

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 73-002-02-1-4-00001  
**Petitioner:** Kooshtard Property VIII, LLC  
**Respondent:** Addison Township Assessor (Shelby County)  
**Parcel:** 07-34.00-020.00  
**Assessment Year:** 2002

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

**Procedural History**

1. The Petitioner initiated an assessment appeal with the Shelby County Property Tax Assessment Board of Appeals (PTABOA) by written document dated September 25, 2003.
2. The PTABOA issued notice of its decision on May 26, 2004.
3. The Petitioner appealed to the Board by filing a Form 131 with the county assessor on June 22, 2004. The Petitioner elected to have this case heard according to small claim procedures.
4. The Board issued a notice of hearing to the parties dated March 3, 2006.
5. The Board held a hearing on May 10, 2006, before Administrative Law Judge Paul Stultz.
6. Persons present and sworn as witnesses at the hearing:  
For Petitioner - Milo E. Smith, President, Tax Consultants Inc.,  
For Respondent - Steven Schultz, Accurate Assessments, Inc.

**Facts**

7. The property is a service station located at 2509 East State Road 44 in Shelbyville, Indiana.
8. The Administrative Law Judge did not conduct an inspection of the property.

9. The assessed value of the subject property as determined by the PTABOA:  
land \$1,047,000 improvements \$25,400 total \$1,072,400.
10. The assessed value requested by the Petitioner at the hearing:  
land \$523,500<sup>1</sup> improvements \$25,400 total \$548,900.

### Issue

11. Summary of the Petitioner's contentions in support of alleged error in the assessment:
- a. The land currently is classified as one acre of primary land and 7.97 acres of undeveloped usable land. *Pet'r Ex. 4*. The 7.97 acres of undeveloped usable land are assessed with a negative 50% influence factor to account for the presence of a power line easement. *Smith testimony; Pet'r Exs. 3, 12*. The power line easement affects 2.87 acres of the parcel, rendering that part unusable.<sup>2</sup> *Smith testimony; Pet'r Exs. 1, 2*. The Petitioner is not contesting the amount of this influence factor. *Smith testimony; Pet'r Ex. 12*.
  - b. The entire parcel also should receive a negative 50% influence factor for size. *Smith testimony; Pet'r Exs. 8, 12*. The Neighborhood Valuation Form recommends a negative 50% influence factor for tracts with 5 to 10 acres. *Pet'r Ex. 5*.
  - c. The Shelbyville Plan Commission will not allow additional construction of buildings in the easement area. *Pet'r Ex. 2*. The current improvements on the property were constructed prior to the Petitioner's purchase. The Petitioner cannot explain why the prior owner was permitted to build in the easement area. *Smith testimony*.
  - d. All real property must be assessed in accordance with the 2002 REAL PROPERTY ASSESSMENT MANUAL (incorporated by reference at 50 IAC 2.3-1-2) (MANUAL). A comparable property, Carter Lumber Inc., is located approximately one mile from the Petitioner's property. It is assessed with a base rate of \$25,000 per acre. *Pet'r Ex. 14*. The assessed value applied to the subject land is not uniform and equal. *Smith testimony*.
12. Summary of the Respondent's contentions in support of the assessment:
- a. Market data from the subject area (Commercial Area #2) and another comparable area (Commercial Area #1) were used to develop the base rates on the Neighborhood Valuation Forms. *Schultz testimony; Resp't Exs. 2, 3*. Comparable land sales in Commercial Area #2 in Addison Township ranged from \$514,706 to \$617,647 per acre. *Resp't Ex. 4*. The sales of comparable properties in

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<sup>1</sup> On the Form 131 petition, the Petitioner contended the land value should be \$250,000.

<sup>2</sup> Although the Petitioner described the land as "unusable," its proposed revised property record does not request a change in the current classification of the land. *Pet'r Ex. 8*.

Commercial Area #1 ranged from \$104,712 to \$406,250 per acre. *Resp't Ex. 5.* These sales establish that the current land value of \$250,000 for primary land is reasonable. *Schultz testimony.*

- b. The improvements on the subject parcel are in the easement area. *Schultz testimony; Pet'r Ex. 1.* The power lines are directly adjacent to the improvements and the tower is approximately 30 to 40 feet from the building. *Schultz testimony; Resp't Exs. 6-8.* All the area with improvements should be classified as primary land. The classification should be changed to two acres of primary land and the negative influence factor should be reduced to 25%. *Schultz testimony.*

