REPRESENTATIVE FOR PETITIONER:
Kay Fleming, Ice Miller

REPRESENTATIVE FOR RESPONDENT:
Charles Todd, Todd Law Office

BEFORE THE
INDIANA BOARD OF TAX REVIEW

SMP Property Company LLC,	)	Petition No.: 89-030-03-1-4-00239
	)	89-030-03-1-4-00245
	)	89-030-03-1-4-00246
Petitioner,	)	89-030-03-1-4-00247
	)	
	)	Parcel: 46-34-000-208.000-29
v.	)	46-33-240-201.000-29
	)	46-33-240-203.000-29
	)	46-37-000-101.000-29
Betty Smith,	)	
Wayne Township Assessor,	)	
	)	County: Wayne
	)	Township: Wayne
Respondent.	)	Assessment Year: 2003

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

December 27, 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, Kay Fleming of Ice Miller, on behalf of SMP Property Company, LLC, filed Form 131 Petitions for Review of Assessment on January 24, 2005, petitioning the Board to conduct an administrative review of the above petitions. The Wayne County Property Tax Assessment Board of Appeals (the PTABOA) issued its determinations on December 22, 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 September 27, 2006, in Richmond, Indiana.

4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Matt L. Nepote, MAI Appraiser,
H. Price Glazer, Managing Member of SMP Property Company LLC,

For the Respondent:

Michael Statzer, Wayne County Assessor and PTABOA Member,[1]
Betty Smith, Wayne Township Assessor,
David Fradenburg, Township Commercial Appraiser,
Joseph Kaiser, President PTABOA,
Richard Lee, PTABOA Member,
Marie Elstro, PTABOA Member,
Dan Williams, PTABOA Member.

[1] Mr. Statzer was the only witness who testified for the Respondent.

5. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Real Estate Appraisal dated October 11, 1995,
Petitioner Exhibit 2 – Summary Appraisal report dated February 4, 2005,
Petitioner Exhibit 3 – Environmental Site Assessment dated May 25, 1994,
Petitioner Exhibit 4 – Phase I Environmental Audit and Assessment dated July 6, 1999,
Petitioner Exhibit 5 – Lease Agreement from 2001,
Petitioner Exhibit 6 – Letter from IU Foundation dated August 23, 2004.

6. The Respondent did not submit any exhibits at the hearing.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:[2]

Board Exhibit A – The 131 Petitions,
Board Exhibit B – Notice of Hearing dated July 14, 2006,
Board Exhibit C – Witness and Exhibit list of Petitioner,
Board Exhibit D – Appearance of Charles Todd,
Board Exhibit E – Witness and Exhibit list of Respondent,
Board Exhibit F – Respondent's Summary of Witness testimony and exchange of evidence,
Board Exhibit G – Hearing Sign-In Sheet.

8. The subject property consists of four industrial parcels totaling 100.451 acres improved with three small utility buildings and fencing located at North 20th Street and Hawkins Road in Richmond.

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 property to be $110,600 for the land for parcel 46-34-000-208.000-29; $157,800 for the land and $61,300 for the improvements for parcel 46-33-240-210.000-29; $74,900 for the land and $3,900 for the improvements for parcel 46-33-240-203.000-29; and $228,500 for the land for parcel 46-

[2] The parties were to submit Proposed Findings of Fact and Conclusions of Law by November 8, 2006. The Respondent submitted Proposed Findings of Fact and Conclusions of Law on November 7, 2006 as requested. The Petitioner also submitted Findings of Fact and Conclusions of Law, which the Board received on November 13, 2006. Because the Petitioner did not submit the document in a timely fashion, the Board will not consider it in making its determination.

37-000-101.000-29, for a total assessed value of $637,000. There are no improvements on parcels 46-34-000-208.000-29 and 46-34-000-101.000-29.

11. For 2003, the Petitioner contends the assessed value of the land for all four parcels should be $50,000. The Petitioner did not dispute the value of the improvements on the properties.

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 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).

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. Wash. 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").

