

REPRESENTATIVE FOR PETITIONER:
Milo E. Smith, Tax Representative

REPRESENTATIVE FOR RESPONDENT:
Brian Cusimano, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Kooshtard Property VIII, LLC,)	Petition Nos.: 73-002-08-1-4-61709
)	73-002-09-1-4-61709
Petitioner,)	73-002-10-1-4-82825
)	
v.)	Parcel No.: 73-07-34-300-017.000-002
)	
Shelby County Assessor,)	County: Shelby
)	
Respondent.)	Assessment Years: 2008, 2009 & 2010

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

December 16, 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

PROCEDURAL HISTORY

1. In this assessment appeal Kooshtard Property VIII, LLC (“Petitioner”) contested the 2008, 2009 and 2010 assessments for the above-referenced parcel. The Shelby County Property Tax Assessment Board of Appeals (“PTABOA”) issued notices of its

determinations for the 2008, 2009 and 2010 appeals on August 19, 2010, July 19, 2010 and August 23, 2011, respectively. Petitioner timely filed Form 131 petitions with the Board for all three years.

2. Petitioner elected to have the administrative hearing conducted under the Board's small claims procedures. However, the Shelby County Assessor ("Respondent") filed a written request to remove the proceeding from the Board's small claims procedures, which the Board granted by Order dated April 27, 2012.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. On September 17, 2015, the Board's Administrative Law Judge ("ALJ"), Jacob Robinson, held a consolidated hearing on the petitions. Neither the Board nor the ALJ inspected the subject property.

4. The following people were sworn as witnesses and testified under oath at the hearing:

For Petitioner:	Milo E. Smith, Tax Representative Belinda Graber, Appraisers, Inc.
For Respondent:	David Hall, MAI, AICP, Integra Realty Resources ¹

5. Petitioner submitted the following exhibits:

Petitioner Exhibit 1:	2008, 2009 and 2010 property record cards for the subject property
Petitioner Exhibit 2:	Appraisal Report for the 2008, 2009 and 2010 assessment dates prepared by Appraisers, Inc., dated April 28, 2015
Petitioner Exhibit 2R:	Revised Appraisal Report for the 2008, 2009 and 2010 assessment dates prepared by Appraisers, Inc., dated September 16, 2015
Petitioner Exhibit 3R:	Johnson Oil Company, Inc. plat 294/655

¹ Michael C. Lady, MAI, SRA, ASA, CCIM, FRICS, Integra Realty Resources, and Bradley Berkemeier, Nexus Group, were sworn, but did not testify at the hearing.

- Petitioner Exhibit 4R: Letter from Shelbyville Plan Commission to Milo E. Smith dated February 24, 2006
- Petitioner Exhibit 5R: Exterior picture of the subject property
- Petitioner Exhibit 6R: Picture of “Danger – High Voltage” sign
- Petitioner Exhibit 7R: Exterior picture of the subject property
- Petitioner Exhibit 8R: Google Maps picture going east on SR 44
- Petitioner Exhibit 9R: Google Maps picture going west on SR 44
- Petitioner Exhibit 10R: Google Maps picture showing end of median going east on SR 44
- Petitioner Exhibit 11R: GIS map showing length of median on SR 44

6. Respondent submitted the following exhibits:

- Respondent Exhibit A: Appraisal Report for the 2008 assessment date prepared by Integra Realty Resources dated August 17, 2015
- Respondent Exhibit B: Appraisal Report for the 2009 assessment date prepared by Integra Realty Resources dated August 17, 2015
- Respondent Exhibit C: Appraisal Report for the 2010 assessment date prepared by Integra Realty Resources dated August 17, 2015
- Respondent Exhibit D: Picture of view northeast along SR 44
- Respondent Exhibit E: Aerial picture of entrance to subject property
- Respondent Exhibit F: Google Maps printout showing distance between Love’s Travel Stop in Saint Paul, IN and the subject property
- Respondent Exhibit G: Nielsen Demographic Snapshot 2015 Report for Saint Paul, IN dated September, 10, 2015
- Respondent Exhibit H: Sales Disclosure Form for 2045 North Riley Highway, Shelbyville, IN 46176 dated June 13, 2012

7. The following items are also recognized as part of the record:

- Board Exhibit A: Form 131 Petitions and attachments
- Board Exhibit B: Notices of Hearing
- Board Exhibit C: Hearing Sign-In Sheet

In addition, the Board incorporates into the record all filings by the parties and all orders and notices issued by the Board or the ALJ.

