

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #s:** 45-001-02-1-4-00729  
45-001-02-1-4-00733  
45-001-02-1-4-00734

**Petitioner:** Michael Kibler/Royal Freight Line, Inc.

**Respondent:** Department of Local Government Finance

**Parcel #s:** 001254000990033  
001254000990036  
001254000990037

**Assessment Year:** 2002

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

### Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held in February 2004 in Lake County, Indiana. The Department of Local Government Finance ("DLGF") determined the Petitioner's property tax assessment for the above captioned parcels and notified the Petitioner on March 31, 2004.
2. The Petitioner filed Form 139L petitions with regard to each of the above captioned parcels on April 28, 2004.
3. The Board issued a notice of hearing for Petition # 45-001-02-1-4-00729 to the parties dated March 31, 2005. The Petitioner requested to include Petition #s 45-001-02-1-4-00733 and 45-001-02-1-4-00734 in a consolidated hearing.
4. A consolidated hearing was held on April 14, 2005, in Crown Point, Indiana before Special Master Beth Hammer.

### Facts

5. The subject parcels consist of three contiguous parcels located in the vicinity of West 15<sup>th</sup> Avenue and Blaine Street in Gary, Indiana, Calumet Township. Parcel 001254000990033 is located at 7336 W. 15<sup>th</sup> Avenue. Parcel 001254000990036 is also located at 7336 W. 15<sup>th</sup> Avenue. Parcel 001254000990037 is located at 1321 Blaine Street. For purposes of this Final Determination, Findings and Conclusions, the Board

will refer to the three parcels at issue collectively as the “subject parcels.” When referring to the parcels individually, the Board will use the last four numerals of the parcel number (i.e. “Parcel 0033,” “Parcel 0036” and “Parcel 0037”).

6. The Special Master did not conduct an on-site visit of the subject parcels.
7. Assessed Value of subject property as determined by the DLGF:

Petition #	Parcel #	Land	Improvements
45-001-02-1-4-00729	001254000990033	\$54,900	\$117,600
45-001-02-1-4-00733	001254000990036	\$97,200	\$ 32,400
45-001-02-1-4-00734	001254000990037	\$23,900	-0-
8. Assessed Value requested by Petitioner on the Form 139L petitions: The Petitioner did not complete this section of the petitions.
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
10. Persons sworn in at hearing:

For Petitioner: Michael Kibler, Owner<sup>1</sup>

For Respondent: Stephen Yohler, DLGF

### Issues

11. Summary of Petitioner’s contentions in support of an alleged error in the assessment:
  - a) The subject parcels are contiguous parcels and should be combined and assessed as a single unit. The Petitioner’s records reflect a total of 5.39 acres for all three parcels. The property record cards show a total of 5.64 acres for the subject parcels. The subject parcels are located adjacent to the Midco 1 environmental super fund site (“Midco site”). *Kibler testimony; Pet’r Ex. 1.*

Petition # 45-001-02-1-4-00729 (Parcel 0033)

- b) The Form 11 Notice of Assessment of Land and Structures (“Form 11”) for Parcel 0033 lists “Null” as the parcel’s address. The Petitioner testified that the correct address of Parcel 0033 is 7336 W 15<sup>th</sup> Avenue, Gary. *Kibler testimony.*

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<sup>1</sup> On the Form 139L petitions, the Petitioner is listed as “Royal Freight Line, Inc.” *See Board Ex. A.* Although Mr. Kibler identified himself as the “owner” of the Petitioner at the hearings, he signed the Form 139L petitions as an authorized officer or corporate employee, without specifying his title. *See id.* Given Mr. Kibler’s treatment of the Petitioner as his alter ego, the Board refers to Mr., Kibler and the Petitioner interchangeably throughout its Final Determination, Findings and Conclusions.

