

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petitions:** 45-028-02-1-5-00618, *et al.*<sup>1</sup>  
**Petitioner:** Richard J Kortenhoven  
**Respondent:** Department of Local Government Finance  
**Parcels:** 009-20-13-0179-0032, *et al.*  
**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 Lake County, Indiana. The Department of Local Government Finance (the “DLGF”) determined the Petitioner’s property tax assessments for the subject properties and notified the Petitioner on March 26, 2004.
2. The Petitioner filed the Forms 139L on April 22, 2004.
3. The Board issued the notices of hearing to the parties dated October 22, 2004.
4. Special Master Patti Kindler held the hearing in Crown Point on November 30, 2004.

### Facts

5. The subject properties are located at 77<sup>th</sup> Place and Irwin Place in Schererville, Indiana.
6. The subject properties are 32 unimproved, platted residential lots.
7. The Special Master did not conduct an on-site visit of the properties.
8. The assessed values as determined by the DLGF are listed on Attachment 1.
9. The assessed values requested by Petitioner are listed on Attachment 1.

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<sup>1</sup> A complete list of petition numbers, parcel numbers, current assessed values, and requested assessed values is attached and identified as Attachment 1.

10. Persons present and sworn as witnesses at the hearing:  
For Petitioner – Richard J. Kortenhoven, taxpayer,  
For Respondent – Tommy P. Bennington, DLGF.

### **Issue**

10. Summary of Petitioner’s contentions in support of an alleged error in the assessment:
- a) The subject properties are platted residential lots. They all are very similar in size, amenities and use. As a result of the informal hearing, the assessments of 18 comparable lots, Lots 18 through 31 of Block 2 in the Venske Subdivision (the same subdivision) were reduced to \$9,600. To be consistent with the \$9,600 assessed value placed on those 18 lots, the subject lots should be valued at \$9,600, except for the lots approved as mitigated wetland, which should be valued at \$1,000. *Kortenhoven testimony; Petitioner Exhibit 3.*
  - b) The lots were platted as a subdivision in the 1950’s, but the subdivision was never developed. The subdivision does not have streets, curbs, sewer, or water. It is overgrown. On the valuation date in 1999 the lots remained undeveloped. *Kortenhoven testimony.*
  - c) In 1998, 7 of the lots were approved as mitigated wetlands by the Department of Natural Resources. Because these 7 lots are mitigated wetlands, they can never be developed. These 7 lots should be valued at \$1,000. *Kortenhoven testimony.*
11. Summary of Respondent’s contentions in support of the assessment:
- a) Respondent is not familiar with the subject area. The land values were determined and approved by the DLGF. The DLGF will defer to the Board for its decision. *Bennington testimony.*
  - b) Respondent does not have any disagreement with Petitioner’s assessed values discussed during the hearing. *Bennington testimony.*

### **Record**

12. 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 771,
  - c) Exhibits:
    - Petitioner Exhibit 1: A copy of a plat showing the area designated as wetlands,
    - Petitioner Exhibit 2: A topographical map showing the elevations of the subject properties,

Petitioner Exhibit 3: A copy of the plat map for Venzke subdivision with notation of the assessments of the subject properties,  
Petitioner Exhibit 4: A copy of the original plat for Venzke subdivision,  
Respondent Exhibit 1<sup>2</sup>: A copy of the Form 139L,  
Respondent Exhibit 2: Subject property record card,  
Respondent Exhibit 3<sup>3</sup>: A copy of the plat map for the area,  
Board Exhibit A: Form 139L,  
Board Exhibit B: Notice of Hearing,  
Board Exhibit C: Sign in Sheet,  
Board Exhibit D: A copy of the land order page for Neighborhood 02015 in St. John Township,

d) These Findings and Conclusions.

### Analysis

13. 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.
14. There is sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) Petitioner presented evidence demonstrating that the subject lots are comparable to the 18 lots offered as comparables in size, use, and lack of amenities. The lots are between 89 feet and 95 feet in width and 195 feet in depth; the lots are intended for

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<sup>2</sup> While the Respondent’s evidence log indicates the submission of the Form 139L, Respondent did not submit this exhibit for each petition filed.

<sup>3</sup> While Respondent’s evidence log indicates the submission of a plat map, Respondent did not submit this exhibit for each petition filed.

residential use, and the lots all lack street and curb access as well as sewer and water. The evidence presented also shows that the assessments for the 18 comparable lots are \$9,600 as a result of the informal hearing process. This evidence is sufficient to show that the subject properties that are available for development are overvalued and those values should be \$9,600. Petitioner has established that the subject properties available for development are comparable to the 18 lots currently valued at \$9,600 each. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005).