- 8. The subject property consists of a gas station and convenience store located at 2905 E. State Road 44 in Shelbyville.
- 9. The PTABOA determined the assessed value of the subject property to be \$1,145,100 (\$1,007,900 for Land; \$137,200 for Improvements) for all three years under appeal.

10. The Petitioner requested an assessment of \$575,000 for all three years under appeal.

OBJECTIONS

11. Mr. Cusimano objected to admission of Petitioner's Exhibit 2R, a Revised Appraisal Report for the 2008, 2009 and 2010 assessment dates prepared by Belinda Graber, because it was not exchanged at least five days prior to the hearing. Mr. Cusimano argued that while appraisers have the right to revise their reports, Respondent would be prejudiced if it was not excluded because the revised appraisal contained significant changes that they did not have time to review and prepare for prior to the hearing.
12. Mr. Smith admitted that the exhibit was not timely exchanged prior to the hearing, but argued that the revised appraisal report could not have been exchanged five days prior to the hearing because it was not completed in time.² According to Mr. Smith, Ms. Graber reserved the right to revise her appraisal and, after reviewing Respondent's appraisal, she decided to make corrections so her report would be accurate. The ALJ took the objection under advisement.
13. Because Respondent removed the proceeding from the Board's small claims procedures, both parties were required to exchange copies of their documentary evidence at least five business days prior to the hearing. 52 IAC 2-7-1(b)(1). The exchange requirement allows parties to be better informed and to avoid surprises, and it also 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).

² Mr. Smith labeled the exhibit as rebuttal evidence. Rebuttal evidence is evidence offered to explain, contradict, or disprove the evidence presented by an adverse party. *McCullough v. Archbold Ladder Co.*, 605 N.E.2d 175, 180 (Ind. 1993). Although the Board does recognize a general exception to the exchange requirement for rebuttal evidence, Mr. Smith conceded that Petitioner's exhibit was not being offered in rebuttal.

14. The Board finds that Petitioner’s substantive changes to appraisal produced the type of unfair surprise the exchange rule is intended to prevent. While the Board applauds Ms. Graber’s willingness to revive her opinion in light of new information, Petitioner was still obligated to meet the Board’s exchange deadline. To admit the exhibit when Respondent had little time to review Ms. Graber’s revised appraisal would prejudice Respondent’s case. Consequently, the Board sustains Respondent’s objection.³

BURDEN OF PROOF

15. 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 465, 468 (Ind. Tax Ct. 2003); see also *Clark v. State Bd. Of Tax Comm’rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
16. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, 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(b).
17. Second, Ind. Code 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment

³ While the exhibit may have been admissible as a summary of Ms. Graber’s testimony, Petitioner did not offer it as such.

date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).

18. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
19. The parties agreed on the record that Petitioner has the burden of proof in this appeal. However, as discussed below, the parties both presented probative evidence for the 2008, 2009 and 2010 assessment years. Therefore, this final determination depends on the weight of the evidence, not which party has the burden of proof.

SUMMARY OF PETITIONER’S CONTENTIONS

20. Mr. Smith contends that the subject property has no curb appeal and that it is encumbered by a 200 foot utility easement that prevents the development of improvements, with the exception of paving or a water basin. There is an electric transmission tower constructed in the easement that is the primary focal point when driving into the subject property’s convenience store. In 2006, Mr. Smith contacted the Shelbyville Planning Commission to inquire as to whether any improvements could be constructed in the easement. He was told that the easement holder and the City of Shelbyville had routinely refused to allow any improvements in this type of easement and such would hold true for the subject property as well. *Smith testimony; Pet’r Exs. 3R, 4R.*
21. Mr. Smith introduced several photographs showing the transmission tower and its proximity to the convenience store. He believes it must have some bearing on whether someone would want to use any portion of the subject property for any other use. He further contends that the “Danger – High Voltage” sign on the tower would be

intimidating to people considering using the property. *Smith testimony; Pet'r Exs. 5R, 6R, 7R.*

