

REPRESENTATIVE FOR PETITIONER:
Milo Smith, Certified Taxpayer Representative

REPRESENTATIVE FOR RESPONDENT:
Marilyn S. Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Kooshtard Property V, LLC,)	Petition Nos.: 53-005-08-1-4-00020
)	53-005-09-1-4-00018
Petitioner,)	53-005-11-1-4-00019
)	
v.)	Parcel No: 53-01-30-058-000.000-005
)	(013-00580-00)
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

November 9, 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 V, LLC (Kooshtard Property), through its certified tax 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 filed Form 131s, 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 – Property record card for the Petitioner’s property,
Petitioner Exhibit 2 – Petitioner’s assessed value summary sheet, plat map, and property report cards for 527 East Third Street, East Third Street (Parcel No. 53-05-33-405-007.000-005), 509 East Third Street (Parcel No. 53-05-33-405-017.000-005), 509 East Third Street (Parcel No. 53-05-33-405-004.000-005), 421 East Third Street, 409 East Third Street, 403 East Third Street, 400 East Third Street, 426 East Third Street, 508 East Third Street, Third Street (Parcel No. 53-08-04-200-109.000-009), 522 East Third Street, South Henderson Street (Parcel No. 53-08-04-100-066.000-009), and South Henderson Street (Parcel No. 53-08-04-100-037.000-009).

7. The Respondent presented the following exhibits:

Respondent Exhibit A – 2008 and 2011 property record cards and two exterior photographs for the Petitioner’s property,
Respondent Exhibit B – Assessment change summary sheet for 2008, 2009 and 2011,
Respondent Exhibit C – Plat map of the subject property’s area,
Respondent Exhibit D – Property record cards, sales disclosure forms, and exterior photographs for 217 South Lincoln Street, 414 East Kirkwood Avenue, 221 East Kirkwood Avenue, 105 North Dunn Street, 110 North Indiana Avenue, 416 East Fourth Street, 425 East Kirkwood Avenue, 409 East Kirkwood Avenue (2009 and 2011 years only), and 108 East Kirkwood Avenue (2009 and 2011 years only),
Respondent Exhibit E – Respondent’s land extraction grid for seven properties for the 2008 assessment year and nine properties for the 2009 and 2011 assessment years,
Respondent Exhibit F – Real Property Assessment Guideline, Chapter 2, page 87,

- Respondent Exhibit G – Property record card, photograph and sales disclosure form for 3324 West Third Street,
- Respondent Exhibit H – 2001 sales disclosure form for the subject property,
- Respondent Exhibit I – 2001 and 2012 sales disclosure forms for 3940 West Third Street,
- Respondent Exhibit J – Property record cards and exterior photographs for 1407 West Third Street and 3021 East Third Street,
- Respondent Exhibit K – Indiana Board of Tax Review, Final Determination in *Koostard Property V, LLC v. Monroe County Assessor*, Petition Nos. 53-005-06-1-4-00055 and 53-005-07-1-4-00047, dated December 8, 2009.

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 at 527 East Third Street, 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 \$794,100 for the land and \$148,400 for the improvements, for a total assessed value of \$942,500. For 2009, the PTABOA determined the assessed value of the property to be \$794,100 for the land and \$151,600 for the improvements, for a total assessed value of \$945,700 and, for 2011, the PTABOA determined the assessed value of the property to be \$794,100 for the land and \$135,600 for the improvements, for a total assessed value of \$929,700.

12. For 2008, the Petitioner’s representative requested an assessed value of \$635,200 for the land and \$144,500 for the improvements, for a total assessed value of \$779,700; for 2009, the Petitioner’s representative requested an assessed value of \$397,000 for the land and \$151,600 for the improvements, for a total assessed value of \$548,600; and for 2011, the

Petitioner's representative requested an assessed value of \$397,000 for the land and \$135,600 for the improvements, for a total assessed value of \$532,600.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONER'S CONTENTIONS

14. The Petitioner's representative testified that the Petitioner agrees with the county's assessed value of the improvements on the Petitioner's property for 2008, 2009, and 2011. *Smith testimony*. Mr. Smith, however, disputes the land's base rate of \$25.00 per square foot with a 100% positive influence factor for 2008, which results in an assessed value for the land that is equivalent to over \$2,000,000 an acre. *Id.*; *Petitioner Exhibit 1*. Mr. Smith argues that the 2008 sales ratio study submitted by the county to the Department of Local Government Finance (DLGF) did not support a \$2 million dollar per acre base rate. *Id.* Therefore, Mr. Smith argues the Petitioner's land should return to the 2007 assessed value of \$635,200 for the March 1, 2008, assessment year.
15. Mr. Smith also contends that the value of the Petitioner's land is overstated in 2008 compared to the land values of thirteen other properties located in the same geographical area as the Petitioner's property. *Smith testimony*. In support of his position, Mr. Smith submitted a comparable assessment analysis, a map of the properties and a property assessment detail report for each property. *Petitioner Exhibit 2*. Mr. Smith argues that the assessed values of neighboring lots ranged from \$11.00 per square foot to \$25.00 per

square foot for the land, or an average of \$22.67 per square foot; whereas the Petitioner's land was assessed at \$50.00 per square foot. *Smith testimony; Petitioner Exhibit 2.* In response to the Respondent's case, Mr. Smith argues that even if all of the exempt properties were removed from his comparable analysis, the highest land base rate was still only \$25.00 per square foot. *Smith testimony.* Accordingly, Mr. Smith argues that the Petitioner's land is valued at a much higher rate per square foot than comparable properties in the same geographic area. *Id.*

