

FOR PETITIONER: Milo Smith, Certified Tax Representative

FOR RESPONDENT: Brian Cusimano, Attorney; Marilyn Meighen, Attorney.

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

ROBERT FLEETWOOD,	)	Petition Nos. 53-005-10-1-4-00027
	)	53-005-12-1-4-00102
	)	
	)	Parcel No. 53-05-33-200-037.000-005
Petitioner,	)	
	)	
v.	)	
	)	Monroe County
MONROE COUNTY ASSESSOR,	)	Bloomington Township
	)	Assessment Years: 2010 and 2012
Respondent.	)	

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

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**January 16, 2014**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Introduction**

The issue in this case is whether the assessments exceed the market value-in-use of the subject property. The evidence presented by the Petitioner was insufficient to show the 2010 or the 2012 assessment was incorrect.

## HEARING FACTS AND OTHER MATTERS OF RECORD

1. The property is a convenience market with gasoline pumps located at 201 W. 17<sup>th</sup> Street, Bloomington, Indiana.
2. The Petitioner initiated his 2010 assessment appeal by filing a Form 130 on September 14, 2010, petitioning for a review of the assessment by county officials. The Monroe County Property Tax Assessment Board of Appeals (PTABOA) issued notice of its assessment determination denying his appeal on December 6, 2010.
3. The Petitioner initiated his 2012 assessment appeal by filing a Form 130 dated August 31, 2012, petitioning for a review of the assessment by county officials. The PTABOA issued notice of its assessment determination denying his appeal on May 8, 2013.
4. The Petitioner filed a Form 131 Petition for Review of Assessment on January 20, 2011, petitioning the Indiana Board of Tax Review (Board) to conduct an administrative review of the 2010 assessment. The Petitioner filed a Form 131 on June 18, 2013, petitioning the Board to conduct an administrative review of the 2012 assessment. The Petitioner elected to have these appeals heard according to small claims procedures. The only issue raised by the Petitioner in the Form 131 appeals is the land assessment. *See Board Ex. A.*
5. The Monroe County Assessor filed a motion on March 18, 2011, requesting that the 2010 hearing be transferred from small claims procedures and instead heard under the Board's standard hearing procedures. This motion was granted by the Board on April 4, 2011. Accordingly, the consolidated hearing for the 2010 and 2012 appeals proceeded under the standard hearing procedures governed by 52 IAC 2.<sup>1</sup>

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<sup>1</sup> The Petitioner elected to have the 2012 appeal heard pursuant to the small claims procedures. The Respondent filed a motion for transfer from the small claims procedure to the standard hearing procedure for assessment year 2010 only. The Board conducted a single hearing for both assessments pursuant to the standard hearing procedures. Neither party objected.

6. Administrative Law Judge Ronald Gudel held the hearing on November 21, 2013. Neither he nor the Board inspected the property.
7. Certified Tax Representative Milo Smith represented the Petitioner and was sworn as a witness. County Assessor Judith Sharp and Ken Surface, Senior Vice President of Nexus Group, a property tax consulting firm contracted by Monroe County, were both sworn as witnesses. Assessor Sharp did not testify.
8. The Petitioner presented the following exhibits:
  - Petitioner Exhibit 1 – The 2010 property record card for the Petitioner’s property,
  - Petitioner Exhibit 2 – The 2012 property record card for the Petitioner’s property,
  - Petitioner Exhibit 3 – Geographic information system (GIS) map,
  - Petitioner Exhibit 4 – The City of Bloomington Unified Development Ordinance,
  - Petitioner Exhibit 5 – Comparable assessment data.
9. The Respondent presented the following exhibits:
  - Respondent Exhibit 1 – A map of the Petitioner’s property and supporting parcels,
  - Respondent Exhibit 2 – Legend for Exhibit 1 map,
  - Respondent Exhibit 3 – Property record card and two photographs of the subject property,
  - Respondent Exhibit 4 – Property record card, photograph, and sales disclosure form for comparable property B,
  - Respondent Exhibit 5 – Property record card and photograph of comparable property C,
  - Respondent Exhibit 6 – Property record card, two photographs, and 2006 sales disclosure form for comparable property D,
  - Respondent Exhibit 7 – Sales listing for comparable property E.
10. The following additional items are recognized as part of the record:
  - Board Exhibit A – The 131 Petitions,
  - Board Exhibit B – Notices of Hearing,
  - Board Exhibit C – Hearing Sign in Sheet.
11. For both the 2010 and 2012 assessment years, the PTABOA determined the market value-in-use of the Petitioner’s land was \$400,000.

