

**REPRESENTATIVE FOR PETITIONER:**

Daniel Guyinn, Property Owner

**REPRESENTATIVE FOR RESPONDENT:**

Larry Unversaw, Center Township Representative

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Daniel Guyinn,	)	Petition No.:	49-101-02-1-5-04480
	)	Parcel:	1015819
Petitioner,	)		
	)		
v.	)		
	)	County:	Marion
James Maley,	)	Township:	Center
Center Township Assessor	)	Assessment Years:	2002
Respondent.	)		

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

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**August 16, 2005**

**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 assessed value of the subject property exceeds its market value as indicated by sales of comparable properties from the same area.*

### **PROCEDURAL HISTORY**

2. Pursuant to Ind. Code § 6-1.1-15-3, Daniel Guyinn, filed Form 131 Petition for Review of Assessment (“Form 131 Petition”), petitioning the Board to conduct an administrative review of the above petition. The Form 131 Petition was filed on May 23, 2004. The determination of the Marion County Property Tax Assessment Board of Appeals (PTABOA) was mailed to the Petitioner on April 23, 2004.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on February 23, 2005, in Indianapolis, Indiana before Debra Eads, the duly designated Administrative Law Judge (the “ALJ”) authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were sworn and presented testimony at the hearing:  
For the Petitioner:  
Daniel Guyinn, Property Owner<sup>1</sup>  
  
For the Respondent:  
Larry Unversaw, Center Township Representative
5. The following exhibits were presented for the Petitioner:

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<sup>1</sup> Reginald B. Bishop filed an appearance on behalf of the Petitioner. Mr. Bishop, however, did not appear at the hearing, and the Petitioner proceeded *pro se*.

Petitioner's Exhibit 1 – Form 131 Petition  
Petitioner's Exhibit 2 – PTABOA Final Assessment Determination (Form 115) for the subject property  
Petitioner's Exhibit 3 – Comparative Market Analysis for the subject property – twenty-six (26) properties  
Petitioner's Exhibit 4 – Property record card (PRC) for the subject property

6. The following exhibits were submitted by the Respondent:

No exhibits were submitted by the Respondent.

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

Board's Exhibit A – Form 131 Petition  
Board's Exhibit B – Notice of Hearing on Petition  
Board's Exhibit C – Notice of Appearance

8. The subject property is located at 3125 Guilford Avenue, Indianapolis, Center Township, Marion County, Indiana.

9. The ALJ did not conduct an on-site inspection of the subject property.

10. For 2002, the PTABOA determined the assessed values of the property to be:

Land: \$5,100      Improvements: \$70,200

11. For 2002, the Petitioner contends the assessed values of the property should be:

Land: \$3,000      Improvements: \$32,000

#### **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 the county Property Tax Assessment Board of Appeals 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 Township 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. 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”).
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**

*Whether the assessed value of the subject property exceeds its market value as indicated by sales of comparable properties from the same area.*

##### Parties' Contentions

16. The Petitioner contends that the sale prices of properties that are similar to the subject property in square footage, condition and room size demonstrate that subject property's current assessment exceeds its market value. *Guyinn testimony.*

17. The Respondent stated that it would leave the decision regarding the appropriate value of the subject property to the State and that the assessed values should stand. *Unversaw testimony.*
18. The Petitioner presented the following evidence and argument in support of his position:
  - A. The Petitioner compared the subject property to the following properties: 3110 Winthrop Avenue, which sold for \$22,500; 2333 Carrollton Avenue, which sold for \$22,000; 2947 Winthrop Avenue which sold for \$41,000; 3353-55 N. College Avenue, which sold for \$40,000; 2841 Central Avenue, which sold for \$37,000; 2838 N. New Jersey, which sold for \$34,000; 2933 N. Talbot Street, which sold for \$33,000; 3534 Carrollton Avenue, which sold for \$33,000; 3657 N. Birchwood Avenue, which sold for \$32,900; 2623 N. Guilford Avenue, which sold for \$30,000; 3431 Carrollton Avenue, which sold for \$30,000; 3229 Dr A. J. Brown Avenue, which sold for \$29,500; 2633 N. College Avenue, which sold for \$29,400; 3319 N. Ruckle Street, which sold for \$29,000; 3345 Carrollton Avenue, which sold for \$29,000; 2926 Mac Pherson Avenue, which sold for \$28,900; 2346 Winthrop Avenue, which sold for \$27,800; 3131 N. College Avenue, which sold for \$27,500; 2941 N Delaware Street, which sold for \$27,500; 3114 Winthrop Avenue, which sold for \$27,000; 3343 N. New Jersey Street, which sold for \$26,900; 2852 Delaware, which sold for \$26,000; 2640 Guilford Avenue, which sold for \$25,000; 3345 Carrollton Avenue, which sold for \$24,500; 3042 N Guilford Avenue, which sold for \$22,500; and 2417 N. Carrollton Avenue, which sold for \$22,500. *Guyinn testimony; Petitioner's Exhibit 3.*
  - B. The Petitioner stated that the properties in question are similar to the subject property in square footage, condition, and room size, and that they are located within less than a six (6) block radius of the subject property. *Guyinn testimony.* The Petitioner came up with an “appraisal value” of \$35,000 for the subject property based on the sale prices of those comparable properties. *Guyinn testimony.* The County did not appraise the subject property but instead used reproduction costs. *Guyinn testimony.*

