

REPRESENTATIVE FOR PETITIONER:  
Bruce D. Huntington, Botkin & Hall, LLP

REPRESENTATIVE FOR RESPONDENT:  
Michael DeFreese, Elkhart County Deputy Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Frank M. Ward Rev. Trust,	)	Petition Nos.: 20-031-02-1-3-00019
	)	20-031-02-1-3-00020
Petitioner,	)	20-031-02-1-3-00021
	)	20-031-02-1-3-00022
	)	
v.	)	Parcel Nos.: 200327451001000031
	)	200327451008000031
	)	200327451009000031
	)	200327451006000031
Elkhart County Assessor <sup>1</sup> ,	)	
	)	County: Elkhart
Respondent.	)	Township: Washington
	)	
	)	Assessment Year: 2002

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

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**September 21, 2009**

**FINAL DETERMINATION**

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

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<sup>1</sup> The Washington Township Assessor made the original assessments. Under IC 6-1.1-15-3(a) as it existed at the time of the PTABOA determinations, the township assessor was the designated respondent. IC 6-1.1-15-3(a)(2004). On June 30, 2008, however, the Washington Township Assessor’s duties were transferred to the Elkhart County Assessor. See § I.C. 36-6-5-1(h). Thus, the Elkhart County Assessor is the Respondent in this case.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **INTRODUCTION**

1. The Petitioner claimed that the subject land and one of the subject buildings were assessed for more than their respective market values. But the Petitioner did not offer probative market value-in-use evidence to support those claims. While the Petitioner pointed to other land sales, he did not sufficiently explain how those properties compared to the subject land. And the Petitioner offered nothing beyond conclusory assertions about the building's value. The Petitioner therefore failed to make a prima facie case for relief.

### **PROCEDURAL HISTORY**

2. On July 23, 2003, the Petitioner filed appeals with the Elkhart County Assessor contesting the 2002 assessments for four parcels, which the Board will refer to collectively as the "subject property." On October 7, 2004, the Elkhart County Property Tax Assessment Board of Appeals ("PTABOA") issued its determinations denying the Petitioner relief. The Petitioner then timely filed four Form 131 petitions asking the Board to review those determinations. The Board has jurisdiction over the Petitioner's appeals under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.
3. On March 25, 2009, the Board's designated administrative law judge, Jennifer Bippus ("ALJ"), held a hearing on the Petitioner's appeals. Neither the Board nor the ALJ inspected the subject property.
4. The following people were sworn in as witnesses:

For the Petitioner:

Bruce D. Huntington, Attorney for the Petitioner

For the Respondent:

Michael DeFreese, Reassessment & Trending Director for the Elkhart  
County Assessor

5. The Petitioner submitted the following exhibits:

Petitioner's Exhibit A – Aerial photograph with subject parcels labeled,  
Petitioner's Exhibit B – Sold Land Comparable - Ludwig to BRD,  
Petitioner's Exhibit C – Sold Land Comparable - Knepp to Sanders,  
Petitioner's Exhibit D – Sold Land Comparable - Ludwig to Red Arrow.

6. The Respondent submitted the following exhibits:

Respondent Exhibit 1 – Elkhart County Commercial Land Values,  
Respondent Exhibit 2 – Categorical definitions for neighborhoods,  
Respondent Exhibit 3 – Eight documents titled “Elkhart County Land Calculation  
Worksheet.”<sup>2</sup>

7. The Board recognizes the following additional items as part of the record of proceedings:

Board Exhibit A – Form 131 petitions and attachments,  
Board Exhibit B – Notices of hearings dated December 23, 2008,  
Board Exhibit C – Notice of County Assessor Appearance,  
Board Exhibit D – Notice of Appearance for Mr. Huntington,  
Board Exhibit E – Hearing sign-in sheet.

8. The four parcels comprising the subject property are adjacent to each other, although they have three different street addresses. They are all located in Bristol.

9. The PTABOA's final determinations list the following values:

<u>Parcel #</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
200327451001000031	\$5,600	\$ 0	\$5,600
200327451008000031	\$77,000	\$9,700	\$86,700
200327451009000031	\$115,800	\$142,400	\$258,200

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<sup>2</sup> Mr. Huntington initially said that he would reserve any objection to the Respondent's exhibits based on not having had time to see them because they were not presented to him “prior to the 15 days.” *Huntington statement*. Presumably, he was referring to the deadline under the Board's procedural rules for parties to exchange documentary evidence. *Huntington statement; see also, 52 IAC 2-7-1(b)*. In any event, Mr. Huntington then said that he would “waive any claim with regard to having [the exhibits] into evidence simply so we can hear the matter today.” *Huntington statement*. Thus, Mr. Huntington waived any objection based on the Respondent's failure to timely provide its exhibits.