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 properties are over-valued based on their appraised values and due to the environment conditions on the property. *Fleming argument.* According to the Petitioner, the land portion of all four properties together should not exceed $50,000. *Id.*

17. In support of its value, the Petitioner presented the following testimony and other evidence:

A. The Petitioner submitted an appraisal of the land prepared by an MAI appraiser that estimates the value of the land to be $407,000 as of October 11, 1995. *Nepote testimony; Petitioner Exhibit 1.* According to the appraiser, ten acres of the properties are deemed valueless due to the presence of a ravine, with the remaining 90.451 acres valued at $4,500 per acre. *Id.* Mr. Nepote testified that he considered the topography, the odd shape of the properties and the large size of the properties in determining the appraised value. *Id.* Further, he testified that, although he was aware that there may be environmental conditions on the properties, the appraised value was determined under the assumption that there were no adverse environmental conditions present which would impede the development of the subject properties. *Id.*

B. The Petitioner submitted a second appraisal for the properties, prepared by the same appraiser, which estimates the land value to be $160,000 as of February 4, 2005. *Nepote testimony; Petitioner Exhibit 2.* Despite the fact that he estimated 40 acres of the properties to be without value, Mr. Nepote testified that he estimated the value of the properties at $1,600 per acre for the total 100.669 acres.[3] *Id.* In consideration of

[3] Mr. Nepote testified that he increased the amount of unusable land from 10 acres in the 1995 appraisal to 40 acres in the 2005 appraisal because the City of Richmond engineering department had estimated 40 acres of the property to be unusable when considering whether to accept the donation of the land from the Petitioner. *Nepote testimony.*

the January 1, 1999, valuation date for the March 1, 2002, reassessment, Mr. Nepote estimated that the subject properties' value would have been approximately 5% more ($1,680 per acre) than the value determined in the February 2005 appraisal. *Id.* Mr. Nepote further testified that the value estimated in the February 2005 appraisal is significantly less than the estimate in the October 1995 appraisal due to the use of more recent comparable sale information and the inability of the owner to sell the properties over an extended period of time. *Nepote testimony.* Further, the development of approximately 800 acres at the Midwest Industrial Park and Gateway Industrial Park, with far superior locations to the subject properties, results in the properties being less desirable to potential buyers than they would have been at the time of the initial appraisal. *Id.*

C. Under cross examination by the Respondent's counsel, Mr. Nepote acknowledged that he is not an environmental expert and cannot testify as to what effect environmental issues may have on the value of the properties. *Nepote testimony.* Further, when asked about the adjustments made to the comparable sales in the February 2005 appraisal, Mr. Nepote replied that, due to the absence of more comparable properties, the adjustments made were more than he would have hoped would be necessary. *Id.*

D. The Petitioner testified that the properties were originally purchased in approximately 1981 for $100,000. *Glazer testimony.* According to the Petitioner, scrap from the railroad company improvements located on the properties was sold for approximately $100,000. *Id.* According to the Petitioner, the properties have been listed several times over the past 19 years at prices ranging from $1,000,000 to $300,000, but the Petitioner received no offers on the properties. *Id.* Similarly, when two property owners in the area of the subject properties were expanding their operations, they did not express interest in purchasing the subject properties. *Id.*

E. The Petitioner testified that ten acres of the property were rented to Penn Central in 1999 for $350 per month. *Glazer testimony.* The term of the lease was five years,

but Penn Central only paid the rent for approximately two years. *Id.* According to the Petitioner, he spent about $15,000 in clean-up costs following the rental period. *Id.* American Tower currently leases three acres of the property for $6,900 per year. *Glazer testimony: Petitioner Exhibit 5*. The lease prohibits the Petitioner from renting to another communications company for the term of the lease. *Id.*

F. The Petitioner contends that site assessments prepared for the properties raise concerns about the environmental conditions on the properties.[4] *Glazer testimony*; *Petitioner Exhibit 3.* According to the Petitioner, a phase I environmental site assessment prepared for the subject properties in May 1994 recommended that a phase II assessment be undertaken. *Glazer testimony*; *Petitioner Exhibit 3.* Mr. Glazer testified that the cost associated with the completion of a phase II environmental site assessment ranged from $50,000 to $150,000 and that, due to the high cost, the Petitioner chose not to proceed with a phase II environmental site assessment. *Id.* A second phase I environmental site audit was completed for the Penn Central group in anticipation of the lease of approximately 10 acres of the subject property in 1999. *Glazer testimony; Petitioner Exhibit 4.* According to the Petitioner, the second environmental site audit also indicated environmental concerns about the properties. *Id.* Under cross-examination by the Respondent's counsel, Mr. Glazer testified that he has only a cursory knowledge of the phase I environmental site assessments completed for the properties. *Glazer in response to Todd*. Further, Mr. Glazer admitted that he has no independent knowledge regarding the environmental issues of the property. *Id.*

