

REPRESENTATIVE FOR PETITIONER:
Milo Smith, Certified Taxpayer Representative

REPRESENTATIVE FOR RESPONDENT:
Marilyn S. Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Kooshtard Property I, LLC,)	Petition Nos.: 53-017-08-1-4-00002
)	53-017-09-1-4-00001
Petitioner,)	53-017-11-1-4-00001
)	
v.)	Parcel No: 53-02-33-100-017.000-017
)	(0110231004)
Monroe County Assessor,)	
)	County: Monroe
Respondent.)	
)	Assessment Years: 2008, 2009 and 2011

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

October 19, 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 2008, 2009, and 2011 assessment years.

PROCEDURAL HISTORY

2. The Petitioner, Kooshtard Property I, LLC (Kooshtard Property), through its certified taxpayer representative, Milo Smith, initiated its assessment appeals by filing Form 130 Petitions with the Monroe County Property Tax Assessment Board of Appeals (the PTABOA) on July 14, 2009, for the 2008 assessment year, on May 19, 2010, for the 2009 assessment year, and on August 12, 2011, for the 2011 assessment year. The PTABOA issued its determinations on September 25, 2009, for the 2008 assessment year, on August 9, 2010, for the 2009 assessment year, and on January 30, 2012, for the 2011 assessment year.
3. Pursuant to Indiana Code § 6-1.1-15-1, Mr. Smith timely filed Form 131 Petitions for Review of Assessment with the Board on November 6, 2009, for the 2008 assessment year, on September 15, 2010, for the 2009 assessment year, and on March 13, 2012, for the 2011 assessment year petitioning the Board to conduct an administrative review of the Petitioner's appeals.

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 August 16, 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:

Judy Sharp, Monroe County Assessor
Ken Surface, Nexus Group

6. The Petitioner presented the following exhibits:

- Petitioner Exhibit 1 – 2008, 2009 and 2011 property record cards for the Petitioner’s property,
- Petitioner Exhibit 2 – Summary Report Appraisal prepared by Belinda Graber of Appraisers Inc., dated August 7, 2011,
- Petitioner Exhibit 3 – Email correspondence from Milo Smith to Belinda Graber, dated August 3, 2012,
- Petitioner Exhibit 4 – Email correspondence from Belinda Graber to Milo Smith, dated August 9, 2012,
- Petitioner Exhibit 5 – Petitioner’s assessed value summary sheet on nine comparable properties and the subject property.

7. The Respondent presented the following exhibits:

- Respondent Exhibit A – Property record cards, exterior photograph, and aerial map of the Petitioner’s property,
- Respondent Exhibit B – Assessment change summary sheet for 2008, 2009 and 2011,
- Respondent Exhibit C – Sales disclosure forms for the Petitioner’s property, dated August 16, 2001,
- Respondent Exhibit D – Property record card, sales disclosure form, exterior photograph and aerial map for 5100 South Victor Pike,
- Respondent Exhibit E – Maps of the Petitioner’s property and 7340 North Wayport Road,
- Respondent Exhibit F – Sales disclosure forms, dated June 22, 2001, and January 19, 2012, for 3940 West Third Street,
- Respondent Exhibit G – Indiana Board of Tax Review Final Determination for *Kooshtard Properties, LLC v. Monroe County Assessor*, Petition Nos. 53-017-06-1-4-00009 and 53-017-07-1-4-00006, dated December 7, 2009,

Respondent Exhibit H – Indiana Board of Tax Review Final Determination for *CVS Corporation #6697-02 v. Bloomington Township Assessor*, Petition No. 53-005-06-1-4-00027, dated October 3, 2008.

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 petitions with attachments,
Board Exhibit B – Notices of Hearing, dated June 20, 2012,
Board Exhibit C – Hearing sign-in sheet.

