

REPRESENTATIVE FOR PETITIONER:  
Milo Smith, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT:  
Marilyn S. Meighen, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Robert Fleetwood,	)	Petition Nos.: 53-005-08-1-4-00021
	)	53-005-09-1-4-00012
Petitioner,	)	
	)	Parcel No.: 53-05-33-200-037.000-005
v.	)	(013-20790-00)
	)	
Monroe County Assessor,	)	County: Monroe
	)	
Respondent.	)	Assessment Years: 2008 and 2009

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

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**October 30, 2012**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the 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 issue presented for consideration by the Board is whether the assessed value of the Petitioner's land is overstated for the 2008 and 2009 assessment years.

### **PROCEDURAL HISTORY**

2. The Petitioner, Robert Fleetwood, through his certified tax representative, Milo Smith, initiated his assessment appeals by filing Form 130 Petitions with the Monroe County Property Tax Assessment Board of Appeals (the PTABOA) on July 14, 2009, for the 2008 assessment year, and on May 19, 2010, for the 2009 assessment year. The PTABOA issued its determinations on September 25, 2009, for the 2008 assessment year, and on August 9, 2010, for the 2009 assessment year.
3. Pursuant to Indiana Code § 6-1.1-15-1, Mr. Smith filed Form 131 Petitions for Review of Assessment with the Board on November 6, 2009, for the 2008 assessment year, and on September 15, 2010, for the 2009 assessment year, petitioning the Board to conduct an administrative review of the Petitioner's appeals.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on August 16, 2012, in Bloomington, Indiana.

5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Milo Smith, Taxpayer Representative

For the Respondent:

Judy Sharp, Monroe County Assessor  
Ken Surface, Nexus Group

6. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Property record card for the subject property,  
Petitioner Exhibit 2 – A list of land assessments for seven comparable properties and the subject property, property assessment detail reports for 201 West 17<sup>th</sup> Street, 203 West 17<sup>th</sup> Street, 301 West 17<sup>th</sup> Street, 13320 North College Avenue, 1327 North Walnut, 1300 North Walnut, 202 West 17<sup>th</sup> Street, and 214 West 17<sup>th</sup> Street, and a plat map.

7. The Respondent presented the following exhibits:

Respondent Exhibit A – Property record card and photograph for the subject property,  
Respondent Exhibit B – Assessment change summary sheet for 2008 and 2009,  
Respondent Exhibit C – Plat map,  
Respondent Exhibit D – Property record cards, photographs and sales disclosure forms for 1705 North Kinser Pike and 1402 North Walnut Street,  
Respondent Exhibit E – Property record card, photograph and sales disclosure form for 3324 West Third Street.

8. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:

Board Exhibit A – Form 131 petitions with attachments,  
Board Exhibit B – Notices of Hearing, dated June 20, 2012,<sup>1</sup>  
Board Exhibit C – Hearing sign-in sheet.

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<sup>1</sup> The Board's hearing was originally scheduled for August 15, 2012. On August 3, 2012, the parties agreed to the hearing being held on August 16, 2012.

9. The subject property is a 1,645 square foot “Big Foot” gas station and convenience store on a half acre of land located at 201 West 17<sup>th</sup> Street, Bloomington, in Monroe County.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2008 and 2009, the PTABOA determined the assessed value of the Petitioner’s property to be \$400,000 for the land and \$68,100 for the improvements, for a total assessed value of \$468,100.
12. For 2008 and 2009, the Petitioner’s representative requested an assessed value of \$200,000 for the land and \$68,100 for the improvements, for a total assessed value of \$268,100.

#### **JURISDICTIONAL FRAMEWORK**

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

#### **PETITIONER’S CONTENTIONS**

14. The Petitioner’s representative testified that he agreed with the value of the property’s improvements for 2008 and 2009. *Smith testimony*. However, Mr. Smith argues, the Petitioner’s land value was incorrect. *Id.* According to Mr. Smith, the Petitioner’s lot was valued with a base rate of \$400,000 per acre and the assessor applied a 100% positive influence factor to that land value, which resulted in an assessed value equal to

