

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

Petitioner: Gery R. Gorzynski
Respondent: Portage Township Assessor (St. Joseph County)
Assessment Year: 2002

Petitions:	Parcels
71-026-02-1-5-00118	18-2162-592901
71-026-02-1-5-00119	18-2139-5175
71-026-02-1-5-00120	18-2142-5342
71-026-02-1-5-00121	18-7198-7180
71-026-02-1-5-00122	18-2125-4634

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

Procedural History

1. The Petitioner initiated the assessment appeals with the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) by written documents dated December 23, 2003.
2. The PTABOA mailed notices of its decisions on September 10, 2004.
3. The Petitioner filed Form 131 appeals with the county assessor on September 30, 2004. The Petitioner elected to have the cases heard according to small claim procedures.
4. The Board issued notice of the hearing for each petition on April 10, 2006.
5. The Board held a combined administrative hearing for all five petitions on July 12, 2006, before Administrative Law Judge Joan Rennick.
6. Persons present and sworn as witnesses at the hearing:
For Petitioner: Gery Gorzynski, Owner,
Raymond Gorzynski,
For Respondent: Rosemary Mandrici, Portage Township Assessor,
Terrance F. Wozniak, Attorney for Township and PTABOA,
Kevin J. Klaybor, PTABOA President,
David E. Wesolowski, PTABOA Secretary,
Dennis J. Dillman, PTABOA Member.

Facts

7. The properties are five residential rental properties located in South Bend. The parties agreed to hold a single hearing for these petitioners because they have the same the issue.

<u>Petition</u>	<u>Parcel</u>	<u>Street Address</u>
71-026-02-1-5-00118	18-2162-592901	929 Roosevelt
71-026-02-1-5-00119	18-2139-5175	1909 Inglewood
71-026-02-1-5-00120	18-2142-5342	1815 Sherman
71-026-02-1-5-00121	18-7198-7180	1007 Amhurst
71-026-02-1-5-00122	18-2125-4634	1733 College

8. The Administrative Law Judge (“ALJ”) did not conduct an inspection of the properties.

9. Assessed values as determined by the PTABOA:

<u>Petition</u>	<u>Parcel</u>	<u>Land</u>	<u>Improvements</u>
71-026-02-1-5-00118	18-2162-592901	\$8,100	\$15,200
71-026-02-1-5-00119	18-2139-5175	\$16,000	\$20,400
71-026-02-1-5-00120	18-2142-5342	\$10,600	\$29,000
71-026-02-1-5-00121	18-7198-7180	\$7,300	\$30,200
71-026-02-1-5-00122	18-2125-4634	\$10,900	\$42,400

10. The Petitioner did not complete the requested assessed value section of the petitions.

Issues

11. Summary of Petitioner’s contentions in support of alleged error in the assessments:

- a) The Petitioner disputes the land value for the subject properties. The land values are excessive compared to other properties the Petitioner owns in the immediate area. *G. Gorzynski testimony.*
- b) The Petitioner owns properties at 1850 Huey, 1129 McCartney, and 2812 Prast that each have land appraised at \$800. The Petitioner also owns 1515 College with land appraised at \$1,000 and 1006 Birchwood with land appraised at \$1,600. *G. Gorzynski testimony.*
- c) The property at 1909 Inglewood (Petition #71-026-02-1-5-00119) has a land value of \$16,000. The property on McCartney is within one-half mile of Inglewood and has a land value of \$800. The property at 1515 College is not far from Inglewood and has a land value of \$1,000. *G. Gorzynski testimony.*
- d) The property at 1733 College (Petition #71-026-02-1-5-00122) has a land value of \$10,900. The Petitioner owns a house two blocks south at 1515 College with a land value of \$1,000. There is a difference of almost \$10,000 within two blocks. It does not seem possible that land could be worth ten times as much only two blocks away. *R. Gorzynski testimony.*

- e) The Petitioner signed statements agreeing with the value set by the township assessor for each of the subject parcels, but was unaware that land was part of the agreement. *G. Gorzynski testimony.*
- f) The Petitioner sold four houses last year because they could not afford to pay the high taxes. *R. Gorzynski testimony.*
- g) The Petitioner admitted that the house at 1733 College (Petition #71-026-02-1-5-00122) sold for around \$83,000. *G. Gorzynski testimony.*