G. The Petitioner concludes that its inability to sell the properties and because neither the IU Foundation nor the City of Richmond accepted the properties when the Petitioner offered to donate them demonstrates that the properties have little value. *Glazer testimony; Petitioner Exhibit 6.* According to the Petitioner's representative, the

[4] Respondent's counsel objected to the admission of Exhibit 3 and Exhibit 4 based on the absence of expert testimony concerning the exhibits. Mr. Todd's objection was over-ruled at hearing because the lack of expert testimony goes to the weight of the exhibit, not their admissibility.

assessor established the value of the land only for the four properties to be $571,800 and the Petitioner's appraisal (*Petitioner Exhibit 2*) establishes the land value at $160,000 as of February 4, 2005. *Fleming argument.* Further, the Petitioner contends, its appraisal is conditional on the land being environmentally clean. *Id.* Because the status of the property relative to environmental issues has not been determined with any degree of certainty, the Petitioner seeks a total land value for all four subject properties of $50,000. *Id.*

18. The Respondent contends that the land is correctly assessed under the Wayne County Land Order. *Statzer testimony*.

19. In support of the assessment, the Respondent presented the following :

A. The Respondent testified that the land is valued in accordance with the Wayne County Land Order as approved by the Department of Local Government Finance and the land was reduced by a negative 40% influence factor by the PTABOA as a result of the Petitioners' hearing before the Wayne County PTABOA. *Statzer testimony.*

B. The Respondent's attorney further argues that the Petitioner's appraisal has not tied the value directly to the March 1, 2003, assessment date. *Todd argument.* Moreover, no one in attendance at the hearing could testify with specific knowledge of the information contained in the submitted environmental site reports. *Id.* Finally, Mr. Todd contends, even if the property has environmental issues that would affect the value of the property, the amount to which the value would be affected was not quantified by the Petitioner. *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 two appraisals prepared by a certified appraiser that estimated the market value of the properties to be $407,000 as of September 26, 1995, and $160,000 as of February 4, 2005, respectively. *Petitioner Exhibits 1 and 2.* In an effort to relate the 2005 appraised value to the January 1, 1999, valuation date, the appraiser testified that the subject properties' value would have been approximately 5% more than the value determined in the February 2005 appraisal. Other than the appraiser's cursory reference to a five percent adjustment, however, the Petitioner presented no evidence of the value of the subject properties as of January 1, 1999. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs,* 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998)*; and Herb v. State Bd. of Tax Comm'rs,* 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). Thus, while Mr. Nepote's testimony may be evidence that the value of the properties is generally declining, we do not find it probative of the specific value of the properties in 1999.

23. Even if such an unsupported "adjustment" could be sufficient to establish the properties' value, it is not the Board's obligation to calculate the value. Further, the vast depreciation from $407,000 in 1995 to $160,000 in 2005 contradicts Mr. Nepote's testimony. There is nothing in the record that would support a finding that the properties

were worth 200% more than the 2005 appraised value in 1995 but only 5% more than the appraised value in 1999. Finally, the Petitioner's present listing of the properties for sale for $500,000 suggests that the Petitioner itself does not find the 2005 appraised value credible.[5] At best, the Petitioner's evidence shows that the properties' value was $407,000 in 1995 and substantially declined in value thereafter. Thus, while the Petitioner did not present probative evidence of the value of the properties on January 1, 1999, the evidence shows that the properties were not worth in excess of $407,000 for purposes of the March 1, 2003, assessment. The Petitioner, therefore, has raised a prima facie case that the current assessment of $637,000 for the subject properties is over-valued.[6]