\$18.37 per square foot for the subject property. *Smith testimony; Petitioner 2.* Instead, Mr. Smith argues, the influence factor should be removed and the Petitioner's land should be assessed at \$200,000 for the half acre parcel, or approximately \$9.18 per square foot. *Smith testimony.*

15. Mr. Smith also contends that the Petitioner's land is over-valued compared to the land value on seven properties located in the same area as the Petitioner's property. *Smith testimony.* In support of this position, Mr. Smith submitted a "comparable assessment analysis," a map of the properties' locations, and a property assessment detail report for each property. *Petitioner Exhibit 2.* According to Mr. Smith, the land values of neighboring lots ranged from \$5.06 per square foot to \$12.00 per square foot, with an average assessment of \$7.76 per square foot; whereas the Petitioner's land was assessed for \$18.37 per square foot. *Smith testimony; Petitioner Exhibits 1 and 2.* Accordingly, Mr. Smith argues that the Petitioner's land is valued at a much higher rate per square foot than comparable properties in the area. *Smith testimony.*
  
16. Finally, Mr. Smith argues that, according to Indiana Code § 6-1.1-15-18 and the 2002 Real Property Assessment Manual, a Petitioner is allowed to use generally accepted appraisal and assessment practices to correct an assessment. *Smith testimony.* According to Mr. Smith, the cost approach assumes that buyers will pay no more for the subject property than it would cost them to purchase an equally desirable parcel of vacant land and construct an equally desirable substitute building. *Id.* To arrive at a uniform assessment in the property's area, Mr. Smith argues, the 100% positive influence factor should be removed from the Petitioner's land. *Id.* Further, Mr. Smith argues, under the statute, the assessed value of the property's improvements can be added to that land value to show that the property's assessed values for 2008 and 2009 were incorrect. *Id.*

## RESPONDENT'S CONTENTIONS

17. Mr. Surface testified that the property under appeal is a convenience store with gas pumps and canopies. *Surface testimony*. The Petitioner's representative, however, focuses his argument solely on the property's land value for 2008 and 2009. *Id.* According to Mr. Surface, even if the property's land value was incorrect, the property's assessed value as a whole represented the property's market value-in-use for 2008 and 2009. *Id.*
18. Mr. Surface further contends that the Petitioner's property's value was assessed correctly based on sales of comparable properties in the area. *Surface testimony*. In support of this contention, Mr. Surface offered a map, photographs and sales information for three nearby properties. *Id.*; *Respondent Exhibits C, D and E*. According to Mr. Surface, the property located at 1705 North Kinser Pike, which is a former gas station with an area for automotive repair and a small convenience store on a 1.186 acre parcel less than a mile from the subject property, sold for \$500,000 on April 11, 2006. *Surface testimony*; *Respondent Exhibits C and D*. The property was remodeled and reopened in 2007 as a gas station and convenience store. *Id.* Similarly, the property located at 1402 North Walnut, which is a 0.34 acre parcel with a restaurant across the street and slightly east from the property under appeal, sold for \$600,000 on December 2, 2005. *Id.* Finally, a convenience store with gas pumps and a canopy located at 3324 West Third Street, sold on June 1, 2007, for \$925,000.<sup>2</sup> *Surface testimony*; *Respondent Exhibit E*. Based on these sales, Mr. Surface concludes, the Petitioner's property was not over-valued in 2008 or 2009. *Surface testimony*.
19. Similarly, Mr. Surface argues, the subject property is not over-valued based on the assessed value of land in the property's neighborhood. *Surface testimony*. Mr. Surface testified that the property under appeal and 1402 North Walnut are assigned to the same

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<sup>2</sup> The sale price included \$100,000 for personal property; therefore Mr. Surface testified that the price allocated to the real estate was \$825,000. *Surface testimony*; *Respondent Exhibit E*.

neighborhood and each parcel was assessed with a land base rate of \$400,000 per acre. *Surface testimony; Respondent Exhibits A and D.* In addition, both properties are corner lots receiving a positive 100% influence factor. *Id.* Thus, Mr. Surface concludes, the Petitioner's land was not over-valued. *Surface testimony.*