- c) Parcel 0033 actually contains two buildings – an office building and a garage. The garage, which is the northernmost building on the parcel, currently is assessed on Parcel 0036. *Kibler testimony.*
- d) The office building is a modular building. The property record card shows a construction date of 1980. *Kibler testimony; Pet'r Ex. 1; Resp't Ex.1. (Pet. No. 00729).* The Petitioner purchased the building, as a used building, in 1976. The Petitioner moved the building and installed a foundation and a roof, all in 1976. *Kibler testimony.*
- e) The property record card shows a replacement cost of \$156,330 for the office building. A brand new modular office building would cost only \$95,796. *Pet'r Ex. 4.* After adding the costs for a foundation, septic field, electrical wiring, and water line installation, the total cost would not exceed \$115,000. *Kibler testimony; Pet'r Exs. 1, 4.*
- f) The Petitioner provided a listing of used modular office buildings for sale to support his contention that a modular office building should be valued for much less than an office building of standard construction. *Kibler testimony; Pet'r Ex. 4.*
- g) The depreciation applied to the office building is also incorrect. The Respondent applied depreciation of only 30% to the building, whereas it is entitled to depreciation of at least 75%. *Kibler testimony.*

Petition # 45-001-02-1-4-00733 (Parcel 0036)

- h) The Form 11 lists the address of Parcel 0036 as 1000 Colfax Street. *Board Ex. A.* The correct address for Parcel 0036 is 7336 W 15<sup>th</sup> Avenue Gary. *Kibler testimony.*
- i) The property record card for Parcel 0036 reflects that the parcel is assessed as containing a garage. *Resp't Ex. 1.* That structure is actually located on Parcel 0033. *Kibler testimony.* The garage is a pole barn and was built in 1976. *Kibler testimony; Pet'r Ex. 1.*
- j) The Petitioner presented evidence to Cole Layer Trumble (“CLT”) to show that the replacement cost of a new pole barn building, including installation, would be only \$41,500. When space heating, electricity, and cement flooring are added, the total replacement cost for such a building would be less than \$60,000. *Kibler testimony; Pet'r Ex. 4.*
- k) The Petitioner computed the reproduction cost of the subject building using General Commercial Kit (“GCK”) base rates. The Petitioner contends that the replacement cost of garage should be \$62,013, and that it should have depreciation of at least 75%. *Kibler testimony; Pet'r Ex. 5.*

Petition # 45-001-02-1-4-00734 (Parcel 0037)

- l) The Form 11 lists Parcel 0037 as having an address of “1321 ApproxBlaine St.” *Board Ex. A.* The correct address of Parcel 0037 is 1321 Blaine Street. It is located next to the Midco site. The Petitioner presented photographs showing the Midco sign and a “checking point” for water. *Kibler testimony; Pet’r Ex. 3.*
  - m) This parcel is brush land and should be classified as undeveloped unusable. The land is assessed as undeveloped usable *Kibler testimony.*
  - n) The Petitioner presented information concerning the assessments, sale prices and listing prices of four other properties. The property located at 3830 & 3900 W 4<sup>th</sup> Avenue is assessed for \$547,400. A sales disclosure statement from 1999 shows a sale price of \$175,000. *Kibler testimony; Pet’r Ex. 7, at 1 - 3.*
  - o) The property located at 901 Grant Street has an assessed value of \$636,400. That property is currently listed for sale at \$300,000. *Kibler testimony; Pet’r Ex. 7, at 4 - 5.*
  - p) Sammons Trucking in Hammond, which is in a better neighborhood than the subject parcels, is listed for sale at \$20,000 per acre. *Kibler testimony; Pet’r Ex. 7, p. 6.*
  - q) An industrial park located at Columbia and Goslan in Hammond has water and sewer service, and it is listed for sale at \$35,000 per acre. *Kibler testimony.*
  - r) The Petitioner presented a letter from a realtor explaining some of the problems involved in selling another property owned by the Petitioner. *Kibler testimony; Pet’r Ex. 7, at 7 - 8.*
12. Summary of Respondent’s contentions in support of the assessment:

Petition # 45-001-02-1-4-00729 (Parcel 0033)

