REPRESENTATIVE FOR PETITIONER:
Milo Smith, Certified Taxpayer Representative

REPRESENTATIVE FOR RESPONDENT:
Marilyn S. Meighen, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Marlin Hukill,	)	Petition No.: 53-005-06-1-4-00076
	)	
Petitioner,	)	Parcel No.: 013-28630-00
	)	
v.	)	
	)	
Monroe County Assessor,	)	County: Monroe
	)	
Respondent.	)	Assessment Year: 2006

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

August 23, 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 2006 assessment year.

PROCEDURAL HISTORY

2. The Petitioner, Marlin Hukill, through his certified taxpayer representative, Milo Smith, initiated his assessment appeal by filing a Form 130 Petition with the Monroe County Property Tax Assessment Board of Appeals (the PTABOA) on August 3, 2007. The PTABOA issued its determination on September 26, 2007.

3. Pursuant to Indiana Code § 6-1.1-15-1, Mr. Smith filed a Form 131 Petition for Review of Assessment with the Board on November 5, 2007, petitioning the Board to conduct an administrative review of the Petitioner's appeal.

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 June 11, 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:[1]

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 – Department of Local Government Finance (DLGF) "Annual Adjustment of Assessed Values Fact Sheet,"
Petitioner Exhibit 3 – Indiana Board of Tax Review, Notice of Hearing on Petition, dated March 19, 2012,
Petitioner Exhibit 4 – Assessor's response to Petitioner's interrogatories and request for production of documents.

7. The Respondent presented the following exhibits:

Respondent Exhibit A – Property record card for the subject property,
Respondent Exhibit B – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131, Petition to the Property Tax Assessment Board of Appeals for Review of Assessment – Form 130, and Notification of Final Assessment Determination – Form 115,
Respondent Exhibit C – Petitioner's response to Assessor's interrogatories and request for production of documents, property record card for 4535 East Third Street, Bloomington, and DLGF "Annual Adjustment of Assessed Values Fact Sheet,"
Respondent Exhibit D – Indiana Fiscal Policy Institute – Statewide Property Tax Equalization Study, Appendix C, "Monroe County Property Tax Reassessment Equalization Analysis," pages 272 and 273, dated October 2005,
Respondent Exhibit E – Commercial/Industrial land order page for 53-0003-45a – Bloomington City (45a – Bloomington City),
Respondent Exhibit F – Monroe County's 2006 sales-ratio study,
Respondent Exhibit G – Property record cards for 4531 East Third Street, 4505 East Third Street, 4517 East Morningside Drive, and 4600 East Morningside Drive,
Respondent Exhibit H – Multiple listing sheet for 4535 East Third Street.[2]

[1] Kay Schwade with Nexus Group was also in attendance but was not sworn as witness to give testimony.

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 petition with attachments,
Board Exhibit B – Notice of Hearing, dated March 19, 2012,
Board Exhibit C – Hearing sign-in sheet.

9. The subject property is a commercial building on 0.58 acre of land located at 4535 East Third Street, Bloomington, in Monroe County.

10. The ALJ did not conduct an on-site inspection of the subject property.

11. For 2006, the PTABOA determined the assessed value of the Petitioner's property to be $101,500 for the land and $62,800 for the improvements, for a total assessed value of $164,300.

12. At the hearing, the Petitioner's representative requested an assessed value of $59,900 for the land and $62,800 for the improvements, for a total assessed value of $122,700.[3]

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.

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[2] Mr. Smith objected to the 2011 multiple listing sheet on the subject property because the Petitioner is contesting the March 1, 2006, assessment. Mr. Smith's objection goes to the weight of the evidence rather than its admissibility. *See* 52 IAC 2-7-2.

[3] Mr. Smith testified that for 2006, he inadvertently requested the 2002 assessed value of $41,900 on the land and $62,800 for the improvements, for a total assessed value of $104,700 on the Form 131 petition. *Smith testimony.*