9. The subject property is a gas station and convenience store located on three acres of land at 7340 North Wayport Road, Bloomington, in Monroe County.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2008, the PTABOA determined the assessed value of the Petitioner's property to be \$1,200,000 for the land and \$317,100 for the improvements, for a total assessed value of \$1,517,100. For 2009, the PTABOA determined the assessed value of the property to be \$1,200,000 for the land and \$324,500 for the improvements, for a total assessed value of \$1,524,500 and for 2011, the PTABOA determined the assessed value of the property to be \$1,200,000 for the land and \$370,000 for the improvements, for a total assessed value of \$1,570,000.
12. The Petitioner's representative requested an assessed value of \$300,000 for the land and \$317,100 for the improvements, for a total assessed value of \$617,100 for 2008. The Petitioner's representative requested an assessed value of \$300,000 for the land and \$324,500 for the improvements, for a total assessed value of \$624,500 for 2009 and the

Petitioner's representative requested an assessed value of \$300,000 for the land and \$370,000 for the improvements, for a total assessed value of \$670,000 for 2011.¹

JURISDICTIONAL FRAMEWORK

13. The Indiana Board of Tax Review 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 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.

PETITIONER'S CONTENTIONS

14. The Petitioner's representative argues that the Petitioner's land was assessed in excess of its market value-in-use for the March 1, 2008, March 1, 2009, and March 1, 2011, assessment dates based on the land's appraised value. *Smith testimony*. In support of this position, the Petitioner's representative submitted an appraisal report prepared by Belinda Graber and Christopher Graber of Appraisers, Inc. *Petitioner Exhibit 2*. Belinda Graber is an Indiana Licensed General Appraiser and Christopher Graber is an Indiana Licensed Appraiser Trainee. *Id.* The appraisers certified that they prepared the appraisal in conformance with the Uniform Standards of Appraisal Practices (USPAP). In the appraisal report, the appraisers estimated the value of the Petitioner's land to be \$300,000 as of March 1, 2006, based on the sales comparison approach. *Id.* A note in the appraisal report stated that "this value indication is the most probable value of the subject site for the assessment years 2006, 07, 08, 09 and 2010. This is based in part on the assumption that land values have remained stable during this time period based upon sales of similarly located tracts of land." *Id.*

¹ The Petitioner's representative testified that he agreed with the assessed values of the improvements for each tax year at issue.

15. Mr. Smith argues that according to Indiana Code § 6-1.1-15-18 and the 2002 Real Property Assessment Manual (Manual), a Petitioner is allowed to use generally accepted appraisal and assessment practices to correct an assessment. *Smith testimony*. According to Mr. Smith, the cost approach assumes that buyers will pay no more for the subject property than it would cost them to purchase an equally desirable parcel of vacant land and construct an equally desirable substitute building. *Id.* Thus, Mr. Smith contends, he properly applied the cost approach by adding the Petitioner's appraised land value to the county assessor's reproduction cost of the improvements priced from the Manual for 2008, 2009 and 2011 to arrive at the property's total value for the assessment years under appeal. *Id.*

16. Mr. Smith also contends that the value of the Petitioner's property was overstated compared to the value of nine other convenience store properties in the county operated by Kooshtard Property. *Smith testimony*. In support of his position, Mr. Smith submitted a "comparable assessment analysis" showing that the land values on the nine comparable properties ranged from \$179,600 to \$635,200, while the Petitioner's land was assessed for \$1,200,000. *Smith testimony; Petitioner Exhibit 5*. Accordingly, Mr. Smith argues that the land assessment on the subject property was approximately twice as high as the highest land assessment of comparable properties operated by the same taxpayer. *Smith testimony*. Similarly, Mr. Smith testified that the total assessed value of the nine comparable convenience stores ranged from \$209,500 to \$779,700, while the Petitioner's total assessed value was \$1,503,800. *Smith testimony*. Mr. Smith argues that this further demonstrates that the Petitioner's property was over-valued. *Id.*

17. Finally, Mr. Smith argues that the assessor engaged in impermissible "sales chasing" because the assessor increased the value of the Petitioner's property based on its sale price. *Smith argument*. According to Mr. Smith, he researched several convenience store properties in the county and only the Petitioner's property's assessed value increased from \$325,500 in 2005 to \$1,482,500 in 2006. *Smith testimony; Petitioner Exhibit 1*.

