

FOR PETITIONER: Milo Smith, Certified Tax Representative

FOR RESPONDENT: Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

KOOSHTARD PROPERTY VIII, LLC.,)	Petition Nos. 53-015-12-1-4-00080
)	53-015-12-1-4-00081
Petitioner,)	53-015-12-1-4-00082
)	
)	Parcel Nos.: 53-09-12-300-033.000-015
MONROE COUNTY ASSESSOR,)	53-09-12-300-013.000-015
)	53-09-12-300-022.000-015
Respondent.)	
)	Monroe County
)	Washington Township
)	Assessment Year: 2012

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

May 15, 2014

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

In this assessment appeal, the Petitioner contested the subject property's 2012 assessment. The property consists of three parcels that are grouped together as a gas station and convenience store. The Board finds that the Petitioner failed to make a prima facie case that the 2012 assessment is incorrect.

Procedural History

1. The subject property is a convenience store located at the intersection of West State Road 45 and Leonard Springs Road in Bloomington, Indiana. The property consists of three adjoining parcels:
 - 2520 S. Leonard Springs Road, Parcel No. 53-09-12-300-033.000-015 (parcel 033)
 - 2510 S. Leonard Springs Road, Parcel No. 53-09-12-300-013.000-015) (parcel 013)
 - W. State Road 45, Parcel No. 53-09-12-300-022.000-015 (parcel 022)
2. The Petitioner initiated the 2012 assessment appeal by filing a Form 130 for each parcel on June 18, 2013. On May 8, 2013, the Monroe County Tax Board of Appeals (PTABOA) issued determinations (Form 115) making no changes to the assessments of the properties.
3. The Petitioner timely filed a Form 131 Petition for Review of Assessment for each parcel, petitioning the Indiana Board of Tax Review (Board) to conduct an administrative review of the 2012 assessment on the property.
4. Respondent filed a motion to have this matter transferred from small claims procedures to the plenary procedures set forth in 52 IAC 2. The Board granted the Respondent's motion on September 20, 2013.
5. Administrative Law Judge Elizabeth Rogers held the hearing on December 18, 2013. Neither she nor the Board inspected the property.
6. Ken Surface, Senior Vice President for Nexus Group and Level 3 Certified Assessor/Appraiser, appeared as a witness for Respondent. Ken Surface and Milo Smith were sworn as witnesses.
7. The Petitioner presented the following exhibits.
 - Petitioner Exhibit 1 – Property Record Card for the subject property.
 - Petitioner Exhibit 2 – Comparable assessment data.
 - Petitioner Exhibit 4 – Indiana Board of Tax Review Determination; *Karen Love and Terrence Kiwala v. Porter County Assessor.*¹

¹ Petitioner presented no Exhibit 3.

8. The Assessor presented the following exhibits:

Respondent Exhibit 1 – Picture and property record card for subject property.

Respondent Exhibit 2 – Map of subject property.

Respondent Exhibit 3 – Convenience Market Comparison grid.

Respondent Exhibit 4 – Map of comparable properties.

Respondent Exhibit 5 – Picture, property record card, and sales disclosure form for Parcel # 53-09-12-400-080.001-015.

Respondent Exhibit 6 – Picture, property record card, and sales disclosure form for Parcel # 53-09-01-200-011.000-016.

Respondent Exhibit 7 – Picture and property record card for Parcel # 53-09-01-100-017.000-016.

Respondent Exhibit 8 – Picture, property record card, and sales disclosure form for Parcel # 53-04-36-404-006.000-012.

Respondent Exhibit 9 – Convenience market sales comparison grid².

Respondent Exhibit 10 – Pictures, property record card, and sales disclosure form for Parcel # 53-05-33-105-027.000-005.

Respondent Exhibit 11 – Picture, property record card, and sales disclosure form for Parcel # 53-11-29-101-003.000-006.

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

Board Exhibit 1 – Forms 131 with attachments.

Board Exhibit 2 – Notice of Hearing.

Board Exhibit 3 – Hearing Sign-In sheet.