20. Finally, Mr. Surface argues that the Board should give little weight to the Petitioner's comparable assessment evidence. *Surface testimony.* According to Mr. Surface, the Petitioner's representative cannot simply submit properties located in the same geographical area as the subject property and assume they are comparable properties. *Id.* To determine whether a property is comparable to another property or if the property needs a positive or negative influence factor applied to the land, Mr. Surface argues, the Petitioner needed to show the properties' characteristics, such as the amount of land that is facing the road, the topography of the land, the size of the lot, and the use of the property. *Id.*
21. Moreover, Mr. Surface argues, the Petitioner's "comparable assessment analysis" used properties that were not, in fact, comparable to the subject property. *Surface testimony.* According to Mr. Surface, five of the Petitioner's seven comparable assessments are located in a different assessment neighborhood, which means that the land base rates may be different. *Id.* Further, most of the Petitioner's "comparable" properties have different use types than the subject property and, by statute, the assessor is required to use different assessment methods for certain types of properties, like residential rental properties. *Id.* In addition, the property located at 1320 North College Avenue is an unused, undeveloped vacant lot and the lots located at 203 West 17<sup>th</sup> Street, 301 West 17<sup>th</sup> Street, and 1320 North College Avenue are not large enough to accommodate a convenience store. *Surface testimony.* Thus, Mr. Surface concludes, the Petitioner's evidence is insufficient to show an error in its property's assessed value for 2008 or 2009. *Id.*

## ANALYSIS

22. The 2002 Real Property Assessment Manual defines “true tax value” as “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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales comparison approach and the income approach to value. *Id.* at 3, 13-15. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (the GUIDELINES).
23. A property’s assessment, determined under the Guidelines, is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer may rebut that presumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
24. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2008, assessment date, the valuation date was January 1, 2007, and for the March 1, 2009, assessment date, the valuation date was January 1, 2008. 50 IAC 21-3-3.



25. The Petitioner's representative generally claims that the subject property's land value was assessed too high in 2008 and 2009 compared to other parcels in his area. In support of his contentions, Mr. Smith submitted "Property Assessment Detail Reports" which provide a total assessed value of the land and the improvements for each of seven other properties in the area of the Petitioner's property. From those reports, Mr. Smith calculated the assessed value per square foot of each lot. Mr. Smith also provided a map to show where the lots were located in relation to the subject property.
26. Pursuant to Indiana Code § 6-1.1-15-18(c), "To accurately determine market-value-in-use, a taxpayer or an assessing official may ... introduce evidence of the assessments of comparable properties located in the same taxing district or within two (2) miles of a boundary of the taxing district..." Ind. Code § 6-1.1-15-18. The statute states that "the determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices." *Id.*
27. To compare the assessed values of comparable properties, however, at a minimum the proponent must provide property record cards to show how the various properties were assessed in the years at issue. Here, the Petitioners provided no such data. The Petitioner's "Property Assessment Detail Reports" are not the kind of report that would allow the Board to determine how a property was assessed and whether the subject property was assessed differently. While Mr. Smith calculated some of the Petitioner's comparable properties to have a land value below the value he calculated for the subject property, Mr. Smith failed to present any evidence to show what base rate was applied to each parcel and what adjustments were applied to that base rate for each property. Thus, the Board has no means of comparing the Petitioner's land assessment to the land assessments on the other properties that Mr. Smith argues are comparable. Moreover, contrary to Mr. Smith's arguments, the Respondent's evidence shows that another similarly situated corner lot in the Petitioner's property's neighborhood was assessed at

the same base rate as the Petitioner's property and received the same 100% influence factor for its location.

28. To the extent that the Petitioner's representative argues that its property should not have had an influence factor applied to the land based on the property's market value, the Board notes that the Petitioner's representative failed to provide any market evidence of the property's value. He merely alleged that the county assessor should remove the 100% positive influence factor applied to the Petitioner's land. Thus, the Petitioner's representative failed to raise prima facie case that the Petitioner's property's land was over-valued for the 2008 and 2009 assessment years.
29. Where the Petitioner's representative has not supported the Petitioner's claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### **SUMMARY OF FINAL DETERMINATION**

30. The Petitioner failed to raise a prima facie case that the land on its property was over-valued for the 2008 or 2009 assessment years. The Board finds in favor of the Respondent and holds that the property's assessed values should not be changed.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

### IMPORTANT NOTICE

- 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>.**