Thus, Mr. Smith argues, the county treated the Petitioner's property differently than other properties in the county causing an inequality in the Petitioner's property's assessment.

Smith testimony.

RESPONDENT'S CONTENTIONS

18. The Respondent's witness, Mr. Surface contends that the assessed value of the Petitioner's property was fair based on its purchase price. *Surface testimony.* According to Mr. Surface, the subject property was assessed for \$1,517,100 in 2008, \$1,524,500 in 2009, and \$1,570,000 in 2011, which is less than the property's June 22, 2001, purchase price of \$1,644,670. *Id.* In support of this contention, the Respondent submitted the Petitioner's property record cards and the property's sales disclosure forms. *Respondent Exhibit A and C.*

19. Further, Mr. Surface contends that the Petitioner's property was assessed correctly based on the sales of comparable properties in the city of Bloomington. *Surface testimony.* In support of this contention, Mr. Surface offered maps, photographs, property record cards and sale disclosure forms for two other convenience store properties. *Id.; Respondent Exhibits D, E, and F.* The first property is located on U.S. Highway 37 at 5100 South Victor Pike, which is 11.85 miles south of the property under appeal.² *Id.; Respondent Exhibit D and E.* It is a convenience market on a 4.93 acre parcel of land that sold for \$1,550,000 on April 4, 2005. *Id.; Respondent Exhibit D.* The second property is located at 3940 West Third Street. *Id.; Respondent Exhibit F.* It is a former service station and convenience market that sold for \$873,096 on June 22, 2001. *Id.; Respondent Exhibit F.* According to Mr. Surface, the buildings and gas tanks were removed from the property and the property sold as vacant land for \$850,000 on January 13, 2012. *Id.* Based on these sales, Mr. Surface concludes, property values in the county have remained "constant" and "relatively" stable from 2001 through 2012. *Surface testimony.*

² Mr. Surface testified that the property under appeal and 5100 South Victor Pike are the only two convenience stores in the county located directly on U.S. Highway 37. *Surface testimony.* The property under appeal is located on the northern end of the county, while 5100 South Victor Pike is located on the southern end of the county. *Id.; Respondent Exhibit E.*

20. Mr. Surface also argues that the Petitioner’s appraisal should not be given any weight by the Board. *Surface testimony*. According to Mr. Surface, the property identified as 573 West Simpson Chapel Road, Bloomington, has a metal pole building located on the property. *Id.* While the appraisers purportedly deducted a value of \$15 per square foot for the building from the sale price, the appraisers provided no explanation as to how they arrived at the value of the building. *Id.*
21. In addition, Mr. Surface argues, the other properties in the appraisal are not comparable to the Petitioner’s property. *Surface testimony*. According to Mr. Surface, the property located at 3802 West State Road 46, Ellettsville, is a 0.73 acre “out-lot” to a large strip shopping center. *Id.* The property is located outside the Bloomington city limits; whereas the subject property is located on State Road 37, which is a main north and south road to Bloomington. *Id.* And the property shown located at the Southeast corner of That Road and South East Lane (which is actually located at the corner of Fullerton Pike and Monroe Medical Park), was developed by the Monroe County Hospital as an “out-lot” that has a retention pond on it and therefore it would be impossible to build a gas station/convenience store on the property. *Id.* Further, the property located at 5790 West State Road 46, Ellettsville, had a steeper elevation and the property owner had to spend a tremendous amount of money to make the property accessible. *Id.*
22. Moreover, Mr. Surface argues that the appraisers did not justify applying a negative 50% adjustment to all of the comparable properties, except for 573 West Simpson Chapel Road, Bloomington, for the differences in the utilities. *Surface testimony*. For example, Mr. Surface testified, the appraiser appears to be asserting that adding electricity to the property located at 3802 West State Road 46 is worth over \$220,000. *Id.* Mr. Surface argues that when large adjustments are made to the sale prices of comparable properties in an appraisal, the less comparable those properties become to the Petitioner’s property. *Id.*

