REPRESENTATIVE FOR PETITIONER:
Charles Max Layden, Attorney

REPRESENTATIVE FOR RESPONDENT:
Marilyn Meighen, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Robert V. Rohrman,	)	Petition Nos.: 79-158-04-1-4-00001
	)	79-158-04-1-4-00002
	)	79-156-04-1-4-00005
Petitioner,	)	79-158-05-1-4-00002
	)	79-158-05-1-4-00003
	)	79-156-05-1-4-00022
	)	
v.	)	Parcels: 158-10910-0721
	)	158-10910-0710
	)	156-02405-2899
	)	
Fairfield Township Assessor,	)	Tippecanoe County
	)	
Respondent.	)	2004 and 2005 Assessments
	)	

Appeal from the Final Determination of the
Tippecanoe County Property Tax Assessment Board of Appeals

OCTOBER 20, 2008

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented for both parties in the above captioned assessment appeals. As a result, the Board issues the findings of fact and conclusions of law that follow.

PROCEDURAL HISTORY

1. The Tippecanoe County Property Tax Assessment Board of Appeals (PTABOA) issued Forms 115, Notification of Final Assessment Determination, for the subject properties on February 3, 2006. Pursuant to Ind. Code § 6-1.1-15-3, Robert V. Rohrman filed Forms 131, Petition for Review of Assessment, on March 8, 2006, seeking the Board's administrative review.

HEARING FACTS AND OTHER MATTERS OF RECORD

2. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Debra Eads, the designated Administrative Law Judge, held a hearing in Lafayette on July 22, 2008.

3. The following persons were sworn as witnesses and presented testimony at the hearing:

Robert V. Rohrman, Petitioner,
Mark James, Senior Project Manager, Alt & Witzig Engineering,
Cathi Gould, PTABOA Member,
Jim Malady, PTABOA Member,
Jan Payne, Fairfield Township Assessor,
Pam Hruska, Deputy County Assessor.

4. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Purchase Agreement,
Petitioner Exhibit 2 – Correspondence relative to underground tanks,
Petitioner Exhibit 3 – Form 131 and Form 115 for parcel 158-10910-0721,
Petitioner Exhibit 4 – Form 131 and Form 115 for parcel 158-10910-0710,
Petitioner Exhibit 5 – Correspondence to Max Layden from Mark James dated July 3, 2008,
Petitioner Exhibit 6 – Form 115 for parcel 158-10910-0710 for 2006,
Petitioner Exhibit 7 – Form 131 and Form 115 for parcel 156-02405-2899,
Petitioner Exhibit 8 – Land survey for subject property,
Petitioner Exhibit 9 – Information regarding right-of-way dedication,
Petitioner Exhibit 10 – Listing information for Lambirth-Shook property,
Petitioner Exhibit 11 – Tax bill and aerial photograph of adjoining parcel,
Petitioner Exhibit 12 – Deed of Easement for detention pond,
Petitioner Exhibit 13 – Agreement regarding drainage facilities,
Petitioner Exhibit 14 – Plat map and zoning information,
Petitioner Exhibit 15 – Agricultural land assessment statute, Ind. Code 6-1.1-4-13,
Petitioner Exhibit 16 – *Lindemann v. Wood*, 799 N.E.2d 1230 (Ind. Tax Ct. 2003).

5. The Respondent presented the following exhibits:

Respondent Exhibit A – Agricultural land assessment statute, Ind. Code 6-1.1-4-13,
Respondent Exhibit B – PTABOA meeting minutes from September 11, 2000,
Respondent Exhibit C – Property record cards for parcel 156-02405-2899,
Respondent Exhibit D – *Indianapolis Elks Building Corp. v. State Bd. of Tax Comm'rs*, 251 N.E.2d 673 (Ind. Ct. App. 1970),
Respondent Exhibit E – *P/A Builders & Developers v. Jennings Co. Assessor,* 842 N.E.2d 899 (Ind. Tax Ct. 2006),
Respondent Exhibit F – *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007).

