

REPRESENTATIVE FOR PETITIONER: William E Wise

REPRESENTATIVE FOR RESPONDENT: Frank Corsaro, Deputy Assessor Center Township

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

William E. Wise,	)	Petitions No.:	49-101-02-1-4-04129
	)		49-101-02-1-4-04127
	)		49-101-02-1-4-04131
Petitioner,	)		49-101-02-1-4-04116
	)		49-101-02-1-4-04126
	)		49-101-02-1-5-09742
	)		49-149-02-1-5-09740
v.	)		49-101-02-1-5-09753
	)		49-101-02-1-4-04117
	)	Parcels:	1020584
James Maley	)		1058559
Center Township Assessor,	)		1039561
	)		1045062
	)		1055150
Respondent.	)		1065232
	)		1066682
	)		1075971
	)		1081211
	)	County:	Marion
	)	Township:	Center
	)	Assessment Year:	2002

Appeal from the Final Determination of
Marion Property Tax Assessment Board of Appeals

July 12, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUES

1. The issue presented for consideration by the Board was whether the subject properties' assessed values exceed their market values in use.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, William E. Wise (Petitioner), filed Form 131 Petitions for Review of Assessments on June 20, 2005, petitioning the Board to conduct administrative reviews of the above petitions. The Marion County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations on May 20, 2005.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Debra Eads, held a hearing on February 1, 2006, in Indianapolis, Indiana.

4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

William E. Wise, Property Owner

For the Respondent:

Frank Corsaro, Center Township Deputy Assessor

5. The Petitioner presented the following exhibits:

Petitioner's Exhibit 1 – Conditional sales contract dated February 4, 2000 for parcels 1020584, 1058559 and 1039561

Petitioner's Exhibit 2 – Photograph of parcel 1045062

Petitioner's Exhibit 3 – Plat map for parcel 1055150

Petitioner's Exhibit 4 – Plat map for parcel 1065232

Petitioner's Exhibit 5 – Photograph and plat map of parcel 1066682

Petitioner's Exhibit 6 – Photograph and plat map of parcel 1075971

Petitioner's Exhibit 7 – Photograph and plat map of parcel 1081211

6. The Respondent presented the following exhibits:
 - Respondent's Exhibit 1 – Property record card (PRC) for parcel 1020584
 - Respondent's Exhibit 2 – PRC for parcel 1058559
 - Respondent's Exhibit 3 – PRC for parcel 1039561
 - Respondent's Exhibit 4 – PRC for parcel 1045062
 - Respondent's Exhibit 5 – PRC for parcel 1055150
 - Respondent's Exhibit 6 – PRC for parcel 1065232
 - Respondent's Exhibit 7 – PRC for parcel 1066682
 - Respondent's Exhibit 8 – PRC for parcel 1075971
 - Respondent's Exhibit 9 – PRC for parcel 1081211

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – Form 131 Petitions
 - Board Exhibit B – Notice of Hearings dated December 21, 2005
 - Board Exhibit C – Hearing Sign in Sheet
 - Board Exhibit D – 30 Day Waiver of Hearing for parcels 1045062, 1065232 and 1066682
 - Board Exhibit E – Withdrawal of Petition Agreement

8. At the hearing, the parties agreed to add parcels 1045062, 1065232 and 1066682 to the proceedings due to their similarities with the other scheduled parcels. Consequently, the parties signed a 30 Day Waiver of Hearing for parcels 1045062, 1065232 and 1066682. The Waivers were entered into the record and labeled as Board Exhibit D. In addition, the Petitioner withdrew parcel 1066429 (Petition No. 49-101-02-1-5-09741) from consideration by the Board, so that the parties might reach an agreeable assessment on this parcel. The Withdrawal Agreement is entered into the record and labeled as Board Exhibit E.

9. The subject properties are small tracts of land that are improved with billboards/signs. The billboards/signs are personal property and are not included in the real estate assessment and therefore not a part of these proceedings.