22. Mr. Smith contends that access to the subject property is limited due to a median that runs down the middle of State Road 44. He presented several photographs showing the median from various vantage points and argued that it affects value because it makes access to the convenience store more difficult. *Smith testimony; Pet'r Exs. 8R, 9R, 10R, 11R.*
23. In support of its contention that the subject property was over-assessed for 2008, 2009 and 2010, Petitioner also offered an appraisal prepared by Belinda Graber, an Indiana certified general appraiser, in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). Ms. Graber developed a land valuation, a sales comparison approach and a cost approach to value the subject property. *Smith testimony; Graber testimony; Pet'r Ex. 2.*

Land Valuation Approach

24. For the land valuation component of her appraisal, Ms. Graber selected comparable properties with similar utility, but she did not find any sales with similar restrictions. The property is encumbered by a 200 foot utility easement and no improvements can be constructed in the easement area, which is approximately 3.13 acres. According to Ms. Graber, the "Great Recession" was underway from December of 2007 to the second quarter of 2009, and there were limited sales to analyze during 2009 and 2010. She identified seven sales of comparable properties:
 - Land Sale #1 is a 18.19 acre parcel located in Fairland that sold in 2006 for \$60,473 per acre and was subsequently developed into a Pilot Travel Center;
 - Land Sale #2 is a 12.15 acre parcel located in Saint Paul that sold in 2008 for \$29,630 per acre for speculation;

- Land Sale #3 is a 12.15 acre parcel located in Saint Paul that sold in 2008 for \$91,358 per acre for use as a Love's Travel Center;
- Land Sale #4 is a 6.52 acre parcel located directly across the road from Land Sale #3 in Saint Paul that was sold in 2007 for \$35,123 per acre for speculation;
- Land Sale #5 is a 24.62 acre parcel located in Saint Paul that was sold in 2008 for \$29,978 per acre for speculation;
- Land Sale #6 is a 2.49 acre parcel located in Shelbyville that was sold in 2008 for \$130,522 per acre and operates as a Holiday Inn Express;
- Land Sale #7 is a 8.73 acre parcel located in Shelbyville that sold in 2008 for \$128,866 per acre and remains vacant ground.

Graber testimony; Pet'r Ex. 2.

25. Ms. Graber adjusted the land sales for location, size and city water and sewer. They were not adjusted for time because she was unable to find matching pairs that would support an increase or decrease in property value during the relevant time period. All of the land sales had similar zoning, but Ms. Graber thinks that the comparables are superior based on the access to the subject property. She arrived at a land value of \$40,000 per acre, which she applied to the 8.93 acre site. Her final value for the land as vacant was approximately \$360,000 for all three years. *Graber testimony; Pet'r Ex. 2.*

Cost Approach

26. Ms. Graber developed her cost approach using the segregated cost estimator from Marshall & Swift. She chose to use the age-life method of depreciation for the site and improvements which resulted in a total economic life of 30 years with an effective age of 23 years in 2008, 24 years in 2009, and 25 years in 2010. Based on this depreciation, the improvements were experiencing 77% depreciation in 2008, 80% depreciation in 2009, and 83% in 2010. The yard improvements were depreciated at 50% for all three years. *Graber testimony; Pet'r Ex. 2.*

27. For 2008, the total depreciated cost of land and building improvements was \$84,740. Adding in the land value of \$360,000 results in a depreciated replacement cost of \$444,740. Entrepreneurial profit was estimated at 15% for an approximate value of \$510,000 for 2008. For 2009, the total depreciated cost of land and building improvements was \$84,916. Adding in the land value of \$360,000 results in a depreciated replacement cost of \$444,916. Entrepreneurial profit was estimated at 15% for an approximate total value of \$510,000 for 2009. For 2010, the total depreciated cost of land and building improvements was \$77,665. Adding in the land value of \$360,000 results in a depreciated replacement cost of \$437,665. Entrepreneurial profit was estimated at 15% for an approximate total value of \$500,000 for 2010. *Pet'r Ex. 2.*

