

REPRESENTATIVES FOR PETITIONER:  
Larry Stroble, Barnes & Thornburg  
Ziaaddin Mollabashy, Barnes & Thornburg

REPRESENTATIVE FOR RESPONDENT:  
Charles Todd, Todd Law Office

---

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Laurence E. Weaver,	)	Petition No.:	89-028-03-1-4-00021
	)	Parcel No.:	462000010201015
Petitioner,	)		
	)		
v.	)		
	)	County:	Wayne
Betty Smith,	)	Township:	Wayne
Wayne Township Assessor,	)	Assessment Year:	2003
Respondent.	)		

---

Appeal from the Final Determination of the  
Wayne County Property Tax Assessment Board of Appeals

---

**October 17, 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**

### **ISSUE**

1. The issue presented for consideration by the Board was whether the property's assessed value exceeds its market value-in-use.

### **PROCEDURAL HISTORY**

2. Pursuant to Ind. Code § 6-1.1-15-3, Larry Stroble of Barnes & Thornburg, filed a Form 131 Petition for Review of Assessment on January 19, 2005, petitioning the Board to conduct an administrative review of the above petition. The Wayne County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination on December 29, 2004.

### **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 June 28, 2006, in Richmond, Indiana.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Matt L. Nepote, MAI Appraiser/Witness

For the Respondent:

Betty Smith, Wayne Township Assessor  
David Fradenburg, Wayne Township Commercial Appraiser  
Michael Statzer, Wayne County Assessor and PTABOA Member  
Joseph Kaiser, President PTABOA  
Richard Lee, PTABOA Member  
Marie Elstro, PTABOA Member  
Daniel Williams, PTABOA Member

5. The Petitioner presented the following exhibits:

Petitioner's Exhibit 1 – Appraisal for the subject property with an estimated market value as of March 1, 2003

Petitioner's Exhibit 2 – Summary page of Wayne County Land Order

6. The Respondent presented the following exhibits:

Respondent's Exhibit 1 – Subject property's property record card (PRC),

Respondent's Exhibit 2 – Aerial photographs of the area

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 131 Petition,

Board Exhibit B – Notice of Hearing dated March 28, 2006,

Board Exhibit C – Notice of Appearance of Charles Todd,

Board Exhibit D – Hearing Sign In Sheet,

Board Exhibit E – Witness and Exhibit List of Respondent,

Board Exhibit F – Summary of Witness testimony of Respondent,

Board Exhibit G – Request for Copy of Tapes of Hearing,

Board Exhibit H – Respondent's Motion to Enlarge Time to Provide Proposed Findings of Fact and Conclusion of Law,

Board Exhibit I – Petitioner's Motion for Extension of Time to Provide Findings of Fact and Conclusion of Law,

Board Exhibit J – Order Granting Time Extension for Findings of Fact and Conclusions of Law,

Board Exhibit K – Order for Extension of Time to Issue Determination,

Board Exhibit L – Respondent's Proposed Findings of Fact and Conclusions of Law,

Board Exhibit M – Petitioner's Proposed Findings of Fact and Conclusions of Law,

Board Exhibit N – Petitioner's Filing of Transcript of Hearing.

8. The subject property is a vacant tract of land approximately 87 feet by 1,100 feet (2.806 acres) in size with three personal property billboards on it, located on Wayne Road, Wayne Township, in Richmond, Indiana.

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

10. For 2003, the PTABOA determined the assessed value of the land for the subject property to be \$135,300.
11. For 2003, the Petitioner contends the assessed value of the property should be \$47,700.

### **JURISDICTIONAL FRAMEWORK**

12. 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**

13. 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).
14. 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”).
15. 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

16. The Petitioner contends that the property is over-valued and that the appropriate value should be \$47,700. *Stroble argument*.
17. The Petitioner presented the following evidence and testimony in regard to this issue:
  - A. The Petitioner contends that an appraisal of the subject property determined its market value-in-use as of March 1, 2003, to be \$47,700. *Nepote testimony; Petitioner Exhibit 1*. The Petitioner's appraiser testified that he determined the subject property's land value using both a per acre basis and a sales price per structure basis. *Id*.
  - B. The Petitioner's appraiser testified that for his per acre valuation, he used three properties located in the Northwest Industrial Park. *Nepote testimony; Petitioner Exhibit 1*. Mr. Nepote testified that, due to the difficulty in finding sales of comparable properties that were sold as billboard sites, that he used properties similar to the subject in size and zoning. *Nepote testimony*. The appraiser testified that he valued the differences between the subject property and the comparable properties such as the subject property having no deeded road access, the subject property being a narrow strip of land suitable only for its present use, the subject property lacking utilities and having a sloping terrain and the subject property being landlocked. *Id*. Based on the adjustments to his sales comparables, Mr. Nepote contends that the property has a "per acre" value of approximately \$17,000 and a total value of \$47,700. *Nepote testimony; Petitioner Exhibit 1*.
  - C. The Petitioner further contends that the outdoor advertising industry, besides using "value per acre" as a unit of comparison, also considers the number of billboards that can be erected on a site before purchasing the property. *Nepote testimony*. According

