

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

**Petition #s:** 89-028-03-1-4-00367  
89-028-03-1-4-00368  
89-028-03-1-4-00369  
89-028-03-1-4-00370

**Petitioner:** Richmond Water Works

**Respondent:** Wayne Township Assessor (Wayne County)

**Parcel #s:** 462200021200015  
461500041200015  
461400032000015  
461500040500015

**Assessment Year:** 2003

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 initiated an assessment appeal with the Wayne County Property Tax Assessment Board of Appeals (“PTABOA”) by written document dated July 19, 2004.
2. The Petitioner received notice of the decision of the PTABOA on December 29, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment (“Form 131 Petition”) with the county assessor on January 28, 2005. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated August 16, 2005. Due to an oversight, a notice of hearing was not issued for Petition 89-028-03-1-4-00370. The Petitioner and Respondent agreed on the record to waive the notice of hearing in order to include Petition 89-028-03-1-4-00370 with the hearing on the other above captioned Form 131 Petitions. The parcel with the omitted notice of hearing adjoins the other

parcels and the Petitioner raised the same issue concerning the assessment of that parcel as it raised with regard to the assessments of the other parcels at issue.

5. The Board held an administrative hearing on October 13, 2005, before the duly appointed Administrative Law Judge Debra Eads.
6. Persons present and sworn in at hearing:
  - a) For Petitioner: Duane Zishka, Uzelac & Associates
  - b) For Respondent: Betty Smith, Wayne Township Assessor  
David Fradenburg, Wayne County Commercial/Industrial Assessor-Appraiser  
Michael Statzer, PTABOA Secretary  
Joseph Kaiser, PTABOA President  
Marie Elstro, PTABOA Member  
Richard Lee, PTABOA Member  
Dan Williams, PTABOA Member

Charles Todd Jr. appeared as attorney for the Wayne Township Assessor and Wayne County. He was not sworn in and did not testify.

### **Facts**

7. The subject parcels are classified as utility property, as is shown on the property record cards. The subject parcels are contiguous vacant land parcels. For purposes of this decision, the Board will refer to the subject parcels collectively as the “subject property.”
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Wayne County PTABOA:

Petition #	Parcel #	Land
89-028-03-1-4-00367	462200021200015	\$ 80,200
89-028-03-1-4-00368	461500041200015	\$ 18,300
89-028-03-1-4-00369	461400032000015	\$ 3,700
89-028-03-1-4-00370	461500040500015	\$ 4,200
10. Assessed Value requested by Petitioner:

Petition #	Parcel #	Land
89-028-03-1-4-00367	462200021200015	\$ 16,700
89-028-03-1-4-00368	461500041200015	\$ 3,800
89-028-03-1-4-00369	461400032000015	\$ 800
89-028-03-1-4-00370	461500040500015	\$ 900

## Issue

11. Summary of Petitioner’s contentions in support of alleged error in assessment:
- a) The subject property (identified by the green hash marks on Pet’r Ex. 13) should be valued in the same manner as other parcels located further north along the same creek. *Zishka testimony.*
  - b) The other parcels around the creek are valued as agricultural land with a negative influence factor for woodland. *Zishka testimony.* The subject property, by contrast, has been valued as reservoir land, the same as the land south of I-70 that is actually a reservoir. *Zishka testimony; Pet’r Exs. 5-12.*
  - c) The Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”) state that “[l]and and buildings located outside the boundaries of the line demarcating the used and useful reservoir property are assessed by the township assessor and valued in the same manner as all similar land and buildings of like construction within the taxing district.” *Pet’r Ex. 14; Zishka testimony.*
  - d) The subject property is located north of I-70 and is outside the “demarcated” reservoir land. The Guidelines are vague in defining “used and useful” land of a reservoir, but the common definition of reservoir refers only to a “natural or artificial lake used for collecting and storing water.” *Pet’r Ex. 15; Zishka testimony.* The subject property surrounds the creek that feeds the reservoir, but it is not part of the reservoir itself. *Zishka testimony.* The Petitioner owns the subject properties in order to protect its water source. *Zishka testimony*
  - e) The subject property therefore should be valued as agricultural land rather than reservoir land. The subject area is zoned for agricultural use. *Pet’r Ex. 16; Zishka testimony.*
  - f) The fact that the subject property occasionally floods is not relevant to its appropriate valuation. *Zishka testimony.*
12. Summary of Respondent’s contentions in support of the assessment:
- a) The Petitioner’s representative has no personal knowledge regarding the normal water level or amount of flooding on the subject property. The Petitioner’s Representative has no personal knowledge of the Petitioner’s intent for owning the subject properties. *Todd argument.*
  - b) When there is considerable amount of water coming down the creek the water is allowed to “back-up” on the subject property. *Williams testimony.* In the spring of each year and during much of the year if the year is a rainy one, the subject property is inundated by water and appears to be a part of the reservoir. *Statzer testimony.*