Sales Comparison Approach

28. Ms. Graber selected six comparables for her sales comparison approach. She selected the comparables because they were the most similar to the subject property. Her comparables are summarized as follows:
- Comparable #1 is a 2,412 square foot gas station/ convenience mart located in Shelbyville that was purchased in 2007 for \$93.28 per square foot;
 - Comparable #2 is a 2,226 square foot gas station/ convenience mart located in Greenfield that was purchased in 2007 for \$209.80 per square foot;
 - Comparable #3 has two buildings, a 1,920 square foot gas station/ convenience mart with 1,520 square feet of canopy and a 3,360 square foot office building located in Crawfordsville that was purchased in 2008 for \$75.76 per square foot;
 - Comparable #4 is a 3,182 square foot gas station/ convenience mart with 4,224 square feet of canopy located in Brownsburg that was purchased in 2008 for \$241.99 per square foot;

- Comparable #5 is a 3,956 gas station/ convenience mart located in Shelbyville that was purchased as part of a package in 2012 for an allocated price of \$183.97 per square foot;
- Comparable #6 is a 1,728 square foot gas station/ convenience mart located in Morristown that was purchased in 2013 for \$144.68 per square foot.

Graber testimony; Pet'r Ex. 2.

29. Ms. Graber made adjustments to the comparables for location, size, and effective age, with the exception of Comparable #6 which had a small, irregular tract. She did not make adjustments for site differences. Ms. Graber believes that all of the comparables have superior access in comparison to the subject property because of the concrete berm that runs in front of it. After her adjustments, Ms. Graber came up with a value of \$150.00 per square foot. Applying that value to the subject property's 1,500 square foot convenience mart resulted in a value of \$225,000 for the improvements. *Graber testimony; Pet'r Ex. 2.*
30. Ms. Graber determined that a portion of the 8.93 acres was surplus land because it could not be sold for commercial use in its current configuration. The surplus land area consists of 6.73 acres and was valued at \$40,000 per acre for an approximate value of \$270,000. The final value for the subject property is \$495,000 as of March 1, 2008. Ms. Graber believes that the value of the subject property remained the same from 2008 through 2010. *Graber testimony; Pet'r Ex. 2.*

Final Reconciliation

31. In her final reconciliation, Ms. Graber concluded that the value of the subject property was \$500,000 as of March 1, 2008, March 1, 2009, and March 1, 2010. *Graber testimony; Pet'r Ex. 2.*

SUMMARY OF RESPONDENT'S CONTENTIONS

32. Respondent offered an appraisal prepared in conformity with USPAP for each year under appeal. The appraisals were prepared by David Hall, MAI, AICP, and Michael C. Lady, MAI, SRA, ASA, CCIM, FRICS, both Indiana certified general appraisers with Integra Realty Resources. They used market value-in-use and the definitions found in the Real Property Manual as a guide. Market value-in-use considers the current use as reflected by the utility received by the owner from the property, which may or may not be reflective of the property's highest and best use. The appraisals estimated the total value of the subject property to be \$1,220,000 as of January 1, 2007, \$1,160,000 as of January 1, 2008, and \$1,070,000 as of March 1, 2010. *Hall testimony; Resp't Exs. A, B, C.*
33. Mr. Hall visited the property and noted the overhead transmission lines. He did not have a copy of a survey depicting an easement, but Mr. Hall assumed there was an easement and accounted for it in the appraisals. Mr. Hall agrees that there is a 200' wide easement for an electric power line, but he found no information concerning possible restrictions on use. *Hall testimony; Pet'r Ex 3R.*
34. Mr. Hall reviewed the local zoning ordinance and did not identify any zoning issues. The subject property is zoned BH, which is a commercial classification meaning business/highway. It allows for uses such as auto business, small scale business, gas stations, banks, financial institutions, hotels, and offices, among several others. A gas station/convenience store is considered to be an auto business, and the subject property's current use is therefore a legal use. *Hall testimony; Resp't Exs. A, B, C.*
35. The subject property has two uses: primary land and excess land. The primary land includes the gas station/convenience store and parking area, which is considered the current use of the property. The excess land is south of the gas station/convenience store and is mostly unimproved. While a significant portion of the improvements appear to be located in the easement, it does not curtail use of the improvements or hinder access to

the property. The property has been used as a gas station for a number of years and there is no reason that use should change. The subject property was valued for its current use as of the effective date, not what it could be used for in the future. However, there is plenty of buildable area outside of the easement area for construction of some alternative commercial use. *Hall testimony; Resp't Exs. A, B, C.*