- a) The Respondent presented a property record card, photograph, plat map, and Neighborhood Land Summary Sheet for Parcel 0033. *Yohler testimony; Resp’t Exs. 1 – 4 .(Pet. No. 00729).*
- b) Respondent’s Exhibit 4 shows the Respondent’s computation of the land value for Parcel 0033. The property record card for that parcel shows one acre of primary land and 1.296 acres of undeveloped unusable land. *Yohler testimony; Resp’t Exs. 1, 4 (Pet. No. 00729).*
- c) The Respondent could not explain why the office building on Parcel 0033 shows a construction date of 1980. The Respondent questioned whether the Petitioner had added anything to the building in 1980. *Yohler testimony.*

- d) The Respondent reminded the Petitioner that the relevant valuation date for the 2002 reassessment is January 1, 1999. *Yohler testimony; Resp't Ex. 1 (Pet. No. 00729).*

Petition # 45-001-02-1-4-00733 (Parcel 0036)

- e) The Respondent presented a property record card, photograph, plat map, and land calculations for Parcel 0036. *Yohler testimony; Resp't Exs. 1 – 4 (Pet. No. 00733).*
- f) The property record card shows 1.927 acres as usable undeveloped land and one-acre as primary land. The Respondent valued the land for Parcel 0036 in the same manner that it valued the land for Parcel 0033. *Yohler testimony.*
- g) The Respondent presented a corrected property card recommending that the garage be valued using the General Commercial Kit (“GCK”) cost schedules. The corrected property record card shows the building as unfinished, with a quality grade of “C” and a year of construction of 1980. *Yohler testimony; Resp't Ex. 5 (Pet. No. 00733).* The corrected property record card values garage at \$26,700. *Id.*
- h) The Respondent did not know why 1980 was used as the year of construction. The Respondent agreed that the garage should be moved to the correct parcel. *Yohler testimony.*

Petition # 45-001-02-1-4-00734 (Parcel 0037)

- i) The Respondent presented a property record card, photograph, plat map, and land calculations for Parcel 0037. *Yohler testimony; Resp't Exs. 1 – 4 (Pet. No. 00734).*
- j) The Respondent valued the land for Parcel 0037 in the same manner as it valued the land for the other two parcels. The Respondent classified the land for Parcel 0037 as usable undeveloped land. The Respondent also applied a negative influence factor of 17% to the parcel. The Respondent assumes that the influence factor was designed to account for the parcel’s proximity to the Midco site. *Yohler testimony; Resp't Ex. 1 (Pet. No. 00734).*

**Record**

13. The official record for this matter is made up of the following:
- a) The Petitions.
  - b) The tape recording of the hearing labeled BTR #1458.
  - c) Exhibits:

For Petition #45-001-02-1-4-00729

Petitioner Exhibit 1: Reasons for the appeal  
Petitioner Exhibit 2: Highlighted map  
Petitioner Exhibit 3: Photographs (8)  
Petitioner Exhibit 4: Office building (parcel 0033) – letter to CLT; Table F-3b; table F-4; Modular Units for sale  
Petitioner Exhibit 5: Pole barn (parcel 0036) – Schedule A-4; Petitioner’s Reproduction Cost Computation; Table F-3d; Table F-4  
Petitioner Exhibit 6: Maps from US Environmental Protection Agency  
Petitioner Exhibit 7: Sales and Properties on the Market – 3830 W 4<sup>th</sup> Ave; 901 Grant Street; 3200 Gibson Transfer Road; Columbia & Goslan Ave; Letter with comments regarding another property owned by the Petitioner

Respondent Exhibit 1: Subject Property Record Card (PRC)  
Respondent Exhibit 2: Subject Photograph  
Respondent Exhibit 3: Plat Map Page  
Respondent Exhibit 4: Land Calculations/NBHD Land Summary Sheet

Board Exhibit A: Form 139L petition  
Board Exhibit B: Notice of Hearing  
Board Exhibit C: Sign in Sheet

For Petition # 45-001-02-1-4-00733

Petitioner Exhibits: Same as listed above

Respondent Exhibit 1: Subject Property Record Card (PRC)  
Respondent Exhibit 2: Subject Photograph  
Respondent Exhibit 3: Plat Map Page  
Respondent Exhibit 4: Land Calculations/NBHD Land Summary Sheet  
Respondent Exhibit 4: Corrected Property Record Card

