

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition No.:** 29-005-07-1-3-00003  
**Petitioner:** 11100 Allisonville Road, LLC  
**Respondent:** Hamilton County Assessor  
**Parcel No.:** 1414020000005000  
**Assessment Year:** 2007

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 Petitioner initiated an assessment appeal with the Hamilton County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated January 25, 2008.
2. The PTABOA issued notice of its decision on April 4, 2008.
3. The Petitioner filed a Form 131 petition with the Board on May 5, 2008. The Petitioner elected to have this case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated November 19, 2008.
5. The Board held an administrative hearing on January 29, 2009, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
  - a. For Petitioner: Marsha Clapper, Manager, 11100 Allisonville Road LLC
  - b. For Respondent:<sup>1</sup> Debbie Folkerts, Hamilton County Assessor  
Terry McAbee, Hamilton County Deputy Assessor

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<sup>1</sup> Marilyn S. Meighen, Meighen & Associates, P.C. appeared as counsel for the Respondent.

## Facts

7. The property is a 3,600 square foot, two story small shop and utility storage building and a 3,000 square foot utility storage building on .50 acre located at 11100 Allisonville Road, Fishers, Delaware Township, in Hamilton County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. The PTABOA determined the assessed value to be \$90,000 for the land and \$27,300 for the improvements, for a total assessed value of \$117,300.
10. The Petitioner requested an assessed value of \$66,000 for the land and \$26,300 for the improvements, for a total assessed value of \$92,300.

## Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
  - a. The Petitioner argues that the Respondent should not have increased the assessment of its property by applying a trending factor for 2007, because the property flooded after work was done on the road. *Clapper testimony*. According to the Petitioner's representative, Ms. Clapper, the City of Fishers elevated Allisonville Road three and half feet and removed the ditch in front of the property, which has caused water to enter the front of the buildings and the property to flood when there is a heavy rain. *Clapper testimony*.
  - b. The Petitioner contends that due to the flooding, the buildings have problems such as ruined carpet and mold and mildew. *Clapper testimony*. In support of this contention, the Petitioner submitted an aerial map and eleven interior and exterior photographs of the property. *Petitioner Exhibits 2 and 3*. The Petitioner argues that, while it continues to operate its business, the flooding of the property adversely impacts its value. *Clapper testimony*.
  - c. Finally, the Petitioner argues that the flooding of the property adversely affects the Petitioner's ability to lease or sell the property. *Clapper testimony*. According to the Petitioner, this is further indication that the property's assessment is overstated. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
  - a. The Respondent contends the Petitioner's property is correctly assessed. *Meighen argument; McAbee testimony*. According to the Respondent's

witness, Mr. McAbee, industrial properties in Hamilton County were assessed from \$24.87 to \$43.54 per square foot in 2007, while the property under appeal is being assessed for \$17.77 per square foot. *McAbee testimony*. In support of this contention, the Respondent submitted aerial maps, property record cards and a comparable analysis for thirteen properties. *Respondent Exhibits 3-16*. Mr. McAbee testified that the comparable properties were similar in lot size, year built and square footage to the subject property. *McAbee testimony*.

- b. The Respondent further contends that the Petitioner's assessment is fair based on the listing price of a nearby property. *McAbee testimony*. According to Mr. McAbee, the property located at 11222 Allisonville Road was listed for sale at \$500,000 in 2007. *McAbee testimony; Petitioner Exhibit 2*. The Respondent argues that the listing price of the 11222 Allisonville Road property suggests that property values were not affected by the road work on Allisonville Road. *McAbee testimony*.
- c. Finally, the Respondent argues, the Petitioner cannot just show the property may be affected by a water problem, but it must also show the actual market value-in-use of the property. *Meighen argument*. According to Ms. Meighen, the Board determined in *Robert V. Rohrman v. Fairfield Township Assessor*, Petition Nos. 79-158-04-1-4-00001, *et al.*, and *Carolyn R. Lane-Hamilton v. Rock Creek Township Assessor*, Petition Nos. 35-015-03-1-5-00003, *et al.*, that it is not enough for a petitioner to show the property suffers from a negative influence factor, the petitioner must also establish the market value-in-use of the property as of the assessment date. *Meighen argument; Petitioner Exhibits 17 and 18*.