### **Record**

- 13. The official record for this matter is made up of the following:
  - a. The Petition,
  - b. A digital recording of the hearing,
  - c. Petitioner Exhibit 1 – Survey,  
Petitioner Exhibit 2 – Letter from the Shelbyville Plan Commission,  
Petitioner Exhibit 3 – Notification of Final Assessment Determination,  
Petitioner Exhibit 4 – Subject property record card,  
Petitioner Exhibit 5 – Neighborhood Valuation Form,  
Petitioner Exhibit 6 – REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 –  
VERSION A, ch. 2 at 94 (incorporated by reference at 50  
IAC 2.3-1-2) (hereafter GUIDELINES),  
Petitioner Exhibit 7 – The Appraisal of Real Estate, page 229,  
Petitioner Exhibit 8 – Subject property record card with assessed value requested,  
Petitioner Exhibit 9 – 50 IAC 2.3-1-1,  
Petitioner Exhibit 10 – Indiana Code § 6.1-1-31-5,  
Petitioner Exhibit 11 – Indiana Code § 6.1-1-4-4.5,  
Petitioner Exhibit 12 – Summary of position,  
Petitioner Exhibit 13 – Letter from Circle K Midwest dated March 2, 2006,  
Petitioner Exhibit 14 – Carter Lumber Inc. property record card and map of the  
area,  
Respondent Exhibit 1 – Map showing Shelbyville commercial areas,  
Respondent Exhibit 2 – Neighborhood Valuation Form – Commercial Area #2,  
Respondent Exhibit 3 – Neighborhood Valuation Form – Commercial Area #3,  
Respondent Exhibit 4 – Sales for commercial area #2 with per acre price for land,  
Respondent Exhibit 5 – Sales for commercial area #1 with per acre price for land,  
Respondent Exhibit 6 – Photograph of the subject property,  
Respondent Exhibit 7 – Photograph of the subject property,  
Respondent Exhibit 8 – Geographic information system (GIS) Data Server aerial  
view of the subject property,  
Respondent Exhibit 9 – Appearance authorization for Accurate Assessments, Inc.,

Board Exhibit A – Form 131 Petition for Review of Assessment,  
Board Exhibit B – Notice of Hearing on Petition,  
Board Exhibit C – Hearing Sign In Sheet

- d. These Findings and Conclusions.

### Analysis

14. The most applicable governing cases 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 did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:
- a. 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); MANUAL at 2. There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. GUIDELINES. The value established by use of the 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.

- b. The Petitioner does not contest the negative 50% influence factor assigned to the parcel to account for the utility easement, but it contends the entire parcel (8.97 acres) also should have a negative 50% influence factor based on size. *Smith testimony; Pet'r Ex. 12.*
- c. An influence factor is 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. The factor may be positive or negative and is expressed as a percentage.” GUIDELINES, glossary at 10. To prevail on the issue of a negative influence factor, a taxpayer must introduce probative evidence both to support the application of a negative influence factor and to quantify the amount of that influence factor. *Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099, 1106 (Ind. Tax Ct. 1999).
- d. Even if one were to view the testimony regarding size as demonstrating some negative impact on the value of the subject property, the Petitioner failed to present probative evidence to quantify the impact on the market value-in-use. The Petitioner merely pointed to a statement in the Neighborhood Valuation Form recommending the application of a negative 50% influence factor for tracts that have 5 to 10 acres. Reliance on general language concerning the recommended application of influence factors is not a substitute for probative evidence quantifying the amount of the influence factor to be applied, especially when most of the parcel already has a 50% negative influence factor for other reasons.
- e. Most significantly, the Petitioner failed to prove the assessment is not a reasonable measure of market value-in-use. Ind. Admin. Code tit. 50, r. 2.3-1-1(d) (“failure to comply with the ... Guidelines ... does not in itself show that the assessment is not a reasonable measure of ‘True Tax Value’[.]”). The Petitioner presented no probative evidence to establish market value-in-use at the value it claimed. Arguments regarding a strict application of the GUIDELINES are not enough to rebut the presumption that the assessment is correct. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006) (a taxpayer must show that the assessed value does not accurately reflect market value-in-use). The Petitioner must show through the use of market-based evidence that the assessed value does not accurately reflect the property’s market value-in-use. Here, the Petitioner did not. Therefore, it failed to make a prima facie case. *Id.* at 678, (“In challenging their assessment, the Eckerlings have offered [no] ... market value-in-use evidence. Rather, they have focused strictly on the Assessor's methodology. The Eckerlings have not shown, however, that the Assessor's methodology resulted in an assessment that failed to accurately reflect their property's market value-in-use. Accordingly, the Court cannot say that the Eckerlings presented a prima facie case that their assessment was in error.”)
- f. The Petitioner also presented the property record card of a purported comparable property, Carter Lumber Inc. Although this property is located approximately one

mile from its parcel, the Petitioner did not establish the comparability of the properties. The Petitioner did not explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable property or how any differences between the properties affect the relative market values-in-use. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Id.* at 470.

- g. Where the Petitioner failed to support the 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, 1222 (Ind. Tax Ct. 2003).
- h. The Respondent contended the assessment should be increased to reflect two acres of primary land and a reduced negative influence factor of 25%. The Respondent presented no measurements or market data to support either contention. Such unsubstantiated conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). They do not establish that any assessment change is appropriate.

**Conclusion**

- 16. Neither party made a case for any assessment change.

**Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: \_\_\_\_\_

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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>.