

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-00712  
**Petitioners:** Joseph & Charlotte Military  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007-18-28-0329-0023  
**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. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the property is \$162,300 and notified the Petitioner on March 31, 2004.
2. The Petitioners filed a Form 139L on April 21, 2004.
3. The Board issued a notice of hearing to the parties dated November 10, 2004.
4. Special Master Peter Salveson held the hearing in Crown Point on December 14, 2004.

### Facts

5. The subject property is located at 9112 Chestnut Lane in Munster.
6. The subject property is a single-family home on 0.298 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value determined by the DLGF is:  
Land \$34,300                      Improvements \$128,000.
9. Assessed value requested by Petitioners:  
Land \$24,300                      Improvements \$128,000.
10. Persons sworn as witnesses at the hearing:  
Joseph and Charlotte Military, owners,  
Diane Spenos, assessor/auditor.

## **Issues**

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
  - a) They have lost 35-40 feet in depth. Land has fallen into Hart's Ditch, which is part of the county's storm sewer system. *Military Testimony; Petitioner Exhibit 4.*
  - b) There was a hearing in December 2000 that resulted in a reduction of the land value based on the change of the depth factor, but the property record card never reflected the reduction. *Military Testimony; Petitioner Exhibit 5.*
  - c) There is ongoing work to fortify the drainage ditch. *Military Testimony; Petitioner Exhibit 6.*
  
12. Summary of Respondent's contentions in support of the assessment:
  - a) The comparables are compared as total property (not just land) sales. *Spenos Testimony; Respondent Exhibit 5.*
  - b) Adjusting the depth factor by 30 feet would change the depth factor from 1.11 to 1.06 and make the land value \$32,700. *Spenos 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. 1116,
  - c) Petitioner Exhibit 1 – Form 139L,  
Petitioner Exhibit 2 – Assessment dated November 14, 2003,  
Petitioner Exhibit 3 – Notice of Final Assessment dated March 31, 2004,  
Petitioner Exhibit 4 – Pictures showing the erosion of subject property, Hart Ditch Restoration Report,  
Petitioner Exhibit 5 – Record of hearing reduction of land value,  
Petitioner Exhibit 6 – Pictures taken November 11, 2004,  
Respondent Exhibit 1 – Form 139L,  
Respondent Exhibit 2 – Subject property record card,  
Respondent Exhibit 3 – Subject photo,  
Respondent Exhibit 4 – Height design,  
Respondent Exhibit 5 – Comparable sales sheet,  
Respondent Exhibit 6 – Comparable property record cards and photos,  
Board Exhibit A – Form 139L,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing 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 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 evidence supports a change in assessment because:

- a) The Petitioners did not show that the current assessment is incorrect. They did not provide probative evidence showing what the actual depth of the lot should be. The Petitioners testified that the lot had lost between 35 – 40 feet to Hart’s Ditch, but could not be more specific. The Petitioners testified that it was closer to 40 feet than 30 feet, but they presented no evidence to establish how they made the determination.
- b) The Petitioners did not testify that they physically measured the lot, nor did they testify that they hired anyone to measure their lot. They provided no basis for their testimony that the lot had lost 40 feet to Hart’s Ditch. Without a basis for their opinion, the Petitioner’s testimony is conclusory and of little probative value.
- c) Nevertheless, the Respondent agreed that some of the lot had been lost to Hart’s ditch. The Respondent recommended an assessment change to remove 30 feet from the effective depth. This correction changes the depth factor from 1.11 to 1.06 and reduces the assessed value of the land to \$32,700.

## Conclusions

16. The land value will be changed to \$32,700.

## 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>.**