23. In addition, Mr. Surface argues that the Petitioner's appraisal, which values the Petitioner's property as if it was vacant land, may not be an accurate reflection of the property's overall market value-in-use. *Surface testimony*. According to Mr. Surface, the appraisers did not explain whether they would have arrived at the same conclusion if they were estimating the value of both the land and buildings in their appraisal. *Id.* Further, Mr. Surface argues that the appraisers failed to estimate the market value-in-use of the Petitioner's property for its particular use as a gas station and convenience store for the 2008, 2009 and 2011 assessment years. *Id.*
24. Similarly, Mr. Surface argues that the Board should give little weight to the Petitioner's comparable assessment evidence. *Surface testimony*. According to Mr. Surface, the Petitioner's properties differ in age, size, condition, location and marketability due to traffic flow. *Id.* In addition, the Petitioner's comparable assessment analysis reflects the 2007 assessed values of comparable properties not the 2008, 2009 or 2011 assessed values. *Id.*
25. To the extent that the Board finds the Petitioner's comparable assessment evidence probative, Mr. Surface argues, the evidence rebuts the appraised value of the Petitioner's land. *Surface testimony*. According to Mr. Surface, the appraisers valued the Petitioner's three acres of land at \$300,000, or \$100,000 per acre, which calculates to \$2.30 per square foot; whereas the property located at 1115 South Walnut was assessed for \$594,300 or approximately \$21.60 per square foot in 2008; the property located at 503 West 5th Street was assessed for \$366,300 or approximately \$40 per square foot; the property located at 2700 East Third Street was assessed at \$650,700 or approximately \$14.93 per square foot; and the property located at 527 East Third Street was being assessed at approximately \$50 per square foot. *Id.* Based on Mr. Smith's comparable land assessment analysis, Mr. Surface argues, if the Petitioner's land was reduced to the \$300,000 amount in its appraisal, the land would be greatly under-valued for 2008, 2009 and 2011. *Id.*

26. The Respondent’s counsel argues that an appraiser’s opinion lacks probative value where the appraiser fails to explain or support its “work product.” *Meighen argument; citing Meijer Stores Limited Partnership v. Wayne Township Assessor*, 926 N.E.2d 1134 (Ind. Tax Ct. 2010); and *Inland Steel Co. v. State Board of Tax Commissioners*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000). According to Ms. Meighen, the Board is not bound by an expert’s opinion and may disregard that opinion. *Meighen argument; citing Indiana Family and Social Services Administration v. Hospitality House of Bedford*, 783 N.E.2d 286 (Ind. Ct. App. 2003). Ms. Meighen argues that the Petitioner’s appraisal lacks credibility because the appraisers are using an “extreme range” of comparable sale prices, which range from \$66,225 to \$453,187, and are using “extreme adjustments,” which range from a negative 75% adjustment to a positive 25% adjustment. *Meighen argument; Petitioner Exhibit 2*. Thus, Ms. Meighen concludes, the Petitioner’s appraisal is not sufficient to establish the market value-in-use of the land at issue in this case. *Meighen argument*.
27. Finally, Ms. Meighen argues that the Petitioner’s representative is “mixing and matching” two different methodologies to arrive at the value of the Petitioner’s property. *Meighen argument*. According to Ms. Meighen, Mr. Smith is attempting to use an appraisal to value the Petitioner’s land and the county’s assessment to value the buildings; thereby “mixing and matching” techniques. *Id.* According to Ms. Meighen, the Board has rejected the practice of mixing a single property appraisal with mass appraisal techniques to determine the value of a property. *Meighen argument; citing CVS Corporation #6697-02 v. Bloomington Township Assessor*, Petition No. 53-005-06-1-4-00027, (October 3, 2008).