PETITIONER'S CONTENTIONS

14. The Petitioner's representative argues that the Monroe County 2006 sales ratio study does not support an "annual adjustment" increasing the Petitioner's land base rate. *Smith testimony.* The adjustment resulted in the assessed value of the Petitioner's land increasing from $59,900 in 2005 to $101,500 in 2006. *Smith testimony; Petitioner Exhibit 1.* According to Mr. Smith, the DLGF "Annual Adjustment of Assessed Values Fact Sheet" states trending requires the assessor to research sales of properties in a particular area over the previous two years, which is used to estimate the values of other properties in the same area. *Smith testimony; Petitioner Exhibit 2.* Mr. Smith argues that the county's ratio study shows the assessor lacked sufficient commercial sales in neighborhood 45a – Bloomington City to support doubling the land base rate. *Smith testimony.* In addition, Mr. Smith testified, he could not find any other land values in the Petitioner's neighborhood that increased by 50% or that the land base rate doubled. *Id.* Therefore, Mr. Smith argues that because the assessor's sales ratio does not support the increase in the 2006 land base in the Petitioner's neighborhood, she failed to follow the "trending" requirements set forth by the DLGF and the Petitioner's land should be returned to the 2005 assessed value of $59,900. *Id.*

15. Similarly, Mr. Smith contends that the assessor erred by changing the Petitioner's land base rate on his property record card for 2006. *Smith testimony.* According to Mr. Smith, the "annual adjustment" should be a mathematical calculation expressed as percentage on the property record card. *Id.* Mr. Smith argues that when comparing a property's assessed value for two years it is "easier" for a taxpayer to understand a percentage increase in the assessed value rather than the land base rate being increased.[4] *Id.*

[4] Mr. Smith also testified that prior to changing the land base rates in 2006, the assessor was required to seek the approval of the PTABOA. *Smith testimony.* It appears that Mr. Smith is referring to Ind. Code § 6-1.1-4-13.6, which requires the PTABOA's involvement in establishing and advertising new land base rates . *See* Ind. Code § 6-1.1-4-13.6. However,, that statute only applies in the year preceding a general reassessment. *Id.* Pursuant to 50 IAC 27-5-7, the assessor shall review land values as part of the annual adjustment process and "If the county

16. In response to questioning, Mr. Smith admitted he did not possess any sales information, any evidence on comparable properties in the neighborhood, or any other evidence of the subject property's market value-in-use. *Smith testimony.* Mr. Smith testified that he filed the Petitioner's appeal based on the fact that the property's "annual adjustment" increased by more than 5%. *Smith testimony; Respondent Exhibit C at 6.* According to Mr. Smith, because the Petitioner's land increased by more than 5% between 2005 and 2006, the county assessor has the burden of proof to establish that the 2006 assessment is correct. *Smith testimony.* Mr. Smith argues that simply because the Respondent's counsel does not agree with the law does not change the fact that Indiana Code § 6-1.1-15-17.2 applies to the Petitioner's case. *Id.*

17. In response to questioning, Mr. Smith admitted that Respondent's evidence shows the Petitioner's property was listed for sale on October 26, 2011, for $250,000. *Smith testimony; Respondent Exhibit H.* Mr. Smith argues that the 2011 listing price is irrelevant in determining the market value-in-use of the Petitioner's property because it is approximately five years after the March 1, 2006, assessment date. *Smith testimony.*

18. Finally, Mr. Smith contends that the assessor correctly assessed the property for $59,900 for the land and $62,800 for the improvements, for a total assessed value of $122,700 in 2005. *Smith testimony.* According to Mr. Smith, the assessor did not possess adequate sales data to "justify" increasing the Petitioner's assessed value in 2006 to $101,500 for the land and $62,800 for the improvements, for a total assessed value of $164,300. *Id.* Thus, Mr. Smith argues the Petitioner's property's assessed value should be reduced to its March 1, 2005, assessment of $122,700. *Id.*

RESPONDENT'S CONTENTIONS

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assessor determines through review, ratio studies, or appeals from the previous assessment years that the land base rate units need to be modified, the county assessor shall proceed to set new land base rates." 50 IAC 27-5-7.

19. The Respondent's counsel argues that Indiana Code § 6-1.1-15-17.2, concerning shifting the burden of proof from the taxpayer to the assessor when an assessment increased more than five percent from the previous assessment, does not apply to this case. *Meighen argument.* According to Ms. Meighen, the statute should be applied prospectively. *Id.; citing Indiana Department of State Revenue v. Estate of Riggs*, 735 N.E.2d 340, 344 (Ind. Tax Ct. 2000). The triggering event is the assessment. *Meighen argument.* And because the assessment date following the effective date of the statute is March 1, 2012, the new statute should start applying with 2012 assessment appeals. *Id.* Thus, she argues, the Petitioner has the burden of proof to present a prima facie case that its 2006 assessment is incorrect. *Id.*

