

REPRESENTATIVE FOR PETITIONER: Milo Smith, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT: Brian Cusimano, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Kooshtard Property V	)	Petition:	53-005-10-1-4-00032
c/o Johnson Oil,	)		53-005-12-1-4-00117
	)		53-005-13-1-4-00117
Petitioner,)		
	)	Parcel:	53-01-30-058-000.000-005
v.)		
	)	County:	Monroe
Monroe County Assessor,)		
	)	Township:	Perry
Respondent.)		
	)	Assessment Years:	2010, 2012, 2013

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

FINAL DETERMINATION

The Indiana Board of Tax Review (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 Petitioner, having the burden of proof, argued that the subject property should not have received a 100% influence factor because several nearby properties including some in the same neighborhood did not. The Board will not reduce the assessment because the Petitioner did not demonstrate sufficient comparability between the subject property and the other properties that were presented as evidence.

PROCEDURAL HISTORY

2. The Petitioner timely filed Form 130 petitions with the Monroe County Property Tax Assessment Board of Appeals (PTABOA) for the 2010, 2012, and 2013 assessment years.
3. The PTABOA issued determinations for each of the years under appeal.
4. The Petitioner timely filed Form 131 petitions with the Board for 2010, 2012, and 2013.
5. On June 18, 2014, the Board's designated administrative law judge, Andrew Howell (ALJ), held a hearing on the petitions. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

6. The subject property consists of a convenience store, gas station, and accompanying land located at 527 East 3rd Street in Bloomington.
7. The following people were sworn in as witnesses: Milo Smith, Certified Tax Representative; Ken Surface, Senior Vice President for Nexus Group and Level 3 Certified Assessor/Appraiser.
8. The Petitioner submitted the following exhibits, all of which were admitted into evidence:
 - Petitioner's Ex. 1: GIS map, comparable assessment analysis of the subject area with attached property record cards for each parcel numbered on the GIS map,
 - Petitioner's Ex. 2: Comparable Sales analysis with attached property record cards for each parcel numbered on first page of Ex. 2,
 - Petitioner's Ex. 2002: Copy of Page 13 of 2002 real property assessment manual
 - Petitioner's Ex. 2011: Copy of Page 9 of 2011 real property assessment manual,
 - Petitioner's Ex. 2m: Copy of Indiana Code 6-1.1-15-18,
 - Petitioner's Ex. CA19: Copy of IAAO Mass Appraisal Summary,
 - Petitioner's Ex. CP164: Copy of IAAO Land Characteristics.

9. The Assessor presented the following exhibits, all of which were admitted into evidence:

- Respondent's Ex. A: Property Record Card for subject property,
- Respondent's Ex. B: Property Record Card showing 2010 (Noted for record that it does not reflect PTABOA decision for 2010),
- Respondent's Ex. C: Responsive Evidence to Petitioner's comparable assessment map,
- Respondent's Ex. D: Summary of comparable properties,
- Respondent's Ex. E: Sales Disclosure Form and Property Record Card for 217 South Lincoln Street,
- Respondent's Ex. F: Property Record Card for 1407 West 3rd Street,
- Respondent's Ex. G: Property Record Card for 3021 East 3rd Street,
- Respondent's Ex. H: 2001 Sales disclosure form for subject property,
- Respondent's Ex. I: 2013 Discovery Responses from Petitioner,
- Respondent's Ex. J: Sales Disclosure form 53-2009-2535,
- Respondent's Ex. K: Sales Disclosure form 53-2010-1521297,
- Respondent's Ex. L: Sales Disclosure form 53-2011-1771339,
- Respondent's Ex. M: Sales Disclosure form C53-2013-2447615,
- Respondent's Ex. N: Sales Disclosure form C53-2012-2105909,
- Respondent's Ex. O: Sales Disclosure form 53-2011-1768333,
- Respondent's Ex. P: Sales Disclosure form 53-2011-1769864.

