use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2)(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 Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). The requirements for assigning probative value to evidence derived from a sales comparison approach are equally applicable where a party relies upon comparisons of assessments.
- f) In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent 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. When addressing the comparability of parcels of land, the relevant characteristics affecting market value include things such as location, lot size and shape, topography, geographical features, accessibility and use. *See Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 714-15 (Ind. Tax. Ct. 2002). Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- g) For the most part, the Petitioner did not explain how the Lake Station properties compare to the subject property in terms of lot size, topography or location. The Petitioner did compare one or two relevant characteristics, such as size and lot shape, with regard to certain of the properties she identified; however, she did not explain how any relevant differences between those properties and the subject property affect their relative market values. This omission is particularly glaring with regard to the location of the properties.
- h) Nonetheless, the Petitioner did identify two properties on her street with land assessments substantially lower than the amount for which the subject land is assessed. With regard to those lots, the Petitioner arguably established comparability as to location. The Petitioner, however, noted significant topographical differences

between the subject lot and a lot immediately adjacent to it (Lot 13). The Petitioner did not present any evidence to quantify how those differences affect the relative market values of the two lots.

- i) The Petitioner arguably did more to establish comparability with regard to another lot located “down the street” from the subject property at 1965 Riverlane Dr. (Riverlane Lot). Deborah Tarnowski testified that the Riverlane Lot is approximately the same size as the subject lot. Even if one were to assume that the two lots were comparable, however, the difference in assessments would show only that one of the two lots is assessed incorrectly. The comparison does little to demonstrate which assessment is incorrect.
- j) Based on the foregoing, the Petitioner failed to establish a prima facie case of error in the assessment.

### **Conclusion**

- 16. The Petitioner did not establish 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 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>>