### **Record**

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

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131, dated May 5, 2008,

Petitioner Exhibit 2 – Nine interior photographs of 11100 Allisonville Road,

Petitioner Exhibit 3 – Two exterior photographs and an aerial map of 11100 Allisonville Road,

Respondent Exhibit 1 – Property record card for 11100 Allisonville Road, Fishers,

Respondent Exhibit 2 – Real estate listing for 11222 Allisonville Road, Fishers,

Respondent Exhibit 3 – Respondent’s comparable analysis of industrial properties in Hamilton County,

Respondent Exhibit 4 – An aerial map and street maps of the area,

Respondent Exhibit 5 – Property record card for 12371 Reynolds Drive, Fishers,

Respondent Exhibit 6 – Property record card for 8605 South Street, Fishers,

Respondent Exhibit 7 – Property record card for 121 Shadowlawn Drive, Fishers,

Respondent Exhibit 8 – Property record card for 125 Shadowlawn Drive, Fishers,

Respondent Exhibit 9 – Property record card for 13<sup>th</sup> Street, Noblesville,

Respondent Exhibit 10 – Property record card for 8<sup>th</sup> Street, Noblesville,

Respondent Exhibit 11 – Property record card for 305 Armitage Avenue West, Westfield,

Respondent Exhibit 12 – Property record card for 211 Elm Street, Westfield,

Respondent Exhibit 13 – Property record card for 254 First Avenue Southwest, Carmel,

Respondent Exhibit 14 – Property record card for 136<sup>th</sup> Street West, Carmel,

Respondent Exhibit 15 – Property record card for 550 Rangeline Road South, Carmel,

Respondent Exhibit 16 – Property record card for 4600 – 96<sup>th</sup> Street West, Carmel,

Respondent Exhibit 17 – Indiana Board of Tax Review Final Determination in *Robert V. Rohrman v. Fairfield Township Assessor*, Petition Nos. 79-158-04-1-4-00001, *et al.*,

Respondent Exhibit 18 – Indiana Board of Tax Review Final Determination in *Carolyn R. Lane-Hamilton v. Rock Creek Township Assessor*, Petition Nos. 35-015-03-1-5-00003, *et al.*,

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing sign-in sheet.

- d. These Findings and Conclusions.

### Analysis

14. 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 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).
  - 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 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”).
  - 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.
15. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a. The Petitioner argued the property’s assessed value should be lowered because the elevated road and lack of ditch in front of the property causes the property to flood. *Clapper testimony*. As a result of this flooding, the Petitioner contends, the buildings have mold and mildew and the carpet is ruined. *Id*. In support of this contention, the Petitioner provided an aerial map of the property showing the location of the ditch and road tile. *Petitioner Exhibit 3*. The Petitioner also provided interior and exterior photographs, which purport to show ruined carpet, mold, mildew and the elevation of Allisonville Road. *Petitioner Exhibits 2 and 3*. The Petitioner contends its property is unique in the area due to this flooding. *Clapper testimony*.

- b. 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). 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." *Talesnick*, 756 N.E.2d at 1108.
- c. Here, the Petitioner provided some evidence of water damage to the buildings but, while the flooding may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show how this condition would impact the market value of the subject property or to show the actual market value of the property. *Talesnick*, 756 N.E.2d at 1108. The Petitioner merely alleged that the 2007 trending factor applied by the county assessor's office should be removed because its property did not increase in value.<sup>2</sup> *Clapper testimony*. A 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).
- d. Further, even if the Petitioner had shown that applying a trending factor to the property for 2007 was an error or that an influence factor should have applied to the property, a Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*"). The Petitioner provided no evidence to establish

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<sup>2</sup> Ind. Code § 6-1.1-4-4.5, requires annual adjustments of the assessed value of real property. The assessors are required to adjust or "trend" property values every year to reflect market values of property. The county assessor uses sales data from sales disclosures completed from every real estate transaction to calculate how much or how little to adjust the assessed value of a property. The amount of the adjustment is determined by how much or how little property increased or decreased in the area. The change is then applied to all assessed values of properties of that type in the area. By applying the annual adjustment factor, the property value is considered adjusted for local market conditions. *See* Ind. Code §6-1.1-4-4.5; 50 IAC 21-1-1.

the market value-in-use of the property under appeal. Thus, the Petitioner failed to raise a prima facie case that its assessment was in error.

- e. 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).

### **Conclusion**

- 16. The Petitioner failed to provide sufficient evidence to support a change in the assessment. The Board finds in favor of the Respondent.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should not be changed.

ISSUED: April 15, 2009

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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 pursuant to 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 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/bills/2007/SE0287.1.html>.**