

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

**Petitions:** 53-005-06-1-4-00078  
53-005-06-1-4-00079  
**Petitioner:** Hoosier Outdoor Advertising Corp.  
**Respondent:** Monroe County  
**Parcels:** 013-10260-10  
013-17090-10  
**Assessment Year:** 2006

The Indiana Board of Tax Review (“Board”) issues its determination in the above matter. The Board finds and concludes as follows:

**Procedural History**

1. The Petitioner initiated an assessment appeal with the Monroe County Property Tax Assessment Board of Appeals (“PTABOA”) by written document dated August 10, 2007.
2. The PTABOA mailed its decision on October 17, 2007.
3. The Petitioner appealed to the Board by filing a Form 131 on December 6, 2007, and elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated February 27, 2009.
5. Administrative Law Judge Kay Schwade held the Board’s administrative hearing on April 2, 2009. She did not conduct an inspection of the property.
6. Certified Tax Representative Gregory Poore represented the Petitioner. Attorney Marilyn Meighen represented the Respondent. The following persons were sworn as witnesses at the hearing:
  - For the Petitioner — Gregory Poore,  
Joseph Hickman,
  - For the Respondent — Ken Surface,  
County Assessor Judith Sharp (but she did not testify).

**Facts**

7. This is a case about commercial properties located at 3015 and 2833 North Walnut Street in Bloomington. During the hearing the properties were sometimes identified by their street numbers. Accordingly, Parcel 013-10260-10 was identified as “Property 3015” and Parcel 013-17090-10 was identified as “Property 2833.”

8. For parcel 013-10260-10, the PTABOA determined the assessed value is \$405,100 for land and \$0 for improvements. For parcel 013-17090-10, it determined the assessed value is \$276,000 for land and \$0 for improvements.
9. At the hearing, the Petitioner requested a total assessed value of \$40,000 for Parcel 013-10260-10 and \$0 for Parcel 013-17090-10. These requested amounts are considerably less than what was alleged on the Form 131 Petitions.

### **Record**

10. The official record for this matter is made up of the following:
  - a) The Petitions with attachments,
  - b) Digital recording of the hearing,
  - c) Petitioner Exhibit A – Aerials and plat map showing the location and line of site easement for Property 2833,  
Petitioner Exhibit B-1 – Enlarged aerial for Property 2833,  
Petitioner Exhibit B-2 – Survey sketch for Property 2833,  
Petitioner Exhibit X – Aerials and plat map showing the location and line of site easement for Property 3015,  
Petitioner Exhibit X-1 – Enlarged aerial for Property 3015,  
Petitioner Exhibit X-2 – Survey sketch for Property 3015,  
Respondent Exhibits – None,<sup>1</sup>  
Board Exhibit A – Form 131 Petitions for Review of Assessment,  
Board Exhibit B – Notices of Hearing on Petition,  
Board Exhibit C – Hearing Sign In Sheet,
  - d) These Findings and Conclusions.

### **Contentions**

11. Summary of the Petitioner's case:
  - a) Utility in land is based on how a potential buyer can use it. The subject properties suffer from a diminished utility because the "line of site" easements restrict any construction that would affect visibility. In addition, the topography limits how much of the subject properties can be used. *Poore testimony.*

---

<sup>1</sup> The Board's files contain documents identified as Respondent Exhibits C, E, and F. Exhibit C has a property record card and sales disclosure form for parcel 013-20470-00. Exhibit E has similar documents for parcel 013-09410-00. Exhibit F has similar documents for parcel 013-34350-00. During the hearing Mr. Surface said these documents pertain to these appeals, but he and Ms. Meighen said nothing more about them. The Respondent never actually offered these exhibits as evidence. Consequently, they are not considered as part of the record. They were not considered in making this determination.

