

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-041-02-1-5-00472  
**Petitioner:** Mercantile National Bank Trust #5431  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 003030703310029  
**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 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$7,200. The DLGF's Notice of Final Assessment was sent to the Petitioner on March 12, 2003.
2. The Petitioner filed a Form 139L on July 7, 2004.
3. The Board issued a notice of hearing to the parties dated March 7, 2005.
4. A hearing was held on April 7, 2005, in Crown Point, Indiana before Special Master Alyson Kunack.

### Facts

5. The subject property is part of the Pine Ridge Subdivision in Crown Point, Center Township, Lake County.
6. The subject property is a vacant residential parcel consisting of 13.453 acres.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$7,200 for the land. There are no improvements on the property.
9. The Petitioner requested an assessed value of \$100.

10. Larry Haak, the Petitioner's representative, and Richard E. Anderson, Petitioner's attorney, appeared at the hearing and Mr. Haak was sworn as a witness. Further, John Toumey, representing the DLGF, appeared and was sworn as a witness.

### **Issue**

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) According to the Petitioner, the subject property is one of five areas in the Pine Ridge Lakes subdivision that are under a Declaration of Restriction from the U.S. Army Corps of Engineers as protected wetlands. The land cannot be used for anything other than wetlands. *Anderson argument & Petitioner Exhibits 4, 5, 7, and 8.*
  - b) At the informal hearing, the Petitioner testified that four of the five parcels were lowered to a value of \$100 each because they are waterways. The subject parcel was excluded. *Anderson argument & Petitioner Exhibit 7.* The Petitioner contends that all five parcels are a combination of ponds and wetlands. The subject parcel is mostly standing water and grass and is not tillable. *Haak testimony.*<sup>1</sup>
12. Summary of Respondent's contentions in support of the assessment:
- a) The subject parcel's assessed value was lowered from \$90,800 to \$7,200 at the informal conference. *Toumey testimony.*
  - b) The subject parcel (13.453 acres) is currently assessed at the agricultural land base rate of \$1,050 with a negative fifty percent (50%) influence factor being applied, which would be consistent with what is tillable land. *Toumey testimony & Respondent Exhibit 1.*
  - c) According to the Real Property Assessment Guidelines, Land Type 22 is Classified Wildlife Habitat. Based on the Guidelines, the Respondent argued, truly classified lands that have applied for and are approved for specific programs administered by the Department of Natural Resources or the county surveyor would be entitled to a 100% influence factor reduction. *Toumey testimony & Respondent Exhibit 4.*
  - d) Finally, the Respondent argued, there was no market data submitted to show that the current value was incorrect. The subject property has been properly valued with a fifty percent (50%) influence factor for flooding. *Toumey testimony & Respondent Exhibit 1.*

### **Record**

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

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<sup>1</sup> At the hearing all parties agreed that the subject property was not tillable. *Haak & Toumey testimonies.*

- a) The Petition.
- b) The tape recording of the hearing labeled Lake Co. # 1404
- c) Exhibits:

- Petitioner Exhibit 1: Notice of Final Assessment
- Petitioner Exhibit 2: Form 139I Petition
- Petitioner Exhibit 3: Tax bills for all five (5) wetland areas in subdivision
- Petitioner Exhibit 4: Map of subdivision
- Petitioner Exhibit 5: Declaration of Restriction on Land Use for subject property
- Petitioner Exhibit 6: Copy of paid tax bill for subject property
- Petitioner Exhibit 7: Property Record Cards (PRCs) for all five (5) wetland parcels in subdivision
- Petitioner Exhibit 8: Map of subdivision

- Respondent Exhibit 1: Subject PRC
- Respondent Exhibit 2: Plat map of subject property
- Respondent Exhibit 3: Aerial map of subject property
- Respondent Exhibit 4: Land Type Codes

- Board Exhibit A: Form 139 L Petition
- Board Exhibit B: Notice of Hearing on Petition
- 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 provided sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
- a) The Petitioner presented the Declaration of Restriction on Land Use for the subject property, along with PRCs for the subject property and four parcels in the same community. *Anderson argument & Petitioner Exhibits 5 and 7*. The Petitioner argued that at the informal hearing, four of the five parcels were lowered to a value of \$100 each, but the subject property was not given the same value. *Petitioner Exhibit 7*.
  - b) Indiana Code section 6-1.1-2-2 requires uniform and equal assessments. Thus to the extent that the Petitioner can prove that the subject property is not assessed uniformly or equal to comparable properties, Petitioner's assessment should be equalized. However, "taxpayers are required to make a detailed factual showing at the administrative level." *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, "the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence." *Id.*
  - c) To introduce evidence of comparable properties, a taxpayer must explain *how* the properties are comparable. *See Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain *how* the properties were comparable). Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id.* *See also, Hoogenboom-Nofziger*, 715 N.E.2d at 1024 (holding that taxpayer failed to make prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).
  - d) Here, according to the PRCs for the subject property and the four comparable properties, the lands are classified as Land Type 22 - Wildlife Habitat, all the parcels are located in the same neighborhood, all are vacant residential lands, and based on the Petitioner's testimony, all are wetlands. *Petitioner Exhibit 7*. In support of the Petitioner's contentions, the Petitioner also submitted a Declaration of Restriction on

Land Use for the subject parcel - wetlands. *Petitioner Exhibit 5*. Thus, the Petitioner raised a prima facie case that the subject property is over-valued and that the uniform and equal value of the subject property is \$100.

- e) Once the Petitioner establishes a prima facie case, the burden shifts to the Respondent to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). This the Respondent did not do. The Respondent merely alleged that "the property was properly valued" or that it would "leave it up to the Board to determine how it should be handled" are conclusory statements that are not probative of the subject property's value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax 1998). Thus the Board finds that the Respondent failed to rebut the Petitioner's evidence.

### **Conclusion**

15. The Petitioner made a prima facie case. The Respondent failed to rebut the Petitioner's evidence. The Board finds in favor of Petitioner.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now 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>>.