200327451006000031            \$56,800                    \$ 0                    \$56,800

10. The Petitioner did not ask for a specific assessment. On his Form 131 petitions, the Petitioner asked that each parcel be assessed “as determined by appraisal.” *Board Ex. A*. But he did not offer an appraisal at the hearing. Instead, the Petitioner’s representative, Bruce D. Huntington, argued that the subject land was worth between \$12,000 and \$20,000 per acre and that the building on parcel #200327451009000031 was essentially valueless.

#### **ADMINISTRATIVE REVIEW AND THE PARTIES’ BURDENS**

11. A taxpayer seeking review of an assessing official’s determination must establish a prima facie case proving both that the current assessment is incorrect and what the correct assessment should 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).
12. In making its case, the taxpayer must explain how each piece of evidence relates to its 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”).
13. If the taxpayer establishes a prima facie case, the burden shifts to the respondent to offer evidence to impeach or rebut the taxpayer’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2003); *Meridian Towers*, 805 N.E.2d at 479.

## ANALYSIS

### Parties' Contentions

#### A. The Petitioner's contentions

14. The portions of the subject property that are classified as primary land are assessed at \$35,000 per acre. And the values for the portions of the property classified as secondary and non-developed land were derived from that \$35,000 base rate. But that base rate is substantially higher than the market value for land in a semi-rural community like Bristol. Instead, sales of comparable properties show that the subject land's market value should be somewhere between \$12,000 and \$20,000 per acre. *Huntington argument; Pet'r Exs. B - D.*
  
15. The Petitioner's representative, Mr. Huntington, pointed to the following three sales:
  - a 2.34-acre parcel that sold in May 1999 for \$46,800, or \$20,000 per acre;
  - a 6.8-acre parcel that sold in February 1999 for \$102,500, or \$15,074 per acre;
  - and
  - a 2.53-acre parcel that sold in May 1996 for \$30,360, or \$12,000 per acre.*Huntington testimony; Pet'r Exs. B - D.*
  
16. While the Respondent offered a chart for Elkhart County commercial land values, the categories listed in that chart are not appraisal-type categories and do not make sense as part of a land valuation standard. *Huntington argument.* Also, none of the columns shows a value of \$35,000 per acre. In fact, under the heading of "Fair" the chart lists a value of \$20,000 per acre for "Rural or Mixed-Use/Spot" land. The Respondent's own chart therefore shows that the property should not be assessed for \$35,000 per acre, but rather for \$20,000 per acre. *Huntington argument; Resp't Ex. 1.*
  
17. Finally, the building on parcel #200327451009000031 is "essentially without value." *Huntington testimony.* According to Mr. Huntington, the building was damaged in a 1998 fire, and it has not been repaired. *Id.* Mr. Huntington showed the Respondent

photographs of the building, but he did not offer those photographs into evidence.

Although the building is being used to store pallets of mulch product, it will likely be torn down. *Id.* The building is assessed for its salvage value, which is predicated on an 80% physical-depreciation factor. But that factor is inadequate. *Huntington testimony; Pet'r Ex. A.*

## **B. The Respondent's contentions**

18. The Respondent offered a chart listing commercial land values for 2002 and eight land-calculation worksheets showing how those values were determined. *DeFreese testimony; Resp't Exs. 1 - 3.* The values ranged from \$5,000 per acre for unusable undeveloped land classified as "Fair" to \$300,000 per acre for prime land classified as "Good." *Resp't Ex. 1.*
19. As for the building on parcel 200327451009000031, Mr. DeFreese did not know whether the Petitioner had raised the building's value as an issue before the PTABOA. After seeing the current photographs, Mr. DeFreese agreed that the Respondent should look at "some sound value" for the building's current assessment, but he did not know what condition the building was in on the March 1, 2002, assessment date at issue in this appeal. *DeFreese testimony.*

## **Discussion**

20. Indiana assesses real property based on its "true tax value," which the 2002 Real Property Assessment Manual defines as "the 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property's value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 - Version A.