36. Mr. Hall took photographs of the property and used Google Maps to obtain a street level and an aerial view of the property. These pictures show that the entrances to the subject property are not impeded by the concrete median that runs down the center of State Road 44. Although the concrete median does limit access from the southbound lane at the western-most point of ingress/egress, the property's second entrance located to the east allows access for southbound traffic. Mr. Hall does not believe that access to the property is in any way deterred. On his first visit to the property, he had no difficulty identifying where the property was or finding the entrances. The property has exposure from I-74 and State Road 44 and there is a large sign near the interstate that directs motorists toward the property. *Hall testimony; Resp't Exs. A, B, C, D, E.*

37. Mr. Hall considers the property to be a local destination for customers from Shelbyville and Shelby County. There are other gas stations at interchanges along I-74 that are not far from the subject property, so the comparable data was drawn from the Shelbyville and the Shelby County market areas. When doing a market analysis, an appraiser can get a sense of the market through general population trends, economic conditions, and employment levels. This helps the appraiser determine the economic climate and also serves as a basis for developing market adjustments. *Hall testimony; Resp't Ex. A.*

Land Valuation

38. The land is divided into primary land area and an excess land area. The primary land area consists of areas that are used to support the gas station/convenience store, such as the asphalt area, all of the building improvements, and pump islands and canopies. The

excess land area is located south of the improved areas. While it is currently vacant, the excess land could be developed for commercial use under the current zoning. The primary land area is more valuable than the excess land area because it is right along State Road 44. The gas station/convenience store was built in 1950 and is only 1,500 square feet. While it probably has some economic life remaining, and its life could be extended with renovations and repairs, most of the property value is in the 8.9 acres of land. *Hall testimony; Resp't Exs. A, B, C.*

39. For the primary land valuation, Mr. Hall chose eight land comparables that are located along the State Road 44 corridor. He focused on the State Road 44 corridor because that is how people access the subject property, making property sales along State Road 44 good indicators of value. He also selected two comparables that are located at the next interstate exit north on I-74. Of these two comparables, the first is also a gas station/convenience store. The second is located along the north side of I-74 and was selected because there has not been as much development north of I-74. The comparables have sites containing between 1 and 3 acres, and they were all adjusted for market conditions. The indicated values for the 2.75 acres of primary land were \$715,000 for 2008, \$660,000 for 2009, and \$605,000 for 2010. *Hall testimony; Resp't Exs. A, B, C.*

40. For the excess land valuation, Mr. Hall attempted to find comparables that have similar exposure to I-74. Four of the comparables that were chosen are located along the north or northeast side of I-74. Mr. Hall took the subject property's zoning into account, and also tried to find sales that would bracket the property's 6 acre size, with some being smaller and some being larger. Mr. Hall used a qualitative analysis rather than a quantitative analysis to make market adjustments because there was not a lot of local data to draw from for excess land with interstate exposure. His qualitative analysis examined whether the comparables were superior or inferior to the subject property in terms of characteristics such as access and size. The values for the 6.18 acres of excess land were

\$435,000 for 2008, \$370,000 for 2009, and \$340,000 for 2010. *Hall testimony; Resp't Exs. A, B, C.*

Cost Approach

41. The cost approach is reflective of market thinking partly because buyers and sellers think of value in terms of cost. When considering whether to purchase a property, reasonable buyers typically consider the cost of building a similar property or acquiring a suitable substitute. In this particular case, the cost approach is a reasonable method to use because the building improvements are almost fully depreciated and they do not contribute significant value. *Hall testimony.*

42. A replacement cost for the improvements was developed using the Marshall Valuation Service. The estimates of depreciation led to the conclusion that the gas station's remaining economic life was three or four years, with renovations potentially adding another two or three years. The depreciated replacement cost of the improvements was \$140,000 for 2008, \$138,000 for 2009, and \$126,000 for 2010. After adding in the primary land and excess land valuations, the value conclusions under the cost approach were \$1,290,000 as of March 1, 2008, \$1,170,000 for 2009, and \$1,070,000 for 2010. *Hall testimony; Resp't Exs. A, B, C.*

Sales Comparison Approach

43. Respondent's appraisers also developed a sales comparison approach, although Mr. Hall believes that it is a less reliable indicator of value because the land contributes so much of the subject property's value. They selected eight comparable properties that were similar in size and age to the subject property, but the comparables are all larger than the subject property in terms of square footage. All eight of the comparables are located outside of Shelby County because of the lack of good sales data there, with five in the Indianapolis

area and three in rural areas that are accessible by interstate. *Hall testimony; Resp't Exs. A, B, C.*

