

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-013-02-1-5-00189  
**Petitioner:** Robert J. Kennedy, Trustee  
**Respondent:** Department of Local Government Finance  
**Parcel:** 005-05-06-0004-0004  
**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 on November 26, 2003. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the property is \$78,700 and notified the Petitioner on March 25, 2004.
2. The Petitioner filed a Form 139L on April 20, 2004.
3. The Board issued a notice of hearing to the parties dated October 22, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on November 29, 2004.

### Facts

5. The subject property is 97 acres of farmland located at 13321 W. 109<sup>th</sup> Avenue, Saint John. The location is in Hanover 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 is:  
Land \$78,700      Improvements \$0      Total \$78,700.
8. Petitioner did not specify an assessed value being sought.
9. Persons sworn as witnesses at the hearing:  
Robert J. Kennedy, trustee,  
Everett D. Davis, assessor/auditor.

### **Issue**

10. Petitioner contends that the value of the subject property should be lowered because 8.72 acres is wetlands. Petitioner presented a wetlands survey from Earth Source, Inc. showing 8.72 acres of wetlands located on the subject property. *Petitioner Exhibit 2; Kennedy testimony.*
11. Respondent contends that to be assessed as wetlands, the classification must be verified by the U.S. Department of Agriculture, Farm Service Agency. This requirement is specified by the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 105. *Davis testimony.*

### **Record**

12. 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. 862,
  - c. Exhibits:
    - Petitioner Exhibit 1 - Form 139L,
    - Petitioner Exhibit 2 - Map of property by Earth Source, Inc,
    - Petitioner Exhibit 3 - Letter from farmers,
    - Petitioner Exhibit 4 - Notice of Final Assessment,
    - Petitioner Exhibit 5 - Reconciliation tax bill with attached receipt,
    - Respondent Exhibit 1 - Form 139L,
    - Respondent Exhibit 2 - Subject property record card,
    - Board Exhibit A - Form 139L,
    - Board Exhibit B - Notice of Hearing,
    - Board Exhibit C - Sign-in sheet,
  - d. These Findings and Conclusions.

### **Analysis**

13. 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.
14. Petitioner did not provide sufficient evidence to support any change. This conclusion was arrived at because:
- a. Petitioner provided a survey from Earth Source, Inc. showing 8.72 acres of wetlands located on the subject property. Petitioner requested that the value of the subject property be lowered because of the wetlands.
  - b. Respondent argued that for property to be declared Type “73” wetlands, this land use must be verified through records obtained from the U.S. Department of Agriculture, Farm Service Agency. GUIDELINES, ch. 2 at 105. Respondent is correct. Type 73 farmland is described as, “2.5 contiguous acres of land designated by the U.S. Department of Agriculture as wetlands. This land use type must be verified through records obtained from the U.S. Department of Agriculture, Farm Service Agency. The value is determined using a productivity factor of .50 and a 40% influence factor deduction.” *Id.*
  - c. Petitioner’s evidence does not contain the necessary verification records. In addition, the property record card indicates that this property is assessed in more that 25 parts with various types of soil and productivity factors that lead to different values. If any change were to be made for wetlands, it would be essential that Petitioner prove exactly what parts of the land should be changed, but that evidence is lacking. Therefore, Petitioner failed to make a prima facie case to establish that 8.72 acres of the parcel should be classified as Land Use Type 73 (wetlands). *Id.*

### **Conclusion**

15. Petitioner 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 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>.