

# INDIANA BOARD OF TAX REVIEW

## Final Determination

**Petition #s:** 45-024-01-3-4-00183  
45-024-02-3-4-00001  
45-024-03-3-4-00001

**Petitioner:** M D Curtis Management Company, Inc.

**Respondent:** North Township & Department of Local Government Finance

**Parcel #:** 007-24-30-0080-0003

**Assessment Years:** 2001, 2002, 2003

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 assessment appeals with the Lake County Property Tax Assessment Board of Appeals (PTABOA) by written document dated February 27, 2004.
2. The PTABOA mailed notice of its decision for 2001 on December 22, 2004.
3. The Petitioner filed appeals with the Board by filing Form 133 petitions on January 4, 2005.
4. The Board issued a notice of hearing to the parties dated January 23, 2007.<sup>1</sup>
5. Administrative Law Judge Ellen Yuhan held a hearing in Crown Point, Indiana on March 14, 2007.
6. Mr. Raymond Curtis, the taxpayer, appeared and participated in the hearing. No one appeared on behalf of the Respondent.

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<sup>1</sup> While North Township was properly notified of the Petitioner's appeals, the Board inadvertently failed to notify the Department of Local Government Finance (DLGF) of the hearing on the Petitioner's 2002 appeal. Subsequent to the hearing, the Board sent a *Notice of Hearing Held* to the DLGF, offering the DLGF the opportunity to either request a rehearing or waive notice. The DLGF reviewed the record of the hearing and, on March 29, 2007 filed notice that it waived notice of the 2002 appeal petition and would not seek re-hearing.

## Facts

7. The subject property is currently a vacant lot located at 4607 Indianapolis Boulevard, East Chicago, North Township, in Lake County. For the March 1, 2001, assessment, the property was improved with apartments and general retail. The building subsequently burned on September 13, 2001, and was demolished.
8. The Administrative Law Judge did not conduct an on-site visit of the property.
9. The Petitioner submitted a Real Property Maintenance Report dated September 13, 2001, showing an assessed value of \$2,500 for the land and \$4,770 for the improvements, for a total assessed value of \$7,270 for “2000 pay 2001.” *Petitioner Exhibit 12*. The Petitioner submitted no information showing an assessed value for the tax years at issue.
10. The Petitioner requested an assessed value of \$0 for all years appealed.

## Issues

11. Summary of Petitioner’s contentions in support of an error in the assessments:
  - a. The Petitioner contends that the property has no value and that the Board should remove all property taxes from the subject property. *Curtis testimony; Petitioner Exhibit 88 at 20*. According to the Petitioner, he is unable to rebuild on the property because of city ordinances and he is unable to sell the property because the City of East Chicago has an unrecorded lien on the property. *Curtis testimony*. In support of this contention, the Petitioner submitted a hand-written note purportedly from the East Chicago Building Commissioner requesting that the city’s attorney file a claim against the property and title work showing that there are no liens on the property other than taxes. *Petitioner Exhibits 56 and 92*.
  - b. The Petitioner further contends that the neighboring property’s improvements encroach on the subject property and amount to a physical taking. *Curtis testimony*. In support of this contention, the Petitioner submitted photographs and documents depicting the alleged encroachments and trespass. *Petitioner Exhibits 77-84 and 88*.
  - c. The Petitioner also contends that he has been denied access and right-of-way to the property by the actions of local and federal agencies, resulting in data entry errors and a charge for improvements that were not in existence after September 13, 2001. *Curtis testimony*.
  - d. The Petitioner also contends that a condemnation action by the National Park Service of another property owned by the Petitioner lowered the value of the subject property through a unity of use theory. *Curtis testimony*. In support of this contention, the Petitioner submitted transcripts of a conversation purported to have occurred with a representative from the National Park Service and a letter from the Service concerning the condemnation of a property that is not at issue in this proceeding.