6. The following additional items are recognized as part of the record:

Board Exhibit A – The 131 Petitions for each parcel,
Board Exhibit B – Notices of Hearing dated June 3, 2008,
Board Exhibit C – Notice of Appearance by Charles Max Layden,
Board Exhibit D – Notice of Appearance by Marilyn Meighen,
Board Exhibit E – Hearing Sign In Sheet.

7. Two of the parcels (158-10910-0721 and 158-10910-0710) are a former service station located on a 58-acre tract of land located on highway 231 in Lafayette, Indiana. The remaining parcel (156-02405-2899) is a vacant 20.1711-acre tract located on highway 26 in Lafayette, Indiana.

8. The Administrative Law Judge did not conduct an on-site inspection of the properties.

9. The PTABOA determined the assessed values of the properties are:

Year	**Petition No.**	**Land**	**Imp**	**Total**
2004	79-158-04-1-4-00001	$108,000	$53,900	$161,900
2004	79-158-04-1-4-00002	42,600	0	42,600
2004	79-156-04-1-4-00005	1,597,500	0	1,597,500
2005	79-158-05-1-4-00002	42,600	0	42,600
2005	79-158-05-1-4-00003	108,000	53,900	161,900
2005	79-156-05-1-4-00022	1,597,500	0	1,597,500

10. The Petitioner contended the assessed values should be:

Year	Petition No.	Land	Imp	Total
2004	79-158-04-1-4-00001	$40,000	$53,900	$93,900
2004	79-158-04-1-4-00002	20,000	0	20,000
2004	79-156-04-1-4-00005	12,300	0	12,300
2005	79-158-05-1-4-00002	20,000	0	20,000
2005	79-158-05-1-4-00003	40,000	53,900	93,900
2005	79-156-05-1-4-00022	12,300	0	12,300

Contentions for Petitions 79-158-04-1-4-0001, 79-158-04-1-4-00002, 79-158-05-1-4-00002 and 79-158-05-1-4-00003

11. Summary of the Petitioner's case:

A. These two parcels are the site of an abandoned service station.[1] The only issue pertaining to their assessment is a claim for a negative influence factor because of site contamination. According to the Petitioner, the land value should be reduced to zero because the clean-up cost would exceed the value of the land. *Layden argument*.

B. The two parcels were used as a service station for many years until approximately 1980. *Rohrman testimony*. The contamination from the subject property has most likely leached over to the adjoining property due to the proximity of the pump island to the parcel boundary. *James testimony*; *Petitioner Exhibit 2*. The estimated clean-up cost of the property is $390,000. *James testimony; Petitioner Exhibit 5*.

C. The Petitioner's original purchase agreement for the property in 1989 required the seller to clean-up the contamination prior to transfer of ownership. The clean-up cost, however, turned out to be prohibitive for the seller. Through a second agreement in 1993, the Petitioner acquired ownership for approximately $52,300 and assumed responsibility for the clean-up. *Rohrman testimony; Petitioner Exhibit 1*. The clean-up has still not been completed to the satisfaction of the Indiana Department of Environmental Management. *Rohrman testimony*.

D. The Form 115 for March 1, 2006, establishes the PTABOA combined the two parcels and the resulting parcel size negated the small acreage adjustment for 2006. Because

[1] They are parcel number 158-10910-0721 and parcel number 158-10910-0710.

the two parcels were not combined in 2004 or 2005, a small acreage adjustment that increased the assessed value was made for those years. *Gould testimony; Petitioner Exhibit 6.*[2]

12. Summary of the Respondent's case:
    A. The Petitioner has used this location for selling cars, but the location was opened and closed several times over a period of years. At the hearing the Petitioner was not sure if the property was being used to sell cars on the 2004 or 2005 assessment dates. *Rohrman testimony*.
    B. The Petitioner did not make a prima facie case. He argued the methodology and failed to quantify the value he sought for the land. *Meighen argument*.