16. Similarly, the Petitioner's representative argues that the Petitioner's land should not be assessed with a 100% positive influence factor for 2009 and 2011. *Smith testimony.* According to Mr. Smith, the Petitioner's land was valued with a \$25.00 base rate per square foot with a 100% positive influence factor, which resulted in a land base rate of \$50.00 per square foot. *Id.; Petitioner Exhibit 2.* Instead, Mr. Smith argues the 100% positive influence factor should be removed and the Petitioner's land should be assessed at \$25.00 per square foot, or \$397,000 for the March 1, 2009, and March 1, 2011, assessment years. *Smith testimony.*

17. Finally, in response to the Respondent's arguments, Mr. Smith contends that for 2009 and 2011, five of his thirteen comparable properties are corner lots, but they are not receiving the same 100% positive influence factor on their land assessments. *Smith testimony.* According to Mr. Smith, 421 East Third Street, 409 East Third Street, 400 East Third Street, 522 East Third Street, and South Henderson Street are all corner lot properties. *Id.; Petitioner Exhibit 2.* Moreover, at least three of the properties could be used as a convenience store by their property owners. *Smith testimony.*

RESPONDENT'S CONTENTIONS

18. The Respondent's counsel argues that Indiana Code § 6-1.1-15-17.2, concerning shifting the burden of proof from the taxpayer to the assessor when an assessment increases more than five percent over the previous assessment, does not apply to these cases. *Meighen argument*. According to Ms. Meighen, the triggering event of the law's application is a property's assessment. *Id.* And because the assessment date following the effective date of the statute was March 1, 2012, the new statute should not apply until the property's 2012 assessments are appealed. *Id.* Thus, Ms. Meighen argues, the Petitioner should retain the burden to present a prima facie case that its 2008, 2009 and 2011 assessments were incorrect. *Id.*
19. The Respondent's witness, Mr. Surface testified that in 2008 annual adjustments were applied to property assessments to account for changes in property values and to assess property according to its market value-in-use. *Surface testimony*. Therefore, Monroe County reevaluated its land values and base rates. *Id.* As a result of this reevaluation, Mr. Surface testified, the base rate for properties in the Petitioner's neighborhood increased from \$20.00 per square foot to \$25.00 per square foot. *Id.* In addition, the county determined that the subject property's valuable corner location, high foot traffic from Indiana University, and the use of the property as a convenience store warranted a 100% influence factor. *Id.* However, Mr. Surface contends, the 100% influence factor was applied to the Petitioner's property prior to the 2008 assessment. *Id.* And other properties are receiving a similar influence factor. *Id.* For example, Mr. Surface testified, the property located at 217 South Lincoln Street is also receiving a 100% influence factor adjustment because it is also a prime corner lot in the Petitioner's property's neighborhood. *Id.; Respondent Exhibit D.*
20. Mr. Surface contends that sales of other properties in the area show that land is assessed below its market value in the Petitioner's property's neighborhood. *Surface testimony*. In support of this argument, the Respondent presented property record cards,

photographs, sales disclosure forms, a land abstraction grid, and a map showing the location of the subject property and nine commercial properties that sold between 2006 and 2009. *Respondent Exhibits A, D and E*. Mr. Surface testified that there were very few vacant land sales in Monroe County, so the county used the “abstraction method” of valuing the land. *Surface testimony*. According to Mr. Surface, he used 2006 and 2007 sales for the 2008 assessment year and, because there were too few sales during the relevant time period, he used 2006, 2007 and 2009 sales for the 2009 and 2011 assessment years. *Surface testimony*. The sale prices ranged from \$620,000 to \$1,345,000, with the abstracted value of the land ranging from \$62 per square foot to \$231 per square foot. *Id.* Moreover, the property identified as “H” on the Respondent’s map sold for \$660,000 in 2006 and the purchaser tore down the building. *Id.*; *Respondent Exhibits D and E*. Thus, the land alone was worth at least \$660,000, or \$125 per square foot. *Id.* Based on these sales, Mr. Surface concludes, the Petitioner’s land was not overvalued for the 2008, 2009 or 2011, assessment years and in fact the land may have been under-assessed during the years at issue in the Petitioner’s appeals. *Surface testimony*.