- c) The Guidelines provide for the township assessor to assess land located within the used and useful reservoir boundary as commercial or industrial unusable, undeveloped land. The subject property was determined to be “used and useful” reservoir land and was valued accordingly. *Fradenburg testimony; Pet’r Ex. 14.*
- d) The subject property located northwest of SR 227 (parcel 461500040500015; identified as # 4 on Pet’r Ex. 13) could not be used as reservoir overflow due to its elevation and location on the opposite side of SR 227. *Williams testimony.*
- e) If the plain meaning of the term reservoir were intended to be the basis of land valuation, as indicated by the Petitioner, the Guidelines would not have been expanded to include the phrase “within the used and useful reservoir boundaries” in describing the appropriate valuation of reservoir land. *Todd argument*

### **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 BTR # 6191
- c) Exhibits:

- Petitioner Exhibit 1: Copy of property record card – parcel 46-22-000-212.000-15
- Petitioner Exhibit 2: Copy of property record card – parcel 46-14-000-320.000-15
- Petitioner Exhibit 3: Copy of property record card – parcel 46-15-000-412.000-15
- Petitioner Exhibit 4: Copy of property record card – parcel 46-15-000-405.000-15
- Petitioner Exhibit 5: Copy of property record card – parcel 46-15-000-407.000-15
- Petitioner Exhibit 6: Copy of property record card – parcel 46-15-000-211.000-15
- Petitioner Exhibit 7: Copy of property record card – parcel 46-15-000-201.010-15
- Petitioner Exhibit 8: Copy of property record card – parcel 46-11-000-302.000-15
- Petitioner Exhibit 9: Copy of property record card – parcel 46-14-000-103.000-15
- Petitioner Exhibit 10: Copy of PRC and map – parcel 46-11-000-301.020-15
- Petitioner Exhibit 11: Copy of PRC and map – parcel 46-11-000-308.000-15
- Petitioner Exhibit 12: Copy of PRC and map – parcel 46-11-000-210.008-15
- Petitioner Exhibit 13: Copy of County aerial photographs indicating overall view of the area
- Petitioner Exhibit 14: Copy of Chapter 9, page 14 of the Real Property Assessment Guideline
- Petitioner Exhibit 15: Definition of the word “reservoir”
- Petitioner Exhibit 16: Copy of the County aerial photographs indicating the city zoning

Respondent did not submit any exhibits

Board Exhibit A: Form 131 Petition  
Board Exhibit B: Notice 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 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.

