

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions

Petitions: 50-015-02-1-5-00002
50-015-02-1-5-00003
50-015-02-1-5-00004

Petitioner: Allen Gilmer

Respondent: Walnut Township Assessor (Marshall County)

Parcels: 0090012200
0090013000
0090011400

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 Petitioners initiated an assessment appeal with the Marshall County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 16, 2003.
2. The Petitioners received notice of the decision of the PTABOA on September 2, 2003.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on September 29, 2003.
4. The Board issued a notice of hearing to the parties dated November 25, 2003.
5. The Board held an administrative hearing on January 14, 2004, before the duly appointed Administrative Law Judge, Dalene McMillen.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Allen Gilmer
 - b) For Respondent: Jennifer Becker, Township Representative
Edward Bisch, Jr., Township Representative
Michael Boys, Marshall County Assessor
William Cleavenger, PTABOA Member
Debra Dunning, Marshall County Deputy Assessor
Jerry Ross, PTABOA Member
Roy Michael Roush, Observer
Lyle Samuelson, PTABOA Member

Facts

7. The properties are classified as agricultural, as is shown on the property record card for all three parcels that are the subject of this hearing.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Marshall County PTABOA:
Petition # 50-015-02-1-5-00002- Land \$47,500; Improvements \$0.
Petition # 50-015-02-1-5-00003- Land \$2,800; Improvements \$13,300
Petition # 50-015-02-1-5-00004- Land \$40,500; Improvements \$500

Issues

Petition Number 50-015-02-1-5-00002

10. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) Petitioner claims the land in this parcel should be priced at \$815 per acre.
 - b) Petitioner claims that there is a 0.46-acre private drainage ditch on this parcel that should be reclassified as non-crop land or zero production value.
11. Summary of Respondent's contentions in support of the assessment:
 - a) Respondent contends this parcel does not contain a legal ditch.

Petitioner Number 50-015-02-1-5-00003

12. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) Petitioner claims the land in this parcel should be priced at \$800 per acre.
 - b) Petitioner claims that there is a 0.23-acre non-tillable ditch on this parcel that should be reclassified as non-crop land or zero production value.
 - c) Petitioner also claims that due the presence of a seasonal high water table of 28 inches and a septic slope of 6%, the Marshall County Health Department would not issue a septic permit for this parcel, precluding any further development of this land which affects the value of the land.
13. Summary of Respondent's contentions in support of the assessment:
 - a) Respondent contends there is a legal ditch and public roadway of 0.24 acres, which is receiving a 100% negative influence factor resulting in a zero value.
 - b) The subject parcel is classified as agricultural acreage, therefore the lack of well and septic does not affect that value of this parcel while it is being utilized as farmland.

14. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) Petitioner argued that land should be assessed at \$850 an acre in this parcel.
 - b) Petitioner contends this parcel contains a county ditch consisting of 2.03 acres, a private drainage ditch consisting of 0.41 acres, and a wooded area consisting of 1.06 acres that all should be classified as non-crop land or zero production value.
 - c) Petitioner claims this parcel was assessed with the soil type Rensselaer Loam and that the parcel does not contain any Rensselaer Loam soil.
 - d) Petitioner opines that this parcel has been assessed as if it were flat ground and this parcel contains three sand hills with soil that is lighter and less productive, therefore this affects the per acre value of the land.
 - e) Petitioner finally contends that a neighboring parcel, owned by Steve Martin (Martin Property), is superior to the subject; is flat ground; has access to three paved roads; has a pivot irrigation system; and is not bisected by a county ditch. Petitioner claims the Martin Property is assessed at \$987 per acre.
15. Summary of Respondent's contentions:
- a) The Respondent assessed this parcel with a 1.83 acre legal ditch, 0.60 acre public roadway and 0.98 acres of woodland using the Global Information Systems (GIS) from the latest soil maps from the Natural Resource Conservation Service (NRCS).

