REPRESENTATIVES FOR PETITIONERS:
Milo Smith, Certified Taxpayer Representative

REPRESENTATIVE FOR RESPONDENT:
Brian Cusimano, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Horizon Properties LLC,	)	Petition Nos.: 27-015-06-1-4-00600
	)	27-008-08-1-4-00011
Petitioner,	)	27-008-09-1-4-00022
	)	27-008-10-1-4-00020
	)	27-008-12-1-4-00008
	)	
v.	)	Parcel No.: 27-06-01-401-023.000-008
	)	
	)	County: Grant
	)	
Grant County Assessor,	)	Township: Franklin
	)	
Respondent.	)	Assessment Years: 2006, 2008, 2009, 2010 & 2012

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

Issued: June 17, 2015

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

INTRODUCTION

1. The Petitioner claims the subject property was assessed too high compared to other properties at the same intersection that were used for the same general purposes. Without a more meaningful comparison of relevant characteristics that affect value, those assessments do little to show the subject property's true tax value. Because the Petitioner has the burden of proof for all but one year at issue, we do not order any change to those assessments. The Respondent conceded a reduction for the remaining year.

PROCEDURAL HISTORY

2. The Petitioner filed Form 130 petitions with the Grant County Property Tax Assessment Board of Appeals ("PTABOA") for 2006, 2008-2010, and 2012. On January 14, 2013, the PTABOA issued determinations upholding the assessments for 2006 and 2008-2010. On April 9, 2013, it issued a determination upholding the 2012 assessment. The Petitioner responded by filing Form 131 petitions with the Board.

3. On November 20, 2014, the Board's designated administrative law judge, Dalene McMillen, held a hearing on the petitions. Neither she nor the Board inspected the property.

4. Milo Smith, the Petitioner's certified tax representative, and Anthony Garrison, from Nexus Group, were sworn in as witnesses.

5. The Petitioner offered the following exhibits:

Petitioner Exhibit 1:	2006 property record card ("PRC") for the subject property,
Petitioner Exhibit 2:	2008-2012 PRC for the subject property,
Petitioner Exhibit 3:	Aerial map and the first page of PRCs for 1401 West 2nd Street, 1402 West 2nd Street, and 1338 West 2nd Street,
Petitioner Exhibit 4:	Analysis of comparable assessments,
Petitioner Exhibit 5:	Copy of 50 IAC 2.4-1-1,

Petitioner Exhibit 6: Eighteen pages from International Association of Assessing Officers ("IAAO") "Mass Appraisal of Real Property,"
Petitioner Exhibit 7: Page 2-23 of the IAAO "Income Approach to Valuation,"
Petitioner Exhibit 8: *CVS Pharmacy, Inc. #6637-02 v. Shelby County Assessor,* pet. nos. 73-002-07-1-4-12801 and 73-002-08-1-4-12801 (IBTR Nov. 15, 2011),
Petitioner Exhibit 9: Section 13 – page 22 "Calculator Method" and Section 98 – page 5 "District Comparative Cost Multipliers" from Marshall Valuation Service,
Petitioner Exhibit 10: *Big Foot Stores LLC v. Franklin Township Assessor, Mill Township Assessor, Pleasant Township and Grant County Assessor*, 919 N.E.2d 621 (Ind. Tax Ct. 2009),
Petitioner Exhibit 11: Master lease between Horizon Properties LLC and Mac's Convenience Stores LLC.

6. The Respondent offered the following exhibits:

Respondent Exhibit A: 2006, 2008-2009, and 2012 PRCs for the subject property,
Respondent Exhibit B: Sales comparison data and paired sales analysis,
Respondent Exhibit C: 2002 annual average traffic count for Grant County,
Respondent Exhibit D: 2006, 2008-2009, and 2010-2012 PRCs for 1707 West Kem Road,
Respondent Exhibit E: 2006, 2008-2009, and 2010-2012 PRCs for 1503 North Baldwin Avenue,
Respondent Exhibit F: 2006, 2008-2009, and 2011-2012 PRCs for 3035 South Western Avenue,
Respondent Exhibit G: 2006, 2008-2009, and 2011-2012 PRCs for 209 West 38th Street,
Respondent Exhibit H: 2006 comparable assessment analysis,
Respondent Exhibit I: PRCs for 1401 West 2nd Street, 1338 West 2nd Street, and 1402 West 2nd Street.

