

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

**Petition No.:** 71-004-07-1-5-07389<sup>1</sup>; 71-024-07-1-5-01024; 71-024-07-1-5-01026;  
71-024-07-1-5-00951  
**Petitioner:** Lorraine L. Cooper  
**Respondent:** St. Joseph County Assessor  
**Parcel No.:** 71-04-32-478-018.000-004; 71-04-32-478-017.000-004;  
71-04-32-478-019.000-004; 71-04-32-478-016.000-004  
**Assessment Year:** 2007

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

**Procedural History**

1. Lorraine Cooper filed Form 130 petitions contesting the March 1, 2007 assessments for the above-captioned parcels. On May 1, 2009, the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations lowering the parcels’ assessments, but not to the level that Ms. Cooper had requested.
2. Ms. Cooper then timely filed four Form 131 petitions with the Board. She elected to have her appeals heard under the Board’s small claims procedures.
3. On February 24, 2011, the Board held an administrative hearing through its designated administrative law judge, Jennifer Bippus (“ALJ”).
4. The following people were sworn in and testified:

Lorraine L. Cooper,

Rosemary Mandrici, St. Joseph County Assessor<sup>2</sup>

**Facts**

5. The subject parcels are unimproved lots located at 3613 Bulla Street, in South Bend, Indiana. They are adjacent to a lot that contains Ms. Cooper’s home.

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<sup>1</sup> The Form 131 petition for parcel 71-04-32-478-018.000-004 included a Form 115 determination addressing an appeal from the parcel’s March 1, 2006 assessment. *Bd. Ex. A.* The Board therefore gave that petition a petition number corresponding to the 2006 assessment year. At hearing, Ms. Cooper clarified that she intended to appeal the parcel’s March 1, 2007 assessment. The Board therefore changed the petition number from 71-004-06-1-5-07389 to 71-004-07-1-5-07389 to reflect the actual year under appeal.

<sup>2</sup> Frank J. Agostino appeared as the Assessor’s counsel.

6. Neither the ALJ nor the Board inspected the subject property.
7. The PTABOA determined the assessment of each of the four individual parcels to be \$2,400. Ms. Cooper requested a value of \$1,200 for each parcel.

### **Parties' Contentions**

8. Summary of Ms. Cooper's contentions:
  - a) The Assessor overvalued the subject parcels in light of the assessments for identical vacant parcels. *Cooper argument*. The subject parcels (Lots 59-61), which are adjacent to each other, are assessed for \$2,400 each. *Cooper testimony; Pet'r Exs. 1-4*. By contrast, James Linger owns four vacant parcels across the street (Lots 45-47 and 50). Three of Mr. Linger's parcels are assessed for \$1,200 and one is assessed for \$100. *Cooper testimony; Pet'r Exs. 5-7*.
  - b) Ms. Cooper similarly testified that a nearby vacant lot that Michael and Evelyn Grzeskiewicz own (Lot 64) is also assessed for only \$100. Ms. Cooper's own evidence, however, belies that claim. The property record card for the Grzeskiwiczes' parcel shows that, while the parcel was originally assessed for \$100, that assessment was raised to \$2,300. *Pet'r Ex. 5*. The card's comment section explains the change as follows: "Omitted/undervalued property land values were undervalued for 2007 pay 2008 due to base rate not applied to land." *Id.* Thus, the Grzeskiwiczes' parcel was ultimately assessed at \$2,300 for the March 1, 2007 assessment date. *Id.*
  - c) The subject parcels are the same size as Mr. Linger's parcels—42 feet by 126 feet. *Cooper testimony; Pet'r Ex. 5*. And they are very similar to the Grzeskiwiczes parcel. *Pet'r Ex. 5*. None of the parcels have city sewer or city water. *Cooper testimony*.
  - d) Mr. Linger's parcels receive a negative 75% influence factor, while the subject parcels receive a negative influence factor of only 35%. *Cooper testimony; Pet'r Ex. 5*. The Assessor attributed part of the 75% influence factor to the fact that "I&M Towers"<sup>3</sup> were directly to the rear of Mr. Linger's lots and that Mr. Linger's lots had power lines running behind them. *Cooper testimony; Pet'r Exs. 5-7*. But the subject parcels also have power lines running behind and in front of them. *Cooper testimony*. All the lots should therefore be assessed the same. *Cooper argument*.
9. Summary of the Assessor's contentions:
  - a) Ms. Cooper did not offer an appraisal, a market analysis, or comparable sales. She therefore failed to shift the burden of proof to the Assessor. *Agostino argument*.

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<sup>3</sup> Although the property record cards refer to "towers" in the plural, the aerial photograph that Ms. Cooper offered as Petitioner's Exhibit 7 shows the location of only one tower.