*Petitioner Exhibit 4 and B.* According to Mr. Curtis, he used both properties in the pursuit of an ice cream business.<sup>2</sup> *Curtis testimony.*

### **Record**

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

- a. The Petitions,
- b. The digital recording of the hearing,
- c. Exhibits:

Petitioner Exhibit 1-3 – Notices of Hearing,  
Petitioner Exhibit 4 – Transcription of May 4, 1995, telephone conversation between Raymond Curtis and Daniel Betts concerning 326 S. Sullivan, Gary, IN,  
Petitioner Exhibit 5 – Letter dated March 11, 1997, from the Department of Agriculture,  
Petitioner Exhibit 6 – Letter dated April 24, 1998, from the Indiana State Board of Animal Health,  
Petitioner Exhibit 7 – Complaint Information dated February 25, 2002, concerning 326 S. Sullivan, Gary, IN,  
Petitioner Exhibit 8 – Gary Police Department Offense Report concerning 326 S. Sullivan Gary, IN,  
Petitioner Exhibit 9 – Letter dated April 6, 2002, from Raymond L. Curtis to the Department of the Interior,  
Petitioner Exhibit 10 – Transcription of conversations that purportedly transpired on September 13, 2001,  
Petitioner Exhibit 11 – Letter dated May 29, 2002, from the City of East Chicago, Division of Inspections and Permits,  
Petitioner Exhibit 12 – Real Property Maintenance Report dated September 13, 2001,  
Petitioner Exhibit 13 – Letter of Legal Objection dated March 22, 2006,  
Petitioner Exhibits 14 & 15 – Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms (ATF) Report of Investigation,  
Petitioner Exhibit 16 – Letter dated December 14, 2005, from Interra-Vision Development, LLC,  
Petitioner Exhibits 17-19 – ATF Report of Investigation submitted September 18, 2001,  
Petitioner Exhibits 20-29 – East Chicago Police Department Report,  
Petitioner Exhibits 30 & 31 – ATF Property Inventory/Forfeited Property Appraisal Report dated September 17, 2001,

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<sup>2</sup> The Petitioner also makes allegations regarding his ex-wife, harassment by an “unknown person,” and interference by the National Labor Relations Board that the Board cannot adequately characterize and deems incidental to the Petitioner’s property tax assessment appeals.

Petitioner Exhibits 32-35 – Real Estate Contract for the subject property offered October 2000,  
Petitioner Exhibits 36 - 38 – City of East Chicago Building Department Supplemental Report dated December 5, 2001,  
Petitioner Exhibits 39 & 40 – East Chicago Police Department Report,  
Petitioner Exhibits 41-44 – City of East Chicago Building Department Supplemental Report dated February 6, 2002,  
Petitioner Exhibit 45 – Invoice for the demolition of the subject building,  
Petitioner Exhibit 46 – Agenda for meeting of City of East Chicago Board of Public Works,  
Petitioner Exhibit 47 – Letter from the City of East Chicago, Department of Law, dated October 19, 2001,  
Petitioner Exhibit 48 – Letter from the City of East Chicago, Department of Law, dated October 26, 2001,  
Petitioner Exhibit 49 – Complaint Report from the East Chicago Building Department dated September 13, 2001,  
Petitioner Exhibits 50 & 51 – Notes from site inspection of September 14, 2001,  
Petitioner Exhibit 52 – Affidavit of Service dated December 5, 2001,  
Petitioner Exhibit 53 – City of East Chicago Building Department Supplemental Report,  
Petitioner Exhibit 54 – Duplicate of Petitioner Exhibit 38,  
Petitioner Exhibit 55 – City of East Chicago Building Department Supplemental Report dated December 5, 2001,  
Petitioner Exhibit 56 – Note regarding a claim against the property,  
Petitioner Exhibit 57 – Building Department Fact Sheet,  
Petitioner Exhibit 58 – City of East Chicago Building Department Work Order dated September 13, 2001,  
Petitioner Exhibit 59 – Letter from City of East Chicago to J.M.G. Enterprises dated September 13, 2001,  
Petitioner Exhibits 60 & 61 – ATF Report of Investigation submitted October 1, 2001,  
Petitioner Exhibits 62-67 – ATF Report of Investigation submitted November 40, 2001,  
Petitioner Exhibit 68 – Withheld page,  
Petitioner Exhibit 69 – Building Permit for 4609 Indianapolis Boulevard dated September 24, 1998,  
Petitioner Exhibits 70 & 71 – Building Permit for 4609 Indianapolis Boulevard dated February 10, 1999,  
Petitioner Exhibits 72-76 – Application for Building Permit,  
Petitioner Exhibit 77 – Encroachment Notice dated February 2, 2007,  
Petitioner Exhibit 78 – Notice of New Taking dated January 31, 2007,  
Petitioner Exhibit 79 – Photograph of encroachment (gutter),  
Petitioner Exhibits 80 & 81 – Photographs of neighbor's scaffolding on the subject property,  
Petitioner Exhibit 82 – Twenty-three photographs of the subject property from the alley to the front property line,