Board Exhibit A: Form 139L petition  
Board Exhibit B: Notice of Hearing  
Board Exhibit C: Sign in Sheet

For Petition # 45-001-02-1-4-00734

Petitioner Exhibits: Same as listed above

Respondent Exhibit 1: Subject Property Record Card (PRC)  
Respondent Exhibit 2: Subject Photograph  
Respondent Exhibit 3: Plat Map Page  
Respondent Exhibit 4: Land Calculations/NBHD Land Summary Sheet

Board Exhibit A: Form 139L petition

Board Exhibit B: Notice of Hearing  
Board Exhibit C: Sign in Sheet

d) These Findings and Conclusions.

### **Analysis**

14. The most applicable laws 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.
15. The Petitioner’s claims generally may be grouped into the following restated contentions: (1) the subject parcels should be combined and assessed as one unit; (2) the assessments overstate the total area encompassed by the subject parcels; (3) the subject office building should be assessed as a modular building for a total value of no more than \$115,000; (4) the subject garage is assessed to the incorrect parcel, and it should be assessed under the GCK cost schedules with a quality grade of “D” and at least 75% depreciation; (5) Parcel 0037 should be classified as unusable undeveloped land; and (6) the assessments of the subject parcels are excessive in light of the assessments, listing prices and sale prices of comparable properties.

### Combining the Subject Parcels

16. The Petitioner did not provide sufficient evidence to support his contention that the Respondent erred by not combining the three parcels into a single unit for purposes of assessment. This Board reaches this conclusion for the following reasons:
- a) The Indiana Code provides a mechanism for taxpayers to request that contiguous parcels be combined for purposes of assessment. *See Ind. Code § 6-1.1-5-16*. Pursuant to that statute, however, the taxpayer must make a written request that the parcels be consolidated. *Id.* In addition, that statute provides that an assessing

official “shall consolidate more than one (1) existing contiguous parcel into a single parcel if the assessing official has knowledge that an improvement to the real property is located on or otherwise significantly affects the parcels.” *Id.*

- b) The Petitioner provided no evidence to show that he made a written request to an assessing official to consolidate the subject parcels. Similarly, while the Petitioner demonstrated that the subject garage was assessed to the incorrect parcel, he did not present any evidence that either the garage or office building was located on more than one parcel.
- c) The Petitioner therefore failed to establish a prima facie case of error.

#### Total Acreage

17. The Petitioner did not provide sufficient evidence to support his contention that the subject parcels encompass less area than the amount for which they are assessed. The Board reaches this conclusion for the following reasons:
- a) The Petitioner testified that his records indicate the subject parcels encompass a total of 5.39 acres, whereas the Respondent assessed them as containing 5.64 acres. *Kibler testimony.*
  - b) The Petitioner’s testimony lacks probative value. The Petitioner did not identify or introduce the records upon which he based his testimony, nor did he explain how the measurements contained in those records were computed.
  - c) Based on the foregoing, the Petitioner failed to establish a prima facie case of error regarding the Respondent’s measurement of the subject parcels.

#### Office Building

18. The Petitioner did provide sufficient evidence to support his contention that the Respondent erred in assessing the subject office building. The Board reaches this conclusion for the following reasons:
- a) The Petitioner contends that the Respondent erred in assessing the office building located on Parcel 0033 for essentially two reasons. First, the Petitioner contends that the office building is a modular building, which could be replaced for a total cost of no more than \$115,000. Second, the Petitioner contends that the building is entitled to depreciation of at least 75% as opposed to the 30% depreciation that it currently receives.
  - b) In support of his first contention, the Petitioner submitted an undated letter to Tim Frye of Cole Layer Trumble. *Pet’r Ex. 4.* In that letter, the Petitioner asserts that he could purchase a 2064 square foot modular office building for \$95,796, plus “footing” costs of “\$5.5K.” *Id.* The letter also indicates that the Petitioner is