10. For 2012, the PTABOA assessed parcel 022 at \$131,400 for the land with no improvements. Parcel 013 was assessed at \$84,000 for the land with no improvements. Parcel 033 was assessed at \$91,200 for the land and \$187,400 for the improvements for a total assessment of \$278,600 for this property. The three parcels total 1.022 acres and have a total assessed value of \$494,000.

² The Convenience Market Comparison Grid and Convenience Market Sales Comparison Grid were prepared by Respondent witness Ken Surface.

Burden of Proof

11. 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, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. Of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two inspections to that rule.
12. 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 year.” I.C. § 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 the Indiana Tax Court.” I.C. § 6-1.1-15-17.2(b).
13. Second, I.C. § 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.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment 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 the assessment is correct.” The statute was amended on March 25, 2014 to include this language. This change has application to all appeals pending before the Board. *See P.L. 97-2014*.
14. The combined 2011 assessment for the three parcels is \$473,800. The combined assessment for the three parcels for 2012 is \$494,000; an increase of 4% over the assessment of the previous year. The parties also agreed at the hearing that the Petitioner has the burden of proof.

Petitioner's Contentions

15. The Petitioner contends that the subject property is assessed too high. In support of its position, Petitioner offered property record cards for two properties it deemed comparable to the subject properties. The Leonard Springs Road property is .52 acres in size and is located in a different neighborhood from the subject property. The adjusted base rate for this area is \$150,000, resulting in an assessed value of \$78,000 for this property. There is no influence factor assigned to this property. The State Road property is 24.966 acres in size and is located in the same neighborhood as the subject property. The adjusted base rate for this area is \$150,000, resulting in an assessed value of \$3,744,900 for this property. There is no influence factor assigned to this property. *Smith testimony, Pet'r Ex. 2.*
16. If the land is being used for a permitted use, it should be assessed comparably to other properties in the same geographic area with the same permitted uses. *Smith testimony, Pet'r Ex. 2.*
17. The 100% influence factor should be removed from the subject property. Because no influence factor was applied to the comparable properties, it should be removed from the subject property. *Smith testimony.*

Respondent's Contentions

18. Petitioner has the burden to present evidence that the assessment under appeal does not reflect market value, and it has not met that burden. Petitioner failed to make a prima facie case that the 2012 assessment on the property is incorrect. *Meighan argument.*
19. Petitioner's argument focuses on the assessor's methodology. Challenging the methodology of the assessment is not sufficient without probative evidence that the assessment is incorrect. *Meighan argument, citing O'Donnell v. Dep't of Local Government Fin.*, 854 N.E.2d 90 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674 (Ind. Tax Ct. 2006); *Kooshtard Prop. VI, LLC., v. White River Twp.*

Ass'r, 836 N.E.2d 501 (Ind. Tax Ct. 2005); *Kooshtard Prop. VIII, LLC. v. Shelby County Ass'r*, 987 N.E.2d 1178 (Ind. Tax Ct. 2013).

20. Property record cards were submitted for comparable properties as well as the convenience market comparison grid and the convenience market sales comparison grid that show the subject property is properly assessed and the influence factor is justified. *Surface testimony, Resp't Exs. 1-11*. The convenience market comparison grid compares various property characteristics such as acreage, land base rate, year built, and traffic flow of four comparable properties with the subject property. *Surface testimony, Resp't Exs. 3- 8*. The convenience market sales comparison grid compares various property characteristics of two comparable properties that recently sold to those of the subject property, although these properties were not in the same township as the subject property. *Surface testimony, Resp't Exs. 9- 11*.

Analysis

21. 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.* at 2. A market value-in-use appraisal prepared according to Uniform Standards of the Professional Appraisal Practice (USPAP) often will be probative. *See Id.*; *see also, Kooshtard Property VI, LLC. 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 or assessment information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. Indiana Code § 6-1.1-15-18 allows parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use.