Petitioner Exhibits 83 & 84 – Copies of photographs allegedly showing encroachment and trespass,  
Petitioner Exhibit 85 – Tape of conversations between the Petitioner and the Building Department, Mr. Bosch, Mr. Hagler, Mr. Hoggs, Mr. Markovich, and Mr. Serrano,  
Petitioner Exhibit 86 – Letter from the East Chicago Building Commissioner to the East Chicago Department of Law dated February 17, 2006,  
Petitioner Exhibit 87 – Complaint for Damages and Appointment of Receiver, *City of East Chicago v. Raymond L. Curtis*,  
Petitioner Exhibit 88 – General Form of Affidavit-Discussion,  
Petitioner Exhibit 89 – Letter from the Petitioner’s attorney to the Lake County Auditor dated September 11, 2003,  
Petitioner Exhibit 90 – Letter from Michael W. Bosch regarding a settlement offer dated May 28, 2003,  
Petitioner Exhibit 91 – Letter to Mr. Bosch regarding settlement offer dated September 11, 2003,  
Petitioner Exhibit 92 – Special Information Report from MaxiMilian Title Corporation concerning the subject property,  
Petitioner Exhibit P-1 – P-3 – Newspaper articles about the fire at the subject property and about city crews working in the neighborhood,  
Petitioner Exhibit A – Note from former tenant Michael Madison,  
Petitioner Exhibit B – Letter from the National Park Service concerning 326 S. Sullivan, Gary, IN, dated August 28, 1995,  
Petitioner Exhibit C – Newspaper article,  
Petitioner Exhibit D – Letter to the East Chicago Police Department from Raymond L. Curtis dated October 25, 2001,  
Petitioner Exhibit E – Letter to the City of East Chicago, Department of Law from Raymond L. Curtis dated October 31, 2001.

Board Exhibit A - Form 133 Petitions,  
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 establish a prima facie case. This conclusion was arrived at because:
- a. The Petitioner contends that the subject property had no value on March 1, 2001, 2002, or 2003. *Curtis testimony*. According to the Petitioner, prior to the March 1, 2001, assessment date, various local and federal agencies interfered with his tenants, causing them to move. *Id.*; *Petitioner Exhibit 88 at 5 and 14*. Further, the Petitioner testified that in September, 2001, the building sustained damage from a fire and the City ordered the building demolished. *Curtis testimony; Petitioner Exhibits 10, 20-29, 30-31, 45-51, 88 at 1, 2, 18-20*. The Petitioner claims that the city wrongfully sought reimbursement for the demolition of the burned structure and has denied him the economic benefits of ownership because he can not rebuild on the property, use the property, or sell the property. *Curtis testimony; Petitioner Exhibit 88 at 2*.
  - b. The Petitioner further contends that the neighbor’s remodeling resulted in encroachment, physical damage and trespass. *Curtis testimony*. The Petitioner submitted photographs showing the alleged encroachment. *Petitioner Exhibits 83, 84, 88 at 16*. According to the Petitioner, the encroachments and trespass on the property result in a physical taking and negatively impact the value of the property. *Curtis testimony; Petitioner Exhibits 77-84 and 88*.
  - c. Finally, the Petitioner contends that a condemnation action by the National Park Service of another property owned by the Petitioner lowered the value of the subject property through a unity of use theory. *Curtis testimony*.
  - d. The Petitioner seeks an adjustment to his property value due to negative influences on his land allegedly caused by governmental interference with his property and the acts of his neighbors. 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 FOR 2002, 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*, 756 N.E.2d at 1108.

