

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-028-02-1-4-00136  
**Petitioner:** Lake County Trust #1972 c/o Willie & Steiner  
**Respondent:** The Department of Local Government Finance  
**Parcel #:** 008-08-15-0466-0010  
**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 February 12, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$660,200 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on May 3, 2004.
3. The Board issued a notice of hearing to the parties dated January 28, 2005.
4. Special Master Kathy J. Clark held a hearing at 1:00 p. m. on March 3, 2005, in Crown Point, Indiana.

### Facts

5. The subject property is located at 8300 (approximately) Georgia Street, Merrillville. The location is in Ross Township.
6. The subject property consists of a vacant commercial lot containing 3.938 acres.
7. The Special Master did not conduct an on-site visit of the property
8. Assessed value of subject property as determined by the DLGF:  
Land \$660,200
9. Assessed value requested by the Petitioner:  
Land: \$4,630.00

10. Persons sworn in as witnesses at the hearing:  
Gerald T. Stiener, Owner's Managing Agent,  
Gay E. Fraire, Owner's Agent,  
Thomas Janik, Tax Advisor,  
Diane Spenos, Department of Local Government Finance.

### Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
  - a. The Petitioner attended the informal hearing with Cole, Layer, Trumble (CLT) on February 12, 2004, regarding both the subject parcel (considered the East Outlot) and parcel number 008-15-0466-0009 (considered the West Outlot). The Petitioner contends that CLT recognized that both parcels are retention ponds serving the Lincoln Square commercial subdivision located southwest of U.S. Highway 30 and Interstate Highway 65 in Merrillville. *Petitioner Exhibit 2; Janik testimony.*
  - b. As a result of that hearing CLT, changed the 3.6037 acre West Outlot to the land classification of Undeveloped Unusable, applied a base land rate of \$23,522.40 and a negative land influence of 95%. These corrections resulted in an assessed value change from \$23,600 to \$4,200. *Petitioner Exhibit 3; Janik testimony.*
  - c. However, for reasons unknown to the Petitioner, the East Outlot's (subject's) assessed value increased from \$617,000 to \$660,200 as a result of the February 12<sup>th</sup> hearing. The Petitioner never received notice of this value change and was therefore denied the ability to attend a second informal hearing with CLT to determine why this had happened. *Janik testimony.*
  - d. The subject parcel's entire 3.938 acres is used as a retention pond, exactly like the West Outlot. The current assessment has 1.938 acres valued as Undeveloped Usable land and 2.00 acres valued as Undeveloped Unusable land with a negative influence factor of 90% applied only to the two-acre section. *Petitioner Exhibits 4 and 5; Janik testimony.*
  - e. The communication from the Town of Merrillville Plan commission supports that the subject was not platted as a buildable lot and that the pond area is 171,546 square feet. Mabel Gemeinhart, Planning & Building Administrator for the Merrillville Plan Commission, further states that because it is considered a retention pond no building permits would ever be issued. *Petitioner Exhibit 6; Janik testimony; Steiner testimony.*
  - f. The Petitioner contends that the subject parcel should be recognized as being totally unusable and be valued in the same manner as the West Outlot. This would result in a base land value of \$23,522 per acre being applied to the 3.938 acres and then reduced by 95%. The resulting value would be \$4,630. *Petitioner Exhibit 7; Janik testimony.*
12. Summary of Respondent's contentions in support of the assessment:
  - a. The subject parcel was originally classified in error as an I-3 property class which resulted in an error in the per acre price. Correction of this issue is why the subject's assessed value increased after the informal hearing. *Spenos testimony.*

- b. It is currently assessed using the Incremental/Decremental method used throughout Lake County. *Respondent Exhibits 2 and 3; Spenos testimony.*
- c. The Respondent is unaware of how much of the subject's acreage is actually retention pond. *Spenos 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 County 1241,
  - c. Exhibits:
    - Petitioner Exhibit 1 - Form 139L Appeal,
    - Petitioner Exhibit 2 - Lincoln Square plat map,
    - Petitioner Exhibit 3 - Assessment detail of the West Outlot retention pond, parcel #008-15-0466-0009,
    - Petitioner Exhibit 4 - Photographs of subject,
    - Petitioner Exhibit 5 - Assessment detail of subject (East Outlot),
    - Petitioner Exhibit 6 - Letter from Planning & Building Administrator, Town of Merrillville Plan Commission,
    - Petitioner Exhibit 7 - Statement of Fact,
    - Respondent Exhibit 1 - Form 139L Petition,
    - Respondent Exhibit 2 - Subject property record card,
    - Respondent Exhibit 3 - Incremental/Decremental calculations and summary sheet,
    - Respondent Exhibit 4 - Plat map,
    - Board Exhibit A - Form 139L,
    - 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.*, 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 provided sufficient probative evidence to establish a prima facie case. The Respondent failed to rebut the Petitioner's evidence. This conclusion was arrived at because:
- a. The Petitioner contends that the subject parcel's entire 3.938 acres is used as a retention pond, exactly like the West Outlot and should be recognized as being totally unusable and be valued in the same manner as the West Outlot. *Janik testimony.*
  - b. The Petitioner submitted photographs of the subject lot, which while not measurably conclusive as to size, show that very little of the lot is not under water. *Petitioner Exhibit 4.*
  - c. Carrying the greatest weight with the Board is the letter from the Planning & Building Administrator of the Town of Merrillville Plan Commission. It states unequivocally that the lot was not platted as a buildable lot and that, according to the plat recorded in 1974, the pond area is 171,546 or 3.938 acres. The Board finds that the entire subject lot should be valued as Undeveloped Unusable land. *Petitioner Exhibit 6.*
  - d. The base land rate applied to a property is determined by the neighborhood where the property is located. The subject is located in neighborhood #30893. *Respondent Exhibit 2.* The West Outlot is located in neighborhood #20894. *Petitioner Exhibit 3.* The Board finds that the subject should be valued using the base land rate for Undeveloped Unusable land in neighborhood #30893. *Respondent Exhibit 3.*
  - e. The subject property record card currently shows a negative 90% land influence is being applied to the Undeveloped Unusable land for code 6 - restrictions. The property record card for the West Outlot shows a 95% influence factor applied for restrictions. The Petitioner testified that both lots are retention ponds and for consistency, the same influence factor should be applied to both parcels. The Board therefore determines that a negative 95% influence factor be applied to the subject parcel. *Respondent Exhibit 2; Petitioner Exhibit 3 and 5.*

### **Conclusion**

16. The Petitioner successfully established a prima facie case. The Respondent failed to rebut the Petitioner's case with substantial evidence. The Board finds for the Petitioner. The subject's entire 3.938 acres should be classified as Undeveloped Unusable land and a negative 95% influence factor for restrictions should be applied.

### **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. 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>.**