21. A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. See MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
22. By contrast, a taxpayer does not rebut the presumption that a property's assessment is accurate simply by contesting the assessor's methodology in computing it. See *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the taxpayer must show that the assessor's methodology yielded an assessment that does not accurately reflect the property's market value-in-use. *Id.*

**A. Land Value**

23. To support the Petitioner's claim that the subject land was assessed using a base rate that exceeded its market value, Mr. Huntington offered information about three vacant-land sales. In doing so, Mr. Huntington correctly recognized that a given property's value can be estimated by comparing it to similar properties that have sold in the market. In fact, that is what the sales-comparison approach does. MANUAL at 3.
24. Mr. Huntington, however, did not follow the sales-comparison approach's basic requirements. That approach assumes that potential buyers will pay no more for a given property than it would cost to buy an equally desirable substitute property already existing in the market place. MANUAL at 13. A person applying the sales-comparison

approach must first identify comparable properties that have sold. *Id.* He next considers and compares all possible differences between the comparable properties and the subject property that could affect value, using objectively verifiable evidence to determine which items actually affect value in the marketplace. *Id.* The contributory values of those items are then used to adjust the comparable properties' sale prices. *Id.* at 14. Thus, when offering sales-comparison evidence in an assessment appeal, a taxpayer must explain "the characteristics of [the subject] property, how those characteristics compare to those of the purportedly comparable properties, and how any differences affect[] the relevant market value-in-use of the properties." *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *Id.* at 470.

25. Mr. Huntington did very little to compare the subject property to the three sold properties for which he offered sales information. He simply identified the sale date and effective price per acre for each of the sold properties. That falls short of the type of comparison described by the Manual and Tax Court. True, the Petitioner's exhibits contained a little more information about the sold properties. But it was the Petitioner's responsibility—not the Board's—to explain how those properties compared to the subject property. *See Long*, 821 N.E.2d at 471 ("[I]t was not the Indiana Board's responsibility to review all the documentation submitted by the [taxpayers] to determine whether those properties were indeed comparable – that duty rested with the [taxpayers]."). Regardless, any additional information about the three sold properties would offer little help given the dearth of information about the subject property. Mr. Huntington simply offered an aerial photograph of the subject property and said that it was located in a semi-rural community.
26. Of course, even if Mr. Huntington had shown that the sold properties were generally comparable to the subject property, that was only the first step. He also needed to explain how any differences between the properties affected their relative market values-in-use. And he offered nothing in that regard.



27. In addition, one of the sales that Mr. Huntington relied on occurred in 1996. The valuation date for the March 1, 2002, assessments under appeal was January 1, 1999. Mr. Huntington therefore needed to explain how that earlier sale price related to the subject property's value as of January 1, 1999. He did not do so. Thus, for that additional reason, the 1996 sale price lacked probative value. *See Long*, 821 N.E.2d at 471 (holding that a December 2003 appraisal lacked probative value where the taxpayers did not explain how it related to the property's market value-in-use as of January 1, 1999).
28. The Petitioner also argued that the Respondent's own land-value chart showed that the subject land should have been assessed for no more than \$20,000 per acre. But that argument simply amounts to an attack on the methodology used to compute the subject property's assessment. As explained above, such attacks are not enough; a taxpayer must offer probative market value-in-use evidence of the type described in the Manual. *Eckerling*, 841 N.E.2d at 678.
29. Even if methodology-based claims were generally permissible, the Petitioner's claim would still fail. Although the Petitioner premised his claim on the base rates used to assess the subject land, he did not bother to offer the property record cards for any of the parcels under appeal. Assuming, for the sake of argument, that the subject land was assessed using the wrong base rates, the Petitioner did not show what the correct rates were. While Mr. Huntington pointed to the per-acre price for land under the classifications of "Fair" and "Rural or Mixed-Use/Spot," he did not explain why the subject property fit into those classifications. *Resp't Ex. 1*.

**B. Building on Parcel #200327451009000031**

30. Finally, the Petitioner claimed that a building on parcel #200327451009000031 was assessed too high in light of damage that it suffered in a 1998 fire. But the Petitioner did not offer a specific value for the building. Instead, Mr. Huntington said that the building was "essentially without value" and that the salvage value that the Respondent had given

it was too high. Mr. Huntington, however, did not point to any evidence to support those conclusory assertions.

31. Granted, the Respondent's representative, Mr. DeFreese, testified that the Respondent should consider "some sound value" for the building. But he did not say what that value was. Thus, even if the Board were to view Mr. DeFreese's testimony as a concession that the building was over-assessed, Mr. DeFreese did not concede what the correct assessment was. And, as explained above, the Petitioner did not offer any evidence on that point beyond Mr. Huntington's conclusory assertions. The Petitioner therefore failed to make a prima facie case for changing the building's assessment.

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

32. The Petitioner failed to make a prima facie case for lowering the subject property's assessment. The Board therefore finds for the Respondent.

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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

## IMPORTANT NOTICE

### **- Appeal Rights -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.