## BURDEN OF PROOF

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should 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). Recently, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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.

13. Here, the Petitioner acknowledged he had the burden of proof.

## SUMMARY OF THE PETITIONER'S CASE

14. The Petitioner's parcel is .50 acre in size and the land is assessed at a base rate of \$400,000 per acre. The assessment should be \$200,000, but the assessor applied a 100% positive influence factor, raising the total land assessment to \$400,000. *Smith testimony; Pet'r Exs. 1 and 2*. The Petitioner seeks removal of the positive influence factor to create uniformity with comparable properties in the same general neighborhood that have the same permitted use as a convenience store with gas station. *Smith testimony*.
15. The Petitioner's land is located in an area zoned as Commercial General (CG), which allows a business to operate as a convenience store with a gas station. *Smith testimony, Pet'r Ex. 4*. The Petitioner identified seven comparable properties, located nearby and

across the street from the Petitioner's property, five of which are also zoned as CG. *Pet'r Ex. 3, 5*. The Petitioner claimed the properties were comparable to the Petitioner's property because they are in the same immediate location and because they have the same permitted uses. *Smith testimony*. The Petitioner's property received a 100% positive influence factor, but none of the comparable properties, which could be used for convenience stores with gas stations, received the same influence factor. *Smith testimony; Pet'r Ex. 5*. For example, properties four and five are at the same intersection as the Petitioner's property but received no influence factor. *Id; Pet'r Ex. 3*.

16. For 2010, the seven comparable properties land values are assessed for an average of \$5.97 per square foot while the Petitioner's land is assessed at \$18.37 per square foot.<sup>2</sup> A similar analysis for 2012 shows the comparable properties land values were assessed for an average of \$8.52 per square foot while the subject land remained assessed at \$18.37 per square foot. *Smith testimony; Pet'r Ex. 5*.
17. The Petitioner collected only assessment data and is unaware of any recent sales of the selected comparable properties. Sales data, however, should be used to adjust the assessed values of all properties in a neighborhood rather than a select few. *Smith testimony*.
18. The properties are comparable because they are in the same immediate neighborhood, have frontage on the same street, and have the same permitted uses as the subject property. *Smith testimony*.

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<sup>2</sup> The Petitioner's math is wrong. The average number from these seven comparables is \$6.96, not \$5.97 per square foot. The Board arrived at this number by adding all of the prices per square foot shown on the 2010 grid together and dividing by 6. *Pet'r Ex. 5*.

## SUMMARY OF THE RESPONDENT'S CASE

19. This site shares two major Bloomington ingress/egress arteries, College and 17<sup>th</sup> Street. Positive influence factors may be applied to account for features such as corner lots. *Surface testimony.*
20. Comparable properties show the current assessment is correct. *Surface testimony; Resp't Ex. 1 and 2.* Property A on the map is the property under appeal. *Resp't Ex. 3.* Property B is a restaurant on a corner lot. It is located on a diagonal from the subject property and is also on a main artery. This property sold for \$600,000 in 2005 and is currently listed for sale for \$659,990.<sup>3</sup> These sales show what the market value of a property on this corner is. *Surface testimony; Resp't Ex. 1, 4.*
21. Property C is another convenience market. It has the same neighborhood code as the subject property and the same base rate. Similar to the subject property, it is also on a major thoroughfare, and also received a 100% positive influence factor. *Surface testimony; Resp't Ex. 5.*
22. Property D is another convenience market with a gas station. It is located less than ¼ of a mile from the subject property, in the same neighborhood and is assigned the same base rate. It is not located on a major intersection so there is no influence factor. It sold for \$500,000 as a closed business in 2006. This property is assessed for more than the subject property. *Surface testimony; Resp't Ex. 6.*
23. Property E is a current MLS listing. The property is located in a different neighborhood, but only two blocks from the Petitioner's property. It is not located on a major thoroughfare. The property is one acre and is listed for \$475,000. *Surface testimony; Resp't Ex. 7.*