10. The Board recognizes the following additional items as part of the record:

- Board Exhibit A: Form 131 petition with attachments,
- Board Exhibit B: Hearing notices,
- Board Exhibit C: Hearing sign-in sheet.

11. The PTABOA determined the following assessments:

2010:	Land: \$794,100	Improvements: \$134,200	Total: \$928,300
2012:	Land: \$794,100	Improvements: \$146,000	Total: \$940,100
2013:	Land: \$794,100	Improvements: \$146,800	Total: \$940,900

SUMMARY OF THE CONTENTIONS

A. The Petitioner's Case

12. The Petitioner argues that pursuant to Ind. Code 6-1.1-15-18 a taxpayer may introduce evidence of assessments of comparable properties. Comparable properties which are

within two miles of the subject property should be given preference. This implies that properties in the same neighborhood are the most relevant. *Smith argument.*

13. The assessments of nearby properties demonstrate that the subject property's assessment is excessive. Seven of the eight nearby properties in the same neighborhood are assessed at \$25 per square foot while the subject property is assessed at \$50 per square foot. Several more nearby properties that are in a different neighborhood have assessments ranging from \$0 (for an exempt property) to \$25. *Smith testimony; Pet'r Ex. 1.*
14. These parcels are also zoned the same as the subject property, permitting a convenience store to be built on any of them. *Smith testimony.*
15. The Petitioner presented a calculation of land value per square foot for each property sold in the subject neighborhood from 2009-2012.¹ The Petitioner based this calculation on the land assessed value and total square footage of each property. The Petitioner said that one property, which came to \$50 per square foot, was an outlier, but was still included in the final calculation. The average for all the properties was \$26.70 per square foot.² This figure confirms that the subject property is over-assessed. *Smith testimony; Pet'r Ex. 2.*
16. For these reasons the 100% influence factor that is on the subject property, but none of the parcels presented on Petitioner's Ex. 1, should be removed.³ As a result of removing the 100% influence factor, the land value for all the years under appeal should be \$397,000. The total assessed value should be \$516,700 for 2010, \$543,100 for 2012, and \$543,800 for 2013. *Smith testimony/argument; Pet'r Ex. 1*

¹ Mr. Smith admitted on cross-examination that one of the properties used in the calculation was from a different neighborhood.

² Ken Surface, witness for the Respondent, correctly pointed out that several of the square footage amounts listed on Mr. Smith's spreadsheet do not match the corresponding property record cards.

³ Mr. Smith used the terms 100% market factor and 100% influence factor interchangeably, though they are distinct terms with entirely different meanings. The 100% influence factor was highlighted on the property record card for the subject property, while the 1.0 market factor was not. The Board will assume the Petitioner was intending to refer to the influence factor throughout the proceedings.

B. The Respondent's Case

17. The subject property is a prime location for a convenience store. It is located on the corner of two major thoroughfares. It has ingress and egress from both roads. There is also a large amount of foot traffic in the area. The subject property has a 100% influence factor because of the site location and traffic flow. *Surface testimony.*
18. While the properties presented in Petitioner's Ex. 1 are close in proximity to the subject property, they are not comparable. They are not convenience stores, do not have the same ingress and egress, and are not corner lots.⁴ *Surface testimony.*
19. There is one property that is comparable to the subject property and in the same neighborhood. It was not included in Petitioner's Ex. 1. It receives the same land influence factor as the subject property. *Surface testimony; Resp't Ex. C.*
20. Indiana uses a market value-in-use system. Property is assessed based upon its use. If it is used as a convenience store, then it is assessed as a convenience store. *Surface testimony.*
21. The majority of sales used in Petitioner's Ex. 2 were non-market transactions that were invalid for trending purposes. There was one valid sale of a property in the same neighborhood as the subject property. The property sold for 1.18 million and is a corner lot with similar site amenities and ingress and egress. It received the same influence factor as the subject property.⁵ *Surface testimony; Resp't Ex. E.*
22. Petitioner's Ex. 2 has several errors that make it unreliable. The land values listed do not match the corresponding property record cards for several of the properties. There is a duplicate entry on the list. Mr. Smith only based his calculations on assessed value.