Contentions for Petitions 79-156-04-1-4-00005 and 79-156-05-1-4-00022

13. Summary of the Petitioner's case:
    A. This property should have been assessed as agricultural land for the 2004 and 2005 assessment years because there was an agreement between the Petitioner and the former Township Assessor.[3] *Layden argument*.
    B. The Petitioner purchased the property on July 27, 1999, for $1,720,000. *Rohrman testimony; Petitioner Exhibit 7*. A detention pond, road right-of-way, ditch and high-tension electric wires were all there at the time of purchase. *Rohrman testimony.* Prior to that time, it was used for growing hay on a horse farm. In approximately 2000, the assessment of the property was changed from agricultural to commercial. Upon appeal of the commercial assessment, the property was reassessed as

[2] The Respondent objected to testimony regarding the 2006 assessed value because that assessment is not relevant to the prior assessment years. But that objection goes more to weight, rather than admissibility. The Respondent also objected to the Form 115 for 2006 (Petitioner Exhibit 6) because a copy was not exchanged prior to the hearing. The Petitioner argued that Exhibit 6 was submitted as impeachment evidence because it was not anticipated that Ms. Gould would testify she did not know what action was taken by the PTABOA for the 2006 assessment date. Even though a copy was not exchanged before the hearing, impeachment evidence is permissible under such circumstances. Therefore, the objections to Exhibit 6 and the testimony about the 2006 assessment change are overruled. Nevertheless, the Board finds that such evidence has no probative value because each tax year stands on its own and because the focus on a change in methodology does not help to determine the real issue, which is the correct market value-in-use of this property.

[3] This property is parcel number 156-02405-2899.

agricultural and the assessor agreed on August 21, 2000, not to change the land classification from agricultural until excavation began for commercial use. *Id; Petitioner Exhibit 7, notation on property record card*.

C. The land was not actively used as farmland in 2004 and 2005 because the Petitioner believed the agricultural assessment would continue until the commencement of new construction on the property. Excavation for commercial use of the land did not begin until 2008. The land should have retained the agricultural assessed value until then. *Rohrman testimony.*

D. A 2.181 acre portion of the subject property is used as a detention pond for the surrounding area. *Rohrman testimony; Petitioner Exhibit 12.* This area is totally fenced and must be maintained by the Petitioner, but is of no use or value to the Petitioner. *Rohrman testimony*. The County Assessor deducted the acreage associated with the detention pond from the total assessment for the property in 2006. Nothing about the property changed between the 2004 and 2005 assessments when the detention pond was assessed, and 2006 when the detention pond was not assessed. *Layden argument.* The Petitioner also maintains a ditch (*marked in orange on Petitioner Exhibit 8*) on the property that carries water to the detention pond. *Rohrman testimony; Petitioner Exhibit 13.*

E. A 1.024 acre portion creates a barrier between the frontage zoned as General Business and the rear portion of the subject property that is zoned as farm or residential. It was dedicated to the city as a right-of-way. *Rohrman testimony; Petitioner Exhibits 9, 14.*

F. A 22.25 acre property comparable to the Petitioner's property and located on Creasy Lane was offered for sale to the Petitioner for $125,000 per acre in 2006. *Rohrman testimony; Petitioner Exhibit 10.* The comparable property on Creasy Lane is zoned similarly to the Petitioner's property, but is used and assessed as agricultural land with a significantly lower property tax liability than the Petitioner's property. *Rohrman testimony.*

G. A 4.9151 acre parcel adjacent to the subject property (*marked in green on Petitioner Exhibit 8*) is assessed for $283,100 and is comparable to the portion of the Petitioner's property zoned for General Business. *Layden argument; Petitioner Exhibit 11.* The portion of the Petitioner's property that has frontage on State Road

26 and is zoned for General Business should be assessed in a manner similar to the adjacent parcel. The value of residential land is approximately 25% of the value of commercial land in the same area. Combining these two values for the business and residential portions of the parcel would give an accurate value. *Rohrman testimony.*

H. It is not uncommon to overpay for commercial property in anticipation of the profit to be made from the proposed business on the property. *Rohrman testimony.*

14. Summary of the Respondent's case:

A. The Petitioner purchased the property for $1,720,000 with the detention pond, road right-of-way, ditch and high-tension electric wires all in place. This purchase is the best indication of the property's value. *Meighen argument.*

B. The property is valued at $79,200 per acre, which is less than the $125,000 per acre asking price for the parcel adjacent to the property. *Meighen argument, referring to Petitioner Exhibit 10.*