10. The ALJ did not conduct an on-site inspection of the subject property.

11. For 2002, the PTABOA determined the assessed values of the subject properties to be \$1,500 for the land for Petition No. 49-101-02-1-4-04116 (Parcel No. 1045062); \$3,200 for the land for Petition No. 49-101-02-1-4-04117 (Parcel No. 1081211); \$2,700 for the land for Petition No. 49-101-02-1-4-04126 (Parcel No. 1055150); \$9,300 for the land and \$2,200 for improvements, for a total assessed value of \$11,500 for Petition No. 49-101-02-1-4-04127 (Parcel No. 1058559); \$9,300 for the land for Petition No. 49-101-02-1-4-04129 (Parcel No. 1020584); \$9,300 for the land and \$2,500 for the improvements, for a total assessed value of \$11,800 for Petition No. 49-101-02-1-4-04131 (Parcel No. 1039561); \$1,500 for the land for Petition No. 49-149-02-1-5-09740 (Parcel No. 1066682); \$1,900 for the land for Petition No. 49-101-02-1-4-09742 (Parcel No. 1065232); and \$1,000 for the land for Petition No. 49-101-02-1-5-09753 (Parcel No. 1075971).
12. For 2002, the Petitioner contends the assessed values of the subject property should be \$400 for Petition No. 49-149-02-1-4-04116 (Parcel No. 1045062); \$500 for Petition No. 49-101-02-1-4-04117 (Parcel No. 1081211); \$500 for Petition No. 49-101-02-1-4-04126 (Parcel No. 1055150); \$3,000 for Petition No. 49-101-02-1-4-04127 (Parcel No. 1058559); \$3,000 for Petition No. 49-101-02-1-4-04129 (Parcel No. 1020584); \$3,000 for Petition No. 49-101-02-1-4-04131 (Parcel No. 1039561); \$500 for Petition No. 49-149-02-1-5-09740 (Parcel No. 1066682); \$500 for Petition No. 49-101-02-1-4-09742 (Parcel No. 1065232); and \$100 for Petition No. 49-101-02-1-5-09753 (Parcel No. 1075971).

JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

14. 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 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).
15. 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”).
16. 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.

ANALYSIS

Whether the subject properties assessed values exceed their market values in use.

17. The Petitioner contends the assessed values of the nine subject properties exceed the market value of the properties. *Wise testimony.*
18. The Respondent contends the assessed values of the nine subject properties were properly determined in compliance with the Marion County Land Order. *Corsaro testimony.*
19. The Petitioner presented the following evidence and testimony in regard to this issue:

- A. The Petitioner contends that parcels 1020584, 1058559 and 1039561 (located at 2001, 2005 and 2009 Massachusetts Avenue) and four other parcels were sold for \$21,500 via a contract sale on February 4, 2000. *Petitioner Exhibit 1. See Id.* The Petitioner alleges that six lots sold for \$2,000 each, one lot for \$1,500 and two buildings for \$8,000. *Wise testimony.* According to the Petitioner, the buildings have since been removed.¹ *Id.* Further, the Petitioner argues, these parcels are in an area that is deteriorating. *Id.* According to the Petitioner, the area is zoned C-3, there are railroad tracks to the north and poor inner city housing to the east and south. *Id.*
- B. The Petitioner contends that Parcel 1045062, located at 2821 Massachusetts Avenue, has a sign on it, is only 994.5 square foot in size, and has only 4.7 feet of frontage. *Wise testimony.* According to the Petitioner, the parcel was assessed at \$400 and increased to \$1,500 for March 1, 2002, assessment date. *Id.* Further, the Petitioner alleges, the parcel is located in a poor industrial area and has limited use. *Id.* The Petitioner testified that he does not own property on either side of this lot. *Id.*
- C. The Petitioner contends that Parcel 1055150, located at 530 W. Morris Street, is a small parcel of land (20 feet by 39 feet) that has a billboard on it. *Wise testimony.* According to the Petitioner, the parcel was previously assessed at \$800 and increased to \$2,700 for the March 1, 2002, assessment date. *Id.*
- D. The Petitioner contends that Parcel 1065232, located at 1628 Ingram Street, is a small parcel measuring 38 feet by 61 feet or 2,318 square feet. *Wise testimony.* According to the Petitioner, the parcel has no frontage on a street but fronts an alley. *Id.* Further, the Petitioner argues, it is in a distressed area of town, has a billboard on it, and was assessed at \$900 and increased to \$1,900 for the 2002 assessment date. *Id.*
- E. Parcel 1066429 located at 1348 Commerce was withdrawn by the Petitioner from consideration by the Board. *See Board Exhibit E.*

¹ The Petitioner, however, could not state for the record precisely when the improvements were removed or whether the improvements existed on the property as of March 1, 2002. *Id.*