20. The Respondent's counsel further argues that the Petitioner's appeal should be dismissed in accordance with Indiana Trial Rule 41(B). *Meighen argument.* Ms. Meighen argues that the Petitioner's representative failed to show some basis for filing its appeal to the PTABOA or to the Board. *Id.* According to Ms. Meighen, under Trial Rule 41(B), a party may move for dismissal where the Petitioner had no valid appeal to begin with or where it is shown through the weight of the evidence that the Petitioner has no right to relief. *Id.* Because it is not sufficient for the Petitioner's representative to simply allege that the assessor got the assessed value wrong in 2006, the Petitioner did not have a valid appeal and the Petitioner's case should be dismissed. *Id.*

21. In addition, the Respondent's counsel argues that the property's 2006 assessment was correct. *Meighen argument.* According to the Respondent's witness, in October of 2005, the Indiana Fiscal Policy Institute released its "Statewide Property Tax Equalization Study – Monroe County Equalization Analysis" (the Equalization Study) which measured the level of assessments for each class of property in the county. *Surface testimony; Respondent Exhibit D.* The Equalization Study showed that, after the 2002 general reassessment, commercial and industrial properties in Monroe County were being undervalued by, on average, 30%. *Id.*

22. Mr. Surface testified that, as a result of the Equalization Study, Monroe County reevaluated all of its land values and base rates and updated its cost tables. *Surface testimony.* Due to a lack of commercial and industrial sales for the 2006 assessment year, however, Monroe County did not rely solely on sales data to establish land values and building costs. *Id.* Instead, Mr. Surface testified, the county looked at other data such as appraisal information, information provided through previous appeals, and multiple listing sheets. *Surface testimony.* As a result of this reevaluation, Mr. Surface testified that the Petitioner's property and other properties in the subject property's neighborhood were assessed with a land base rate of $175,000 per acre. *Id.* In support of this contention, the Respondent submitted the land order sheet, Petitioner's property record card and four additional property record cards for properties located in the Petitioner's neighborhood. *Respondent Exhibits A, E, and G.*

23. Mr. Surface argues that Monroe County's 2006 assessments were correct pursuant to its DLGF-approved sales-ratio study. *Surface testimony; Respondent Exhibit F.* According to Mr. Surface, a sales-ratio study is a statistical study which measures whether assessed values are correct based on the ratio of assessed value to sale price of properties in different neighborhoods in the county. *Surface testimony.* Mr. Surface testified that the Monroe County sales-ratio study met the median, coefficient of dispersion (COD) and price-related differential (PRD) standards established by the International Association of Assessing Officers (IAAO) and DLGF.[5] *Id.* In addition, the sales-ratio study shows four sales in the Petitioner's neighborhood that sold in 2005. Based on the sales and the approved sales-ratio study, Mr. Surface argues, the county has sufficiently shown that the Petitioner's land's base rate of $175,000 per acre is not over-valued. *Id.*

24. Mr. Surface testified there are numerous reasons an assessment might increase at a higher percentage than another property in the same neighborhood. *Surface testimony.* For example; changes are made to the property from one year to the next year, the property

[5] Mr. Surface testified that the acceptable standards are as follows; the median is between 0.90 and 1.10, a COD for commercial property less than 20, and a PRD between 0.98 and 1.03. *Surface testimony.*

could have been undervalued in prior years, something was omitted from the assessment of the property or the property was assigned to the wrong neighborhood. *Id.* Thus, Mr. Surface argues the Petitioner cannot just look at the percentage of increase in assessed value compared to the neighbors assessed value and assume the assessed value is incorrect. *Id.*

25. Mr. Surface argues that the Petitioner's property was properly assessed in 2006 for $164,300, based on the property's 2011 listing price. *Surface testimony.* In support of this position, Mr. Surface submitted a multiple listing for the property under appeal showing the property was listed for sale with Stith Commercial Brokers for $250,000 on October 26, 2011. *Respondent Exhibit H.* According to Mr. Surface, the listing price is what the owner deems the property is worth. *Surface testimony.* Mr. Surface contends that property values in the 45a – Bloomington City have remained "relatively constant" from 2005 through 2011. *Surface testimony.* In support of this statement, Mr. Surface offered the assessed values of the four properties located in the Petitioner's neighborhood. *Respondent Exhibit G.* Mr. Surface argues that on the January 1, 2005, valuation date for the March 1, 2006, assessment, the Petitioner's property was assessed for less than the property's listing price. *Id.* Thus, he argues, because the property values have remained constant from 2005 through 2011 in the Petitioner's neighborhood, the Petitioner's property was not over-assessed.[6] *Surface testimony.*

