REPRESENTATIVE FOR PETITIONER:
Milo E. Smith, Tax Representative

REPRESENTATIVE FOR RESPONDENT:
Heather A. Scheel, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Kooshtard Property I, LLC,	)	Petition No.: 53-017-13-1-4-00006
	)	
Petitioner,	)	Parcel No.: 53-02-33-100-017.000-017
	)	
v.	)	County: Monroe
	)	
Monroe County Assessor,	)	Assessment Year: 2013
	)	
Respondent.	)	

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

March 2, 2017

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. Kooshtard Property I, LLC, challenged the valuation of the subject property's land. The Monroe County Assessor submitted a restricted appraisal report that, despite some problems, is generally probative of the land's true tax value, and Kooshtard did not offer

any probative valuation evidence of its own. We therefore find that the land portion of the property's assessment should be changed to reflect the value from the appraisal.

PROCEDURAL HISTORY

2. Kooshtard contested its 2013 assessment. On March 18, 2013, the Monroe County Property Tax Assessment Board of Appeals ("PTABOA") issued a notice of its determination upholding the assessment. Kooshtard responded by timely filing a Form 131 petition with the Board.

3. Although Kooshtard elected our small claims procedures, we granted the Assessor's written request to remove the appeal from small claims.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. On October 5, 2016, our designated administrative law judge, Jacob Robinson ("ALJ"), held a hearing on Kooshtard's petition. Neither he nor the Board inspected the property.

5. The following people were sworn as witnesses:

For Petitioner:	Milo E. Smith, tax representative
For Respondent:	Judith A. Sharp, Monroe County Assessor Wayne F. Johnson, II, MAI, RM, First Appraisal Group, Inc. Ken Surface, vice president, Nexus Group

6. Petitioner submitted the following exhibits:

Petitioner Exhibit 1:	Property record card ("PRC") for subject property, printed 6/20/2013
Petitioner Exhibit 2:	PRC for subject property, printed 5/31/2014
Petitioner Exhibit 3:	PRC for subject property, printed 6/19/2015
Petitioner Exhibit 4R:	*Kooshtard Property I, LLC v. Monroe County Ass'r,* 38 N.E.3d 750 (Ind. Tax Ct. 2015)
Petitioner Exhibit 5R:	*Kooshtard Property I, LLC v. Monroe County Ass'r;* Petition No. 53-017-10-1-4-00001, et al. (IBTR March 14, 2014)

Petitioner Exhibit 6R:	GIS aerial view of subject property
Petitioner Exhibit 7R:	Monroe County GIS Slope Map of the subject property dated 10/3/2016
Petitioner Exhibit 8R:	Chapter 804 – Monroe County Zoning Ordinance, revised 4/29/2016
Petitioner Exhibit 9R:	PRC and GIS aerial view – Parcel No. 53-01-10-602-000.000-017
Petitioner Exhibit 10R:	PRC – Parcel No. 53-02-33-100-022.000-017
Petitioner Exhibit 11R:	GIS aerial view of subject property measuring undeveloped unusable land
Petitioner Exhibit 12R:	Parcel information, PRC and GIS aerial view for 301 N. Gates Drive

7. Respondent submitted the following exhibits:

Respondent Exhibit I:	Restricted Real Estate Appraisal Report prepared by Wayne F. Johnson, II, MAI, RM, First Appraisal Group, Inc., dated 9/22/2016

8. The record also includes the following: (1) all motions, briefs, and documents filed in these appeals, and (2) all orders and notices issued by the Board or our ALJ.

9. On the assessment date, the property consisted of a gas station and convenience store located on three acres (130,680 square feet) of land at 7340 N. Wayport Road, Bloomington.

10. The PTABOA determined the following values:

    Land: $1,200,000 Improvements: $363,300 Total: $1,563,300

11. Kooshtard challenged only the land assessment. In its Form 131 petition, it claimed that the land value was $300,000 "per an appraisal." Kooshtard, however, did not offer an appraisal or otherwise request a specific value at the hearing.