Record

16. The official record for this matter is made up of the following:
- a) The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
 - b) The tape recording of the hearing labeled BTR 5730
 - c) Exhibits:
 - For the Petitioner:
 - Petitioner's Exhibit 1 – A photograph of a ditch located on the 58.87 acres (parcel 0090012200).
 - Petitioner's Exhibit 2 – A hand drawn map showing the Gilmer ditch and sod waterway on the 58.87 acres (parcel 0090012200).
 - Petitioner's Exhibit 3 – A photograph showing the north side of the ditch located on the 4 acres (parcel 0090013000).
 - Petitioner's Exhibit 4 – A photograph showing the south side of the ditch located on the 4 acres (parcel 0090013000).
 - Petitioner's Exhibit 5 – A copy of the on-site soils profile analysis conducted by the Marshall County Health Department, dated January 2, 2004 (parcel 0090013000).

Petitioner's Exhibit 6 – A hand drawn map showing the ditch and sand hill on the 4 acres (parcel 0090013000).

Petitioner's Exhibit 7 – A photograph of deep creek located on the 40 acres (parcel 0090011400).

Petitioner's Exhibit 8 – A hand drawn map showing the sand hills and waterway and soil types on the 40 acres (parcel 0090011400).

Petitioner's Exhibit 9 – A photograph of water running onto Houghton Muck from side hill on 40 acres (parcel 0090011400).

Petitioner's Exhibit 10 – A photograph of an 18' slope from hill to ditch on 40 acres (parcel 0090011400).

Petitioner's Exhibit 11 – A photograph showing north of the ditch on the 40 acres (parcel 0090011400).

Petitioner's Exhibit 12 – A photograph showing a private ditch on the 40 acres (parcel 0090011400)

Petitioner's Exhibit 13 – A photograph showing woodland on the 40 acres (parcel 0090011400).

Petitioner's Exhibit 14 – A photograph showing Mr. Martin's property (comparable).

Petitioner's Exhibit 15 – A copy of Mr. Martin's 2002 property record card.

Petitioner's Exhibit 16 – A copy of the Petitioner's presentation notes.

For the Respondent:

Respondent's Exhibit 1 – The Township Assessor's response to the Form 131 issues for petition #50-015-02-1-5-00002 with the following attachments: letter from Kenneth Powell, Walnut Township Trustee authorizing Mr. Edward Bisch to represent Walnut Township; a copy of Allen Gilmer's original 2002 property record card; a copy of a letter from Debra Dunning, Deputy Assessor, to Allen Gilmer, dated July 16, 2003; a copy of Form 115 Notification of Final Assessment Determination, dated September 2, 2003; a copy of Allen Gilmer's revised 2002 property record card, dated August 29, 2003; a copy of page 104 from the Version A-Real Property Assessment Guideline (Type 5-Nontillable land); and a copy of the issue from the Petitioner's Form 130 appeal.

Respondent's Exhibit 2 – The Township Assessor's response to the Form 131 issues for petition #50-015-02-1-5-00003 with the following attachments: letter from Kenneth Powell, Walnut Township Trustee authorizing Mr. Edward Bisch to represent Walnut Township; a copy of Allen Gilmer's original 2002 property record card; a letter from Debra Dunning, Deputy Assessor, to Allen Gilmer, dated July 16, 2003; a copy of Form 115 Notification of Final Assessment Determination, dated September 2, 2003; a copy of Allen Gilmer's revised 2002 property record card, dated August 29, 2003; and a copy of the issue from the Petitioner's Form 130 appeal.

Respondent's Exhibit 3 – The Township Assessor's response to the Form 131 issues for petition #50-015-02-1-5-00004 with the following

attachments: letter from Kenneth Powell, Walnut Township Trustee authorizing Mr. Edward Bisch to represent Walnut Township; a copy of Allen Gilmer's original 2002 property record card; a letter from Debra Dunning, Deputy Assessor, to Allen Gilmer, dated July 16, 2003; a copy of Form 115 Notification of Final Assessment Determination, dated September 2, 2003; a copy of Allen Gilmer's revised 2002 property record, dated August 29, 2003; a copy of page 100 from Version A-Real Property Assessment Guideline (Agricultural Land market value in use); and a copy of pages 106, 107 and 108 from Version A-Real Property Assessment Guideline (Using Soil Maps).

Respondent's Exhibit 4 – A copy of page 105 from Version A-Real Property Assessment Guideline (Agricultural Support Land Subtypes (Type 81)).

Respondent's Exhibit 5 – A copy of Soil Productivity Factors – 1995 Reassessment for Marshall County.