- Reproduction cost represents the old way of assessing and does not represent “real world values.” *Guyinn argument.*
19. The Respondent failed to present any evidence in support of the current assessment. The Respondent’s representative stated that he would leave the assessed values up to the State. *Unversaw testimony*
- Discussion**
20. The Petitioner claims that he compared the subject property to twenty-six (26) properties within a six (6) block radius of the subject property that sold for between \$22,000 and \$40,000. *Guyinn testimony; Petitioner’s Exhibit 3.* According to the Petitioner, the sale prices for those properties demonstrate that the subject property has a “real world” value of \$35,000. *Id.*
21. Real property in Indiana is assessed on the basis of its “true tax value.” *See I.C. § 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 a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2) (“Manual”).
22. The market value-in-use of a property may be calculated utilizing 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 (Ind. Tax Ct. 2005). One such approach is known as the “sales comparison approach.” *Id.* 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.” *Id.*
23. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent of such evidence 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. *See Long*, 821 N.E.2d at 470. Instead, 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. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id.*

24. In the case at bar, the Petitioner did not even approach engaging in a valid sales comparison analysis under *Long*. First, although the Petitioner listed various characteristics of the purportedly comparable properties, he did not specifically identify any characteristics of the subject property. *Petitioner’s Exhibit 3*. While there is a column in the Petitioner’s “Comparative Market Analysis” where it appears that the subject property’s characteristics are intended to be listed, that column is blank. Moreover, the property identified at the top of that column is 7033 Dior Court, which does not match the address of the subject property listed on the Form 131 Petition.
25. The Petitioner also contends that the current assessment is erroneous because it is based upon “reproduction” costs rather than “real world values.” *Guyinn testimony*.
26. As set forth above, the Manual defines “true tax value” for purposes of assessment. MANUAL at 2. The underlying concept of the Manual, however, is to allow local assessing officials to select an acceptable mass appraisal method to arrive at that value. *Id.* at 7; *see also*, 50 IAC 2.3-1-1. The Manual and 50 IAC 2.3 incorporate the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”) as a pre-approved mass appraisal method. 50 IAC 2.3-1-2; PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, intro at 1. As with many mass appraisal methods, the Guidelines are based upon the cost approach to value, one of the three approaches to value traditionally used in the appraisal profession. *Id.*; MANUAL at 3.
27. Thus, a valuation performed in accordance with the Guidelines, such as the assessment at issue in this case, is a specifically recognized method by which to determine a property’s

true tax value. It is not the exclusive method, and a taxpayer in a given case may present even more persuasive evidence, such as a fee appraisal performed in accordance with generally accepted appraisal principles. The Petitioner, however, did not present any such evidence in this case.

28. Based on the foregoing, the Petitioner failed to establish a prima facie case of error.

#### **SUMMARY OF FINAL DETERMINATION**

29. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent<sup>2</sup>.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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Commissioner, Indiana Board of Tax Review

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<sup>2</sup> The Petitioner's failure to establish a prima facie case mandates a finding in favor of the Respondent. The Respondent's position that it will leave the determination "to the State," however, is an unacceptable response in proceedings before the Board. It is the Respondent's responsibility, not the Board's, to assess property within the Respondent's jurisdiction. Similarly, it is the Respondent's duty to defend its assessment before the Board. The Board will not make the Respondent's case for it.

## **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 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.