Objections

12. The Assessor objected to Kooshtard's Exhibits 9R and 10R—property record cards for two nearby properties and an aerial map—on grounds that Kooshtard did not exchange them before the hearing. Kooshtard responded that it did not need to exchange those documents because they were rebuttal evidence and it did not know it would need them until after it received copies of the exhibits the Assessor intended to offer at the hearing. The ALJ took the objection under advisement.

13. We sustain the objection. Because the Assessor removed the appeal from the Board's small claims procedures, the parties were required to exchange copies of their documentary evidence at least five business days before the hearing. 52 IAC 2-7-1(b)(1). The exchange requirement allows parties to be better informed and to avoid surprises, and it promotes an organized, efficient, and fair consideration of the issues at a hearing. The Board may exclude evidence based on a party's failure to comply with the exchange rule where it appears that admitting the exhibit would prejudice the opposing party. 52 IAC 2-7-1(f).

14. Kooshtard's failure to timely exchange the contested exhibits produced exactly the type of unfair surprise the rule intends to prevent. Kooshtard's claim that the exhibits were unanticipated rebuttal evidence is not credible. Those exhibits do not address any evidence offered by the Assessor. *See McCullough v. Archbold Ladder Co.*, 605 N.E.2d 175, 180 (Ind. 1993) (explaining that rebuttal evidence is evidence offered to explain, contradict, or disprove the evidence presented by an adverse party). Instead, Kooshtard offered the exhibits to support its independent claim for relief based on a lack of uniformity and equality in assessments. Kooshtard therefore should have anticipated the need for those exhibits prior to the exchange deadline.

15. The Assessor also objected to the admission of Kooshtard's Exhibit 12R. That exhibit includes a page from an appraisal report Johnson had prepared in conjunction with Kooshtard's appeal of the 2012 ("2012 appraisal"). The page provides information for a

property at 301 North Gates Drive. The exhibit also includes a property record card for, and a GIS aerial view of, that property.

16. We overrule the objection. The Assessor did not give a legal basis beyond arguing that she had not offered Johnson's earlier appraisal report as an exhibit. She did not explain why that matters. If she was concerned that introducing only a portion of that report would be misleading, she was free to offer the rest of the document to prevent that danger. *See* Ind. Evid. R. 106 (allowing an objecting party to require the introduction of the parts of the document it wants considered alongside the objectionable material).

SUMMARY OF THE ASSESSOR'S CONTENTIONS

17. The Assessor offered a restricted appraisal report from Wayne F. Johnson, II, MAI, RM, of First Appraisal Group, Inc. Johnson prepared the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"), and he indicated that it supplemented the more comprehensive 2012 appraisal. *Johnson testimony; Resp't Ex. I.*

18. Johnson described the property's location as north of Bloomington along State Road 37. He described the subject property as having either level or "level to sloping" topography. He determined that the site has excess or surplus area that provides "extra room for possible expansion." The property is zoned LB (limited business), which Johnson explained discourages single-family residential use and protects environmentally sensitive areas. He described that zoning as "extremely important" because there is little commercial land with that zoning classification along SR 37 between Bloomington and the Morgan County line. According to Johnson, zoning for non-residential use will continue to be "very limited" along S.R. 37 because the plan commission wants to preserve the corridor into Bloomington. He found that the land's highest and best use as if vacant was as a commercial site, and he valued it as it was being used at the time of his report. *Johnson testimony; Resp't Ex. I.*

19. Johnson developed his opinion of value using the sales comparison approach. He did not find regional sales to be appropriate because there were local sales available. He identified four sales of commercial parcels from Bloomington that ranged from .5 to 3.2 acres. They sold between December 5, 2013 and October 20, 2015 for unadjusted prices ranging from $5.81/sq. ft. to $13.77/sq. ft. All four sales transferred a fee simple interest, and they were arms-length transactions with cash or cash-equivalent financing. *Johnson testimony; Resp't Ex. I.*

