

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 71-003-06-1-5-07282  
**Petitioner:** Lynette Jones Revocable Trust  
**Respondent:** St. Joseph County Assessor  
**Parcel:** 022019038828  
**Assessment Year:** 2006

The Indiana Board of Tax Review (Board) issues this determination in the above matter. The Board finds and concludes as follows:

**Procedural History**

1. On June 19, 2007, Lynette Jones<sup>1</sup> filed a Request for Preliminary Conference with Township Assessor (“Preliminary Conference Request”) contesting the subject property’s March 1, 2006 assessment. *Board Ex. A.*
2. On October 4 and 5, 2007, Ms. Jones and the Clay Township Assessor signed Section VI of the Preliminary Conference Request, indicating the following: “PETITIONER IS A DEVELOPER. LAND TAKEN BACK TO DEVELOPER’S DISCOUNT.” *Board Ex. A; Resp’t Ex. 1.* They listed a total of \$600 as the amount for which the Clay Township Assessor contended the subject property should have been assessed. *Id.*
3. The St. Joseph County Property Tax Assessment Board of Appeals did not schedule Ms. Jones’s appeal for a hearing, although it did hear her appeal on an adjacent parcel’s assessment<sup>2</sup> on July 24, 2008. At that hearing, Ms. Jones requested that the PTABOA hear her appeal on the subject parcel’s assessment as well. The PTABOA apparently declined her request. The PTABOA later issued a Form 115 determination on Ms. Jones’s other appeal but did not issue a determination concerning the subject property.
4. On November 25, 2008, Ms. Jones filed a Form 131 petition with the Board. On September 8, 2010, the Board held an administrative hearing through its Administrative Law Judge, Jennifer Bippus (“ALJ”).

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<sup>1</sup> Lynette Jones is the trustee for the Lynette Jones Revocable Trust.

<sup>2</sup> That appeal was filed under Pet. No. 71-003-06-1-5-07281. The Board will enter a separate determination in that appeal.

5. Persons present and sworn in at hearing:
  - a) Lynette Jones
  - b) For the Assessor: David Wesolowski, County Assessor,  
Sue Tranberg, Member, St. Joseph County PTABOA,  
Dennis Dillman, President, St. Joseph County PTABOA,

**Record**

6. The official record for this matter is made up of the following:
  - c) The Form 131 petition,
  - d) The digital recording of the hearing,<sup>3</sup>
  - e) Exhibits:
 

Petitioner’s Exhibit 1:	Form entitled Request for Preliminary Conference with Township Assessor,
Petitioner’s Exhibit 2:	Form 131 petition for the subject property,
Petitioner’s Exhibit 3:	Page 20 from Home Builders Association membership book,
Petitioner’s Exhibit 4:	Memo Sandy Bickel and Beth Henkel to Rick Wajda,
Petitioner’s Exhibit 5:	Property tax information for Buckley Land Transfer, LLC and John Boettcher,
Petitioner’s Exhibit 6:	Property tax information for James and Michael Wallace,
Petitioner’s Exhibit 7:	Photographs of garage and house,
Petitioner’s Exhibit 8:	Photographs of land owned by Jones, Wallace, Buckley/Boettcher,
Petitioner’s Exhibit 9:	“LHAS” flyer.
Respondent Exhibit 1:	Form entitled Request for Preliminary Conference with Township Assessor,
Respondent Exhibit 2:	Form 131 petition
Respondent Exhibit 3:	Subject’s property record card.
Board Exhibit A:	Form 131 petition,
Board Exhibit B:	Notice of hearing,
Board Exhibit C:	Notice of Appearance by Frank Agostino,
Board Exhibit D:	Letter from the Board denying Ms. Jones’ request for continuance,

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<sup>3</sup> There was a malfunction that resulted in the first six minutes and fifty-four seconds of the hearing not being recorded.

Board Exhibit E: Hearing sign-in sheet.

f) These Findings and Conclusions.

