

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

**Petitions#:** 45-032-02-1-4-00359  
45-032-02-1-4-00360  
**Petitioners:** Theodore and Mari Hunter  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 009-20-13-0233-0004  
009-20-13-0233-0005  
**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. The Department of Local Government Finance (the DLGF) determined that Petitioners' property tax assessment for the subject properties is \$91,400 for Lot 4 and \$81,600 for Lot 5 and notified Petitioners on March 26, 2004.
2. Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated March 14, 2005.
4. Special Master Joseph Stanford held a hearing April 12, 2005, in Crown Point.

**Facts**

5. The subject properties are located at 7910 US 41 (the 7910 Property) and 7930 US 41 (the 7930 Property), Schererville, in St. John Township.
6. The subject properties are undeveloped parcels of commercial/industrial land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject properties to be \$91,400 for the land on the 7930 Property. The DLGF determined the assessed value of the 7910 Property to be \$81,600 for the land. There are no improvements on either property.
9. The Petitioners did not request a specific assessed value.

10. Theodore and Mari Hunter, the property owners, and Tommy Bennington, representing the DLGF, appeared at the hearing and were sworn as witnesses.

### **Issues**

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
  - a) According to a Wetlands Delineation Report, the subject properties contain wetlands. *Mari Hunter testimony, Petitioner Exhibit 6.* The Petitioners argue that this decreases the value of the property, and increases the cost of development. *Mari Hunter argument.* According to the Petitioners, the properties have a negative influence factor on the property record card, but that is for a small swampy area, not wetlands. *Mari Hunter testimony.*
  - b) The Petitioners also argue that the subject properties contain a 50-foot right-of-way for US 41. Petitioners allege that they have never been given a non-exempt tax credit for the footage of highway right-of-way. *Id.*
  - c) The Petitioners further contend that total correct acreage for Petitioners' two adjacent parcels under appeal is 1.7 acres, not 1.75 acres. *Id, Petitioner Exhibit 7.*
  - d) Finally, according to Petitioners, a neighboring parcel is assessed lower than Petitioners' properties, even though the neighboring parcel contains a large brick building. *Id, Petitioner Exhibit 8.*
12. Summary of Respondent's contentions in support of the assessment:
  - a) A 44% negative influence factor has been applied to the assessment of the subject properties. According to the Respondent, an influence factor of 24% is for assessing both of Petitioners' adjacent parcels as one parcel. The remaining 20% of the negative influence factor is for wetlands. *Bennington 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 1513,
  - c) Exhibits:
    - Petitioner Exhibit 1 - Form 139L Petition,
    - Petitioner Exhibit 2 - Notice of Final Assessment,
    - Petitioner Exhibit 3 - Subject property record card,
    - Petitioner Exhibit 4 - Summary of Petitioner's arguments,

Petitioner Exhibit 5 - Outline of evidence,  
Petitioner Exhibit 6 - Wetlands Delineation Report,  
Petitioner Exhibit 7 – Survey,  
Petitioner Exhibit 8 - Assessment of neighboring property,

Respondent Exhibit 1 - Subject property record card,  
Respondent Exhibit 2 - Neighborhood land value summary sheet,  
Respondent Exhibit 3 - Plat map page,

Board Exhibit A - Form 139 L,  
Board Exhibit B - Notice of Hearing,  
Board Exhibit C - Sign in Sheet,

- d) These Findings and Conclusions.

### Analysis

14. The most applicable governing cases are:
- a) A Petitioner seeking a review of a determination of the Department of Local Government Finance 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 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 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 Insurance Company 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. Petitioners did not provide sufficient evidence to support Petitioners’ contentions. This conclusion was arrived at because:
- a) Petitioners have shown that the subject properties contain wetlands. Respondent testified that a 20% negative influence factor was applied to the assessment of the parcels due to wetlands and a 24% negative influence factor was applied for the size of the parcels when both parcels are assessed together. Petitioners, however, contend the 20% deduction was for a small swampy area on the properties and should be

higher now that the property has been investigated and determined to contain a wetlands area.

- b) Generally, land values in a given neighborhood are determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier "that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel." PROPERTY ASSESSMENT GUIDELINES OF 2002, glossary at 10. Petitioners have the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). The DLGF testified that a 20% negative adjustment factor was applied to the property to reflect the wetlands in addition to a 24% negative influence factor for the two parcel's combined size. Petitioners request "up to 90%" negative influence factor, but this is not evidence of loss in value. In fact, no evidence of the actual value of the property exists on the record. It is not the Board's duty to search for evidence outside the record to compute a negative influence factor for the property. It is Petitioners' burden to provide such evidence. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax 1998). Thus, while Petitioners have proven that wetlands exist on the subject properties, they failed to provide any evidence to quantify a loss in value as a result, or to show that the 20% negative influence factor for wetlands applied by the DLGF is incorrect.
- c) Petitioners also submitted a print out of the assessed value of a neighboring property. *Petitioner Exhibit 8*. Indiana Code section 6-1.1-2-2 requires uniform and equal assessments. Thus to the extent that Petitioners prove that their properties are not assessed uniformly or equal to comparable properties, Petitioners' assessment should be equalized. However, "taxpayers are required to make a detailed factual showing at the administrative level." *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, "the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence." *Id.*
- d) To introduce evidence of comparable properties, a taxpayer must explain *how* the properties are comparable. *See Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain *how* the properties were comparable). Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the

proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id* at 471. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id. See also, Hoogenboom-Nofziger*, 715 N.E.2d at 1024 (holding that taxpayer failed to make prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).

- e) In the case at bar, Petitioners have not met their burden. While Petitioners identify a neighboring property that is allegedly assessed lower, Petitioners did not make any attempt to explain why or how the property is comparable to the subject properties. This falls far short of the burden Petitioners face. Petitioners have only made a “de minimis factual showing” and have failed to “sufficiently link [their] evidence to the uniform and equal argument they raise.” *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).
- f) Finally, the Board finds no discrepancies between the survey, Petitioners’ testimony, and the calculation of square footage on the subject property record cards of both parcels under appeal. The survey (*Petitioner Exhibit 7*) shows a total area for both parcels under appeal of 1.7 acres. Petitioners testified that this figure is correct. The subject property record card (*Petitioner Exhibit 3, Respondent Exhibit 1*) shows an area of .959 acres. The property record card for the adjacent parcel (009-20-13-0233-0005, *Petition 45-032-02-1-4-00359*) shows .750 acres. Thus, the total acreage assessed is 1.709 acres. The Board finds that the acreage assessed by the DLGF is correct.
- g) Where the Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

- 16. Petitioners failed to make a prima facie case. The Board finds in favor of 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: \_\_\_\_\_

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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 petitioner'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 the 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> .