15. The Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the subject property should be assessed as agricultural land with a negative influence factor for being wooded rather than as unusable undeveloped industrial land, as it is currently assessed.
- b) The Guidelines set forth rules pursuant to which township assessors are to assess fixed property of a water distribution company, such as the land in question in this case.<sup>1</sup> Specifically, the Guidelines provide: “Land and buildings located outside the boundaries of the line demarcating the used and useful reservoir property are assessed by the township assessor and valued in the same manner as all similar land and buildings of like construction within the taxing district. The township assessor assesses the land located within the used and useful reservoir boundary as commercial

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<sup>1</sup> The parties do not dispute that the subject property constitutes fixed property, which is assessed by the township assessor, rather than distributable property, which is assessed by the Department of Local Government Finance. *See* Ind. Code § 6-1.1-8-17 (defining what constitutes “fixed property” of a water distribution company); Ind. Code § 6-1.1-8-24 (providing that the township assessor shall assess the fixed property of a public utility company located in the township that the assessor serves).

- or industrial unusable, undeveloped land. The value for this land is established by the township assessor.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 9 at 14-15 (incorporated by reference at Ind. Admin. Code tit. 50, r. 2.3-1-2).
- c) The Petitioner contends that, although the Guidelines do not provide a definition of what constitutes “used and useful reservoir property,” that term should be read as being synonymous with the dictionary definition of “reservoir.” The Petitioner then argues that, because the subject properties are not part of a natural or artificial lake, they cannot be part of the “used and useful reservoir property.”
  - d) The Petitioner is correct in its assertion that the Guidelines do not define the term “used and useful reservoir property.” The term “used and useful” when referring to property owned by a utility is a term of art used found in utility regulatory law. The term is found in statutes and cases addressing how to determine the rate base upon which a utility should be allowed to earn a return. *See Indiana Office of Utility Consumer Counselor v. Lincoln Industries, Inc.*, 784 N.E.2d 1072, 1075 (Ind. Ct. App. 2003). Thus, in determining a rate base, the Indiana Utility Regulatory Commission is directed to value all property of a public utility that is “used and useful for the convenience of the public.” Ind. Code § 8-1-2-6(a); *see also, Lincoln Industries*, 784 N.E.2d at 1075. The question of what property owned by a utility is actually “used and useful” is a fact sensitive question that is the subject of frequent litigation.
  - e) Read in conjunction with statutes and cases governing rates chargeable by utilities, the term “used and useful reservoir property” contemplates some connection between the property in question and the services performed by the water distribution company that owns the property. Moreover, the Guidelines recognize that real property within the demarcated boundaries of used and useful reservoir property may include buildings, although the Guidelines recognize that those buildings are likely to have little or no value. *See* GUIDELINES, ch. 9 at 15. Thus, property within the demarcated boundaries of used and useful reservoir property must include something beyond merely land that is permanently inundated by water.
  - f) The Petitioner submitted virtually no evidence regarding its use of the subject property other than Mr. Zishka’s testimony that the Petitioner owns the property in order to protect the reservoir’s water source. Given this lack of evidence, the Board cannot determine whether the subject property falls within the boundaries of the line demarcating the Petitioner’s used and useful reservoir property.
  - g) Even if the Board were to accept the Petitioner’s argument that the subject property falls outside of the boundaries of the line demarcating the Petitioner’s used and useable reservoir property, it does not necessarily follow that the subject property should be assessed as agricultural land. The Petitioner relies upon the provision in the Guidelines stating that property outside of that line should be valued in the same manner as similar land within the township. The Petitioner contends that, because the subject property is zoned for agricultural use and the surrounding land is assessed as

agricultural land with a negative influence factor for being wooded, the subject property also should be assessed as agricultural land with same negative influence factor.

- h) Indiana Code § 6-1.1-4-13(a), however, provides that land shall be assessed as agricultural “only when it is devoted to agricultural use.” The Petitioner did not present any evidence that it devoted any portion of the subject property to an agricultural use as of the relevant assessment date. Thus, the Petitioner did not establish that the subject property is similar to the neighboring agricultural land.
- i) Based on the foregoing, the Petitioner failed to establish a prima facie case that the subject property should be assessed as agricultural land with a negative influence factor for being wooded.

### **Conclusion**

- 16. The Petitioner failed to make a prima facie case of error in assessment. 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: January 12, 2006**

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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 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](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>>.