ANALYSIS

28. 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 Uniform Standards of Professional Appraisal Practices (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 property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

29. 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, 2008, assessment date, the valuation date was January 1, 2007, and for the March 1, 2009, assessment date, the valuation date was January 1, 2008. 50 IAC 21-3-3 (2006). For the March 1, 2011, assessment date, however, the valuation date was March 1, 2011. Ind. Code § 6-1.1-4-4.5(f) (2010); 50 IAC 27-5-2(c) (2010).

30. The Petitioner's representative first argues that the Petitioner's land was over-assessed in 2008, 2009 and 2011 based on its appraised value. *Smith testimony*. In support of this contention, Mr. Smith submitted an appraisal prepared by Belinda Graber and Christopher Graber that estimated the value of the Petitioner's land to be \$300,000 as of March 1, 2006. *Petitioner Exhibit 2*. Ms. Graber is an Indiana Licensed General Appraiser and Mr. Graber is an Indiana Licensed Appraiser Trainee. *Id.* Both appraisers attested that they prepared the Petitioner's appraisal in accordance with USPAP. *Id.* The appraisers used the sales comparison approach to value the land as if vacant. *Id.* An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case that a property is over-valued. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003).

31. The Respondent argues that offering an appraisal that values only the land on a property and then simply adding the assessed value of the improvements to value the property as a whole is “mixing and matching techniques” – which has been rejected by the Board as a valid way to determine the value of a property. *Meighen argument; citing CVS Corporation #6697-02 v. Bloomington Township Assessor*, Petition No. 53-005-06-1-4-00027, (October 3, 2008). The Board acknowledges that it has rejected this method in the past, but since the Board issued its decision in *CVS Corporation #6697-02*, the Tax Court has expressed in several opinions that a taxpayer may solely challenge the land value or the improvement value of a property. *See e.g. Susan Barker v. Johnson County Assessor*, 49T10-0711-TA-68 (Ind. Tax Ct. 2009); and *Donald F. Elliott, Jr. v. Debra Dunning, Marshall County Assessor*, 49T10-0812-TA-69 (Ind. Tax Ct. 2009). While both opinions were issued “not for publication,” the Tax Court made clear that a taxpayer’s evidence should not be rejected simply because it values only a part of the property.

32. The Respondent also argues that the appraisers made large adjustments based on the utilities available on the various parcels. According to the report, “the adjustment applied for the lack of city sewer was 50% based upon the assumption that twice as much land would be needed for an on-site septic service as what would be needed if the site had municipal sewer service.” But as the Respondent argued, this resulted in the appraisers estimating the value of a sewer to be \$226,594 for the property located at 3802 West State Road 46. The problem with the Respondent’s case, however, was that the assessor provided no evidence of how much it would typically cost to construct an adequate septic system or how much property would be required for a septic field. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination).

33. Similarly, the Respondent argued that the appraisers failed to support their adjustment for the building value on the property located at 573 West Simpson Chapel Road. And the

Board is equally troubled by the appraisers' explanation that "contribution value of approximately \$15.00/SF for the improvements was subtracted to come to land value" when the appraisers provided no evidence of the total sale price or information on the building itself to determine if \$15.00 per square foot was a reasonable value for the building. But like the utility cost, the Respondent failed to present any evidence that it was not a reasonable valuation. Mr. Surface merely argued that the appraisers did not support their adjustments.

34. Ultimately, an appraiser's assumptions are backed by his education, training, and experience. The appraiser also certifies that he complied with the uniform standards of professional appraisal practice. Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data, where available, to quantify his adjustments. And where objective data was not available, the Board can infer that the appraiser relied on his education, training and experience to estimate a reliable quantification. While the Respondent raised issues with the appraisers' assumptions, the assessor presented no evidence to show that the assumptions were incorrect. Thus, while the Respondent's arguments detract from the credibility of the Petitioner's appraisers' valuation, the Respondent gave the Board insufficient evidence to reject the appraisers' value based on the assumptions the appraisers made in reaching those values.
35. That does not end the Board's inquiry, however, because the appraisers estimated the property's land value as of March 1, 2006. A note added to the end of the appraisal states that the \$300,000 land value established for March 1, 2006, "is the most probable value of the subject site for the assessment years 2006, 07, 08, 09 and 2010. This is based in part on the assumption that land values have remained stable during this period based upon sales of similarly located tracts of land." It is not clear who added the note to the end of the appraisal, but the note is supported by an email from Belinda Graber dated August 8, 2012.