44. Gas station/convenience stores are often sold as going-concerns, and sales prices typically include land, building, personal property, and business value. Respondent's appraisers identified the personal property and its contribution to the value of the comparables so they could extract the value from the real estate. Unlike Ms. Graber, Respondent's appraisers avoided using package sales of multiple properties because it is unlikely that all of the properties have the same income characteristics, condition, and location appeal. *Hall testimony.*

45. In addition to accounting for transactional differences, personal property, and market conditions, Respondent's appraisers made qualitative adjustments for location. The values for the gas station/convenience store were \$690,000 for 2008, \$660,000 for 2009, and \$630,000 for 2010. The value conclusions under the sales comparison approach were \$1,125,000 for 2008, \$1,030,000 for 2009, and \$970,000 for 2010. *Hall testimony; Resp't Exs. A, B, C.*

Final Reconciliation

46. In their final reconciliation, Respondent's appraisers gave the most weight to the cost approach because the sales comparison approach might underestimate the value of the subject property due to the large amount of land. The opinions of value were \$1,290,000 as of March 1, 2008, \$1,170,000 as of March 1, 2009, and \$1,070,000 as of March 1, 2010. *Hall testimony; Resp't Exs. A, B, C.*

47. The opinions of value for 2008 and 2009 were then trended back to reflect the valuation dates of January 1, 2007, and January 1, 2008, respectively. To trend the values back to the proper valuation dates, the appraisers looked at changes in the Consumer Price Index for All Urban Consumers ("CPI-U") between January 1st and March 1st for each year and

applied the adjustments indicated by each respective change in the CPI-U. This resulted in value conclusions of \$1,220,000 as of January 1, 2007, and \$1,160,000 as of January 1, 2008. *Hall testimony; Resp't Exs. A, B, C.*

DISCUSSION AND ANALYSIS

48. 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.* Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. 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.
49. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2008 and 2009 assessment years, the valuation dates were January 1, 2007 and January 1, 2008, respectively. 50 IAC 21-3-3. For the 2010 assessment year, the valuation date and the assessment date were both March 1, 2010. Ind. Code § 6-1.1-4-4.5(f).
50. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case. *Meridian Towers*, 805 N.E.2d at 479. In this case, both parties offered appraisals prepared in conformity with USPAP valuing the

subject property for the years under appeal. Thus, both parties established a prima facie case and it is unnecessary to analyze which party had the burden of proof in each assessment year. However, “[t]he valuation of property is the formulation of an opinion; it is not an exact science. When there are competing opinions as to how a property should be valued, the Indiana Board must determine which opinion is more probative.” *Stinson v. Trimas Fasteners, Inc.*, 923 N.E.2d 496, 502 (Ind. Tax Ct. 2010). Therefore, the Board must weigh the evidence to determine which party presented the most credible and reliable opinion of the subject property’s market value-in-use for the 2008, 2009, and 2010 assessments years.

51. Both parties’ appraisers agreed that the land value was the largest contributor to the subject property’s overall value, and they relied on the sales comparison approach to develop their respective opinions of value for the land. But, there was a fundamental difference in how the appraisers allocated the land areas that ultimately led them to very different value conclusions. The difference stems from whether the appraisers believe the land outside of the primary land area can be separated and sold for another commercial use.
52. Ms. Graber identified the primary land area (the land needed to support the gas station/convenience store) as containing 2.2 acres. She considers the remaining 6.73 acres to be “surplus land” based on her belief that the site could not be improved without proper access and zoning approval. In contrast, Respondent’s appraisers performed a land-to-building ratio analysis and determined that the subject property contains 2.75 acres of primary land area and 6.18 acres of “excess land.” They think the “excess land” could be sold off and developed for commercial use under the current zoning classification and that any access issues could be resolved.
53. *The Dictionary of Real Estate Appraisal, Fifth Edition* defines “excess land” and “surplus land” as follows:

Excess Land: Land that is not needed to serve or support the existing improvement. The highest and best use of the excess land may or may not be the same as the highest and best use of the improved parcel. Excess land may have the potential to be sold separately and is valued independently.