20. Next, Johnson considered adjusting his comparable properties' sale prices to account for relevant ways in which they differed from the subject property. He adjusted the prices by .17% per month (or 2% per year) to account for the time that had lapsed between the assessment date and their sale dates. He also made adjustments to account for differences in location, visibility and frontage, and site size. He premised his size adjustment on the fact that larger sites typically sell for less per square foot than smaller sites. *Johnson testimony; Resp't Ex. I.*

21. Kooshtard criticized Johnson for describing the subject property and all his comparable properties as "level" in his adjustment grid, and for failing to adjust the sale prices to account for what Kooshtard's witness, Milo Smith, described as a steep slope on the north side of the subject property. Elsewhere in his report, however, Johnson described the subject property's topography as "[l]evel to sloping." And on cross-examination, he acknowledged that the subject property is "not all level." He characterized the topography of his comparable properties using similar language. He described Comparable 1's topography as "generally level" and Comparable 3's topography as "generally level" and "level to sloping." Although he did not describe the topography of the other two comparable properties in the same manner, he did explain that "most properties" in Monroe County "are not all level." *Johnson testimony; Resp't Ex. I.*

22. Johnson calculated median and mean adjusted sale prices of $8.12/sq. ft. and $8.41/sq. ft., respectively. After weighing the sales, he settled on a value of $8.60/sq. ft. for the

subject property, which when multiplied by the property's 130,680 square feet, indicated a value of $1,125,000 (rounded). *Johnson testimony; Resp't Ex. I.*

SUMMARY OF KOOSHTARD'S CONTENTIONS

23. Kooshtard contends that the Assessor erred by pricing a portion of the property as primary land instead of as unusable, undeveloped land. An aerial photograph shows a grassy area north of the parking lot that contains a septic field. There has been no development of the brown area north of the grassy area. A slope map from the Monroe County Planning Department shows that the property drops from an elevation of 764 feet down to as low as 748 feet north of the parking lot. Some areas have a slope of more than 25%. Monroe County's zoning ordinances require a variance to develop land with a slope of greater than 15%. The ordinance provides for an administrative waiver of that prohibition, which allows existing structures to be expanded under some circumstances. Even then, the waiver may not authorize an expansion greater than 1,000 square feet. *Smith testimony; Pet'r Exs. 6R-8R.*

24. Kooshtard introduced a GIS map that Smith believes shows that 51,238 square feet of the property are unusable and undeveloped. The assessment should therefore resemble the assessments of properties with similar impediments. According to Smith, 301 North Gates Drive has similar slope issues, and it is comparable to the subject property as shown by the fact that Johnson used it in his appraisal report for the 2012 appeal. The Assessor classified the sloped portion of the Gates Drive property as unusable and valued it at $2,500 per acre. The 51,238 square feet of unusable, undeveloped land at the subject property should be valued using the same base rate. *Smith testimony; Pet'r Exs. 11R, 12R.*

25. In his appraisal, Johnson described the subject property's topography, as well as the topography of all four of his comparable properties as level. But that does not account for the subject property's unusable, undeveloped land. Johnson should have adjusted his comparable properties' sale prices to account for that fact. *Smith Argument.*

BURDEN OF PROOF

26. Generally, a taxpayer seeking review of an assessing official's determination has the burden of making a prima facie case both that the current assessment is incorrect and what the correct assessment should be. If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence.

27. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to an 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). In any case, if an assessor has the burden and fails to meet it, the taxpayer may offer evidence to prove the correct assessment. If neither party offers evidence that suffices to prove the property's correct assessment, it reverts to the previous year's value. I.C. § 6-1.1-15-17.2(b).

28. We reduced Kooshtard's 2012 assessment in response to its appeal. The 2013 assessment is greater than that reduced 2012 value. The Assessor therefore appropriately conceded that she has the burden of proof.

ANALYSIS AND CONCLUSIONS OF LAW

29. Indiana assesses property based on its "true tax value," which does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c) and (e). For most types of property, true tax value is determined under the rules of the Department of Local

Government Finance ("DLGF").[1] I.C. § 6-1.1-31-6(f). In accordance with these statutory directives, the DLGF defines "true tax value" as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL 2.