Respondent's Exhibit 6 – A copy of the GIS map for the Allen Gilmer properties, dated August 14, 2003.

d) These Findings and Conclusions.

Analysis

17. The most applicable governing law is:

Ind. Code § 6-1.1-31-6(c):

True tax value does not mean fair market value. True tax value is the value determined under the rules of the department of local government finance.

See 2002 REAL PROPERTY ASSESSMENT MANUAL at 12, (incorporated by reference at 50 IAC 2.3-1-1(a)).

“True Tax Value” is 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, less that portion of use value representing subsistence housing for its owner.

Ind. Code § 6-1.1-4-13(a): Agricultural land:

- (a) In assessing land or reassessing land, the land shall be assessed as agricultural land only when it is devoted to agricultural use.
- (b) The Department of Local Government Finance shall give written notice to each county assessor of:
 - (1) The availability of the United States Department of Agriculture's soil survey data; and
 - (2) The appropriate soil productivity factor for each type or classification of soil shown on the United States Department of Agriculture's soil survey map.

Ind. Code § 14-27-8-3: Ditch or drain defined:

As used in this chapter, “ditch” or “drain” includes the following:

- (1) A main dredge ditch.
- (2) The lateral ditches:
 - (A) tributary to a main ditch; and
 - (B) constructed as one (1) system of drainage by the use of a dredge machine.

Ind. Code § 36-9-27-2 “Private drain”

means a drain that:

- (1) is located on land owned by one (1) person or by two (2) or more persons jointly; and
- (2) was not established under or made subject to any drainage statute.

Ind. Code § 36-9-27-2 “Regulated drain”

means an open drain, a tiled drain, or a combination of the two.

Ind. Code § 36-9-27-2 “Open Drain”

means a natural or artificial open channel that:

- (1) carries surplus water; and
- (2) was established under or made subject to any drainage statute.

Ind. Code § 36-9-27-2 “Tiled drain”

means a tiled channel that:

- (1) carries surplus water; and
- (2) was established under or made subject to any drainage statute.

2002 REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION ‘A’ at 99, (incorporated by reference at 50 IAC 2.3-1-1(b)) “Agricultural Land Base Rate Value” in pertinent part:

Agricultural land is calculated by dividing the net income of each acre by the appropriate capitalization rate.

Market value in use = Net income divided by Capitalization rate.

Agricultural land in Indiana is nearly evenly divided between cash rent and owner-occupied production, the State Board of Tax Commissioners utilized a four-year rolling average (1995 to 1998) of both methods in determining the market value in use of agricultural land.

The statewide agricultural land base rate value for the 2002 general reassessment will be the average market value in use of \$1050 per acre.

2002 REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION ‘A’ at 100, (incorporated by reference at 50 IAC 2.3-1-1(b)) “Assessing Agricultural Land” in pertinent part:

The agricultural land assessment involves identifying agricultural tracts using data from a detailed soil map, aerial photography, and local plat maps.

2002 REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION ‘A’ at 102, (incorporated by reference in 50 IAC 2.3-1-1(b)) “Land Use Types”

Agricultural land is categorized according to its land use type and soil identification. The following land use types, apply to agricultural acreage:

- Type-2 – classified land
- Type 4 – tillable land
- Type 5 – nontillable land
- Type 6 – woodland
- Type 7 – other farmland
- Type 8 – agricultural support land
- Type 9 – homesite.

Agricultural land use types usually are measured from aerial photographs.

2002 REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION ‘A’ at 105, (incorporated by reference in 50 IAC 2.3-1-1(b)) “Type 8 – Agricultural Support Land”

Type 81 – A legal ditch. The area used and occupied as part of a legal drainage ditch is considered to have no value and is deducted from the total parcel acreage.

Type 82 – A public road. The right-of-way area dedicated for public roads is deducted from the total parcel acreage.

Type 83 – Land on which public utility transmission towers are situated.

2002 REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION ‘A’ at 106-108 (incorporated by reference in 50 IAC 2.3-1-1(b)) “Using Soil Maps” and “The Calculation of the Soil Productivity Index”

Agricultural land assessment formula values farmland, in part, based on the productivity of each parcel’s resources.

