

INDIANA BOARD OF TAX REVIEW
Final Determination
Findings and Conclusions

Petitions: **45-004-98-3-4-00184**
 45-004-99-3-4-00185
 45-004-00-3-4-00186
 45-004-00-3-4-00187
 45-004-99-3-4-00190

Petitioner: **Raymond L. Curtis**

Respondent: **North Township Assessor (Lake County)**

Parcel Nos.: **001-25-46-0291-0029**
 001-25-46-0291-0035

Assessment Year: **1998, 1999 & 2000**

The Indiana Board of Tax Review (Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The Petitioner initiated assessment appeals with the Lake County Property Tax Assessment Board of Appeals (PTABOA) by written document dated September 2, 2003.
2. The PTABOA mailed notices of its decisions on December 22, 2004, for Petition Nos. 45-004-98-3-4-00184, 45-004-99-3-4-00185, and 45-004-00-3-4-00187, on April 11, 2005, for Petition No. 45-004-99-3-4-00190, and May 26, 2005, for Petition No. 45-004-00-3-4-00186.
3. The Petitioner filed an appeal to the Board by filing Form 133 petitions with the county assessor on January 14, 2005, for Petition Nos. 45-004-98-3-4-00184, 45-004-99-3-4-00185, and 45-004-00-3-4-00187, on May 9, 2005, for Petition No. 45-004-99-3-4-00190, and May 27, 2005, for Petition No. 45-004-00-3-4-00186.
4. The Board issued notices of hearing to the parties dated August 25, 2006.¹

¹ The Board noticed Petition Nos. 45-004-98-3-4-00184, 45-004-99-3-4-00185, 45-004-00-3-4-00186 and 45-004-99-3-4-00190 for hearing. The Petitioner moved to consolidate the hearing in 45-004-00-3-4-00187 on the basis that the Petition addressed the same property as the hearing on Petition No. 45-004-99-3-4-00186, Parcel No. 001-25-46-0291-0035, and that the same evidence would be presented for assessment year 2000 as would be presented for assessment year 1999. No objection was raised on the motion to consolidate. Therefore, the Board will consider all five petitions here.

5. Administrative Law Judge Carol Comer held the hearings in Merriville, Indiana, on November 29, 2006.
6. Mr. Raymond Curtis, the taxpayer, appeared and participated in the hearing. No one appeared on behalf of the Respondent.

Facts

7. The properties are classified as commercial parking lots or structures located at 759-79 Lawrence Street for Parcel No. 001-25-46-0291-0029 (Parcel 29) and 729-53 Lawrence Street for Parcel No. 001-25-46-0291-0035 (Parcel 35). Both properties are located in Gary, Indiana, Calumet Township, Lake County.
8. The Administrative Law Judge did not conduct an on-site inspection of the properties.
9. The PTABOA determined the assessed value of Parcel 29 to be \$12,300 for the land and \$9,000 for the improvements, for a total assessed value of \$21,300. The PTABOA determined the assessed value of Parcel 35 to be \$14,400 for the land and \$4,800 for the improvements, for a total assessed value of \$19,200.
10. The Petitioner requested a value of \$1,400 for the land and \$1,400 for improvements, for a total assessed value of \$2,800.00 for Lot 29. The Petitioner requested a value of \$1,750 for the land and \$1,750 for improvements, for a total assessed value of \$3,600 for Lot 35.

Issue

11. Summary of the Petitioner's contentions in support of alleged error in assessment:²
 - a) The Petitioner contends that the City of Gary and a neighboring property owner have maintained an obstruction that bars access to the adjacent public highway for the subject properties since the Petitioner purchased the properties in 1998.³ *Curtis testimony*. The Petitioner argues that the state stipulated to the issue of the obstruction based on an agreement between the Petitioner and the Department of Local Government Finance on Parcel 50. *Id.*; *Petitioner Exhibit 12*.
 - b) The Petitioner further argues that Lake County refused to sell him the parcels adjacent to the subject properties. *Curtis testimony*. According to the Petitioner,

² The Petitioner also filed a document entitled "Motion for Summary Judgement [sic.]" on November 22, 2006, raising substantially similar issues. According to the Petitioner, the contents of his Form 133 Forms and exhibit lists, which "Lake County has failed to controvert" or respond to, entitled the Petitioner to judgment in his favor.

³ The Petitioner also alleges that the neighboring property owner took the Petitioner's tax bills and "made an illegal demand for payment" on Parcel 20. *Curtis testimony*. The Petitioner contends that this may have been for purposes of identify theft. *Id.* We note that mail fraud or identity theft is not a matter over which the Board would have jurisdiction. Further, even if these allegations were somehow related to the value of Parcel 20, that property is wholly unrelated to the properties at issue in this appeal.

by refusing to sell parcels 25 and 49 to the Petitioner, the county attempted to land-lock the properties in order to decrease their market values so that the City could inexpensively transfer the property to the owner of the “Black Cherry Lounge.” *Id.*

- c) The Petitioner also claims that the properties are over-valued based on the assessments of neighboring properties. *Curtis testimony.* According to the Petitioner, Parcel 43 is valued at \$400. *Id.* Further, the parties stipulated to a value of \$200 for Parcel 50. *Id.; Petitioner Exhibit 12.* The Petitioner argues that the subject properties should be valued in accordance with Parcel 43 and Parcel 50. *Curtis testimony.*
- d) Finally, the Petitioner argues that the assessor erred in assessing the improvements on the properties. *Curtis testimony.* According to the Petitioner, the properties should not be classified as commercial parking lots because there is no access to the lots. *Curtis testimony.* Further, the asphalt is in poor condition and previously used as a dumping ground for the City of Gary Park Department’s landscaping debris. *Id.* Finally, the Petitioner contends that a neighbor created deep areas of erosion by bulldozing several trees on the property. *Id.*