7. The following additional items are part of the record:

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

8. The PTABOA determined the following assessments:

Year	Land	Improvements	Total
2006	$38,800	$584,100	$622,900
2008	$39,600	$568,000	$607,600
2009	$22,100	$579,800	$601,900
2010	$22,100	$629,300	$651,400
2012	$71,600	$489,700	$561,300

9. The Petitioner asked for the following assessments:

Year	Total Assessment
2006	$151,400
2008	$156,200
2009	$156,200
2010	$156,200
2012	$152,300

BURDEN OF PROOF

10. Generally, a taxpayer appealing the assessment of its property must prove the assessment is incorrect and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances. Where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving the assessment under appeal is correct. I.C. § 6-1.1-15-17.2 (a) and (b). The assessor similarly has the burden where a property's gross assessed value was reduced in an appeal and the assessment for the following date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase…." I.C. § 6-1.1-15-17.2(d). If the assessor fails to meet her burden of proving the assessment is correct, it must be reduced to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).

11. Although the record does not show what the property was assessed for in 2005, the parties agree that the assessment did not increase by more than 5% between 2005 and 2006. They also agree that the Petitioner did not appeal the 2005 assessment. So neither of the circumstances outlined in the burden-shifting statute apply.

12. The Petitioner, however, argues that the Respondent should nonetheless have the burden of proof because the Tax Court reduced the 2003 assessment to $175,100. *See Pet'r Ex. 10* (*Big Foot Stores v. Franklin Twp. Assessor*, 919 N.E.2d 621 (Ind. Tax Ct. 2009). Between 2003 and 2005, assessors did not annually adjust assessments, so the Petitioner argues that the $175,100 value should have rolled forward to 2005. And the difference between $175,100 and the 2006 assessment of $622,900 is far greater than 5%. *See Smith argument.*

13. Whether local assessing officials should have changed the 2005 assessment based on the Tax Court's resolution of the 2003 appeal is beside the point. They did not do so, and the Petitioner failed to appeal that year's assessment. Although the Petitioner claims that the Tax Court's decision came too late for it to appeal the 2005 assessment, receiving a decision on the 2003 appeal was not a prerequisite to the Petitioner appealing the ensuing years' assessments. We cannot impute a lower assessment for 2005 than what the officials with the authority to make that assessment determined. The Petitioner therefore has the burden of proof for 2006.

14. The parties agree that the 2008 assessment did not increase by more than 5% over 2007, and there is no evidence that the Petitioner appealed 2007. Once again, neither circumstance outlined in the burden-shifting statute applies, and the Petitioner has the burden of proof for 2008.

15. Assigning the burden for 2009 necessarily depends on our determination for 2008. We will therefore address that question below after we explain our determination for 2008. In theory, the same is true for 2010—until we decide 2009 we cannot know for sure

whether either of the two circumstances described in the burden-shifting statute will apply. But as things stand, the parties agree that the 2010 assessments represents an increase of more than 5% over 2009, and the Respondent has not asked us to increase the 2009 assessment. Indeed, the Assessor concedes that she will not try to defend the 2010 assessment as it currently stands.

16. Finally, the parties agree that the assessment did not increase by more than 5% between 2011 and 2012, and the Petitioner did not appeal 2011. Thus, neither circumstance outlined by the burden-shifting statute applies, and the Petitioner has the burden of proof for 2012.