Soil map units in Indiana are assigned a productivity rating. The rating is based on average estimated corn yields, which in turn are based on the physical properties of the soil, such as:

- slope
- moisture holding capacity
- natural drainage class
- depth of rooting
- amount of surface soil remaining
- organic matter content
- various other soil characteristics.

Estimated corn yields are based on an average level of crop management and reflect a 10-year average. Estimates of corn yields for particular soil map units are tested using data collected by Purdue University and the U.S. Department of Agriculture, Natural Resource Conservation Service from field trials, yield tests, and producer experiences.

***Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E.2d 329 (Ind. Tax 1999)**

The petitioner must sufficiently explain the connection between the evidence and petitioner's assertion in order for it to be considered material to the facts. Conclusory statements are of no value to the State in its evaluation of the evidence.

***State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.* 743 N.E.2d 247, 253 (Ind. 2001), and *Blackbird Farms Apartment, LP v. Department of Local Government Finance*, 765 N.E.2d 711 (Ind. Tax 2002)**

The Petitioner must do two things: (1) prove the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct.

Agricultural Land Base Rate (all parcels)

18. For all three subject parcels, Petitioner argued that the base rate of \$1,050 per acre for farmland as set by the Department of Local Government Finance is incorrect.
19. The assessment of agricultural land is specifically, and somewhat uniquely, addressed in state statute. Ind. Code § 6-1.1-4-13 provides that all assessing officials use specified data in determining the True Tax Value (TTV) of agricultural land. The statute also requires that the Department of Local Government Finance "shall by rule provide a method for determining the true tax value of agricultural land."
20. The Petitioner challenges the correctness of the agricultural land base rate of \$1050 per acre, promulgated in accordance with IC 6-1.1-4-13. The established method is contained within the 2002 REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION 'A' (incorporated by reference in 50 IAC 2.3-1-1(b)).
21. The Guidelines state that "The statewide agricultural land base rate value for the 2002 general reassessment will [is] ... \$1050 per acre." 2002 REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION 'A' Ch. 2, at 100 (incorporated by reference in 50 IAC 2.3-1-1(b)). The provisions establish that this \$1050 per acre base rate be used as the starting point in calculating the TTV of agricultural land. The complete calculation, however, requires the application of several additional factors (such as land use type and soil productivity) before arriving at final TTV.

22. In this case, the Petitioner has elected to challenge a single aspect of the mass appraisal rules applicable to agricultural land (the \$1050). The Petitioner directly contests the provisions of the mass appraisal process rather than the end result of the application the rules. The Board is not in the position to find fault or pass judgment on the propriety of the properly promulgated rules themselves. The Petitioner may present evidence that adjustments to the base rate are necessary, but being part of a duly promulgated rule, the Board cannot entertain a facial challenge to the terms of the rule itself (the established base rate).
23. The Board views these particular circumstances (and the provisions set out in the rules) as affording the Petitioner the opportunity to demonstrate that the established process was not properly applied to the subject property. However, it does not appear that the Petitioner is challenging the manner in which the rules were applied. It seems the Petitioner believes his evidence disproves the propriety of the \$1050, and therefore disproves the final TTV value. But again, simply challenging one specific step in the mass appraisal process lacks the necessary scope of analysis required to evaluate the appropriate value of the subject property.
24. The Petitioner's evidence must serve to disprove the validity of TTV arrived at for the subject property. The Board does not find that the Petitioner's evidence demonstrates that the TTV arrived at, after the full and complete application of the rules, is in error.
25. For all reasons set forth above, the Petitioner failed to establish a prima facie case indicating an error in assessment. No change is made in the assessment of these parcels as a result of this issue.

Petition #50-015-02-1-5-00002

26. Petitioner presented a photograph and hand drawn map of parcel #0090012200 containing 58.87 acres. Through testimony the Petitioner stated the private ditch measured 418 feet long by 47 feet wide and consisted of approximately .45 acre and should be classified as non-crop land or zero production value. *Petitioner's Ex. 1 & Ex. 2; Gilmer testimony.*
27. Respondent testified that the PTABOA calculated the land using data from the Marshall County GIS Department and in accordance with the Regulation (50 IAC 2.3) as follows; 42.12 acres tillable cropland (type 4), 16.03 acres non-tillable cropland (type 5) and .72 acre public road right of way (type 82). Further, this parcel was found to contain no legal ditch. *Respondent's Ex. 1, Ex. 5 & Ex. 6; Bisch testimony.*
28. "The area used and occupied as part of a legal drainage ditch is considered to have no value and is deducted from the total parcel acreage." 2002 REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION 'A' Ch. 2, at 105 (incorporated by reference in 50 IAC 2.3-1-1(b)). Private ditches are not included in this category.