C. The minutes from the 2000 PTABOA hearing indicate that the property was classified as agricultural based on the actual use of the land in 2000. *Gould testimony; Respondent Exhibit 2*. The PTABOA did not value the property as agricultural land in 2004 or 2005 because the land was not used for agricultural purposes during those years. *Gould testimony.*

D. There have been no longstanding agreements as to future assessments made by the PTABOA since at least 2004. *Gould testimony.* Even if some type of agreement was made between the Township Assessor and the Petitioner regarding future assessments for the property, that agreement would be contrary to statute because land must be used for agricultural purposes in order to be assessed using the agricultural valuation method. *Meighen argument; Respondent Exhibit A.*

ANALYSIS

15. 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).

16. In making a 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").

17. 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.

18. Real property is assessed based on 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). The cost approach, the sales comparison approach, and the income approach are the three generally accepted techniques to calculate market value-in-use. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* To that end, Indiana promulgated a series of guidelines for application of the cost approach. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of those 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. The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.

19. The term "influence factor" refers to a multiplier "that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel." GUIDELINES, glossary at 10. The Petitioner's contention that his land value should be adjusted with a negative influence factor does not make a prima facie case because a taxpayer cannot rebut an assessment simply by showing an assessor's technical failure in applying the Guidelines. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006); *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006); s*ee also* Ind. Admin. Code tit. 50. r. 2.3-1-1(d).

20. To make an effective case, a taxpayer should offer the types of market-based evidence described in the Manual. *See Eckerling*, 841 N.E.2d at 678 (finding that taxpayers failed to make a prima facie case by focusing strictly on the assessor's methodology rather than offering market value-in-use evidence).

21. There was an attempt to establish that the Petitioner is an expert in valuing real estate, but there was no substantial evidence that his opinions about value were based on generally accepted appraisal principles. His conclusory testimony that the property has no market value-in-use is not probative evidence. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Furthermore, the assertions the land has no market value-in-use are contradicted by the Petitioner's admission that he paid approximately $52,300 for the property in 1993 when he knew about the contamination and his testimony that he has operated car businesses at the site several times since he purchased the parcels. Nevertheless, the 1993 purchase price does not help to prove what the assessment should be for 2004 or 2005 because there is no evidence relating that amount to valuation as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

22. Nobody disputed the fact that there is some contamination of this property's soil. This fact probably is relevant to a proper valuation. It might limit the possible uses for the

property. It might have an impact on selling the property. The estimated clean-up cost of $390,000 might be accurate. But assuming, *arguendo*, that the foregoing statements are correct, they do not prove that the actual market value-in-use is anything other than the current assessed value, which is presumed to be accurate. The Petitioner did not provide any of the kinds of evidence (such as an appraisal) that he might have used to prove a value that would be more accurate than the current assessment. MANUAL at 5.

23. The Petitioner failed to prove that the assessed value of this property should be changed on this property for any reason.

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24. The Petitioner testified that in 2000 the prior township assessor agreed to assess this parcel as agricultural until construction began for commercial development—and new construction did not start until 2008. A notation dated August 21, 2000, on the property record card lends some support to the Petitioner's testimony that after he purchased this property the classification was changed to commercial valuation, but then it was changed back to agricultural: "Land use changed back * had been changed in error * Now valued as farm ground until excavating begins to indicate commercial use." *Petitioner Exhibit 7.* But the Petitioner acknowledged the land was not used for agricultural purposes in 2004 or 2005. By statute, only land that is devoted to agricultural use may be assessed as agricultural land. The Petitioner provided no substantial authority that would require an assessing official to disregard such clear statutory authority, even if a predecessor made the kind of agreement the Petitioner claims.[4] And the Board will not impose such a requirement.

