

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-016-02-1-5-00164  
**Petitioner:** Theron Tarnowski  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 006-14-19-0129-0014  
**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 \$9,500 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a 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 vacant residential lot consisting of 3.5 acres located west of 51 and north of 29th, 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 \$9,500                      Improvements \$ 0                      Total \$9,500
8. Assessed Value requested by the Petitioner on Form 139L petition:  
Land \$5,000                      Improvements \$ 0                      Total \$5,000
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, Owner  
Deborah Tarnowski, Spouse

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 lot may not be buildable. The lot is basically all swamp land with an extreme slope. City sewers are not available. There is a 75' setback for highways. *D. Tarnowski testimony; Pet'r Exs. 3A-C, 4.*
- b) The adjacent property (Lot 13) is assessed lower than the subject property. Lot 13 is smaller, swampy, and goes downhill. *D. Tarnowski testimony; Pet'r Ex. 5.*
- c) The Petitioner appealed the assessment of the subject property in 1989 and received a reduction. *D. Tarnowski testimony; Pet'r Exs. 6A-D.*
- d) The subject property is overvalued in comparison with vacant land sales in Lake Station. The Petitioner submitted a listing of vacant lots which sold in Lake Station. *D. Tarnowski testimony; Pet'r Exs. 7A-C.*
- e) The Lake Station Community Schools and a volunteer fire department have a negative affect on the value of the subject property. *D. Tarnowski testimony.*
- f) The Petitioner requests influence factors for wetlands, topography, excess frontage, restrictions, and traffic flow. *D. Tarnowski testimony.*
- g) The subject property does not have sidewalks or curbs. *D. Tarnowski testimony.*

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

- a) The Petitioner is receiving an influence factor of 25% for topography. The excess frontage, restrictions, and traffic flow would have been taken into consideration in the market information used to determine the land values. *Davis testimony; Resp't Ex. 2.*
- b) The Petitioner did not present evidence to show the subject land qualified as wetlands. Wetlands are certified by the Department of Agriculture. *Davis testimony.*
- c) The Petitioner did not present evidence to support his contention that the subject land is unbuildable. The evidence only indicates that the subject land might be unbuildable. *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. #870.
- c) Exhibits:

- Petitioner Exhibit 1A-D: Form 139L Petition
- Petitioner Exhibit 2A-B: Summary of Arguments
- Petitioner Exhibit 3A-B: Maps
- Petitioner Exhibit 4: Highway Setbacks
- Petitioner Exhibit 5: Comparable Property
- Petitioner Exhibit 6A-D: 1989 Appeal Papers
- Petitioner Exhibit 7A-C: Vacant Land Sales
- Petitioner Exhibit 8: Photographs

- Respondent Exhibit 1: Form 139L Petition
- Respondent Exhibit 2: Subject Property Record Card
- Respondent Exhibit 3: Maps

- 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 his contentions. This conclusion was arrived at because:
- a) The Petitioner identified several factors that he contends negatively affect the market value of the subject property. In that vein, the Petitioner contends that the property: is swampy and sloping; lacks access to city sewers; is subject to a 75' setback; is in an undesirable school district; and is served by a volunteer fire department. The Petitioner further contends that the subject lot may be unbuildable.
  - b) The Petitioner, however, did not attempt to quantify the effect of these factors on the market value-in-use of the subject property. In addition, the Petitioner did not present evidence to support his opinion that improvements cannot be constructed on the subject property. Thus, the Petitioner's assertions in that regard amount to little more than conclusory statements. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).
  - c) The Petitioner also presented information from an appeal of the 1989 assessment of the subject property. The Petitioner received a reduction as a result of that appeal. The Petitioner did not explain how the change in the 1989 assessment is relevant to his current appeal from the March 1, 2002, assessment of the subject property. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id*
  - d) The Petitioner also presented evidence concerning sales of vacant lots in Lake Station and assessment information for a property next door to the subject property. The Petitioner contends that the sales and assessment information demonstrates that the subject property is over assessed. *T Tarnowski testimony; Pet'r Exs. 5, 7A-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 to the assessment comparison approach.

- 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. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- g) The Petitioner did not explain how the vacant lots and neighboring property were actually comparable to the subject property as required by the court in *Long*. The Petitioner provided no comparison of lot sizes, topography, or location. See *Blackbird Farms, LP v. Dep’t of Local Gov’t Fin.*, 765 N.E.2d 711, 715 (holding that taxpayer failed to establish comparability where it failed to compare lot sizes and shapes, topography and geographical features). Consequently, the Petitioner’s evidence concerning the sales and assessments of other properties lacks probative value.
- h) Based on the foregoing, the Petitioner has failed to establish a prima facie case that the current assessment is incorrect.

**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>>