- b) The locations of the subject properties are indicated by red arrows on the maps. They were purchased for the purpose of constructing billboards for advertising. Line of site easements ensure the billboards have high visibility. The line of site easements are depicted on the aerial maps by the red dashed lines. The aerial maps also show how much of the subject properties are unusable due to a heavily wooded hillside that is very steep—it slopes more than 100 feet down to a creek and trailer park. *Poore testimony; Pet’r Ex. A, B-1, B-2, X, X-1, and X-2.*
- c) Property 2833 has a total of 0.69 acres, but due to the “line of site” easement and the heavily wooded hillside, only 0.10 acres is useable. One possible use within the limitations of the line of site easement would be a parking lot because it would not affect visibility of the billboard. Using the current land base rate of \$400,000, Property 2833 should be valued at \$40,000 (0.10 x \$400,000). *Poore testimony; Hickman testimony.*
- d) Property 3015 has no buildable land other than the billboard area due to the line of site easement and the heavily wooded hillside. It is completely diminished. Therefore, the value of Property 3015 should be zero. *Poore testimony; Hickman testimony.*

12. Summary of the Respondent’s case:

- a) The subject properties are used for the Petitioner’s billboard business. The Petitioner created and uses the line of site easements for visibility of its billboard business. The billboard business is “location, location, location”. *Meighen argument.*
- b) It is possible that the line of site easement could affect the value if the subject properties were sold in the future, but it does not reduce the value while the properties are being used for the billboard business. *Meighen argument.*
- c) It is significant that the Petitioner did not offer any evidence related to the income it gets from these properties. The Petitioner did not discuss anything other than “what if” the properties sell in the future. It is not enough to simply say the easement affects value. That statement does not establish what the correct assessment should be. *Meighen argument.*

**Analysis**

13. The Petitioner who seeks 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). In making its case, the Petitioner 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”).

14. The Petitioner failed to prove that the current assessments are wrong or what more accurate assessments might be. This conclusion was arrived at for the following reasons:
- a) Real property is assessed on the basis of its “true tax value,” which does not mean fair market value. It means “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.” Ind. Code § 6-1.1-31-6(c); REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. MANUAL at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
  - b) The Petitioner did not present any of that kind of evidence to support its claim—no appraisals, no sales information regarding the subject or comparable properties, nothing about the income derived from the properties, or any other information compiled in accordance with generally accepted appraisal principles. Rather, the Petitioner relied on the “easements telling the whole story.”
  - c) These cases illustrate the difference between market value and market value-in-use. The Petitioner’s basic argument claims that there would be little or no use to a potential buyer for the balance of the properties because the visibility of the billboards must be maintained. That position, however, demonstrates a failure to grasp the market value-in-use concept. To repeat, market value-in-use is based on the current use and utility to the owner. The evidence establishes that the use of both properties *is* displaying the billboards. The testimony that only 0.10 acre of Property 2833 is useable and that none of Property 3015 is useable conflicts with the balance of the evidence about how both properties are used to display billboards. The conclusory testimony about them being unusable is not probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E. 2d 1113, 1119 (Ind. Tax 1998).
  - d) The Petitioner admitted it bought the properties to construct advertising billboards. Now the Petitioner uses them for displaying advertising on the billboards. There was no evidence that the line of sight easements diminish the

value to Petitioner for that purpose. In fact, the evidence indicates just the opposite. Clearly visibility of the billboards is important to the business.

- e) Similarly, there was no probative evidence that the wooded, steep slope hurts the value as the properties are currently being used for the Petitioner's billboard advertising business.
- f) As the Respondent acknowledged, the significance of these points might be different if at some future time the Petitioner determined to sell the property or use it for something else. Such speculation, however, is not relevant to what the assessed values for 2006 should be.

- 15. Where the Petitioner fails to provide probative evidence supporting its position that an assessment should be changed, 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 make a prima facie case. The Board finds in favor of the Respondent.

**Final Determination**

In accordance with the above findings and conclusions, the assessments will not be changed.

ISSUED: \_\_\_\_\_

\_\_\_\_\_  
Commissioner,  
Indiana Board of Tax Review

\_\_\_\_\_  
Commissioner,  
Indiana Board of Tax Review

\_\_\_\_\_  
Commissioner,  
Indiana Board of Tax Review

- 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>>