30. The cost, sales-comparison, and income approaches are three generally accepted ways to determine true tax value. 2011 MANUAL at 2. In an appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. MANUAL at 3; *Eckerling v. Wayne Twp. Ass'r,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a USPAP-compliant market-value-in-use appraisal is the most effective method for rebutting the presumption that an assessment is correct).

31. As discussed above, Ind. Code § 6-1.1-15-17.2 shifts the burden of proof to the Assessor in this appeal. In applying that statute, we look at whether a property's overall assessment has increased between years rather than focusing on individual components, such as land or improvements. That being said, if a taxpayer limits its appeal to one component, an Assessor may meet its burden by offering evidence addressing only that component.[2]

32. That is what the Assessor attempted to do here by offering Johnson's appraisal of the land only. Although somewhat ambiguous, Kooshtard's appeal petition appeared to challenge

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[1] The legislature has specifically defined true tax value for various property types, including certain rental properties (I.C. § 6-1.1-4-39), casinos (I.C. § 6-1.1-4-39.5), low-income rental properties (I.C. § 6-1.1-4-41), and golf courses (I.C. § 6-1.1-4-42).

[2] Just because parties may make a case by focusing on only one component of an assessment does not mean it is advisable to do so. Countervailing evidence of the property's overall value will normally be more persuasive. And there are other less obvious pitfalls. The 2011 Real Property Assessment Guidelines, on which assessments are usually based, represent a mass-appraisal approach that may not always mirror how appraisers normally appraise individual properties. For example, when appraising land as if vacant, appraisers may not include things like the costs associated with sewers, utility lines, grading, and landscaping. But those things are included in determining the base rate for primary commercial land that has been improved. *See* 2011 GUIDELINES, ch. 2 at 66. If a land-only appraisal of an improved property does not account for those costs, it will understate the property's value. In this case, it is unclear whether Johnson's appraisal included those costs. To the extent it did not, the error benefited Kooshtard.

only the land portion of its assessment. Kooshtard, also only addressed the land portion at the hearing. Indeed, that is all it challenged in the previous years' appeals as well. Under these circumstances, the Assessor could make her case by addressing only the value of the land.

33. With that in mind, we turn to the Assessor's evidence. Johnson prepared a USPAP-compliant restricted appraisal report in which he relied on the sales-comparison approach to estimate the subject land's value at $1,125,000 as of March 1, 2013. Kooshtard mainly criticizes Johnson's appraisal on grounds that he did not adjust the sale prices for his comparable properties to account for differences between their level topography and the subject property's sloping topography.

34. We agree that Johnson's treatment of the subject property's topography was less than compelling. Kooshtard may have overstated its case about how little it believed the undeveloped area contributes to the property's overall value. For example, a portion of that area contains a septic field that undoubtedly supports the gas station and convenience store. Nonetheless, the slope covering part of the property may impede potential development. Yet Johnson used a uniform rate to value the entire property. Because he took that rate from his comparable sales, the degree of comparability between the topographies of those properties and the subject property's topography matters.

35. As the Assessor pointed out, however, Johnson acknowledged in his report that the subject property was not entirely level, and he characterized two of the four comparable properties in similar terms. He also explained that most properties in Monroe County are not "all level." Kooshtard did not offer any evidence to show the slope percentages for any of the comparable properties. Thus, while Johnson's terminology may have been imprecise, there is nothing in the record to show that actual differences in topography between the subject property and any of the comparable properties were significant enough to require an adjustment. Nor can we say that Johnson's decision to use a uniform rate to value the entire property deprives his opinion of probative weight.

36. Our inquiry does not end there, however, because Kooshtard offered its own valuation evidence. It also alleged a lack of uniformity and equality in assessments. In both instances, it relied on the assessment of the Gates Drive property.