Record

12. The official record for this matter is made up of the following:

- a) The Petition,
- b) The digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1 - Tax Bill from 1998 for Parcel No. 001-25-46-0290-0023,
Petitioner Exhibit 2 - Property Record Card 1999 for Parcel No. 001-25-46-0290-0023,
Petitioner Exhibit 3 - Property Record Card 2002 for Parcel No. 001-25-46-0290-0023,
Petitioner Exhibit 4 - Letter to the Lake County Auditor dated November 6, 2001,
Petitioner Exhibit 5 - Tax Bill for Parcel No. 001-25-46-0290-0020,
Petitioner Exhibit 6 - Letter From SRI, Inc., dated January 15, 1999,
Petitioner Exhibit 7 - Affidavit regarding obstruction of Parcel No. 001-25-46-0290-0050,
Petitioner Exhibit 8 - Letter from the City of Gary dated March 22, 2004,
Petitioner Exhibit 9 - Letter from the City of Gary dated July 1, 2004,
Petitioner Exhibit 10 - Letter from the City of Gary dated Sept 15, 2004,
Petitioner Exhibit 11 - Letter from Raymond Elwood August 30, 2004,
Petitioner Exhibit 12 - Letter from Department of Local Government Finance dated July 6, 2005,

Board Exhibit A - Form 133 Petition with attachments,
Board Exhibit B - Notices of Hearing,
Board Exhibit C - Hearing 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. The Petitioner failed to provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) The Petitioner contends that the properties are over-valued compared to the assessed values of Parcels 43 and 50. *Curtis testimony*. In support of this contention, the Petitioner testified that Parcel 43 was assessed for \$400 and the parties stipulated to an assessed value of \$200 on Parcel 50.
 - b) Indiana Code section 6-1.1-2-2 requires uniform and equal assessments. Thus, the Petitioner argues, to the extent that he proves that his property is not assessed uniformly or equal to comparable properties, the assessment should be equalized. However, “taxpayers are required to make a detailed factual showing at the administrative level.” *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, “the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence.” *Id.*

- c) To introduce evidence of comparable properties, a taxpayer must explain *how* the properties are comparable. See *Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain how the properties were comparable). Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. See *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id.* See also, *Hoogenboom-Nofziger*, 715 N.E.2d 1018, 1024 (Ind. Tax Ct. 1999) (holding that taxpayer failed to make prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).
- d) Here, the Petitioner has not met his burden. While he identifies neighboring properties are assessed lower, the Petitioner made no attempt to explain why or how the properties are comparable to the subject properties. Further, even if the Petitioner had shown that Parcel 50 was comparable to the subject properties, the *Joint Motion to Stipulate Final Assessed Value on Parcel No. 001254602910050* is inadmissible to establish the value of any parcel. See *Indiana Rules of Evidence, Rule 408* (“Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim, which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount.”) The Petitioner’s evidence falls short of the type of analysis required to establish comparability under *Long* and falls far short of the burden he faces. See *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).
- e) The Petitioner further contends that the County, City, and private individuals, conspired to decrease the value of the properties by illegally preventing access to public roadways. *Curtis testimony*. In addition, the Petitioner alleges, the properties have deep areas of erosion and debris dumped upon them by the City of Gary.
- f) 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). Properties however, 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). A 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).

- g) While the alleged access limitations, topography or environmental conditions related to any debris disposal on the properties may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show how these conditions would impact the market value of the subject property or to show the actual market value of the property. 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. 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). To the extent Mr. Curtis believes he was misled in his purchase of the properties or that he has been damaged by the actions of others, Mr. Curtis must seek his remedy in court. The Board of Tax Review does not have jurisdiction over such civil matters.
- h) The Petitioner also objects to the assessment of the improvements on the properties on the basis that the "blocked access" destroys their use as parking lots. The Petitioner, however, admits that the asphalt that is assessed to the properties exists on the properties. Therefore, the assessment of the improvements to the properties was not in error. Further, even if an error were made, that would be insufficient to rebut the presumption that the assessed value "accurately reflect[s] the property's market value-in-use." See *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 764 (Ind. Tax Ct. 2006) ("when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.")
- i) Finally, the Petitioner sought to resolve his claims through a Form 133 Petition. A Petitioner who files a Form 133 Petition has the burden to show that an objective error is alleged and must quantify the error. *Damico v. Dept. of Local Gov't. Finance*, 769 N.E.2d 715, 721 (Ind. Tax Ct. 2002). An objective error is one that "involves a simple observation of fact without resort to subjective judgment." *Id.* Here, whether the properties are similar to neighboring properties or whether an influence factor should apply to the properties because of conditions on the properties or restricted access to the properties are not objective errors. Moreover, the Petitioner failed to quantify those errors. Thus, the Petitioner's Form 133 filings are improper.

- j) Where the Petitioner has not supported the 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, 1222 (Ind. Tax Ct. 2003). There is no change in the assessment.

Conclusion

15. The Petitioner failed to raise a prima facie case. The Board finds in favor of the Respondent. The motion for summary judgment is denied and the assessment remains unchanged.

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: _____

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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.