- e. While any alleged encroachment by his neighbor or use restriction purportedly imposed by the city may be relevant to the issue of whether a negative influence factor should apply, the Petitioner failed to offer probative evidence of 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. Similarly, the Petitioner failed to show how the National Parks Service’s efforts to condemn 326 S. Sullivan impacted the value of the subject property. Mr. Curtis’ vague contention that he used both properties in the pursuit of his ice cream business falls far short of the evidence required to show that any condemnation of 326 S. Sullivan impacted the market value-in-use of the subject property located at 4607 Indianapolis Blvd.<sup>3</sup> In fact, the Petitioner presented no evidence to establish the market value-in-use of the property under appeal. Mr. Curtis’ unsupported allegations that the property is without value is not evidence of its market value-in-use. A petitioner must submit “probative evidence” that adequately demonstrates all alleged errors in the assessment. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
- f. Mr. Curtis’ lengthy list of perceived wrongdoings by others is comprised of little more than unsupported allegations. Even if each of the Petitioner’s contentions were taken as true, however, it is not sufficient for a Petitioner to merely identify random factors that may cause the property to suffer a loss in value. See *Champlin Realty Co. v. State Bd. of Tax Comm'rs*, 745 N.E.2d 928, 936 (Ind. Tax Ct. 2001), *review denied*. He must quantify the impact of those factors on his property. *Whitley Products*, 704 N.E. 2d 1113. To the extent Mr. Curtis believes that any act of another person or entity has damaged him or his property, Mr. Curtis must seek his remedy in court. The Board of Tax Review does not have jurisdiction over such civil matters as whether a trespass or encroachment has occurred or whether an illegal lien has been placed upon the title to the property.<sup>4</sup>
- g. Finally, the Petitioner sought to resolve his claims through Form 133 Petitions. A petitioner who files a Form 133 Petition has the burden to show that an objective

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<sup>3</sup> A similar analysis applies to economic obsolescence. For a Petitioner to show that it is entitled to receive an adjustment for obsolescence, the Petitioner must both identify the causes of obsolescence it believes is present in its improvement and also quantify the amount of obsolescence it believes should be applied to its property. To the extent that obsolescence could apply to the subject property’s improvement prior to its destruction, the Petitioner failed to quantify the loss in value to its improvement.

<sup>4</sup> The Petitioner also contends that, due to the actions of local and federal agencies, there were data entry errors that resulted in a charge for improvements that were not in existence after September 13, 2001. *Curtis testimony*. Mr. Curtis, however, did not deny that the improvements to the property existed on the March 1, 2001, assessment date. Further, Mr. Curtis presented no evidence that the improvements were assessed in 2002 or 2003.

error is alleged and must quantify the error. *Damico v. Dep't. 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 an obsolescence factor or an influence factor should apply to the property because of conditions, encroachments, or restricted access is based on subjective contentions not an objective error. Also, the Petitioner failed to quantify these alleged errors to show how the market value-in-use was affected or what the market value of the property actually was. Thus, the Petitioner’s Form 133 filings are improper.

- h. 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 Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

- 15. The Petitioner failed to provide sufficient evidence to establish a prima facie case. 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: **June 6, 2007**

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