

INDIANA BOARD OF TAX REVIEW
Final Determination
Findings and Conclusions

Petitions:	45-016-02-1-5-00193	Parcels:	006-27-17-0106-0001
	45-016-02-1-5-00194		006-27-17-0106-0002
	45-016-02-1-5-00195		006-27-17-0106-0006
	45-016-02-1-5-00196		006-27-17-0106-0005
	45-016-02-1-5-00197		006-27-17-0106-0004
	45-016-02-1-5-00198		006-27-17-0106-0003

Petitioner: David Thyen
Respondent: Department of Local Government Finance
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. The Department of Local Government Finance (the “DLGF”) determined the tax assessment for the subject properties and notified Petitioner on March 26, 2004.
2. Petitioner filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated November 10, 2004.
4. Special Master Barbara Wiggins held the hearing in Crown Point on December 10, 2004.
5. Persons present and sworn as witnesses at the hearing:
For Petitioner – David Thyen, property owner,
For Respondent – Sharon Elliott, assessor/auditor.

Facts

6. Subject properties are six vacant residential lots located near the corner of Linda Street and Lillian Street, Hobart. They are contiguous lots.
7. The Special Master did not conduct an on-site visit of the property.

8. Assessed values as determined by the DLGF:

Parcel 006-27-17-0106-0001	\$4,800
Parcel 006-27-17-0106-0002	\$4,000
Parcel 006-27-17-0106-0006	\$9,200
Parcel 006-27-17-0106-0005	\$9,200
Parcel 006-27-17-0106-0004	\$9,200
Parcel 006-27-17-0106-0003	\$4,100

9. Petitioner requested \$2,000 assessed value for each parcel.

Issues

10. Summary of Petitioner’s contentions in support of an alleged error in the assessment:

- a) Assessed value should be \$2,000 based on actual purchase price. In June 1999, by court order, the lots were assigned a value of \$2,000. *Thyen testimony, Petitioner Exhibit 4(d).*
- b) The purchase price gives consideration to the fact that the subject lots are not buildable because they are in an area designated as wetlands by the Army Corps of Engineers. *Thyen testimony, Petitioner Exhibit 4(a), (b), (c), (e).*

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

- a) The factors that the Petitioner relies on have already been taken into consideration. The subject property value was reduced through the application of negative influence factors because subject properties are vacant, designated wetlands and because some lots have no road access. *Elliott testimony, Respondent Exhibit 2.*
- b) The court ordered sale is not an arms-length transaction. *Elliott testimony.*

Record

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

- a) The Petition,
- b) The tape recording of the hearing labeled Lake County 972,
- c) Exhibits:
 - Petitioner Exhibit 1 – Copy of the Form 139L for each parcel,
 - Petitioner Exhibit 2 – Summary of the Petitioner’s arguments,
 - Petitioner Exhibit 3 – Outline of the evidence,
 - Petitioner Exhibit 4 – (a) Copies of flood zone maps,

- (b) Letter from the Department of Army Corps of Engineers,
 - (c) Survey and maps showing the subject property,
 - (d) Court order regarding the purchase of the subject property,
 - (e) Photographs of the subject property,
- Respondent Exhibit 1 – Form 139L for each parcel,
 Respondent Exhibit 2 – Subject property record cards,
 Respondent Exhibit 3 – Aerial map showing the subject property,
 Board Exhibit A – Form 139L for each parcel,
 Board Exhibit B – Notice of Hearing,
 Board Exhibit C – Sign in Sheet,
- d) These Findings and Conclusions.

Analysis

13. 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.
14. Petitioner did not provide sufficient evidence to support his contentions for a reduction in value. This conclusion was arrived at because:
- a) The evidence proves the subject properties are vacant lots. An area 5' by 125' designated as wetlands runs along the side of part of the property. *Thyen testimony, Petitioner Exhibit 4(a), (b), (c), (e)*. This evidence, however, does nothing to show that the current value is incorrect or what the correct value should be. Three of the parcels, -0001, -0002, and -0003, already have 75% negative

influence factors based on the wetlands designation, vacancy and lack of street access.¹ The remaining three parcels, -0004, -0005, and -0006, have 45% negative influence factors based on similar considerations.² The Petitioner failed to prove that any additional influence factor is required. Specifically, the Petitioner failed to prove that the contiguous parcels are not a buildable property.

- b) The subject property was ordered by the courts to be sold to Petitioner, who got an undivided 1/5 interest in all six lots for \$2,400. *Petitioner Exhibit 4(d)*. Petitioner relies on the fact that the court made its determination in June 1999. The value assigned to the subject property by the court's order, however, is based on a 1996 purchase agreement between Petitioner and the defendant in that matter. Therefore, without evidence that the 1996 purchase price is reflective of the 1999 value, the value assigned by the court for the subject property has no probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005).
- c) Furthermore, under these circumstances the Petitioner failed to prove that his purchase was an arms-length transaction or that the court-ordered price based on an undivided 1/5 interest is market value-in-use. Petitioner has not established that his price is representative of the subject property's market value.

Conclusion

15. Petitioner did not make a prima facie case. The Board finds in favor of 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: _____

Commissioner,
Indiana Board of Tax Review

¹ The evidence indicates that parcel -0001 has frontage on Cleveland Street. Part of the basis for the negative influence factor on that parcel might be incorrect, but Respondent did not raise the issue. Therefore, the Board will not address it.

² The evidence indicates that these three parcels have frontage on Linda Street. Part of the basis for the 45% negative influence factor on these parcels might be incorrect, but Respondent did not raise the issue. Therefore, the Board will not address it.

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>>.