26. Finally, the Respondent's counsel argues that the Respondent was prejudiced in its preparation for the Petitioner's hearing because the hearing was held five or six years after the appeal was filed with the Board. *Meighen argument.* Mr. Surface testified that the county has had four computer software vendors from 2002 to 2011. *Surface testimony.* According to Mr. Surface, once a computer vendors' license agreement expires, property information prepared by that vendor is not longer available to the county. *Id.* Because the county does not retain "hard" copies of the information, Mr.

[6] In response to questioning, Mr. Surface testified that the Petitioner's assessed value increased from $103,000 in 2002 to $122,700 in 2005 due to an error in the land's depth factor, which was discovered as a result of changing computer software vendors. *Surface testimony; Respondent Exhibit A.*

Surface argues, it was difficult to recreate the property's assessment information. *Id.* Therefore, the Respondent's counsel argues the Board should give considerable weight to Mr. Surface's firsthand knowledge of assessments and activities in Monroe County. *Meighen argument.*

BURDEN OF PROOF

27. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2.[7] That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment:

> 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.

28. Here, the Respondent's counsel argues that Indiana Code § 6-1.1-15-17.2 should not be applied retroactively. According to Ms. Meighen, the burden-shifting law should only

[7] HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

apply to assessments that occur after the law's effective date. The Board, however, is not convinced that applying the law in this case would be a retroactive application. "While statutes are generally given prospective effect absent a contrary legislative intent, it is also true that the jurisdiction in pending proceedings continues under the procedure directed by new legislation where the new legislation does not impair or take away previously existing rights, or deny a remedy for their enforcement, but merely modifies procedure, while providing a substantially similar remedy." *Tarver v. Dix,* 421 N.E.2d 693, 696 (Ind. Ct. App. 1981). According to the U.S. District Court in the Northern District of Indiana, "applying newly enacted procedure to a case awaiting trial in district court is not, strictly speaking, a retroactive application of the law" because the court has not yet "done the affected thing" when the new law is applied. *Brown v. Amoco Oil Co.,* 793 F. Supp. 846, 851 (N.D. Ind. 1992).

29. In *City of Indianapolis v. Wynn,* 157 N.E.2d 828, 834-835 (Ind. 1959), the Indiana Supreme Court held that a statutory amendment, which specified that evidence of certain factors would constitute primary determinants of an annexation's merit, was a procedural amendment and therefore applied to a proceeding where the remonstrators has filed their challenge, but no hearing had yet occurred. The Court reasoned that because the amendment "changes the method of procedure and elements of proof necessary to sustain an annexation ordinance, and does not change the tribunal or the basis of any right, it must be presumed that the Legislature intended that the proceedings instituted under the [prior version of the statute] should be continued to completion under the method of procedure prescribed by the [amendment]." *Id., see also Tarver v. Dix,* 421 N.E.2d 693, 696 (Ind. Ct. App. 1981) (A statutory presumption of legitimacy applied to a case filed prior to its enactment but heard after the legislation was passed because "the new legislation … provided a substantially similar remedy while delineating more clearly the procedure to be followed in determining and enforcing this right.").

30. The Respondent's counsel argues that amendments are only to apply prospectively "absent clear and expressed language to the contrary." *Meighen argument, citing Indiana*

Dep't of Revenue v. Estate of Riggs, 735 N.E.2d 340 (Ind. Tax Ct. 2000). But the Tax Court in *Estate of Riggs* recognized that "exceptions to the general rule exist" noting that "retroactive application may be permitted where the new legislation only changes a mode of procedure… or where a statute is remedial." 735 N.E.2d at 344. Because the amendment at issue in the *Estate of Riggs* case changed the amount of an exemption, the Court held that, unlike the burden shifting law at issue in this case, the amendment did not "change a mode of procedure"; nor was there any indication the amendment was "designed or intended to cure a defect or mischief existing in a prior statute." *Id.* at 345. Thus, the Court concluded in that case there was no evidence to suggest that the General Assembly intended to make the amendment retroactive. *Id.*