- enclosing “quotes” from two contractors regarding the cost of a new modular office building and a new pole-barn building. *Id.* The Petitioner, however, did not offer those quotes as evidence at the hearing before the Board. *See id.* The Petitioner also submitted a document listing prices for various used modular buildings. *Id.*
- c) As noted above, the Petitioner did not offer the contractor’s “quotes” into evidence. Moreover, the Petitioner neither provided any evidence to demonstrate the features of the modular office for which he received a quote nor explained how those features compared to the features of the subject office building. The same is true with regard to the listings for “used” modular buildings submitted by the Petitioner. Consequently, the Petitioner’s evidence regarding the costs of new and used modular office buildings lacks probative value.
  - d) The Petitioner, however, also contends that the Respondent erred in calculating the appropriate amount of depreciation to apply to the subject office building. The property record card for Parcel 0033 shows that the Respondent valued the subject office building using the cost schedules for the General Commercial Mercantile (“GCM”) General Office model contained in the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”). *Resp’t Ex. 1(Pet. No. 00729)*. The property record card further shows that the Respondent assessed the subject building based upon a year of construction of 1980. *Id.* The Respondent applied depreciation of 30% to the replacement cost new for the subject building. *Id.*
  - e) The Petitioner bases his contention that the subject office building should receive depreciation of at least 75% on schedules relevant to the assessment of General Commercial Industrial (“GCI”) buildings. *See Pet’r Exs. 1, 4*. The Petitioner, however, did not present any probative evidence to show that the subject office building should be assessed from the GCI rather than the GCM schedules.
  - f) Nonetheless, the Petitioner did testify that he bought the building in 1976 and moved the building to its present location that same year. *Kibler testimony; see also, Pet’r Ex. 1*. Consequently, the Petitioner established a prima facie case that the Respondent based its assessment of the subject office building on an incorrect year of construction, and that the building should be assessed as having been constructed no later than 1976.
  - g) The Respondent did not offer any evidence to impeach or rebut the Petitioner’s testimony regarding the year that he purchased the building. The assessment therefore should be changed to calculate the amount of depreciation to apply to the subject office building based upon a year of construction of 1976.

#### Garage

19. The evidence supports the Petitioner’s contentions that the Respondent erred in assessing the subject garage. The Board reaches this conclusion for the following reasons:

- a) The Petitioner contends the subject garage should be valued using GCK cost schedules with depreciation of at least 75%.
- b) The Respondent agreed that garage should be valued using the GCK cost schedules. The Respondent recalculated the value of the subject building using the GCK cost schedules with what it views as all necessary adjustments. *Yohler testimony; Resp't Ex. 5 (Pet. No. 00733)*. The Respondent presented a corrected property record card showing those calculations. *Id.* The Respondent calculated a replacement cost new of \$60,580 and applied physical depreciation of 56% to arrive at a true tax value of \$26,700. *Id.*
- c) The Petitioner did not present any evidence to dispute the Respondent's proposed calculation other than to contest the quality grade ("C") and year of construction (1980) used by the Respondent.
- d) With regard to the former, the Petitioner testified that the garage was assigned a quality grade of "D" in prior assessments. *Kibler testimony*. As to the latter, the Petitioner testified that the garage was built in 1976, the same year he bought the subject office building. *Id.*
- e) The fact that the garage was assigned a grade of "D" in prior assessments is irrelevant to the current assessment. *See Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991) (Stating that each tax year stands alone).
- f) The year of construction, however, is relevant to the proper amount of depreciation to apply to the subject garage. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A*, App. F at 5 (incorporated by reference at 50 IAC 2.3-1-2) ("Depreciation is based upon the number of years that have lapsed from the date of construction and the effective date of valuation."). Thus, by proving that the Respondent based its assessment on a year of construction of 1980 rather than 1976, the Petitioner demonstrated that the Respondent's revised calculations are in error. The Respondent did not rebut the Petitioner's testimony in that regard.
- g) Consequently, the Petitioner has demonstrated that the assessment of the subject garage should be changed to reflect a replacement cost new of \$60,580, and that the depreciation applied to that replacement cost should be calculated based upon a year of construction of 1976.
- h) Finally, the parties agree that the subject garage should be removed from parcel 0036 and added to parcel 0033.