- b) The subject properties were originally assessed at \$3,500, but the PTABOA lowered the assessments to \$2,400. *Mandrici testimony*. The subject parcels and Mr. Linger's parcels have identical base rates (\$73) and adjusted base rates (\$72). *Id.* The difference in the assessments stems from differences in the influence factors applied to the parcels. *Id.* The Assessor gave two reasons for the difference in influence factors: (1) the subject parcels previously had received a negative influence factor for the lack of a well or septic system, but that influence factor was removed in 2007; and (2) Mr. Linger's parcels receive a negative influence factor due to their proximity to the I&M towers and power lines. *Mandrici testimony; Resp't Exs. 2-5; Pet'r Ex. 5.*
- c) Ms. Mandrici testified that Mr. Linger's parcels might be assessed too low and said that she would look into those assessments in the future. *Mandrici argument.*

### **Record**

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

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

- Petitioner Exhibit 1: Form 131 and attachments, parcel 71-04-32-478-016.000-004
- Petitioner Exhibit 2: Form 131 and attachments, parcel 71-04-32-478-017.000-004
- Petitioner Exhibit 3: Form 131 and attachments, parcel 71-04-32-478-018.000-004
- Petitioner Exhibit 4: Form 131 and attachments, parcel 71-04-32-478-019.000-004
- Petitioner Exhibit 5: Property record cards for four parcels owned by James Liner and one parcel owned by Michael and Evelyn Grzeskiewicz
- Petitioner Exhibit 6: Plat map showing property locations
- Petitioner Exhibit 7: Aerial photograph showing property locations
- Petitioner Exhibit 8: Appeal contentions
  
- Respondent Exhibit 1: Parcel map,
- Respondent Exhibit 2: Property record card for parcel 71-04-32-478-019.000-004,
- Respondent Exhibit 3: Property record card for parcel 71-04-32-478-018.000-004,
- Respondent Exhibit 4: Property record card for parcel 71-04-32-478-017.000-004,
- Respondent Exhibit 5: Property record card for parcel 71-02-32-478-016.000-004.

Board Exhibit A: Form 131 petition,  
Board Exhibit B: Hearing notice,  
Board Exhibit C: Notice of Appearance by Frank Agostino  
Board Exhibit D: Hearing sign-in sheet.

d) These Findings and Conclusions.

## **Analysis**

### Burden of Proof

11. A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect, and what the correct assessment should 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).
12. In making its case, the taxpayer must explain how each piece of evidence relates to its 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”).
13. If the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to impeach or rebut the taxpayer’s evidence. *See American United Life Ins. Co v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.
14. Ms. Cooper did not make a prima facie case for reducing the subject parcels’ assessments. The Board reaches this conclusion for the following reasons:
  - a) Indiana assesses real property based on its true tax value, which the 2002 Real Property Real Property Assessment Manual defines as “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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property’s market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
  - b) A property’s market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (“USPAP”) often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and

any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

- c) Ms. Cooper offered none of the types of evidence that the Manual contemplates. Instead, she argued that the subject parcels' assessments are unfair in light of the assessments of what she described as identical parcels across the street. It is unclear whether Ms. Cooper offered the other parcels' assessments in an attempt to show the subject parcels' market value in use, or whether she instead offered that data to show a lack of uniformity and equality.
- d) In either case, Ms. Cooper premised her claim on the notion that the subject parcels are virtually identical to Mr. Linger's parcels in all respects that affect their market values-in-use. While Ms. Cooper did show that the parcels are the same size and are located across the street from each other, she did not show that they are comparably situated for purposes of the key feature that led to the differences in their assessments—their relative proximity to the I&M tower.<sup>4</sup> Granted, there is conflicting testimony about whether power lines run along the front and rear of the subject parcels. But even if that is the case, the subject parcels are further from the actual I&M tower than are Mr. Linger's parcels. While one may dispute whether the Linger parcels' comparatively closer proximity to that tower is enough to make them worth half of what the subject parcels are worth, Ms. Cooper did not offer any market-value-in-use evidence to help answer that question. Ms. Cooper therefore failed to make a case for lowering the subject parcels' assessments.

### **Conclusion**

- 15. Ms. Cooper did not meet her burden of showing that the subject property's assessments should be lowered. The Board finds for the Assessor.

### **Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment.

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

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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

<sup>4</sup> Although the property record cards for Mr. Linger's parcels refer to "towers" in the plural, the aerial photograph that Ms. Cooper offered as Petitioner's Exhibit 7 shows the location of only one tower.

IMPORTANT NOTICE

**- 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>>.