31. The Respondent's counsel also argues that the assessment is the "thing affected." However, Indiana Code § 6-1.1-15-17.2 does not change the rules or standards for determining whether an assessment is correct. Nor does the statute make any change to the assessor's duties in making assessments. Assessors are tasked with assessing property based on its "true tax value" which is defined 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). This definition "sets the standard upon which assessments may be judged." *Id.* Moreover, under the trending rules, property values are to be adjusted each year to reflect the change in a property's market value between general reassessment years. Ind. Code § 6-1.1-4-4.5. Whether the assessor will have the burden of proof at trial based on how much that property's value changes year over year should have no impact on the assessor's obligation to value property according to its market value-in-use. In fact, the Respondent made no claim that it would have assessed the Petitioner's properties differently if the burden shifting provision had been promulgated prior to the time that the assessment was made.

32. Indiana Code § 6-1.1-15-17.2 places the burden of proof on an assessor when the assessed value of a property increases by more than five percent between assessment

years. Thus, the "affected thing" would be the evidentiary hearing wherein the Board evaluates the proof offered by the parties. If the General Assembly had not intended the law to apply to pending appeals, it could have inserted language to that effect, stating that the law only applied to future assessments. This the legislature did not do.

33. While the Board sympathizes with the county that it no longer has access to much of the information related to older assessments because of numerous contractor changes in the past ten years, it notes that the Respondent was fully aware of the parcels being appealed at the time each appeal was filed. That the county chose not to retain hard copies of computer data to aid in its defense is not a reason to ignore the legislative mandate that has been passed. Moreover, the laws regarding proving a property's value by providing probative market value-in-use evidence have been in place since 2002. Even before that time, the Tax Court held that a Respondent could not defend an assessment merely by contending it assessed the property correctly. *See Canal Square v. State Bd. of Tax Comm'rs*, 694 N.E.d2d 801, 808 (Ind. Tax Ct. 1998) (mere recitation of expertise insufficient to rebut prima facie case). Thus, assessors could not merely rely on proof that the county's assessments were performed in accordance with DLGF guidelines and the county should have been collecting market value-in-use evidence, separate from any evidence of a property's assessment, since long before the burden shifting law was passed.

34. Because the law applies to all pending appeals and because the property's assessed value for 2006 increased by more than 5% over the property's assessed value in 2005, the Board finds that the Respondent has the burden of proof in this proceeding.

MOTION FOR INVOLUNTARY DISMISSAL

35. The Respondent's counsel argues that the Petitioner's representative failed to show a "legitimate" reason for filing the Petitioner's appeal with the PTABOA and with the Board. *Meighen argument.* Because the Petitioner had no valid basis for filing an

appeal, Ms. Meighen argues, the Board should dismiss his Petition pursuant to Trial Rule 41(B). *Id.*

36. Pursuant to Trial Rule 41(B) of the Indiana Rules of Trial Procedure: "After the plaintiff or party with the burden of proof upon an issue, in an action tried by the court without a jury, has completed the presentation of his evidence thereon, the opposing party, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the weight of the evidence and the law there has been shown no right to relief." The clear language of the rule, however, applies to dismiss the case of "the plaintiff or *party with the burden of proof* upon an issue." Trial Rule 41(B) (emphasis added). There is little question that, had the Petitioner had the burden of proof in this appeal, the case presented by his representative would have fallen far short of the burden to prove the Petitioner's property's assessment was in error. As discussed above, however, Indiana Code § 6-1.1-15-17.2 places the burden of proof on an assessor when the assessed value of a property increases by more than five percent between assessment years. Because the Respondent has the burden of proof in this case, the Petitioner's appeal cannot be involuntarily dismissed pursuant to Trial Rule 41(B).

37. The Board therefore denies the Respondent's counsel's motion for involuntary dismissal under Indiana Trial Rule 41(B).

ANALYSIS

38. In Indiana, assessors value real property based on the property's market value-in-use, which the 2002 Real Property Assessment Manual defines 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." MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *Id.* A market-value-in-use appraisal prepared according to USPAP will often be probative. *Kooshtard Property VI v. White River Twp. Ass'r,* 836 N.E.2d 501,506 n. 6. (Ind. Tax Ct. 2005). A party may also offer actual construction

costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

39. Regardless of the method used to prove a property's true tax value, 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, 2006, assessment date, the valuation date was January 1, 2005. 50 IAC 21-3-3.