#### Land Classification

20. The Petitioner did not provide sufficient evidence to support his contention that the Respondent misclassified the land contained in Parcel 0037. The Board reaches this conclusion for the following reasons:

- a) The Petitioner contends that the land contained in Parcel 0037, which the Respondent classified as usable undeveloped land, instead should be classified as unusable undeveloped land.
- b) The Guidelines establish four (4) general categories of commercial and industrial land, the following two (2) of which are at issue in this appeal:
  - Usable Undeveloped - the amount of acreage that is vacant and held for future development
  - Unusable Undeveloped - the amount of vacant acreage that is unusable for commercial or industrial purposes, and not used for agricultural purposes.

GUIDELINES, ch. 2 at 85.

- c) The Guidelines also describe what the base rate for each of the above referenced types of land represents:

For usable undeveloped land, the base rate represents the January 1, 1999, value of vacant or raw land that is zoned for commercial and industrial purposes. This type of land has incurred no on-site development cost. . . .

For unusable undeveloped land, the base rate represents the January 1, 1999, value of undeveloped land that is zoned for commercial or industrial purposes. This type of land has incurred no on-site development costs and normally represents an area of vacant land with restrictions. There may be restrictions against building because there are environmental hazards on the property or because the area has been designated as a wetland area by the federal government. . . .

GUIDELINES, ch. 2 at 86.

- d) The Petitioner did not provide any evidence to show either that any of the land at issue is unusable for commercial or industrial purposes or the presence of any restrictions comparable to those described in the Guidelines. At most, the Petitioner pointed to the proximity of the Midco site to Parcel 0037. While the Petitioner identified the Midco site as a “superfund” site, he did not present any evidence as to how that designation restricted him from developing Parcel 0037 for commercial or industrial purposes. Moreover, although it is possible that the Midco site’s proximity to Parcel 0037 detracts from the latter’s market value-in-use, the Petitioner did not present any evidence to quantify the extent to which it does so, or to show that the 17% negative influence factor applied to the parcel does not already account for any such negative effects.

- e) Based on the foregoing, the Petitioner failed to establish a prima facie case that the Respondent erred in classifying Parcel 0037 as usable undeveloped land.

### Comparable Properties

21. The Petitioner did not provide sufficient evidence to support his contention that the subject parcels are improperly assessed in comparison to the assessments, sale prices and listing prices of comparable properties. The Board reaches this conclusion for the following reasons:
- a) The Petitioner presented assessment, sales and listing information for four properties. *See Pet'r Ex. 7*. The Petitioner apparently contends that the sales and assessments of those properties demonstrate that the subject parcels are assessed in excess of their market value-in-use.
  - b) In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value-in-use of the subject parcels. *See 2002 REAL PROPERTY ASSESSMENT MANUAL 2* (incorporated by reference at 50 IAC 2.3-1-2)(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).
  - c) In order to use the sales comparison approach as evidence in a property assessment appeal, 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. 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. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
  - d) The Petitioner did not provide a comparison of the four properties and the subject parcels as required by the court in *Long*. The Petitioner provided few details regarding any of the properties beyond their respective sales or listing prices and assessed values. The Petitioner did not compare things such as shape, access or topography of the respective parcels of land. *See Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that taxpayer failed to establish comparability of parcels of land where, among other things, taxpayer did not compare the topography and accessibility of parcels). The Petitioner likewise failed to engage in even the most basic comparison of improvements. Consequently, the Petitioner's evidence concerning the sales and listing prices of four properties lacks probative value.
  - e) Based on the foregoing, the Petitioner failed to establish a prima facie case of error.

### **Conclusion**

22. The Petitioner demonstrated that the assessment of the subject office building located on Parcel 0033 should be changed to reflect depreciation based upon a year of construction of 1976. The Petitioner further demonstrated that the subject garage should be moved from Parcel 0036 to Parcel 0033, that the replacement cost new of the garage should be changed to \$60,580, and that the depreciation applied to the replacement cost should be calculated based upon a year of construction of 1976.
23. The Petitioner failed to establish a prima facie case with regard to the remainder of his contentions. The Board finds in favor of the Respondent with regard to those contentions.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

**ISSUED: February 9, 2006**

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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](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>>.