25. Furthermore, starting with the 2002 reassessment, Indiana began using a new approach to valuation that is substantially different. As previously noted, the valuation methodology established by the Guidelines is only a starting point. The ultimate goal is properly

[4] This statement should not be taken as an indication that the evidence is sufficient to establish the existence of such an agreement.

determining market value-in-use. *See Eckerling*, 841 N.E.2d at 678; *O'Donnell*, 854 N.E.2d at 94-95. Therefore, the evidence and arguments about agricultural land classification are merely a diversion from the issue that must be determined. The Petitioner is not necessarily entitled to relief even if the assessment misclassified the land as commercial rather than agricultural. Again, to make an effective case, a taxpayer should offer market-based evidence that proves the value of the subject property. *See Eckerling*, 841 N.E.2d at 678; MANUAL at 5.

26. The Petitioner contended that, because the area of the detention pond was removed from the 2006 assessment, it also should be removed from the 2004 and 2005 assessments. Each assessment and each tax year, however, stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property's assessment in one tax year is not probative of its market value-in-use in a different tax year. In addition, this point is similar to the agricultural land classification issue in that it is a diversion from the issue that must be determined. The ditch and portion of the land purportedly dedicated to the city right-of-way fall into the same category. Whether the detention pond, ditch, and city right-of-way should be included or eliminated goes to the methodology of the guidelines, but that evidence fails prove what the market value-in-use of the property really should be if it is true they add no value to the subject property. The Petitioner is not necessarily entitled to relief even if the detention pond and right-of-way should have been removed from the original assessment calculations.

27. The Petitioner contended the parcel should be valued the same as a property located on Creasy Lane that was offered for sale for $125,000 per acre in 2006. The Petitioner did not relate that offer price to the valuation date of January 1, 1999. The Petitioner also failed to provide the kind of detailed analysis that would be necessary to establish any valid comparison. Accordingly, this evidence has no probative value. *See Long v. Wayne Twp. Assessor,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Furthermore, undisputed testimony established the Petitioner's land is currently assessed for only

$79,200 per acre. Assuming, *arguendo*, that these properties are comparable, the Petitioner failed to establish how an offer for $125,000 per acre supports something less than the current assessment. In addition, the relative tax liabilities of the two properties are irrelevant to the determination of the value-in-use or the proper assessment of the subject property because the amount of taxes for the two properties depends on many additional factors beyond their assessed values.

28. The Petitioner contended the value of his parcel could be obtained by using a composite valuation method where the portion of the parcel zoned as General Business should be valued the same as an adjacent property and the residential portion should be assessed for 25% of that amount. The Petitioner failed to establish that this approach to valuation conforms to generally accepted appraisal principles—and the Board is aware of no support for it. Consequently, that kind of conclusory approach is not probative. *See Whitley Products,* 704 N.E.2d at 1119.

29. In *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) the taxpayer contended that its assessment violated Article X section 1 of the Indiana Constitution because the assessor valued its driving range's landing area using a $35,100 per-acre base rate, but valued other driving-ranges using the Guidelines' $1,050 golf course base rate. 859 N.E. 2d at 397-98. The court rejected the taxpayer's claim because that claim focused solely on the assessor's methodology. *Id*. at 399. Indeed, the court noted the taxpayer's failure to show the actual market value-in-use of its property or of any of the properties that it argued were being treated more favorably. *Id*. Similar to *Westfield Golf,* the Petitioner simply claims that the township assessor used a different methodology to value his property than it used to assess another property devoted to a similar use. But in both cases, the taxpayers did not show lack of uniformity because they failed to show the market value-in-use of the properties. Such presentations do not make a prima facie case for any assessment change.

30. Finally, the Petitioner acknowledged he purchased this property for $1,720,000 on July 27, 1999. This date is very near the required valuation date of January 1, 1999. The

actual purchase price of the parcel exceeds the current assessed value of $1,597,500 and provides substantial support for *at least* the current assessed value. Even though the Petitioner claims he overpaid for the property, the Board finds the purchase price to be strong evidence that the current assessment should not be reduced.

31. The Petitioner failed to make a case for any reduction of the current assessment. When a taxpayer fails to provide substantial evidence to support a claim, the Respondent's duty to support the assessment is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley,* 704 N.E.2d at 1119 (Ind. Tax Ct. 1998).

SUMMARY OF FINAL DETERMINATION

32. The Board finds in favor of the Respondent regarding all these parcels. The assessments of the subject parcels should not be changed.

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

_____
Commissioner, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

- 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>