Surplus Land: Land that is not currently needed to support the existing improvement but cannot be separated from the property and sold off. Surplus land does not have an independent highest and best use and may or may not contribute value to the improved parcel.

Resp't Exs. A, B, C at Addendum B (The Dictionary of Real Estate Appraisal, Fifth Edition, Appraisal Institute, Chicago, Illinois, 2010).

54. The Board recognizes that making a distinction between excess land and surplus land requires appraisers to exercise their judgment and involves issues that are purely a matter of opinion, rather than questions with a definitive answer. Consequently, the Board must determine which appraiser did a more credible job based on the evidence offered and how effectively the arguments were presented. The Board's analysis is limited to the facts of this particular case and is not intended to establish any general rules regarding the allocation of land areas.

55. Ms. Graber determined that any land outside the primary land area was "surplus land" because it could not be sold for commercial use. While she stated that the site could not be improved without proper access and zoning approval, her main focus was on the impact of the utility easement. She based her opinion on a letter Mr. Smith received from the Shelbyville Building and Plan Commission Director in 2006 and her own communications with Duke Energy and the Commission's current Director of Planning regarding the use of the land encumbered by the utility easement. According to Ms. Graber, these sources confirmed that, other than parking lots and detention basins, no improvements can be constructed in the easement area. Ms. Graber estimated that the utility easement encumbers approximately 1 acre of the primary land area and 2.13 acres of the "surplus land" area. Thus, of the 6.73 acres she identified as "surplus land" area, roughly 4.6 acres are unencumbered by the easement. Despite the existence of this large

unencumbered area, Ms. Graber concluded that the utility easement will prevent the entire 6.73 acres of “surplus land” from being developed for commercial use.

56. On the other hand, Mr. Hall testified that there was “plenty of buildable area” that could be developed for commercial use. Mr. Hall determined that the subject property contains 2.75 acres of primary land area and 6.18 acres of “excess land.” Although he accepted Ms. Graber’s estimation that the utility easement encumbers approximately 2.1 acres of the “excess land,” Mr. Hall believes the remaining 4 acres could support a typical commercial building, with any necessary surface parking, drains and retention basins being located in the easement area. He stated that under its current zoning, the “excess land” is “large enough and physically capable of supporting development.” He also gave several examples of appropriate commercial uses under the current zoning such as auto businesses, financial institutions, hotels, motels, and offices that could potentially utilize the “excess land.” Mr. Hall testified that utility easements and overhead transmission lines are “extremely common” on commercial properties, and “as long as they don’t really impair the siting of the building, they don’t necessarily have an adverse effect on the property.” Mr. Hall did admit that access to the “excess land” “isn’t that great” because it has no frontage on State Road 44, but he provided several alternatives to address access such as developing the site as a planned unit development (“PUD”) since PUD’s typically allow for multiple uses on a single parcel, or splitting the property and creating 50 feet of frontage by incorporating one of the subject property’s existing curb cuts along State Road 44.
57. The Board finds Mr. Hall’s interpretation to be more credible. While Mr. Hall’s testimony left some questions unanswered, the Board concludes that he defended his choice to treat the additional acreage as “excess land” more effectively than Ms. Graber defended her choice to treat it as “surplus land.” Although it is true that the additional acreage is partially burdened by an easement and may not be able to be improved without addressing access to the site and obtaining any required zoning approvals, Ms. Graber failed to effectively explain how those issues would prevent the additional acreage from

being separated from the primary land and sold for another commercial use. In other words, while the existence of the utility easement, along with any access and zoning issues may pose some challenges, Ms. Graber did not convince the Board that these issues eliminate the potential for the 6-plus acres to be sold separately from the primary land area.

