

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-037-02-1-5-00012  
**Petitioners:** Martin F. Kroll  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 010-10-01-0083-0006  
**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 December 2003, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$82,800 and notified the Petitioner on March 23, 2004.
2. The Petitioner filed a Form 139L on April 13, 2004.
3. The Board issued a notice of hearing to the parties dated July 21, 2004.
4. A hearing was held on August 27, 2004, in Crown Point, Indiana, before Special Master S. Sue Mayes.

### Facts

5. The subject property is located at 19214 Austin Ave., Lowell, in West Creek Township.
6. The subject property is an old farmstead of over 77 acres and is improved with 10 farm buildings, most dating back to 1928.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed Value of the subject property as determined by the DLGF:  
Land: \$64,900      Improvements: \$17,900      Total: \$82,800.
9. Assessed Value requested by Petitioners:  
Land: \$64,900      Improvements: \$ 6,950      Total: \$71,850.

10. Persons sworn as witnesses at the hearing:  
For Petitioner – Martin Kroll and Phyllis Kroll, Owners  
For Respondent – David M. Depp, Cole-Layer-Trumble, Senior Appraiser.

### **Issues**

11. Summary of Petitioner’s contentions in support of an alleged error in the assessment:
- a. The property is a vacated farmstead. The silos and outbuildings are not being used and have not been used for at least 40 years. *M. Kroll testimony*. The barn is totally gone. The local fire department burned the barn. *Petitioner Exhibits 1, 2; M. Kroll testimony*. The silos have not been used in 50 years. They are being dismantled. *Petitioner Exhibit 3; M. Kroll testimony*. All that is left of another building is the foundation. *Petitioner Exhibit 4; M. Kroll testimony*. The only building listed on the property record card (PRC) that should be taxable is the Quonset hut. *Petitioner Exhibit 5; M. Kroll testimony*. A notation on the PRC states, “Build are unusable need functional OBO.” Petitioner contended this notation by the local township assessor is evidence that the buildings are of no value. *Petitioner Exhibit 5; M. Kroll testimony*. But the buildings listed on the PRC were on the property as of March 1, 2002. *M. Kroll testimony*.
  - b. The neighborhood factor is 1.08 for the subject property. This property is farmland. The neighborhood factor is 1.00 for other properties owned by Petitioner. Petitioner contended that the neighborhood factor for this property should be 1.00. *M. Kroll testimony*.
12. Summary of Respondent’s contentions in support of the assessment:
- a. All buildings on the property on March 1, 2002, are taxable. *Depp testimony*.
  - b. All of the buildings are listed in poor or very poor condition. They were allowed as much depreciation as possible. *Petitioner Exhibit 5; Depp testimony*.
  - c. Other properties in the neighborhood have a neighborhood factor of 1.08. This neighborhood factor cannot be arbitrarily changed. *Depp 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 County – 189.

- c. Exhibits:
  - Petitioner Exhibit 1 – Photograph of a burning barn
  - Petitioner Exhibit 2 – Photograph of a burning barn
  - Petitioner Exhibit 3 – Photograph of a silo
  - Petitioner Exhibit 4 – Photograph of a building foundation
  - Petitioner Exhibit 5 – PRC of the subject property
  - Respondent Exhibit 1 – Form 139L
  - Respondent Exhibit 2 – Subject PRC
  - Respondent Exhibit 3 – Six photographs of the subject property
  - Respondent Exhibit 4 – Petitioner’s response at informal hearing
  - Board Exhibit A – Form 139L
  - Board Exhibit B – Notice of Hearing
  - 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 Twp. 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 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.

### Value of Structures

- 15. Petitioner did not provide sufficient evidence to make a prima facie case in support of his contentions. This conclusion was arrived at because:
  - a. Petitioner acknowledged that all of the structures listed on the PRC were still on the property on March 1, 2002. *M. Kroll testimony*.

- b. Petitioner contended that only the Quonset hut should be taxable. The other buildings are very old and have not been used in years. *M. Kroll testimony*. In support of this position, Petitioner relied on a notation written on the PRC by the local township assessor. *Petitioner Exhibit 5; M. Kroll testimony*. This notation, however, recommends that the structures should receive functional obsolescence. It does not place an assessed value on the structures or explain the factors considered in arriving at the conclusion. It does not provide a basis for eliminating them from assessment altogether.
- c. Petitioner presented no probative evidence to support his contention that the buildings were of no value on the assessment date. His unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Accordingly, Petitioner has not met his initial burden to show the assessment determination was invalid. *Clark v. Dep't of Local Gov't Fin.*, 779 N.E.2d 1277, 1281 (Ind. Tax Ct. 2002).

#### Neighborhood Factor

- 16. Petitioner did not provide sufficient evidence to make a prima facie case to support his contentions that the neighborhood factor should be changed. This conclusion was arrived at because:
  - a. A neighborhood factor is determined by analyzing sales in each neighborhood. "It adjusts the standard depreciation tables in this manual to meet market conditions within the neighborhood." REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002 – VERSION A, Appendix B, page 5.
  - b. Petitioner testified that the neighborhood factor should be changed from 1.08 to 1.00 because this is just farmland and the neighborhood factor on his other properties is only 1.00. *M. Kroll testimony*.
  - c. Petitioner failed to establish that other parcels he owns are in the same neighborhood as the property under appeal or that the neighborhood factors for those parcels have any probative value in regard to the appropriate neighborhood factor for the subject property. His unsubstantiated conclusions do not constitute probative evidence. *Whitley Products*, 704 N.E.2d at 1119. Again, Petitioner has not met his initial burden to show the assessment determination on this issue was invalid. *Clark*, 779 N.E.2d at 1281.

#### Conclusions

- 17. Petitioner failed to make a prima facie case about the value of structures or about the neighborhood factor. Therefore, the Board finds in favor of the Respondent on all issues presented in this appeal.

### **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: \_\_\_\_\_

\_\_\_\_\_  
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.**