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<sup>3</sup> Although not specifically stated by the Respondent, this amount would seem to include both land and improvements.

24. The Petitioner's comparables are not really comparable. None of the Petitioner's claimed comparable properties include convenience markets assigned to the same neighborhood as the subject property, and all the comparables have different uses. The Petitioner's comparable properties are significantly smaller in size and the subject property would not even fit on them. There is a pending sale for the corner lot identified by the Petitioner (property 5) for \$35 per square foot, much greater than the assessed value of the Petitioner's parcel. Zoning is not a major consideration in the determination of true tax value. *Surface testimony.*
  
25. The Petitioner's properties 4 and 5 are on the same corner as the subject property. Property 4 is leased to a bank, the assessed value has been appealed, and the true tax value was established through the appeal process. Property 5 is under assessed as it is getting ready to sell for \$35 per square foot. Sales are looked at, but the bottom line worth of the property is the ultimate consideration. Potentially, one property may be assessed differently from other properties in the neighborhood. *Surface testimony.*
  
26. The Petitioner did not meet his burden of proof. The Petitioner's main contention is that surrounding properties are assessed differently than the subject property. Complaints of assessment methodology do not make a prima facie case. The Petitioner's comparable properties are different in use, neighborhood, and size. In contrast, sales presented by the Respondent show similar uses, similar assessments, and two sales greater than the subject property's assessment. Sales from 2005 and 2006 are being listed for the same value, suggesting values have remained stable. The argument that all properties zoned alike should be assessed similarly is also conclusory and based on methodology. The Petitioner has presented no objective market evidence of value. *Cusimano argument.*

## ANALYSIS

27. For 2010, real property is assessed based on "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 three generally accepted techniques to calculate market value-in-use. The primary method for assessing officials is the cost approach. *Id.* at 3. Indiana has Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines is presumed to be accurate, but it 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.
28. Beginning in 2012, real property is assessed based on its "true tax value," which 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); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* at 2. Assessing officials primarily use the cost approach. *Id.* at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost of improvements to arrive at a total estimate of value. *Id.* at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. *Id.* at 3.



29. Regardless of the method used to rebut the presumed accuracy of an assessment, a party must explain how its evidence relates to the required valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2010 assessment was March 1, 2010. The valuation date for a 2012 assessment date was March 1, 2012. I.C. 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
30. The Petitioner claimed that his land value was assessed too high in 2010 and 2012 compared to other parcels in his area. In support of his contentions, the Petitioner submitted assessment data for seven nearby properties each in 2010 and 2012. For 2010, the Petitioner erroneously calculated that the comparable land was assessed at an average rate of \$5.97 per square foot (or \$6.96 per square foot as explained in footnote 2), whereas the Petitioner's land was assessed at \$18.37 per square foot. Using a similar calculation for 2012, the Petitioner concluded the average assessed land value for the comparables was \$8.52 per square foot while the Petitioner's land was assessed at \$18.37 per square foot.
31. Indiana Code section 6-1.1-15-18(c) states: "To accurately determine market-value-in-use, a taxpayer . . . may in a proceeding concerning property that is not residential property, introduce evidence of the assessments of any relevant, comparable property." The statute further states that preference is given to properties in the same taxing district or within two miles of a boundary of the taxing district and that "the determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices." *Id.*
32. Here, the Petitioner failed to establish the comparability of the selected parcels. The only comparable qualities the Petitioner offered were the fact that the subject property and the comparables were located near each other, and the fact that the subject property and the comparables were similarly zoned as commercial general or commercial arterial. *Pet'r. Ex. 4-5*. However, the subject property is a convenience market with gas stations and the comparable properties include the following: two commercial structures (comparables 1,

