

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s:	Parcel #s:
45-016-02-1-5-00269	006-27-17-0033-0075
45-016-02-1-5-00270	006-27-17-0033-0074
45-016-02-1-5-00271	006-27-17-0033-0082

Petitioner: Robert A. Krull, Trustee
Respondent: Department of Local Government Finance
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 Petitioner received a Notice of Department Assessed Value Determination issued by the Department of Local Government Finance (the “DLGF”) for each parcel on March 31, 2004. The Notices state the adjustments were a result of “Changed neighborhood assignment.”
2. The Petitioner filed a Form 139L petition for each parcel on April 29, 2004.
3. The Board issued notices of hearing to the parties on November 11, 2004.
4. A hearing was held on December 16, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject properties consist of excess residential acreage totaling 49.93 acres. The subject properties are located on 10th Street West of County Line and East of Union and North of 10th, Hobart in Hobart Township.
6. The Special Master did not conduct an on-site visit of the property.

7. Assessed Value of the subject property as determined by the DLGF:

Petition #	Parcel #	Land value
45-016-02-1-5-00269	006-27-17-0033-0075	\$101,100
45-016-02-1-5-00270	006-27-17-0033-0074	\$73,700
45-016-02-1-5-00271	006-27-17-0033-0082	\$33,600

8. Assessed Value requested by the Petitioner on the Form 139L petitions:

Petition #	Parcel #	Land value
45-016-02-1-5-00269	006-27-17-0033-0075	\$51,700
45-016-02-1-5-00270	006-27-17-0033-0074	\$37,700
45-016-02-1-5-00271	006-27-17-0033-0082	\$17,200

9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioner: Robert A. Krull, Owner

For Respondent: Sharon Elliott, DLGF

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:

- a) The subject properties are land locked. Access to the subject properties would be very expensive. *Krull testimony.*
- b) To get to the subject properties from the south you would have to cross several hundred feet of Duck Creek Basin. The Petitioner tried to get permission from the State for two 84 inch culverts and was turned down because it was not big enough. The Petitioner then tried to get permission for two 96 inch culverts and was turned down again because it was not big enough. The Petitioner stated that if he had to put in a bridge, he probably could not afford it. *Krull testimony.*
- c) To get to the subject properties from State Road 130, the Petitioner would have to cross the railroad tracks. The railroad tracks are several feet higher than the road and the slope is too steep. The Petitioner has not tried to get permission to access from State Road 130. The most practical access would be off of County Line, but he would have to negotiate to come across someone else's property. *Krull testimony.*
- d) A portion of the subject properties is located in a flood zone. *Krull testimony.*

- e) The subject properties are no longer being farmed. There is no way for the farmer to get to the subject properties. There was a driveway where the farmer could cross the creek, but when the Petitioner developed the property south of the creek, the driveway was blocked off. *Krull testimony.*
- f) The Petitioner estimates the subject properties are worth \$2,500 per acre. *Krull testimony.*

12. Summary of Respondent's contentions in support of assessment:

- a) The Petitioner did not provide evidence to support his contention that a portion of the subject properties are subject to flooding. *Elliott Testimony.*
- b) The subject properties are being assessed as residential excess acreage. Parcel #006-27-17-0033-0075 is receiving a negative 10% influence factor for shape and size. *Elliott Testimony.*
- c) The Respondent is not aware of any special adjustments or influence factors for land locked properties. *Elliott 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. #1165.
- c) Exhibits:

The Petitioner presented no exhibits.

Respondent Exhibit 1: Form 139L Petitions

Respondent Exhibit 2: Subject Property Record Cards (PRCs)

Respondent Exhibit 3: Arial Maps

Respondent Exhibit 4: Plat Maps

Board Exhibit A: Form 139L Petitions

Board Exhibit B: Notices of Hearing

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 Township 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 Township 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 did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) The Petitioner contends the assessment is too high due to the fact the subject properties are land locked. Also, a portion of the subject properties are located in a flood zone.
 - b) At the hearing, the Petitioner had a platted survey to show how the subject properties are land locked. Based on the testimony, it appears the subject properties are land locked. The Petitioner admits the land lock was created when he developed the property south of the creek and the driveway was blocked off. The subject properties are no longer being farmed. The Petitioner stated he has no plan to use the property at this time.
 - c) The only evidence presented by the Petitioner was his testimony that the subject properties were assessed too high. The Petitioner did not explain how the market value-in-use of the subject properties was affected by being land locked. The Petitioner did not provide any evidence to show what portion of the subject properties are prone to flooding, how often the flooding occurs, or how the market value-in-use was affected by the flooding. Thus the Petitioner's assertions amount to little more than conclusory statements. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998).

- d) At the hearing, the Petitioner estimated the subject properties were worth \$2,500 per acre. The Petitioner did not explain or support the requested value of \$2,500 per acre value.
- e) The Petitioner has not met his burden of proving the current assessment is incorrect, nor has he shown what the correct assessment would be.

Conclusion

- 16. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

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. 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>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.