24. In an attempt to further reduce the assessed value of the properties, the Petitioner contends that the subject properties have environmental issues and, therefore, are worth approximately $50,000 rather than either appraised value and despite the Petitioner's $500,000 "asking price" for the property. In support of this contention, the Petitioner presented two Phase I environmental assessment reports dated May 25, 1994, and July 6, 1999, respectively. *Petitioner Exhibit 3 and 4*. The 1994 phase I assessment determined that "recognized environmental conditions were present and appeared to create a concern for potential impairment…." and recommended a phase II environmental assessment be performed. *Petitioner Exhibit 3 at 14*. The second phase I environmental assessment was only conducted for a 9.936 acre portion of the property and concluded that "the subject property is not currently, nor in a prior period, subject to CERCLA remediation, or requiring further test to discover further environmental defect." *Petitioner Exhibit 4*.

25. 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

[5] Mr. Glazer testified that he did not believe the property was worth $500,000 but listed the property at that price as a way of attracting interest in the sale. While it is easy for a taxpayer to allege that he believes his property is assessed too high, Mr. Glazer's actions in continuing to list the property between $500,000 and $1,000,000 effectively rebut his claim that the property is only worth $50,000.

[6] The Petitioner contends that it is only seeking an adjustment for the land. However, the appraised value of the properties contemplates the improvements on the properties even though the appraisals find that the improvements have little value.

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 often possess peculiar attributes, however, 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). The 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).

26. While alleged use limitations or environmental conditions on the properties may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show any significant environmental impact to the properties or quantify a loss in value as a result. Further, the Petitioner failed to show that the negative 40% influence factor currently applied to the parcels is incorrect. 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).

27. Finally, the Petitioner contends that 40 acres of the subject parcels are unusable. According to the Petitioner's witness, the City of Richmond's engineering department discovered this fact when the Petitioner offered to donate the parcels to the city. *Nepote testimony*. The Petitioner, however, offered no support for this conclusory statement. A conclusory statement is insufficient to establish a prima facie case of error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs,* 704 N.E. 2d 1113, 1122 (Ind. Tax 1998). *See College Corner, L.P. v. Department of Local Gov't Finance*, 840 N.E.2d 905, 907-8 (Ind. Tax Ct. 2006). Furthermore, the city of Richmond's determination that 40 acres of the properties were unusable for the city's purposes is not probative that the 40 acres are unusable for all purposes or that those acres are without value. For example, a

wooded ravine may be undevelopable, but may add substantial value to surrounding lots. Similarly, merely because the city of Richmond and the IU Foundation determined that the properties did not suit their purposes is not probative that the properties have little value as those entities have specific missions bearing little relation to market forces. Finally, we are not persuaded by the Petitioner's testimony that it has been unable to sell the properties for 19 years when the evidence shows that the Petitioner has continued to list the property substantially in excess of its appraised value. Thus, the Petitioner has failed to raise a prima facie case that its assessment should be further reduced from its 1995 appraised value.

28. Based on the January 1, 1999, valuation date the Petitioner has established a prima facie case that for the March 1, 2003, assessment its properties are worth no more than $407,000. Once the Petitioner has raised a prima facie case, the burden shifts to the Respondent 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. Here the Respondent merely alleged that the assessment was correctly determined according to the County Land Order. In order to carry its burden, an assessor must do more than merely assert that it assessed the property correctly. See *Canal Square v. State Bd. of Tax Comm'rs,* 694 N.E.d2d 801, 808 (Ind. Tax Ct. Apr. 24, 1998) (mere recitation of expertise insufficient to rebut prima facie case). The Respondent further contends that the Petitioner could not testify with specific knowledge of the information contained in the environmental site reports and failed to quantify how any such contamination would affect the properties' value. *Id.* The Board agrees that the Petitioner failed to raise a prima facie case regarding the environmental issues on the properties. The Respondent, however, failed to rebut or impeach the Petitioner's appraised values.

SUMMARY OF FINAL DETERMINATION

29. The Petitioner raised a prima facie case that the subject properties are worth no more than $407,000. The Respondent failed to rebut or impeach this evidence. The Board,

therefore, finds in favor of the Petitioner and holds that the properties may not be valued in excess of $407,000 together.

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. The Indiana Code is available on the Internet at http://www.in.gov/legislative/ic/code.