22. In a proceeding concerning property that is not residential, a party to an appeal may introduce evidence of the assessments of any relevant, comparable property. I.C. § 6-1.1-15-18. However, preference shall be given to comparable properties that are located in the same taxing district or within two (2) miles of a boundary of the taxing district. The determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices. *Id.*
23. A petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. Of Tax Comm'rs*, 694 N.E.2d 1230, 1234 (Ind. Tax Ct. 1998).
24. The Petitioner did not argue for a specific assessment for the properties. It did argue that the 100% influence factor should be removed from each of the parcels. *Smith testimony.*
25. “Influence factor” refers to a condition peculiar to the lot that dictates an adjustment to the estimated value to account for variations from the base lot on which the base unit land value for the subject property is predicated. *See REAL PROPERTY ASSESSMENT GUIDELINES for 2011 (Incorporated by reference at 50 IAC 2.4-1-2(c)), Bk. 1 Ch. 2 at 9, 70-71.*
26. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004). ([I]t is the taxpayer’s duty to walk the Indiana Board ...through every element of the analysis.”)
27. Regardless of the method used to rebut an assessment’s presumed accuracy, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *O’Donnell*, 854 N.E.2d at 95. *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

28. While Petitioner did provide the property record cards for the subject property and two properties offered as comparable to the subject property, Petitioner failed to provide the Board with a detailed explanation or analysis as to how the comparable properties specifically compare to the subject property. Petitioner simply argues that because the assessor did not apply the same positive influence factor to properties that Petitioner concludes are comparable to the subject property, the influence factor on the subject property should be removed. Petitioner made the same argument in a previous case to no avail. See *Kooshtard Property VIII, LLC, v. Shelby County Assessor*, 987 N.E.2d 1178 (Ind. Tax Ct. 2013). In *Kooshtard* the court determined: “Kooshtard did not present any market-based evidence to support its claim; instead, Kooshtard merely concluded that because the Assessor did not apply the same positive influence factor of 100% to a nearby office building, automotive sales/service center, and fast food restaurant, the factor should be removed from its assessment.” *Id. at 1181*. The court went on to hold that such conclusory statements are insufficient to make a prima facie case because they are not probative evidence. *Id.*
29. The information provided by Petitioner is insufficient for the Board to conclude that these properties are in fact comparable to the subject property. A hearing officer does not have an affirmative duty to make a case on behalf of a party. *North Park Cinemas, Inc. v. State Board of Tax Comm’rs*, 689 N.E.2d 765, 769 (Ind. Tax Ct. 1997).
30. Accordingly, the Petitioner failed to establish a prima facie case that there is an error in the 2012 assessment of the subject property. See *Eckerling*, 841 N.E.2d at 674 (stating that “when a taxpayer chooses to challenge an assessment, he or she must show that the assessor’s assessed value does not accurately reflect the property’s market value-in use.)
31. The Petitioner also offered the case of *Love and Kiwala v. Porter County Ass’r*, Petition No. 64-025-07-1-5-00008, in support of its argument. *Smith testimony, Pet’r Exhibit 4*. As with the case at hand, Petitioners in *Love* argued that the assessment of their property is too high. In support of their argument, Petitioners in *Love* presented a spreadsheet showing the sales prices and assessed values for seven properties that sold in their taxing district in the two years previous to the assessment year at issue in their appeal. They

also provided assessment information for each of the properties sold and a sales disclosure form for each sale. *Id. at 2.* The Petitioner in the instant case offered no such sales-based studies of the subject property taxing district and offered no ratio study to support its argument. In the *Love* case the Board concluded that the Petitioner had presented a prima facie case that their property's level of assessment was not uniform and equal with other properties in their neighborhood for the assessment year at issue. *Id. at 4.* It also concluded that the Respondent in *Love* had failed to rebut or impeach the Petitioner's evidence. *Id. at 7.* In the case at hand, Petitioner failed to establish a prima facie case that their property was assessed incorrectly. In addition, the Respondents in this case presented substantive, credible testimony and documentary evidence supporting the assessment of the property. The facts of the *Love* case are readily distinguishable from the case at hand.

32. The Respondent's duty to offer substantial evidence of the correct assessment was not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Thus the Board will not review the Respondent's evidence.

Summary of Final Determination

The Petitioner failed to make a prima facie case for a change in assessed value. The Board finds in favor of the Respondent. The assessment for 2012 will not be changed.

This Final Determination of the above captioned matter is issued on the date first written above.

Commissioner, 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>>.