58. As a result of their decision to allocate the land into a primary land area and an “excess land” area, Respondent’s appraisers performed a separate valuation analysis for each area using different sets of comparable properties. For their primary land valuation, Respondent’s appraisers selected eight comparable properties located along the State Road 44 corridor in Shelby County with between 1 and 3 acres zoned as Business Highway that were purchased for commercial development. Based on their analysis, Respondent’s appraisers concluded to land values for the primary land of \$260,000 per acre for 2008, \$240,000 per acre for 2009, and \$220,000 per acre for 2010. For their excess land valuation, Respondent’s appraisers selected five comparable properties located in Shelby County with between 2.5 and 20 acres zoned as either Business Highway or Business General that have similar exposure to I-74. Based on their analysis of the comparable properties, Respondent’s appraisers arrived at land values for the excess land of \$70,000 per acre for 2008, \$60,000 per acre for 2009, and \$55,000 per acre for 2010.
59. Ms. Graber’s decision to treat the additional acreage as surplus land led her to perform a single land valuation analysis for the subject property. She selected seven properties located along the I-74 and State Road 44 corridors that range in size from 2.49 acres to 24.62 acres. Nevertheless, four of her comparable properties are located outside of Shelby County. Based on her analysis, Ms. Graber arrived at a land value of \$40,000 per acre for all three years.
60. The Board finds that Ms. Graber’s land valuation approach resulted in a severe undervaluation of the subject property. By not valuing the primary land area separately,

Ms. Graber failed to include properties in her sales comparison analysis that were reasonably comparable in size to the 2.2 acres she identified as the primary land area, with only one exception. Because the majority of her comparables are considerably larger in size than the primary land area, they have significantly lower prices per acre. While Ms. Graber adjusted her comparables to account for the size differences, her adjustments were made to bring them in line with the subject property's total size of 8.93 acres, not the 2.2 acres of primary land area. Consequently, the Board finds her land value conclusions to be unreliable.

61. Additionally, the Board notes that for 2008 and 2009, Ms. Graber valued the property as of March 1, 2008 and March 1, 2009, respectively. The relevant valuation dates for those years were January 1, 2007 and January 1, 2008. *See* 50 IAC 21-3-3 (2006) (making the valuation date for assessments after March 1, 2005, January 1 of the year preceding the assessment date). Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, that required valuation date. *Long*, 821 N.E.2d at 471. Here, Petitioner's appraiser failed to make any attempt to relate her indicated values for 2008 and 2009 to the relevant valuation dates. Because the effective dates are more than a year removed from the relevant valuation dates and were not properly trended back to those dates, it lacks the analysis required by *Long*. Therefore, the Board gives even less weight to Petitioner's appraisal for the 2008 and 2009 assessments.
62. Petitioner's main criticism of Respondent's appraisals was that they should have valued the 2.1 acres of "excess land" encumbered by the utility easement area differently or made adjustments to account for it. But, Mr. Hall explained that their "Extraordinary Assumption No. 3" shows that they accounted for the fact that "development within the easement is not permitted on this property." He acknowledged that if the easement prevented a building from being built in the "excess land" area they would have probably ended up with a much lower value conclusion, but emphasized that the easement does not actually pose a problem for development. With regard to its effect on the primary land

area, Mr. Hall countered that the easement “has not restricted, taken away, or prohibited the use of that building, parking areas, pump islands, et cetera, of that property. You have to look at it, but it does not impede the function of that property.” Further, while Mr. Hall agreed that it might not be permissible to build the existing improvements in the easement area now, he explained that they are appraising the property for its current use which is as a functioning gas station/convenience store.

63. Mr. Smith also criticized several of the adjustments Respondent’s appraisers made for market conditions under their primary and excess land valuations, but to little effect. Mr. Hall thoroughly explained and supported the adjustments through his testimony and the “Market Conditions” analyses contained in the appraisal reports. The Board notes, however, that in the primary land area valuations, their “Access/Exposure” analyses indicates that Respondent’s appraisers intended to make upward adjustments for the comparable properties, but their adjustment grid shows no adjustments were applied to Comparables 4 and 5 in the 2008 and 2009 appraisals, or Comparables 3 and 4 in the 2010 appraisal. These errors detract somewhat from the credibility of Respondent’s appraisals, but they do not render them unreliable.

64. The Board recognizes that there are strengths and weaknesses in both appraisals, but the Board is more persuaded by the approach taken by Respondent’s appraisers. Consequently, the Board finds Respondent’s appraisals to be the most credible evidence of the subject property’s market value-in-use for the 2008, 2009, and 2010 assessment years.

SUMMARY OF FINAL DETERMINATION

65. After weighing the evidence, the Board finds Respondent’s appraisals to be more credible than the appraisal presented by Petitioner. The Board therefore orders the assessments be changed to \$1,220,000 for 2008, \$1,160,000 for 2009, and \$1,070,000 for 2010.

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