29. Legal drainage ditches are those “established under or made subject to any drainage statute.” Ind. Code §36-9-27-2.
30. Petitioner failed to present testimony or evidence that the drainage ditch on his property was “established under or made subject to any drainage statute,” or is encumbered by any government restrictions. *See Gilmer testimony.*
31. Finally, the Petitioner failed to submit any testimony or evidence that the land type classifications established by the County were incorrectly applied to the subject property.
32. For all reasons set forth above, the Petitioner failed to establish a prima facie case indicating an error in assessment. No change is made in the assessment of this parcel as a result of these issues.

Petition #50-015-02-1-5-00003

33. Petitioner testified that the parcel contains a legal open ditch of .22 acre that should be reclassified as non-cropland or zero production value. Further due to seasonal high water table of 28 inches and a septic area slope of 6%, the Marshall County Health Department would not issue a septic permit for this parcel, thereby precluding any further development of this land. *Petitioner’s Ex. 3, Ex. 4 & Ex. 5; Gilmer testimony.*
34. Respondent testified that upon calculating the ditch size and public road for this parcel using the GIS map it was determined the legal ditch and public road right of way totaled .24 acre. This legal ditch lies adjacent to the public road therefore the acreage was already being deducted from the subject parcel. Also, the PTABOA calculated the land using data from the Marshall County GIS Department and in accordance with the Regulation (50 IAC 2.3) as follows; 2.89 acres tillable cropland (type 4), 1 acre other farmland (type 71), .01 acre legal ditch (type 81) and .23 acre public road right of way (type 82). *Petitioner’s Ex. 2, Ex. 5 & Ex. 6; Bisch testimony.*
35. Petitioner submitted an on-site soil profile conducted by the Marshall County Health Department, a hand drawn map and two (2) photographs of the subject area, however he failed to demonstrate the land classification or value is incorrect. Petitioner has not sufficiently explained the connection between the evidence and his assertions in order for the evidence to be considered probative. “[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis.” *Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004).
36. Regarding Petitioner’s inability to secure a septic permit, Petitioner did not explain how that fact affects the market value-in-use of the property. Respondent correctly pointed out that “[a]t present time this parcel is classified as agricultural acreage. The lack of a well and septic system does not affect the value of this land while used as farmland.” *Respondent Ex. 2 at 3.*

37. The agricultural land was valued at \$1050 per acre with adjustments permitted for such things as soil productivity and influence factors. *See* 2002 REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION ‘A’ Ch. 2 at 99-100, 102, 106-108 (incorporated by reference in 50 IAC 2.3-1-1(b)).
38. Petitioner failed to produce a soil analysis or certified survey of the area to demonstrate the land classifications applied to the subject land are incorrect.
39. For all reasons set forth above, the Petitioner failed to establish a prima facie case indicating an error in assessment. No change is made in the assessment of this parcel as a result of these issues.