- b) The Petitioner presented evidence demonstrating that Lots 7, 8, 9, 10, 11, 12, and 13 are Department of Natural Resource mitigated wetlands. Petitioner also presented evidence that value for those lots designated as mitigated wetlands should be \$1,000 because the designation prohibits the development of the lots for the intended residential use. Petitioner demonstrated that the current values for the lots designated as mitigated wetlands is overstated because the use of these lots is restricted, or prohibited, from any development as a result of the mitigation.
- c) Petitioner presented sufficient evidence to establish a prima facie case regarding the valuation of the subject properties. The burden has shifted to the Respondent to rebut, or impeach, the Petitioner's evidence. *American United Life*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.
- d) Respondent failed to offer any evidence that rebutted or impeached Petitioner's case. Respondent offered no objection to or rebuttal of the assessed values proposed by Petitioner. Respondent merely stated that the established land values were approved by the DLGF and would defer to the Board for a decision in this matter. Respondent fell short of meeting its burden and failed to rebut the Petitioner's prima facie case.

### **Conclusion**

- 15. Petitioner made a prima facie case. Respondent failed to rebut that case. Therefore, 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.**

## Kortenhoven Findings & Conclusions Attachment 1

<b>Petition</b>	<b>Parcel</b>	<b>Address</b>	<b>DLGF Assessed Value</b>	<b>Requested Assessed Value</b>
45-028-02-1-5-00618	009201301790032	11412 W 77 <sup>th</sup>	\$10,300	\$9,600
45-028-02-1-5-00619	009201301790033	11406 W 77 <sup>th</sup>	\$10,300	\$9,600
45-028-02-1-5-00620	009201301790034	11402 W 77 <sup>th</sup>	\$10,300	\$9,600
45-028-02-1-5-00621	009201301790035	11316 W 77 <sup>th</sup>	\$10,300	\$9,600
45-028-02-1-5-00622	009201301790036	11312 W 77 <sup>th</sup>	\$10,300	\$9,600
45-028-02-1-5-00623	009201302320022	11707 W 77 <sup>th</sup>	\$30,800	\$9,600
45-208-02-1-5-00624	009201302320023	11703 W 77 <sup>th</sup>	\$30,800	\$9,600
45-028-02-1-5-00625	009201302320024	11609 W 77 <sup>th</sup>	\$19,300	\$9,600
45-028-02-1-5-00626	009201302320025	11605 W 77 <sup>th</sup>	\$30,800	\$9,600
45-028-02-1-5-00627	009201302320026	11513 W 77 <sup>th</sup>	\$30,800	\$9,600
45-028-02-1-5-00628	009201302320027	11509 W 77 <sup>th</sup>	\$30,800	\$9,600
45-028-02-1-5-00629	009201302320028	11503 W 77 <sup>th</sup>	\$19,300	\$9,600
45-028-02-1-5-00630	009201302320029	11427 W 77 <sup>th</sup>	\$30,800	\$9,600
45-028-02-1-5-00631	009201302320030	11423 W 77 <sup>th</sup>	\$30,800	\$9,600
45-028-02-1-5-00632	009201302320031	11419 W 77 <sup>th</sup>	\$30,800	\$9,600
45-028-02-1-5-00633	009201302320033	11407 W 77 <sup>th</sup>	\$30,400	\$9,600
45-028-02-1-5-00634	009201302320034	11403 W 77 <sup>th</sup>	\$30,400	\$9,600
45-028-02-1-5-00635	009201302320035	11317 W 77 <sup>th</sup>	\$30,400	\$9,600
45-028-02-1-5-00636	009201302320015	11502 Irvin Place	\$19,300	\$9,600
45-028-02-1-5-00637	009201302320014	11426 Irvin Place	\$19,300	\$9,600
45-028-02-1-5-00638	009201302320012	11418 Irvin Place	\$30,800	\$9,600
45-028-02-1-5-00639	009201302320010	11046 Irvin Place	\$30,400	\$9,600
45-028-02-1-5-00640	009201302320009	11402 Irvin Place	\$30,400	\$9,600
45-028-02-1-5-00641	009201302320008	11316 Irvin Place	\$30,400	\$9,600
45-028-02-1-5-00642	009201302320007	11312 Irvin Place	\$30,400	\$9,600
45-028-02-1-5-00643	009201301790013	11423 W 77 <sup>th</sup>	\$10,300	\$1,000
45-028-02-1-5-00644	009201301790007	11313 W 77 <sup>th</sup>	\$10,300	\$1,000
45-028-02-1-5-00645	009201301790008	11317 W 77 <sup>th</sup>	\$10,300	\$1,000
45-028-02-1-5-00646	009201301790009	11403 W 77 <sup>th</sup>	\$10,300	\$1,000

<b>Petition</b>	<b>Parcel</b>	<b>Address</b>	<b>DLGF Assessed Value</b>	<b>Requested Assessed Value</b>
45-028-02-1-5-00647	009201301790011	11413 W 77 <sup>th</sup>	\$10,300	\$1,000
45-028-02-1-5-00648	009201301790012	11419 W 77 <sup>th</sup>	\$ 9,600	\$1,000
45-028-02-1-5-00649	009201301790010	11407 W 77 <sup>th</sup>	\$10,300	\$1,000