40. Here, the Respondent's witness offered little evidence to prove the subject property's market value-in-use for 2006. According to Mr. Surface, the Monroe County Equalization Study, conducted after the 2002 general reassessment, showed commercial and industrial properties were undervalued by approximately 30%. *Surface testimony.* Mr. Surface testified that, as a result of the Equalization Study, instead of applying a trending factor, Monroe County opted to reevaluate all land values and land base rates. *Id.* Thus, the Respondent's witness contends, the large increase in the Petitioner's property's assessed value between 2005 and 2006 was a result of the county reviewing sales data, appraisal information, evidence provided in previous appeals and multiple listing sheets and establishing a new land base rate for the neighborhood. *Id.* The Respondent's witness, however, failed to present any probative evidence to show how the land base rate was calculated or that applying the base rate to the Petitioner's property reflected the property's market value-in-use in 2006. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitely Products, Inc. v. State Board of Tax Commissioners,* 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); *and Herb v. State Board of Tax Commissioners,* 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).

41. The Respondent's witness also argues that the Petitioner's property's assessment was valid because the sales ratio study for 2006 fell within the state requirements for a proper

assessment and the DLGF approved the Respondent's ratio study. *Surface testimony.* In addition, the Respondent argues, other commercial properties in the neighborhood were assessed with the same land base rate as the Petitioner's property; thus showing land was uniformly assessed. *Id.* The Respondent, however, offered no evidence or support for the premise that an assessment is correct if properties are assessed uniformly or that an individual assessment is deemed "correct" so long as assessments in general are within acceptable statistical ranges for measuring the overall uniformity, equality, and accuracy of mass appraisals. *See also Canal Square v. State Board of Tax Commissioners,* 694 N.E.2d 801, 808 (Ind. Tax Ct. Apr. 24, 1998) (in order to carry its burden, the assessor must do more than merely assert that it assessed the property correctly).

42. Finally, Mr. Surface argues that the Petitioner's property was properly assessed in 2006 for $164,300, based on the property's 2011 listing price. *Surface testimony.* Mr. Surface submitted a multiple listing sheet showing the property under appeal was listed for sale with Stith Commercial Broker for $250,000 on October 26, 2011. *Id.; Respondent Exhibit H.* He also presented the assessed value of four properties located in the Petitioner's neighborhood to show that property values in the area have remained relatively constant from 2005 through 2011. *Id.; Respondent Exhibit G.*

43. "True tax value may be thought of as the ask price of property by its owner, because this value more clearly represents the utility obtained from the property, and the ask price represents how much utility must be replaced to induce the owner to abandon the property." MANUAL at 2. Thus, when reasonable marketing efforts are made to sell a property at a given price for a period of time and those efforts are unsuccessful, it can be inferred that the market value-in-use of a property is something less than its asking price. For the March 1, 2006, assessment, the valuation date was January 1, 2005. 50 IAC 21-3-3. Here, the Respondent's evidence shows that the property under appeal was listed for sale on October 26, 2011, for $250,000.

44. Mr. Surface argues that, because property values have remained "relatively constant" in the Petitioner's neighborhood from 2005 through 2011, the Petitioner's current listing price of $250,000 shows that Petitioner's property was not over-assessed in 2006 at $164,300. *Surface testimony.* However the fact that the Petitioner listed his property for sale in 2011 for $250,000 is not probative evidence of the Petitioner's assessed value in 2006. Furthermore, the Respondent's witness' conclusory testimony that the assessed values of the properties in the neighborhood have remained relatively constant and therefore support the Petitioner's assessed value was not supported by any substantial facts or authorities and it is not probative evidence. *Whitely Products, Inc.*, N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Thus, the Board cannot reasonably conclude that the property's 2011 listing price or the neighboring properties' assessed values show the Petitioner's 2006 assessed value is correct.

45. Because the assessor failed to meet its burden of proof, the subject property's March 1, 2006, assessment must be reduced to its previous year's level of $59,900 for the land and $62,800 for the improvements, for a total assessed value of $122,700.

SUMMARY OF FINAL DETERMINATION

46. The Petitioner's property's March 1, 2006, assessment increased by more than 5% over the property's 2005 value and therefore the assessor bore the burden of proving the property's March 1, 2006, assessment was correct. The Respondent failed to raise a prima facie case that the property's assessed value was correct for March 1, 2006. Therefore, the Board finds in favor of the Petitioner, and holds that the assessed value of the Petitioner's property is $122,700 for 2006.

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

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.