6), a fast food restaurant (comparable 2), a commercial warehouse (comparable 3), a full-service bank (comparable 4), a vacant lot (comparable 5), and a 40 unit apartment building (comparable 7). *Pet'r Ex. 5*. And the size of the lots range from .155 acres to 1.33 acres. *Pet'r Ex. 5*. The Petitioner is “responsible for explaining to the Indiana Board the characteristics of their own property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties.” *Long*, 821 N.E.2d at 471. Despite presenting such a variety of comparables, the Petitioner failed to address any of the considerable differences between the subject property and the comparables.

33. The Petitioner also argued that the subject property should not have had an influence factor applied to the land. The Board notes that the Petitioner failed to provide any market evidence of what the value should be. Instead, he merely alleged that the county assessor should remove the 100% positive influence factor applied to the Petitioner’s land. He provided no support, other than his opinion, for this assertion. Unsubstantiated conclusions 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).
  
34. For 2010, the Petitioner failed to show that the assessment was not a reasonable measure of true tax value. *See* 50 IAC 2.3-1-1(d)<sup>4</sup> (stating that “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 market evidence to show that the assessment is not a reasonable measure of the true tax value. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006) (stating that when a taxpayer chooses to challenge an assessment, he must show that the assessor’s assessed value does not accurately reflect the property’s market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct). The Petitioner must show through the use of market-based evidence that the assessed value

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<sup>4</sup> 50 IAC 2.3-1-2 was repealed effective March 2, 2010, and replaced by the 2011 REAL PROPERTY ASSESSMENT MANUAL. Any property assessed after February 28, 2011, must be assessed in accordance with the 2011 Manual. 50 IAC 2.4-1-2).

does not accurately reflect the property's market value-in-use. Here, the Petitioner did not. Therefore, the Petitioner has failed to raise a prima facie case. *See Eckerling*, (stating that focusing strictly on the assessor's methodology without showing that the methodology used failed to accurately reflect the property's market value-in-use is insufficient to show that the assessment was in error).

35. The Petitioner similarly failed to show that the assessment was not a reasonable measure of true tax value for 2012. The 2011 Manual states:

Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment. Such evidence may include an appraisal prepared in accordance with generally recognized appraisal standards; however, there is no requirement that an appraisal be presented either to support or to rebut an assessment. Instead, the validity of the assessment shall be evaluated on the basis of all relevant evidence presented. Whether an assessment is correct shall be determined on the basis of whether, in light of the relevant evidence, it reflects the property's true tax value.

2011 REAL PROPERTY ASSESSMENT MANUAL at 3.

36. Again, the only evidence for 2012 the Petitioner introduced was a list of comparable properties that were located near the subject property and zoned similar to the subject property. None of the Petitioner's comparables were convenience markets in the same neighborhood as the subject property.
37. Finally, the Petitioner contended that properties with similar potential zoning uses should be assessed similarly. The Petitioner presented no authority in support of this argument. Indiana's assessment scheme is based on a property's market value-in-use, not some hypothetical use that zoning regulations might permit. 50 IAC 2.3-1-1; 50 IAC 2.4-1-1. The Petitioner's conclusory assertions are insufficient evidence of the market value-in-use of the property. *Whitley*, 704 N.E.2d at 1119.
38. The Petitioner failed to make a prima facie case that the land was over-valued for 2010 or 2012.

39. When a taxpayer fails to provide probative evidence supporting the position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence 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.

#### CONCLUSION

40. The Petitioner failed to make a prima facie case for a change to either year's assessed value. The Board finds in favor of the Respondent. Consequently, the 2010 and 2012 assessments will not be changed.

This Final Determination of the above captioned matter is issued by the Board.

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Commissioner, 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

#### - 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>>.