12. Summary of Respondent's contentions in support of the assessment:

- a) The Petitioner signed letters agreeing to the value of each property. *Wozniak argument.* The letters dated August 18, 2004, show the original assessment and the proposed new assessment for each property. The letters ask whether the Petitioner agrees or disagrees with the value. All the letters for the subject properties indicate agreement with the value and each one is signed by the Petitioner. *Resp't Ex. 4.* The Petitioner agreed to the proposed new assessment, so there was never a hearing before the PTABOA. *Mandrici testimony.*
- b) The PTABOA's responsibility was to focus on the bottom line value and getting the bottom line correct. The allocation does not really matter much. *Wesolowski testimony.*
- c) The property at 1733 College (Petition #71-026-02-1-5-00122) sold for around \$83,000. The original assessment was \$72,300. The new proposed assessment that the Petitioner agreed to is \$53,300. *Mandrici testimony.*
- d) The PTABOA, township, and county assessors only determine the value of the property. The ultimate tax on a property is outside their purview. *Wozniak argument.*

Record

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

- a) The Petitions,
- b) Digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1: A 2-page letter to the Board dated June 26, 2006,

Respondent Exhibit 1: Form 131 for each parcel,

Respondent Exhibit 2: Form 115 for each parcel,

Respondent Exhibit 3: Form 130 for each parcel,
Respondent Exhibit 4: Letter to Taxpayer dated August 18, 2004, for each parcel,

Board Exhibit 1: Form 131 petition with attachments for each parcel,
Board Exhibit 2: Notice of Hearing for each parcel,
Board Exhibit 3: Hearing Sign-In Sheet,

d) These Findings and Conclusions.

14. After the hearing, the Respondent submitted a copy of a sales disclosure form. It is for the property located at 1733 College (Petition #71-026-02-1-5-00122). This sale was discussed at the hearing, but the Respondent did not present this sales disclosure at the hearing. The ALJ did not request the sales disclosure. Furthermore, there is no evidence that the Respondent properly served the Petitioner with a copy. Ind. Admin. Code tit. 52, r. 2-3-4 (2004). Therefore, the Board will not accept the sales disclosure as evidence in this determination. Ind. Admin. Code tit. 52, r. 2-8-8.

Analysis

15. 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.
16. The Petitioner did not provide sufficient evidence to support his contentions. These conclusions were arrived at because:
- 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); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter

- 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. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A* (hereafter Guidelines). 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) In making this argument, the Petitioner essentially relies on a comparison approach to establish the market value in use of the subject property. *See 2002 REAL PROPERTY ASSESSMENT MANUAL* at 2 (stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”); *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). The Petitioner’s methodology seeks to establish the value of the subject property by analyzing the assessments of purportedly comparable properties, rather than sale prices. Nevertheless, the requirements for any valid comparison are similar.
- c) In order to effectively use a comparison approach, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. The proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect relative market values-in-use. *Id.*
- d) The Petitioner did not explain how any of the other properties he owned were comparable to the subject properties as required by the court in *Long*. The Petitioner made vague references to distances between some of the properties. The Petitioner did not provide property record cards or any other meaningful evidence to compare even the most basic aspects of land value such as size, topography, and other physical features. Consequently, the assessments of other properties lack probative value.
- e) The Petitioner has the burden to prove the current assessment is incorrect and what the correct assessment would be. In this case, the Petitioner simply made conclusory statements that the land assessments were excessive. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The tax amount or percentage of tax increase has no relevance to determining the market value-in-use of the subject properties. The Petitioner presented no

evidence to show the land assessments were incorrect, nor was any evidence presented to show what the correct assessments would be. The Petitioner failed to meet his burden.

- f) Where a taxpayer fails to provide probative evidence supporting a claim, the duty to support the current 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); *Whitley Products*, 704 N.E.2d at 1119.
- g) Similarly, because the Petitioner failed to make a prima facie case for any assessment changes, it is not necessary to make any determination regarding the effect of the Petitioner's signature and purported acceptance of the proposed new assessments in the letters dated August 18, 2004.

Conclusion

- 17. The Petitioner failed to make a prima facie case. The Board finds in favor of 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: _____

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>>.