PETITIONER'S CONTENTIONS

17. The subject property was assessed for significantly more per square foot of building area than were other gas stations or convenience stores at the same intersection. Milo Smith, the Petitioner's representative and witness, compared the subject property to the three other properties at the intersection, identifying the respective parcel and building sizes, uses, and assessments:

Property	**Parcel Size**	**Building Size**	**Use**
Subject	.39 acres	2,384 sq. ft.	Convenience Market
1401 W. 2nd St.	.46 acres	5,184 sq. ft.	Service Station
1402 W. 2nd St.	.2666 acres	2,876 sq. ft.	Convenience Market
1338 W. 2nd St.	.37 acres	2,014 sq. ft.	Convenience Market

Smith testimony; Pet'r Exs. 3-4.

18. Smith converted each assessment into a value per square foot of building area. Where possible, he determined an average of the other three properties' assessments. The property record cards for two of the three properties did not list a value for 2009 or 2010,

making it impossible to obtain an average. For those years, he used the average from 2008. He then offered the following comparison:

Property	**2006 AV**	**2008 AV**	**2009 AV**	**2010 AV**	**2012 AV**
1401 W. 2nd	$44/sq. ft.	$47/sq. ft.	$42/sq. ft	$37/sq ft.	$33/sq. ft.
1402 W. 2nd	$83/sq. ft.	$84/sq. ft.	No value	No value	$95/sq. ft.
1338 W. 2nd	No Value	No value	No Value	No Value	$85/sq. ft.
Average	**$63.50**	**$65.50**	**$65.50**	**$65.50**	**$63.90**[1]
Subject	$261/sq. ft.	$255/sq. ft.	$252/sq. ft.	$273/sq. ft.	$235/sq. ft.

Smith testimony; Pet'r Exs. 3-4.

19. According to Smith, the disparity in per-unit values between the subject property and the other properties at the same intersection demonstrates a lack of uniformity. The Petitioner therefore requests assessments computed using the average price-per-square-foot of building area from the other assessments. *Smith testimony.*

20. As further support, the Petitioner pointed out that 1402 W. 2nd St. sold for $200,000 in 2007. The reasons the Respondent's witness gave for viewing the sale as invalid—that it may have involved a land contract and that the seller owned a competing business on the same intersection—are unfounded. If anything, the price from a land contract is likely to be above market value. *Smith argument*.

21. While the Respondent pointed to differences between products sold at the subject property and those sold at the other properties in Smith's analysis, Indiana's assessment regulations value real property—not the business occupying the property. *Smith testimony; Pet'r Ex. 8.*

[1] Smith testified the average for 2012 was $63.50/sq. ft. It is actually $71/sq. ft. (33+95+85=213 and 213÷ 3=71).

RESPONDENT'S CONTENTIONS

22. The subject property is a 2,384-square-foot convenience store that was built in 1983. It has restrooms inside, and the occupant sells various items, including oil, anti-freeze, cigarettes, snacks, and coffee. *Garrison testimony; Resp't Ex. A.*

23. The Petitioner's evidence does not show that the property was over-assessed for any of the years in question. Smith chose the properties for his analysis based solely on location, and he failed to address significant differences between those properties and the subject property. For example, 1401 West 2nd Street is a service station with a 288-square-foot cash booth. Although Smith described that property as having a 5,194-square-foot building, the structure to which he referred is actually a detached canopy. 1402 West 2nd Street is not only a convenience store, but it also has an area for selling food, such as fried chicken and catfish. 1338 West 2nd has a vacant building without a detached canopy or gasoline pumps. The Board has found similar evidence insufficient to prove a property's true tax value in other appeals. *Garrison testimony; Resp't Ex. I; Cusimano argument (citing Fisher v. Monroe County Ass'r,* pet. no. 53-005-12-1-4-00127 (IBTR June 9, 2014))

24. Although 1402 West 2nd Street sold for $200,000 on September 17, 2007, the seller was the adjacent property's owner, and the sale was a land contract. Land-contract sales are generally invalid for purposes of determining true tax value, and the Respondent could not ascertain whether the parties completed the sales disclosure form at the beginning or the end of the contract. In addition, the buyer was purchasing the property from a competing business, and the sale involved multiple parcels. *Garrison testimony.*

