

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-028-02-1-4-00097  
**Petitioner:** Dimitra Minginas  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 008-08-15-0454-0004  
**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 February 10, 2004, 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 \$291,500 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed the Form 139L petition on May 3, 2004<sup>1</sup>.
3. The Board issued a notice of hearing to the parties dated August 23, 2005.
4. Special Master Dalene McMillen held the hearing on October 4, 2005, at 9:15 A.M. in Crown Point, Indiana.

### Facts

5. The subject property is located at 4050 Approx. West 81<sup>st</sup> Avenue, Merrillville. The location is in Ross Township.
6. The subject property is 2.90 acres of vacant land.
7. The Special Master did not conduct an on-site visit of the property.

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<sup>1</sup> The Petitioner filed the petition by U.S. mail postmarked April 29, 2004.

8. The assessed value of the subject property as determined by the DLGF:  
Land: \$291,500.
9. The assessed value requested by the Petitioner on the Form 139L:  
Land: \$40,000.
10. The following persons were present and sworn in at the hearing:  
For Petitioner: Thomas Rucinski, Attorney<sup>2</sup>  
                    Thomas Bochnowski, Witness/Appraiser  
For Respondent: Sharon Elliott, Assessor/Auditor, DLGF.

### **Issue**

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
  - a. The assessed value exceeds the 1999 market value of the subject property.
  - b. The Petitioner submitted an appraisal of the subject property prepared by Thomas S. Bochnowski, Bochnowski Appraisal Company, a certified appraiser. The appraisal is dated September 5, 2005, and estimates the value of the subject property to be \$18,000 as of the tax year 1999. The appraisal was performed for the purpose of establishing value for tax/reassessment purposes. *Petitioner Exhibit 7; Bochnowski testimony.*
  - c. The Petitioner submitted a letter from the Department of the Army that states the subject property has been declared wetlands and therefore falls under the jurisdiction of the Corps of Engineer. *Petitioner Exhibit 3; Rucinski argument.*
12. Summary of Respondent's contentions in support of assessment:
  - a. The Respondent testified the subject property is valued fair and consistent for the subject area. *Elliott testimony.*
  - b. The property record card shows the land is being classified as .66 acres of usable undeveloped land (type 13) and 2.24 acres of unusable undeveloped land (type 14) with a negative 20% influence factor being applied because of restrictions. *Respondent 1; Elliott testimony.*

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<sup>2</sup> Mr. Thomas Rucinski was present during the administrative proceedings on behalf of the Petitioner, but he was not sworn in to present testimony.

## **Record**

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

- a. The Petition,
- b. The recording of the hearing labeled Lake Co. 1668,
- c. Exhibits:

- Petitioner Exhibit 1 – Summary of facts,
- Petitioner Exhibit 2 – Power of Attorney form Dimitra Minginas to Thomas E. Rucinski,
- Petitioner Exhibit 3 – Letter from Department of the Army, dated April 6, 1994,
- Petitioner Exhibit 4 – Notice of Assessment of Land and Structures – Form 11/ Lake County for parcel #008-08-15-0454-0004,
- Petitioner Exhibit 5 – Form 139L petition,
- Petitioner Exhibit 6 – Notice of Final Assessment for parcel #008-08-15-0454-0004,
- Petitioner Exhibit 7 – An appraisal prepared by Thomas S. Bochnowski, Bochnowski Appraisal Company,

- Respondent Exhibit 1 – Subject property record card,
- Respondent Exhibit 2 – Incremental / Decremental Land Pricing in Lake County Indiana for neighborhood #893, Land Recommendations for neighborhood #00894, and Commercial and Industrial Neighborhood Valuation Form for neighborhood #00893,
- Respondent Exhibit 3 – Plat map and aerial map of the subject area,

- Board Exhibit A – Form 139L petition,
- Board Exhibit B – Notice of Hearing on Petition,
- 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. *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 established a prima facie case. The Respondent failed to rebut or impeach the Petitioner’s case with substantial evidence. This conclusion was arrived at because:
- a. The Petitioner contends the subject property contains wetlands therefore the assessed value of the subject property at \$291,500 exceeds the market value of the property.
  - b. The Respondent contends that the subject property is assessed in accordance with the Real Property Guidelines and fairly reflects the 1999 market value of the property.
  - c. Taxpayers may offer evidence relevant to the fair market value-in-use of the property to rebut their assessment and to establish the actual true tax value of the property, using evidence of market value including, but not limited to, actual construction costs, sale information regarding the subject or comparable properties, and appraisals prepared in accordance with generally recognized appraisal practices. 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 IAC 2.3-1-2).
  - d. The Petitioner presented an appraisal from Bochnowski Appraisal Company that concluded the value of the property, using the sales comparison approach was \$18,000 as of the tax year 1999. An appraisal performed in accordance with generally recognized appraisal principles is enough to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479. A qualified expert performed the appraisal. The appraisal is based on a sales comparison approach and uses four sales of comparable wetland properties to estimate subject property at a value of \$18,000 as of 1999. The appraisal constitutes a prima facie case that the assessment of \$291,500 is too high and that the property should be valued at \$18,000.
  - e. The Petitioner established a prima facie case. The burden shifted to the assessing official to rebut the Petitioner’s case. *American United Life*, 803 N.E.2d 276. The

assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

- f. The Respondent presented its evidence supporting the assessment. The evidence consisted of the property record card for the subject property, plat and aerial map of the area. The property record card simply shows the assessment and how the land is valued under the assessment guidelines. Standing alone, this is not probative as to the correctness of the assessment. *See Damico v. Dep't of Local Gov't Fin.*, 769 N.E.2d 715, 723 (Ind. Tax Ct. 2002) (stating that conclusory statements and documents unaccompanied by an explanation do not constitute probative evidence).
- g. Based on the foregoing, the Respondent failed to impeach or rebut the appraisal submitted by the Petitioner. The preponderance of the evidence supports a finding that the current assessment is incorrect and that the correct assessment is \$18,000 for the land.

### **Conclusion**

- 16. The Petitioner presented a prima facie case that the assessment is incorrect, and that the correct assessment is \$18,000. The Respondent did not rebut the Petitioner's evidence. The Board finds in favor of the 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>.