to the Mr. Nepote, the Petitioner was a party to six purchases of land for the purpose of outdoor advertising. *Id.* The transactions were identified in a May 3, 2006, letter from the Petitioner. *Id.* The Petitioner's appraiser testified that the properties sold for \$11,250 to \$20,000 per permitted structure. *Id.* Mr. Nepote contends that he reconciled the value "per billboard" to \$16,500 per structure. *Id.* Thus, with three billboards on the subject property, he estimated the market value for the subject property to be \$49,500. *Id.* In response to cross examination, Mr. Nepote testified that he did not independently verify the information from the Petitioner in the May 3, 2006, letter. *Id.*

- D. Under cross examination by the Respondent's counsel, Mr. Nepote testified that he had done only three appraisals of land where billboards were located. *Nepote in response to Todd.* Mr. Nepote also testified that he was not aware of the sales price per structure comparison as an industry standard when purchasing land until the Petitioner, Mr. Weaver, brought it to his attention. *Id.*
- E. Mr. Nepote conceded that the negative factors that he identified on the subject property, such as limited access and the sloping terrain, would not affect the property as a billboard site. *Id.* Further, when asked about the 10% adjustment made to the comparables in the appraisal, Mr. Nepote replied that he could not specifically justify or quantify the 10% adjustment. *Nepote in response to Todd.* According to the Petitioner's appraiser, he used his training and experience to quantify the 10% adjustment. *Nepote in response to Stroble redirect.* Mr. Nepote also agreed with the Respondent that the highest and best use of the property was for billboards. *Nepote in response to Todd.*
- F. Finally, the Petitioner contends that when valuing land only, that it is normal and an accepted appraisal practice to use exclusively a comparable sales method and that income information would not be used to value land only. *Nepote testimony.* Mr. Nepote testified that he did not develop a value based on the income approach to value because the income derived from the billboards is not income that is specific to

the land, which was the only thing valued in the appraisal. *Id.* According to Mr. Nepote, the income approach would include the value of the land, the value of the structures, and the value of the entrepreneurial ability of the owner to find tenants and negotiate leases and that all three components would contribute to the income produced by the property and that he did not have the expertise in determining that breakdown. *Id.*

18. The Respondent contends that the property was properly assessed in compliance with the approved Wayne County Land Order (the Land Order). *Statzer testimony.*
19. The Respondent presented the following evidence and testimony in regard to this issue:
  - A. The Respondent testified that the subject land was valued at \$50,000 per acre for the .806 acre of primary land and \$47,500 per acre for the 2 acres of usable undeveloped land. *Statzer testimony; Board Exhibit 1.* In response to questioning by Mr. Todd, Mr. Statzer testified that land values were determined for the subject property's geographical area by using sales within the area and noted on the Land Order. *Statzer in response to Todd.* According to Mr. Statzer, these values were reviewed by the Department of Local Government Finance (the DLGF) and represent the market value-in-use of the property. *Id.*
  - B. The Respondent testified that, even though there are billboards on the property that are personal property, the assessor considered the current use of the property which is commercial. *Statzer testimony.* In response to a question about the application of an influence factor due to the lack of utilities, the shape and size of the parcel, the accessibility of the property, and topography, Mr. Statzer contends that these factors would have no adverse impact on the property's use for outdoor advertising and, therefore, no weight was given to those factors. *Statzer in response to Todd.*
  - C. Under cross examination by the Petitioner's counsel, Mr. Statzer admitted that the primary commercial land and the usable undeveloped land were priced at the highest

- part of the range approved in the Land Order, but contends that the valuation is due to its use as billboard land and high visibility location along I-70. *Statzer in response to Stroble*. Further, Mr. Statzer admitted that there was no study of comparable sales done to determine what range within the Land Order to use, that neither the Township Assessor nor the PTABOA had an appraisal prepared to value the subject property, and that no income data was used in making the valuation under the Land Order. *Id.*
20. 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 similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2) (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).
  21. 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*, 821 N.E.2d 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.*
  22. Here, the Petitioner presented an appraisal prepared by a certified appraiser that estimated the market value of the subject property at \$47,700 as of the March 1, 2003, assessment date. *Petitioner Exhibit 1*. The Petitioner, however, failed to show the relevance of the appraisal’s March 1, 2003, valuation to the statutory January 1, 1999, valuation date. *See 117 Republic Ltd. Partnership v. Brown Township Assessor*, 851 N.E.2d 399, 400 n.2 (Ind. Tax Ct. 2006); *Long*, 821 N.E.2d at 471-472. Therefore, the Petitioner failed to raise a prima facie case that its property is over-valued.

23. 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 Industries v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-122 (Ind. Tax Ct. 2003).

#### **SUMMARY OF FINAL DETERMINATION**

24. The Petitioner failed to provide sufficient evidence to raise a prima facie case. The Board finds in favor of the Respondent. The assessment is not changed as a result of this issue.

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](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>.