25. Garrison prepared his own analyses based on sales and assessments of what he described as comparable properties. For his sales-comparison analysis, Garrison used four properties that sold between June 2002 and April 2004. He adjusted the sale prices to account for differences between those properties and the subject property in terms of the age and size of buildings, the number of fuel pumps, the presence of a car wash, and

traffic counts. The four properties sold for an average adjusted price of $259.58/sq. ft. of building area, which translates to a value of $619,000 for the subject property. *Garrison testimony; Resp't Exs. B, D-G.*

26. For his assessment-comparison, Garrison used five convenience stores from Grant County. In 2006, those properties were assessed for values ranging from $486,900 to $1,045,400, while the subject property was assessed for only $622,800. According to Garrison, the stores he used in his analysis are more comparable to the subject property than are the properties from Smith's analysis. *Garrison testimony; Resp't Exs. A, H.*

27. Finally, Garrison prepared what he described as a "paired-sales" analysis to determine market appreciation. Based on the Respondent's exhibits, it appears that Garrison used that analysis to adjust the subject property's sale price from 2003 to reflect a value as of January 1, 2005—the valuation date for 2006 assessments. His analysis refers to a "gross" sale price of $728,683 and a "net" price of $619,381. But he did not testify about that sale, much less explain how he got his net sale price. *Garrison testimony*; *Resp't Ex. B.*

ANALYSIS

A. True Tax Value and Evidence in Assessment Appeals

28. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance has defined as "the market value-in-use of a property for its current use, as reflected by utility received by 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); *see also* 2011 REAL Property ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Parties to an assessment appeal may offer relevant evidence that is consistent with the true tax value standard. A market value-in-use appraisal prepared according to the uniform standards of professional appraisal practice often will suffice. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Parties may

also offer evidence of actual construction costs, sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id.*; *see also,* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).

B. The Parties' Evidence

29. The Petitioner offered Smith's analysis, in which he used assessment data for the other three properties at the same intersection, and argued that the subject property should be assessed at a rate equal to the average price-per-square foot of building area for those three properties. Parties may offer evidence of comparable assessments to prove the value of a property under appeal, but comparability must be determined using generally accepted assessment and appraisal practices. I.C. § 6-1.1- 15-18. Conclusory statements that a property is "similar" or "comparable" to another property are not enough. *Indianapolis Racquet Club, Inc. v. Marion County Assessor,* 15 N.E.3d 150, 155 (Ind. Tax Ct. 2014); *see also*, *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Instead, one must compare the relevant characteristics of the purportedly comparable properties to those for the property under appeal and explain how any differences affect the values. *See id.*

30. Smith did little to compare the relevant characteristics of the subject property to any of the three properties for which he offered assessment data. At most, he pointed to the location on the same intersection and to their similar uses. He did not even attempt to explain how relevant differences affected their relative values. The comparative assessment data therefore does little to show the subject property's true tax value.

31. The Petitioner also pointed to the 2007 sale of one of the properties from Smith's analysis (1402 West 2nd Street). Again, without sufficiently comparing that property to the

subject property and adjusting the sale price for relevant differences, the sale price does little or nothing to show the subject property's true tax value.[2]

32. At hearing, Smith argued that assessments at the same intersection must be uniform. In response to a question about whether he looked at sales for any of his comparable properties Smith stated that the Petitioner had "appealed this based on uniform assessments for similar properties at the same location, which is permissible by statute, to my understanding." *Smith argument*. It is not clear whether he meant the Petitioner was claiming a lack of uniformity and equality under Ind. Code § 6-1.1-2-2(a) as an independent basis for relief or was instead simply pointing to Ind. Code § 6-1.1-15-18, which allows parties to offer evidence of comparable assessments to prove a property's market value-in-use.[3] It appears to be the latter. But to the extent it is the former, the Petitioner failed to support that claim with cogent argument or probative evidence.[4]