36. The problem with the Petitioner's attempt to relate the 2006 appraised value to the subject property's value for the 2008, 2009 and 2011 assessment years is that neither the note at the end of the appraisal, nor the email, is supported by any evidence. There is no indication that the appraisers looked at paired sales to determine how property values changed. The notation simply references the sale of "similarly located tracts of land." And the email simply states "I believe that this is a good number for all the years you are appealing." An appraisal that does not identify the sales upon which the appraisers rely to make their assumptions has little credibility. See *Inland Steel v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (stating that testimony of a recognized appraisal expert without explanation is conclusory and lacks probative value).
37. Moreover any assumption of reliability or credibility that the Board may make regarding an appraiser's certified work product would not necessarily apply to a notation added after the fact to a certified appraisal. And here the note is in a different font and a different size type and is prefaced by an asterisk which does not correspond to any data in the report. The most likely inference is that the notation at the end of the appraisal was added around the time of the email exchange between Mr. Smith and Ms. Graber in August of 2012. Thus, barring evidence of how and when the notation was added or evidence of those "similarly located tracts of land" that purport to show property values have not changed, the Board finds that the Petitioner failed to sufficiently relate the property's appraised value to the relevant valuation dates for the 2008, 2009 and 2011 assessment years.
38. However, the Respondent here makes the same argument that the Petitioner's representative sought to make. In its attempt to rebut the Petitioner's case with the property's 2001 purchase price, the Respondent argued that property values did not change between 2001 and 2011. According to Mr. Surface, "values have remained relatively stable during this time frame." In fact, the assessor valued the land on the subject property for \$1.2 million for each of the tax years at issue in these appeals. Thus, while the Petitioner's evidence failed to relate the property's appraised value to the

relevant valuation dates, the Respondent's evidence supported the Petitioner's claims sufficient to raise a prima facie case for a reduction in the property's land value for 2008, 2009 and 2011.

39. Once the Petitioner raises a prima facie case that its property was over-valued, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
40. Here, the Respondent's witness argues that the Petitioner's property was properly assessed for \$1,517,100 in 2008, for \$1,524,500 in 2009, and for \$1,570,000 in 2011, based on the property's 2001 purchase price. *Surface testimony*. In support of this contention, Mr. Surface submitted two sales disclosure forms showing that the property under appeal sold for a total of \$1,644,670 on June 22, 2001. *Respondent Exhibit C*. The purchase price of a property is often the best evidence of a property's value. *See Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) (finding that the Board's determination assigning greater weight to the property's purchase price than its appraised value was proper and supported by evidence).
41. For the March 1, 2008, assessment, however, the valuation date was January 1, 2007; for the March 1, 2009, assessment, the valuation date was January 1, 2008; and for the March 1, 2011, assessment, the valuation date was March 1, 2011. 50 IAC 21-3-3 and 50 IAC 27-5-2. Therefore, to rebut the Petitioner's property's appraised value for the March 1, 2008, March 1, 2009, and March 1, 2011 assessment dates, the Respondent needed to relate the property's 2001 sale price to the property's value on January 1, 2007, January 1, 2008, and March 1, 2011, respectively.