37. Kooshtard argues that Johnson's use of the Gates Drive property in his earlier appraisal report shows that it is comparable to the subject property. Because the Assessor characterized a portion of the Gates Drive land as unusable/undeveloped and assessed it at $2,500/acre, Kooshtard claims that the 51,238-square-foot portion of the subject property that it claims is also unusable should be valued at that same rate.

38. We disagree. A taxpayer may offer evidence of comparable properties' assessments to show the market value-in-use of a property under appeal. I.C. § 6-1.1-15-18. But "the determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices." I.C. § 6-1.1-15-18(c). At most, Johnson's inclusion of the Gates Drive property in his original appraisal report might show that it is generally comparable to the subject property. However, accepted appraisal and assessment practices require more than general comparability. One must explain how relevant differences between the properties affect value. *See Long v. Wayne Twp. Ass'r,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that taxpayers needed to explain how any relevant differences between their property and purportedly comparable properties affected values). Presumably, Johnson did that in his original appraisal report. Kooshtard, however, did not offer that part of the report or otherwise show what adjustments Johnson made to the Gates Drive sale price. The Gates Drive assessment therefore lacks probative value.

39. In any case, the Gates Drive assessment is one data point, and there nothing to show that the Gates Drive property is more comparable to the subject property than were the four properties Johnson used in his sales-comparison analysis for 2013. Even if the Gates

Drive assessment had any probative weight, it would be less persuasive than Johnson's appraisal.

40. We now turn to Kooshtard's claim that the subject property's assessment was not uniform and equal compared to other assessments. As the Tax Court has explained, "when a taxpayer challenges the uniformity and equality of his or her assessment *one* approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf Practice Center v. Washington Twp. Ass'r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) (emphasis in original). Such studies, however, should be prepared according to professionally acceptable standards. *See Kemp v. State Bd. of Tax Comm'rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). They should also be based on a statistically reliable sample of properties that actually sold. *See Bishop v. State Bd. of Tax Comm'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (*citing Southern Bell Tel. and Tel. Co. v. Markham*, 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994).

41. Kooshtard failed to explain how a sample size of one is sufficient to draw any meaningful inference about the uniformity or equality of assessments within an assessing jurisdiction. Even if it were, Kooshtard did not compare the Gates Drive assessment to objectively verifiable data, such as sale price or a market value-in-use appraisal. Although the excerpt from Johnson's 2012 appraisal report shows what the Gates Drive land sold for in May 2011, Kooshtard did not relate that price to a value as of March 1, 2013—the assessment date at issue in this appeal. *See Long*, 821 N.E.2d at 471 (holding that taxpayers' appraisal and insurance policy lacked probative value where the taxpayers did not explain how they related to their property's value as of the relevant valuation date).

42. In any case, Kooshtard did not seek an adjustment based on the ratio between the Gates Drive property's assessment and its sale price, but instead wanted the Assessor to use the same methodology (apply the same base rate) to assess a portion of the subject property

as she used to assess the Gates Drive property. The Tax Court has rejected that type of claim. *See Westfield Golf*, 859 N.E.2d at 398-399 (rejecting taxpayer's uniformity and equality claim where taxpayer argued that its golf-ball-landing area was assessed using a different base rate than the base rates used to assess landing areas at other driving ranges). Kooshtard therefore failed to make a prima facie case showing a lack of uniformity and equality in assessments.[3]

SUMMARY OF FINAL DETERMINATION

43. Johnson's appraisal is the most credible evidence of the subject land's true tax value. We therefore order that the land component of the assessment be changed to $1,125,000, which results in a total assessment of $1,488,300.

This Final Determination of the above-captioned matter is issued by the Board on the date first 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

[3] We would reach the same conclusion even if we had overruled the Assessor's objection to the property record cards for two other properties Kooshtard offered in support of its uniformity and equality claim. Kooshtard did not explain why using three properties would be a statistically meaningful sample. It similarly failed to compare the assessments for those properties to sales information or market value-in-use appraisals. One of the properties apparently sold in 2014, but the Assessor deemed the sale invalid for use in a ratio study and there is no sale or appraisal information for the other property. *See Pet'r Exs. 9R-10R*.

- 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>.