- F. The Petitioner contends that Parcel 1066682, located at 1076 W. 28th Street, measures 30 feet by 81 feet or 2,430 square feet. *Wise testimony*. According to the Petitioner, the parcel adjoins a residential district, has a billboard on it, and was assessed at \$500 and increased to \$1,500 for the 2002 assessment date. *Id.*
- G. The Petitioner contends that Parcel 1075971, located at 1966 S. Meridian Street, measures 5 feet by 100 feet or 500 square feet. *Wise testimony*. According to the Petitioner, the parcel was assessed at \$100 and increased to \$1,000 for the 2002 assessment date. *Id.* Further, the Petitioner argues, the parcel is located in a poor area and has a sign on it. *Id.*
- H. Finally, the Petitioner contends that Parcel 1081211, located at 1102 E Michigan Street, is a small parcel of land parcel measuring 43 feet by 75 feet or 1,607 square feet. *Wise testimony*. According to the Petitioner, the parcel is pie shaped making the property unbuildable and has a sign on it. *Id.* Further, the Petitioner argues, the parcel was assessed at \$600 and increased to \$3,200 for the 2002 assessment date. *Id.*
20. The Respondent presented the following evidence and testimony in regard to this issue:
- A. The Respondent contends that parcels 1058559 and 1039561 located on Massachusetts Avenue had improvements on the properties as of the March 1, 2002, assessment date. *Corsaro testimony and Respondent Exhibits 1-3.*
- B. The Respondent contends that parcel 1045062 located at 2821 Massachusetts Avenue is zoned and used commercially and was valued at \$1.50 per square foot as reflected on the subject PRC. *Corsaro testimony; Respondent Exhibit 4.* The Respondent argues that this value is in compliance with the Marion County Land Order. *Corsaro testimony.*
- C. The Respondent testified that for parcel 1055150 located at 530 W. Morris the Township would not object to reclassifying the parcel as “undeveloped” because it

does not have improvements like sewer, water or buildings and adjusting the price per square foot rate from \$2.50 to \$.75. *Corsaro testimony; Respondent Exhibit 5.*

- D. The Respondent testified that parcel 1065232, located at 1628 Ingram, was priced residential before the billboard went up. *Corsaro testimony.* The Township valued this property at \$145 per front foot and applied a negative influence factor of 50% for being a vacant lot. *Id.; Respondent Exhibit 6.* The Respondent argued that the parcel was valued fairly and nothing more should be done on the property. *Id.*
- E. The Respondent contends that parcel 1066682, located at 1076 W. 28th Street, is valued at \$125 per front foot with a negative influence of 50%. *Corsaro testimony; Respondent Exhibit 7.* According to the Respondent, the parcel was valued fairly and nothing more should be done on the property. *Id.* The Respondent further testified that the Petitioner is only paying \$45 per year in taxes on this property. *Corsaro testimony.*
- F. The Respondent agreed that, for parcel 1075971 located at 1966 S. Meridian, the Township would not object to the application of a negative influence factor that would reduce the assessed value to \$500. *Corsaro testimony; Respondent Exhibit 8.* The Respondent testified that the Petitioner is only paying \$25 per year in taxes on this parcel. *Corsaro testimony.*
- G. Finally, the Respondent contends that parcel 1081211, located at 1102 E. Michigan Street, is valued according to the Marion County Land Order at \$2.00 per square foot. *Corsaro testimony.* The Respondent agreed, however, that the Township would not object to reclassifying this tract of land as “undeveloped” and adjusting the price per square foot price to \$.60. *Id.; Respondent Exhibit 9.*
21. The Petitioner contends that the subject properties are over-valued. In support of this contention, the Petitioner submitted a Conditional Sales Contract dated February 4, 2000,

selling seven lots and the structures contained thereon for \$21,500. *See Petitioner Exhibit 1.*²

22. Real property in Indiana is assessed on the basis of its “true tax value.” *See* Ind. Code § 6-1.1-31-6(c). “True tax value” is defined as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (2001 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter the MANUAL)). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
23. Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
24. The sale of a subject property is often the most compelling evidence of its market value. In this case, the Petitioner sold seven parcels in early 2000 for less than the assessed value of the three appealed properties.³ The sale price therefore demonstrates that the current assessment is excessive. Other than a handwritten note at the bottom of page 1 of this document, however, the contract only indicates a total sales price for all seven lots and does not breakdown the total sale price into a price per lot or a price for the

² Only three of the seven lots sold by the Petitioner are under review in these hearings: 2001, 2005 and 2009 Massachusetts Avenue.