⁴ Respondent's Ex. C and Petitioner's Ex. 1 both indicate that some of the presented properties are in fact corner lots.

⁵ Though not clear from the testimony, this appears to be the same property referenced in paragraph 20.

There is no attempt to breakdown the sale price between land and improvements. The calculations have no relationship to the sale price of the properties. Moreover, Mr. Smith made no adjustments between the assessments of the comparables and the subject property. When establishing actual comparables adjustments should be made for site size, topography, etc. *Surface testimony; Smith testimony; Pet'r Ex 2.*

23. Assessments of other convenience markets in the area demonstrate that the subject property's assessment is appropriate. A market located on West 3rd street had an assessment ranging from \$1,083,300 to \$1,130,800 for the years under appeal. It is a prime location for that part of town. It has a different base rate than the subject property, and is receiving a positive land influence that other properties in the neighborhood are probably not receiving. *Surface testimony; Resp't Ex. F.*
24. Another convenience market also supports the assessed value of the subject property. This convenience market is a Speedway gas station in a different neighborhood with a different land rate. Mr. Surface testified that for 2010-2013 this property's assessment ranged from a low of \$719,800 to a high of \$735,100.⁶ *Surface testimony; Resp't Ex. G.*
25. The Petitioner purchased the subject property in 2001 for \$1,106,116.41. This suggests that the Petitioner's requested assessment drastically undervalues the property. Considering the market conditions, there is no evidence that the value of the property has dropped by 50%. *Surface testimony; Resp't Ex. H.*
26. The county's current assessment is accurate. The value has been consistent over the last several years and the market evidence does not indicate it should be otherwise. *Surface testimony.*
27. The Petitioner chose the properties it presented based solely on their proximity to the subject property. The Petitioner did not consider geographic characteristics, topography, or anything else. Ind. Code § 6-1.1-15-18 states that the determination of what properties

⁶ The property record card submitted by the Respondent indicates the actual low was \$712,600 in 2011.

are comparable shall be done by using generally accepted appraisal and assessment practices. The Petitioner has not proved these properties are comparable, and instead has presented only conclusory evidence. While the Petitioner did point out that the properties were zoned the same and could be used for the same purpose, they are not. Indiana uses a current use system. None of the properties presented by the Petitioner are convenience stores or gas stations. They are a slew of different uses that are not comparable to the subject property. *Cusimano argument*.

28. The Petitioner has not established that the evidence in Petitioner's Ex. 2 is comparable to the subject property. The Respondent has presented evidence of invalid sales. Some were for zero dollars, some as a result of foreclosure, etc. The Petitioner has not taken those sales and made the adjustments necessary to properly value the subject property. Instead, the Petitioner only looked at the assessments from those sales. This is not a sales comparison approach and does not follow generally accepted appraisal practices. It is also difficult to break down a value of a sale between land and improvements. *Cusimano argument*.

BURDEN OF PROOF

29. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.
30. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is

correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).

31. Second, Ind. Code § 6-1.1-15-17(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1.15.” Under those circumstances, “if the gross assessed value of the real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17(d). This change is effective March 25, 2014, and has application to all appeals pending before the Board.
32. These provisions may not apply if there was a change in improvements, zoning, or use, or if the assessment was based on an income capitalization approach. Ind. Code § 6-1.1-15-17.2(c) and (d).
33. Here the parties agree, and the property record cards confirm, that the Petitioner has the burden of proof for the 2010 and 2012 assessment years. The burden for 2013 depends on the resolution of the 2012 matter, and will be addressed in turn.

