

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-001-02-1-5-00724  
**Petitioner:** James L. Wilson  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 006-35-50-0147-0008  
**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 \$6,700 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated September 2, 2004.
4. A hearing was held on October 7, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

### Facts

5. The subject property is located at: 2740 Wyoming, Lake Station, Hobart Township.
6. The subject property is a 0.207 acres parcel of vacant land.
7. The Special Master did not conduct an on-site visit of the property.
  - a) Assessed Value of subject property as determined by the DLGF:  
Land \$6,700 Improvements \$0 Total \$6,700
  - b) Assessed Value requested by Petitioner at hearing:  
Land \$1,000 Improvements \$0 Total \$1,000

8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
9. Persons sworn in at hearing:
  - For Petitioner: James L. Wilson, Co-Owner
  - For Respondent: David Depp, Representing the DLGF

### **Issues**

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
  - a) When the Petitioner purchased the subject property in 1995 for \$1,200 he assumed that improvements could be constructed upon it. *Wilson testimony.*
  - b) Following the purchase, the Petitioner learned from a representative of the city of Lake Station that improvements could not be built upon the subject property due to the property being located in a flood zone. *Wilson testimony.*

11. Summary of Respondent's contentions in support of the assessment:
  - a) The Respondent contended that, without further evidence, it could not accept the Petitioner's contention that he could not construct improvements upon the subject land. *Depp testimony.*
  - b) The Respondent testified that unbuildable lots are valued at \$1,100. *Depp testimony.*

### **Record**

12. The official record for this matter is made up of the following:
  - a) The Petition, and all prehearing submissions by either party.
  - b) The tape recording of the hearing labeled Lake Co. #508.
  - c) Exhibits:

Petitioner's Exhibit 1: Form 139L Petition  
Petitioner's Exhibit 2: Notice of Final Assessment  
Petitioner's Exhibit 3: Notice of Original Assessment  
Petitioner's Exhibit 4: Copy of MLS Data for Two Similar Properties  
Petitioner's Exhibit 5: Subject Property Tax Deed  
Petitioner's Exhibit 6: 1995 Property Record Card  
Petitioner's Exhibit 7: Notice of Hearing on Petition

Respondent's Exhibit 1: Form 139L Petition  
Respondent's Exhibit 2: Subject Property Record Card

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

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. The Petitioner provided sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:

- a) The Petitioner contends the subject property should be assessed for \$1,000. The Petitioner relies largely upon his claim that the subject lot has little value because improvements cannot be constructed upon it. In that regard, the Petitioner testified that he learned that the subject lot was in a flood zone after he had purchased the lot for \$1,200 at a public auction. *Wilson testimony*. According to the Petitioner, an official from the City of Lake Station informed him that the subject lot’s location in the flood zone renders it unsuitable for new residential construction. *Pet’r Ex. 8; Wilson Testimony*.
- b) While the Petitioner did not present any independent evidence to quantify the effect that the subject property’s location within a flood zone has on its market value-in-use, the Respondent testified that properties not suitable for new construction are generally valued at \$1,100.

- c) The Petitioner therefore established a prima facie case that the subject property is incorrectly assessed, and that the correct assessment should be \$1,1000. The burden therefore shifted to the Respondent to impeach or rebut the evidence upon which the Petitioner's prima facie case was based. *See Meridian Towers*, 805 N.E.2d at 479.
- d) The Respondent contended that, without evidence from the relevant zoning commission, it could not accept the Petitioner's testimony that improvements could not be constructed upon the subject property. *Depp testimony*. However, the Board finds the Petitioner's testimony on this point to be credible without requiring corroborating documents.<sup>1</sup> The Petitioner's actions were consistent with his position that improvements could not be constructed upon the subject property. The Petitioner purchased the property in 1995, and as of the date of the hearing, he had not built any improvements on the property. *Wilson testimony*.
- e) Based on the foregoing, the preponderance of the evidence demonstrates that the assessment of the subject property should be reduced to \$1,100.

**Conclusion**

15. The Petitioner made a prima facie case. The Respondent failed to rebut the Petitioner's evidence. 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 to \$1,100.

ISSUED: \_\_\_\_\_

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Commissioner,  
Indiana Board of Tax Review

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<sup>1</sup> At the request of the Special Master, the Petitioner forwarded a copy of a letter from an official of the building department of the City of Lake Station. However, it does not appear that this letter was provided to the Respondent, or that the Respondent had an opportunity to present evidence to impeach or rebut that letter. The Board's rules provide that any posthearing evidence must be served on all parties. 52 IAC 2-8-8(c). Consequently, the Board does not consider that letter in issuing its final determination.

## 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.**