33. The "overarching goal" of Indiana's assessment scheme "is to measure a property's value using objectively verifiable data." *Westfield Golf Practice Center, LLC v. Washington Twp. Ass'r,* 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). Consequently, "the end result—a 'uniform and equal *rate*' of assessment—is required, but there is no requirement of uniform procedures to arrive at that rate." *Id*. (quoting *State ex. rel. Att'y Gen. v. Lake Superior Ct*., 820 N.E.2d 1240, 1250 (Ind. 2005) (emphasis supplied by Tax Court). In *Westfield Golf*, the Tax Court held that the taxpayer did not prove a violation of Art. X section 1 of the Indiana Constitution where it merely showed that its driving range was assessed using a different base rate than other driving ranges, but failed to show the market value-in-use for any of the properties. *Id*.

34. At most, the Petitioner showed that properties with similar locations and uses were assessed for different amounts. Other than pointing to the 2007 sale of 1402 West 2nd

[2] As it is not essential to our decision, we do not address whether any of the circumstances surrounding the sale would make the sale price an unreliable indicator of 1402 West 2nd Street's market value.
[3] The Petitioner's Form 131 petitions do not mention anything about uniformity and equality.
[4] To the extent the Petitioner raised such a claim, the burden-shifting statute does not apply, and the Petitioner has the burden of proof for each year under appeal. *See Thorsness v. Porter County Ass'r*, 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014).

Street, the Petitioner did nothing to show the market value-in-use for any of the properties.[5] Thus, like the taxpayer in *Westfield Golf*, the Petitioner failed to prove an actionable lack of uniformity and equality.

35. The Respondent's evidence suffers from similar flaws. Garrison pointed to the sale prices and assessments for several properties. He compared the properties based on more characteristics than Smith did in his analysis. And unlike Smith, Garrison made several adjustments to the comparable properties' sale prices (although not to the assessments). But he did not explain how he determined any of those adjustments or otherwise show that he complied with generally accepted appraisal principles. We therefore find that Garrison's sales- and assessment-comparison analyses have little or no probative value.

C. Determinations

36. Given the lack of probative evidence to show the property's value, the outcome for each year turns solely on who has the burden of proof. As explained above, the Petitioner has the burden for 2006 and 2008. Its failure to meet that burden means the assessments for those years do not change. Because (1) the Petitioner did not prevail in its appeal for 2008, and (2) the assessment did not increase by more than 5% between 2008 and 2009, the Petitioner has the burden for 2009 as well. Its failure to meet that burden means the assessment for 2009 does not change. We have already explained that the Petitioner has the burden of proof for 2012 regardless of the outcome of any of the other appeals. Once again, the lack of probative evidence means the assessment for that year does not change

37. The Respondent, however, has the burden for 2010, and she conceded that she was not trying to defend an assessment above the previous year's level of $601,900. The 2010 assessment must therefore be changed to that amount.

[5] The Petitioner cited to *Big Foot Stores v. Franklin Twp. Assessor*, 919 N.E.2d 621 (Ind. Tax Ct. 2009), a decision addressing an appeal of the subject property's 2003 assessment, in arguing that the revised assessment ordered by the Tax Court should have carried forward to 2005. But the Petitioner does not claim, as it did in *Big Foot Stores*, that the assessments under review in these appeals were invalid because they were the products of spot assessments or sales chasing. *See Big Foot Stores*, 919 N.E.2d at 624-625 n.8. We therefore do not address that question.

SUMMARY OF FINAL DETERMINATIONS

38. The Petitioner failed to make a prima facie case for changing the 2006, 2008-2009, and 2012 assessments. The Respondent had the burden of proof for 2010 and conceded that the assessment should revert to its 2009. We therefore order no change to the 2006, 2008-2009, and 2012 assessments. But we order the Respondent to change the 2010 assessment to $601,900.

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

_____
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>.