ANALYSIS

34. Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance (DLGF) has defined as the property’s market value-in-use. 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). *See also* 2011 REAL Property ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property’s market value-in-use, a party may offer evidence that is consistent with the DLGF’s definition of true tax value. A market-value-in-use appraisal prepared according

to the Uniform Standards of Professional Appraisal Practice (USPAP) often will be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales or assessment information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. Ind. Code § 6-1.1-15-18.

35. Regardless of the valuation method used, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. See *O'Donnell v. Dep't of Local Gov't Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Township Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2010 assessment was March 1, 2010. Ind. Code § 6-1.1-4-4.5(f). The valuation date for a 2012 assessment was March 1, 2012. *Id.* The valuation date for a 2013 assessment was March 1, 2013. *Id.* Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, that required valuation date. *Long*, 821 N.E.2d at 471.
36. The Petitioner has the burden for the 2010 assessment year. The Petitioner argues that all properties located in the same neighborhood or nearby the subject property are necessarily comparable. But even when comparing assessments, a taxpayer must present evidence regarding the similarities and differences between the properties. The Tax Court has recently noted:

Thus, while the land assessments of the [comparable properties] might have been an appropriate starting point for the [taxpayer] in its appeal preparation, they were just that — a starting point. Indeed, the [taxpayer] needed to provide some sort of explanation or analysis as to what factors made the value of the land at those properties comparable to its own; likewise, if there were any distinguishing characteristics that would affect the land values, the [taxpayer] needed to account for those by making adjustments.

Indianapolis Racquet Club, Inc. v. Marion County Assessor, 15 N.E.3d 150, 155 (Ind. Tax Ct. 2014) (citing *Long*, 821 N.E.2d at 470).

37. The Petitioner failed to present the analysis required by *Long*. Conclusory statements that a property is “similar” or “comparable” to another property do not suffice. *Long*, 821 N.E.2d at 471. Rather, a taxpayer 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 taxpayer must explain how any differences affect the relative market value-in-use. Without this analysis of comparability, the Board can give this evidence no weight.
38. To the extent the Petitioner raises a claim that the properties are not uniformly assessed due to the application of the influence factor to the subject property and not others, the Petitioner has failed to present market evidence to support the claim. To establish that “land was not uniformly assessed because comparable land was not assessed in the same manner, . . . the petitioner must present evidence that is sufficient to establish a given fact and which if not contradicted will remain sufficient to establish that fact.” *Kooshtard Prop. VIII v. Shelby County Assessor*, 987 N.E.2d 1178, 1181 (Ind. Tax Ct. 2013) (quotation marks omitted). Thus the Tax Court has held:
- [The taxpayer] merely concluded that because the Assessor did not apply the same positive influence factor of 100% to a nearby office building, automotive sales/service center, and fast-food restaurant, the factor should be removed from its assessment. Conclusory statements are insufficient to make a prima facie case because they are not probative evidence (i.e., “evidence that tends to prove or disprove a point in issue”).
- Id.* (citations omitted). The Petitioner makes the same error here and fails to establish a prima facie case for a challenge of uniformity of assessments. The Petitioner failed to meet its burden.
39. The Petitioner also has the burden of proof for the 2012 assessment year, as agreed by the parties and supported by the property record card. The Petitioner relied on the same evidence and arguments for 2012 as for 2010, and the Board reaches the same conclusion. The Petitioner failed to meet its burden.

40. Because the Board orders no change for 2012, and the property's assessed value did not increase by more than 5% between 2012 and 2013, the Petitioner also has the burden of proof for the 2013 assessment year. The Petitioner relied on the same evidence and arguments for 2013 as for 2010, and the Board reaches the same conclusion. The Petitioner failed to meet its burden.

41. Where the Petitioners have not supported their claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). The Respondent has not requested any change from the PTABOA determination.

The Petitioner failed to make a prima facie case for a reduction in assessment in the 2010, 2012 or 2013 assessment years. The Board does not order any change in the assessments.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on this date 11-17-14 .

Chairman, 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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.