### Analysis

7. Although the parties vigorously dispute whether the subject property was entitled to a “developer’s discount,” the Board does not reach that issue. Instead, the Board finds as a threshold matter that it lacks jurisdiction to hear Ms. Jones’s appeal.
8. The Board is a creature of the legislature and therefore has only those powers conferred by statute. *See Matonovich v. State Bd. of Tax Comm’rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999) (addressing the authority of the now abolished State Board of Tax Commissioners). And “[a]ll doubts regarding a claim to power of a governmental agency are resolved against the agency.” *State ex rel. ANR Pipeline Co. v. Indiana Dep’t of State Revenue*, 672 N.E.2d 91, 94 (Ind. Tax Ct. 1996).
9. The Board’s enabling statute (Ind. Code § 6-1.5) contains two sections describing appeals that the Board must address. One, Ind. Code § 6-1.5-5-1(a), directs the Board to review appeals of final determinations made by the Department of Local Government Finance (“DLGF”). The other, Ind. Code § 6-1.5-4-1(a), requires the Board to review all appeals concerning: “(1) the assessed valuation of tangible property; (2) property tax deductions; or (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law.” Nobody alleges that the DLGF issued a determination concerning the subject property’s assessment. Thus, if the Board has jurisdiction to hear Ms. Jones’s appeal, that jurisdiction must come from Ind. Code § 6-1.5-4-1(a) directly or from some other statute.
10. As to Ind. Code § 6-1.5-4-1(a), Ms. Jones does not identify a determination by an assessing official or a county PTABOA from which she seeks to appeal. The Clay Township Assessor agreed to the assessment that Ms. Jones seeks and the PTABOA did not issue a determination. And the Board cannot find any other statute that would give it authority to hear Ms. Jones’s appeal. Indiana Code § 6-1.1-15 sets forth the usual procedures for a taxpayer to appeal from an assessment. At the times relevant to Ms. Jones’s appeal, that statute required a taxpayer to begin the appeal process by timely filing a written notice asking for a preliminary conference with the local official that made the contested assessment. Ind. Code § 6-1.1-15-1(b) (2006 repl. vol.). The official and taxpayer were required to complete and sign a prescribed form specifying the results of the conference, including the items of agreement and disagreement. I.C. § 6-1.1-15-1(f)-(g) (2006 repl. vol.).
11. If there were no items of disagreement, the official was required “to give notice to the taxpayer, the county property tax assessment board of appeals, and the county assessor of the assessment in the amount agreed to by the taxpayer and the [assessor]” and the county PTABOA could “reserve the right to change the assessment under IC 6-1.1-13.” I.C. § 6-

1.1-15-1(h) (2006 repl. vol.). If, on the other hand, there was any disagreement, the PTABOA was required to hold a hearing and prepare a written statement of its findings and decision. I.C. § 6-1.1-15-1(i)-(k)-(l) (2006 repl. vol.). Although the PTABOA was required to hold that hearing and issue its decision within specified timeframes, the statute did not provide for the taxpayer to appeal to the Board if the PTABOA failed to act within those timeframes. *See* .C. § 6-1.1-15-1(k)-(l) (2006 repl. vol.). That changed in 2007 when the General Assembly amended the statute to give taxpayers that option. *See* P.L. 219-2007 § 38 (adding what is now subsection (o) to I.C. § 6-1.1-15-1). But that amendment applied only to appeals in which taxpayers began the appeal process at the local level after June 30, 2007. *See* 2007 Ind. Acts 219 § 156(a)(1). Because Ms. Jones began the process on June 19, 2007, the amendment does not apply to her appeal.

12. That being said, it appears that there was nothing for the PTABOA to decide. Once Ms. Jones and the Clay Township Assessor reached their agreement, the assessment changed to \$600 subject only to the PTABOA's rights under Ind. Code § 6-1.1-13.
13. Even though the Board must dismiss Ms. Jones's appeal, one would hope that local officials will give effect to the agreement between Ms. Jones and the Clay Township Assessor without requiring Ms. Jones to expend additional effort or incur any expense.

### **Final Determination**

In accordance with the above findings and conclusions, the Board hereby **DISMISSES** Ms. Jones's appeal.

ISSUED: \_\_\_\_\_

\_\_\_\_\_  
Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

## IMPORTANT NOTICE

### - APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>