Petition #50-015-02-1-5-00004

40. Petitioner testified that the parcel contains a county ditch of 2.03 acres, a private drainage ditch consisting of .41 acre and a wooded area consisting of 1.06 acres that should be reclassified as non-cropland or zero production value. The parcel assessed contains three (3) sand hills with soil that is lighter and less productive. Also, the parcel contains 6 acres of muck that is wet and does impede farming at times. Finally, this parcel is assessed with the soil type Rensselaer Loam and this parcel does not contain any Rensselaer Loam soil. *Petitioner’s Ex. 7, Ex. 8, Ex. 9, Ex. 10, Ex. 11, Ex. 12 & Ex. 13; Gilmer testimony.*
41. Respondent testified that the PTABOA calculated the land using data from the Marshall County GIS Department and in accordance with the Regulation (50 IAC 2.3) as follows; 36.59 acres tillable cropland (type 4), 1.83 acres legal ditch (type 81), .60-acre public road right of way (type 82), and .98-acre woodland (type 6). *Respondent’s Ex. 3, Ex. 5 & Ex. 6; Bisch testimony.*
42. To repeat, “The area used and occupied as part of a legal drainage ditch is considered to have no value and is deducted from the total parcel acreage.” *50 IAC 2.3, Version A, Chapter 2, page 105.* Private ditches are not included in this category.
43. Legal drainage ditches are those “established under or made subject to any drainage statute.” Ind. Code §36-9-27-2.
44. Petitioner failed to present testimony or evidence that the .41-acre of private drainage ditch on his property was “established under or made subject to any drainage statute,” or is encumbered by any government restrictions.
45. Petitioner submitted a hand drawn map and six photographs of the subject area, however, he failed to demonstrate the land classification or value is incorrect. The Petitioner must sufficiently explain the connection between the evidence and Petitioner’s assertion in order for it to be considered material to the facts. Conclusory statements are of no value to the State in its evaluation of the evidence. *See Heart City Chrysler v. State Board of Tax Commissioners, 714 N.E.2d 329 (Ind. Tax 1999).*

46. “The agricultural land assessment formula values farmland, in part, based on the productivity of each parcel’s soil resources. More productive land is rated higher than less productive land. Therefore, more productive land has a higher value. To evaluate and categorize land according to its productivity, measurements are calculated from detailed soil maps published by the U.S. Department of Agriculture.” *50 IAC 2.3, Version A, Chapter 2, page 106.*
47. The Respondent testified that the soil maps prepared by the U.S. Department of Agriculture were used to assess the Petitioner’s property. *Bisch testimony.* The Respondent did not present any evidence, other than his conclusory statements and a hand drawn map showing his claimed soil types. The Respondent failed to produce any type of soil analysis or certified survey of the parcel indicating the land classifications arrived at by the U.S. Department of Agriculture were incorrect.
48. Petitioner testified that Steve Martin’s parcel is superior to the subject property as the comparable property is flat ground, has access to three (3) paved roads, has a pivot irrigation system and is not bisected by a county ditch and is assessed at \$987 per acre. *Petitioner’s Ex. 14 & Ex. 15; Gilmer testimony.*
49. Merely characterizing properties as superior or comparable, however, is insufficient for appeal purposes. The Petitioner is required to present probative evidence that the purported property he offers is, in fact, superior or comparable to the subject. No such foundation was presented. Mr. Gilmer’s conclusory statements concerning superior or comparable property does not constitute probative evidence. *Whitley, 704 N.E.2d at 1119. See Blackbird Farms Apts., LP v. Dep’t of Local Gov’t Fin., 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (finding that where “there is no comparison of lot sizes or shapes, no comparison of topography or geographical features, no comparison of lot accessibility and uses,” taxpayer had failed to probative evidence that properties were comparable).*
50. For all reasons set forth above, the Petitioner failed to establish a prima facie case indicating an error in assessment. No change is made in the assessment as a result of this issue.

Objection Issue

51. Respondent objected to the testimony and evidence submitted by the Petitioner at the hearing. Respondent claimed that the testimony and evidence had not been presented at the PTABOA hearing.¹ However, the Board’s rules do not limit the parties’ ability to bring new evidence and testimony. The only limitation is that the *issues* presented to the Board in small claims proceedings must be “substantially the same as those presented to

¹ There was ample discussion at the hearing regarding Mr. Gilmer’s failure to attend the PTABOA hearing. Although it is helpful for everyone involved when all parties meaningfully participate in PTABOA proceedings, it is not a prerequisite for Indiana Board review. The Indiana Board reviews PTABOA determinations *de novo*. See *generally*, Ind. Code § 6-1.1-15-4.

the PTABOA[.]” 52 IAC 3-1-2(b); *see also*, Ind. Code § 6-1.1-15-4(k). Therefore, the Board overrules the Respondent’s objection.

Conclusions

52. The Petitioner failed to establish a prima facie case indicating an error in assessment. The Board finds in favor of the Respondent. No change is made in the assessment of this parcel as a result of these issues.

Final Determination

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