³ To determine the land value for each neighborhood, a township assessor selects representative sales disclosure statements or written estimations of a property value. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Chap.2, pg. 7 (the GUIDELINES), According to the GUIDELINES, “representative disclosure statements ... refer to a transaction, or written estimations of value must refer to an estimation of value, that is dated no more than eighteen (18) months prior or subsequent to January 1, 1999.” Accordingly, a sale that occurred within eighteen months of the January 1, 1999, assessment valuation date must, therefore, also have evidentiary value.

improvements constructed on two of the lots. *Id.* The sales contract, therefore, is not probative to a specific value for each of the individual lots located on Massachusetts Avenue that are under appeal in these hearings (parcels 1020584, 1058559 and 1039561). Thus, the Board determines that the Petitioner has raised a prima facie case that the value of parcels 1020584, 1058559 and 1039561 (Petition Nos. 49-101-02-1-4-04129, 49-101-02-1-4-04127, and 49-101-02-1-4-04131) together does not exceed \$21,500.

25. Once the Petitioner establishes a prima facie case, the burden then shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Respondent merely alleged that the properties were assessed correctly according to the Marion County Land Order. In order to carry its burden, however, the Respondent must do more than merely assert that it assessed the property correctly. *See Canal Square v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 808 (Ind. Tax Ct. Apr. 24, 1998) (mere recitation of expertise insufficient to rebut prima facie case). Thus, the Respondent failed to rebut or impeach the Petitioner's case on Petition Nos. 49-101-02-1-4-04129, 49-101-02-1-4-04127, and 49-101-02-1-4-04131.
26. The Petitioner's evidence for the other six parcels under appeal consisted of four photographs and five plat maps of the subject properties. *Petitioner Exhibits 2 - 7*. These exhibits serve only to establish the size (square footage) of the parcels and the fact that billboards/signs are erected at these locations. *Id.* Mere references to photographs or regulations, without explanation, do not qualify as probative evidence. *See Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999). These exhibits failed to offer probative evidence of value.
27. The Petitioner further alleged that the assessments on the parcels under appeal increased in 2002. The Petitioner is mistaken in his reliance on prior assessments. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a

property's assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id*

28. Finally, the Petitioner alleged that the properties small tracks, located in deteriorating neighborhoods. According to the Petitioner, the properties are over-assessed for their size and location.
29. 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." REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A, glossary at 10 (incorporated by reference at 50 IAC 2.3-1-2). Petitioner has 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).
30. While the properties' limited size or location may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show how these conditions impact the market value of the subject properties or to show the actual market value of the properties. *See Talesnick*, 756 N.E.2d at 1108. In fact, the Petitioner presented no evidence to establish the market value-in-use of the lots under appeal or to show that the subject lots are assessed differently than neighboring lots with the same characteristics. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).

31. 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). Here, however, the Respondent testified that the Township would not object to the application of an influence factor to parcels 1055150, 1081211, and 1075971. The Respondent agreed to reclassify parcel 1055150 as "undeveloped" and adjust the price per square foot rate from \$2.50 to \$.75. Similarly, the Respondent agreed that parcel 1081211, could be reclassified as "undeveloped" and the price per square foot price adjusted to \$.60. Finally, the Respondent agreed that, for parcel 1075971, the Township would not object to the application of a negative influence factor that would reduce the assessed value to \$500. We commend the Respondent's willingness to accommodate the taxpayer in this matter.

SUMMARY OF FINAL DETERMINATION

Whether the subject properties assessed values exceed their market values in use.

32. The Board determines that the Petitioner raised a prima facie case that the value of parcels 1020584, 1058559 and 1039561 (Petition Nos. 49-101-02-1-4-04129, 49-101-02-1-4-04127, and 49-101-02-1-4-04131) is over-stated. The Respondent failed to rebut this evidence. The Board, therefore, finds in favor of the Petitioner and holds that the value of parcels 1020584, 1058559 and 1039561 (Petition Nos. 49-101-02-1-4-04129, 49-101-02-1-4-04127, and 49-101-02-1-4-04131) together does not exceed \$21,500. The Petitioner failed to raise a prima facie case on all other matters. Despite this, however, the Respondent agreed to reclassify parcel 1055150 as "undeveloped" and adjust the price per square foot rate from \$2.50 to \$.75. Similarly, the Respondent agreed that parcel 1081211, could be reclassified as "undeveloped" and the price per square foot price adjusted to \$.60. Finally, the Respondent agreed that, for parcel 1075971, the Township would not object to the application of a negative influence factor that would reduce the assessed value to \$500. We accept these changes and commend the Respondent's willingness to accommodate the taxpayer in this matter.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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>.