42. As noted above, Mr. Surface argues that property sales have remained “constant” and “relatively stable” in Bloomington from 2001 through 2012. In fact, that admission in conjunction with evidence that the assessor did not change the land value on the property between 2006 and 2011 was sufficient to relate the Petitioner’s appraised value to the proper valuation dates. Not so for the Respondent’s case. The assessed value of the Petitioner’s land changed dramatically between March 1, 2002, and March 1, 2006, effectively rebutting Mr. Surface’s claims that values remained constant or stable between the 2001 purchase of the subject property and 2011.
43. The Respondent also offered the sale of another gas station/convenience store in an attempt to show that property values had not changed between 2001 and 2011. *Respondent Exhibit D.* According to Mr. Surface, a gas station/convenience store located at 5100 South Victor Pike sold for \$1.5 million in 2005. *Surface testimony.* But that another property sold for something near the value of the subject property’s sale price four years earlier does not prove that values are stable. The Respondent provided no evidence that the two properties were comparable, other than to argue that the 5100 South Victor Pike property was a gas station/convenience store located on State Road 37 – like the Petitioner’s property. This falls short of the burden established by the Indiana Supreme Court to prove comparability. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972) (“One need only examine the multitudinous factors which make separate tracts of land similar or dissimilar to realize that the variation in the character of land is limitless. No two tracts of land are identical.’ Whether or not properties are similar enough to be considered ‘comparable’ then must also depend on a number of factors including (but not limited to) size, shape, topography, accessibility, use, and closeness of the time of the sale to the present action.”). Without evidence of the properties’ comparability, the Board cannot infer from the sale of a property in 2005 for \$1.5 million that the market had changed little since the Petitioner purchased the subject property for approximately \$1.6 million.

44. Similarly, Mr. Surface presented evidence of the sale of the property located at 3940 West Third Street in 2001 and again in 2012. *Respondent Exhibit F*. Mr. Surface testified that the property was a dilapidated service station and convenience market that sold for \$873,096 on June 22, 2001. *Surface testimony*. The buildings and gas tanks were subsequently removed from the property and the vacant land sold for \$850,000 on January 13, 2012. *Id.* With this evidence, the Respondent essentially urges the Board to infer that the improvements had no value because they were later razed so the 2001 purchase price was also for little more than vacant land. But the Respondent failed to provide any evidence of when the improvements were demolished. Therefore, it is equally likely that the gas station operated for another ten years before being demolished and, in fact, had significant value. Thus, the Respondent's evidence fails to support a finding that property values did not change between 2001 and 2011 sufficient to relate the property's 2001 purchase price to its 2007, 2008 and 2011 values.
45. To the extent the Respondent can be seen as arguing that the property's land values were correct for the 2008, 2009 and 2011 assessment years based on sales of those two properties, the Respondent's evidence similarly fails to rebut or impeach the Petitioner's prima facie case. In order to effectively use the sales comparison approach as evidence of a property's value, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property are not probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of the purportedly comparable properties. *See Id.* at 470-71. They must also explain how any differences between the properties affect their relative market value-in-use.
46. Here, the Respondent's witness merely offered two properties located in Bloomington that sold in 2005 and 2012. But as Mr. Surface observed about the Petitioner's "comparable" sales – they were all "in a different location." According to Mr. Surface,

“A convenience market isn’t necessarily a convenience market. They all differ in age, size, condition. Their marketability is dictated based upon traffic...” Thus, the 5100 South Victor Pike property is not comparable to the Petitioner’s property simply because it is a gas station/convenience market located on State Road 37. Similarly, the vacant land parcel is not comparable to the subject property’s parcel simply because it once housed a gas station/convenience store. The Respondent must have sufficiently shown that the parcels were comparable in location, topography, accessibility and traffic flow to prove that the sale price of either property proves that the subject property was not over-valued for the assessment years at issue. *See Blackbird Farms Apts., LP v. Department of Local Government Finance*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that taxpayer failed to establish comparability of parcels of land where, among other things, taxpayer did not compare the topography and accessibility of parcels).

SUMMARY OF FINAL DETERMINATION

47. The Petitioner raised a prima facie case that its property’s land value for the March 1, 2008, March 1, 2009, and March 1, 2011, assessment dates was over-stated. The Respondent failed to rebut or impeach this evidence. The Board therefore finds in favor of the Petitioner, and holds that the assessed values of the Petitioner’s land should be lowered to \$300,000 for the 2008, 2009 and 2011 assessment years.

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>.