21. Mr. Surface also contends that the assessed value of the Petitioner’s property was fair based on the property’s purchase price. *Surface testimony*. According to Mr. Surface, the subject property was assessed for \$942,500 in 2008, which is less than its June 22, 2001, purchase price of \$1,121,827. *Id.*; *Respondent Exhibits A and H*. In support of this contention, the Respondent submitted the Petitioner’s property record card and the property’s sales disclosure forms.¹ *Respondent Exhibit A and C*.
22. Moreover, Mr. Surface contends that the Petitioner’s property was assessed correctly based on the sales of other gas station/convenience stores in the county. *Surface testimony*. According to Mr. Surface, a gas station and convenience store located on 3324 West Third Street – which is an inferior location to the subject property – sold on

¹ Mr. Surface testified that in 2001 the Petitioner’s property was assessed as three separate parcels; however prior to 2008 the three parcels were combined and assessed as one parcel. *Surface testimony*.

June 1, 2007, for \$925,000.² *Id.*; *Respondent Exhibit G*. Another gas station/convenience store, located at 3940 West Third Street, sold for \$873,096 on June 22, 2001. *Surface testimony*; *Respondent Exhibit I*. Again, Mr. Surface testified, this was an inferior property to the Petitioner's property. *Surface testimony*. After the gas station closed, the property sold again on January 13, 2012, for \$850,000 as "basically vacant land." *Id.*; *Respondent Exhibit I*. Mr. Surface argues that the Petitioner's property and the comparable properties are direct competitors. *Id.* Therefore, Mr. Surface concludes, neither the Petitioner's land, nor the Petitioner's property as a whole, were over-valued based on the sales of 3324 West Third Street and 3940 West Third Street. *Id.*

23. Similarly, the Respondent argues that the Petitioner's property's assessed value was correct based on the assessed values of other gas station/convenience store properties. *Surface testimony*. According to Mr. Surface, the property located at 1407 West Third Street, which is a convenience store with gas pumps and a canopy, was assessed for \$1,171,700 in 2008. *Surface testimony*; *Respondent Exhibit J*. And the property located at 3021 East Third Street, which is a convenience store with gas pumps and a canopy, was assessed for \$761,800 in 2008. *Id.* Thus, Mr. Surface argues, these assessments support a finding that the Petitioner's property was assessed uniformly based on its use as a gas station/convenience store. *Id.*
24. Finally, Mr. Surface argues that the Petitioner's representative's comparable land assessments should be given little weight in this case. *Surface testimony*. According to Mr. Surface, the properties identified on the Petitioner's map as property numbers 4, 5, 12, 14, and 15 are exempt properties. *Id.* In addition, the property numbered 14 by the Petitioner is a road and the property numbered 15 is "green space" used by Indiana University as part of a parking complex. *Id.* Similarly, the property identified on the Petitioner's map as property number 3, located on East Third Street, is a privately owned

² The sale price included \$100,000 for personal property; therefore Mr. Surface testified that the price allocated to the real estate was \$825,000. *Surface testimony*.

parking lot that supports the offices owned by the Indiana University Foundation. *Id.* According to Mr. Surface, exempt properties are not considered relevant in establishing the market value-in-use of an area, because the properties are not taxable. *Id.*

25. Further, the property located at 522 East Third Street is rental housing with no road access to Third Street and the property located at 508 East Third Street is rental housing owned by Indiana University. *Surface testimony.* Similarly, the property located at 426 East Third Street is an apartment complex and 421 East Third Street is a multi-use building with retail space on the first floor and apartments on the second floor. *Id.* According to Mr. Surface, rental housing and apartment complexes, according to statute, must be valued on the lesser of the three approaches to value. *Id.* Thus, Mr. Surface argues, their assessments cannot be compared to the Petitioner's property's assessed value. *Id.* Despite these differences, Mr. Surface argues, the Petitioner's representative's comparable properties that are located in the Petitioner's property's neighborhood were almost all assigned the same \$25 per square foot value for which the Petitioner's land was assessed. *Id.*
26. Finally, none of the "corner lots" identified by the Petitioner's representative are "corner lots" like the Petitioner's property. *Surface testimony.* According to Mr. Surface, many of the "streets" on which the Petitioner's comparable properties sit are simply alleys; several of the roads are one way streets into residential neighborhoods with no commercial properties; and the property identified as number 13 sits on a dead end street with no access to Third Street. *Id.* Mr. Surface argues that the Petitioner's representative failed to show other "comparable" corner lots were not assessed with a similar influence factor. *Id.* Thus, he concludes, the Petitioner's representative's comparable land assessment analysis is insufficient to show an error in the Petitioner's land value. *Id.*

BURDEN OF PROOF

27. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2.³ That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

28. Here, the Respondent's counsel argues that Indiana Code § 6-1.1-15-17.2 should not be applied retroactively. According to Ms. Meighen, the burden-shifting law should only apply to assessments that occur after the law's effective date. The Board, however, is not convinced that applying the law in this case would be a retroactive application. "While statutes are generally given prospective effect absent a contrary legislative intent, it is also true that the jurisdiction in pending proceedings continues under the procedure directed by new legislation where the new legislation does not impair or take away

³ HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

previously existing rights, or deny a remedy for their enforcement, but merely modifies procedure, while providing a substantially similar remedy.” *Tarver v. Dix*, 421 N.E.2d 693, 696 (Ind. Ct. App. 1981). According to the U.S. District Court in the Northern District of Indiana, “applying newly enacted procedure to a case awaiting trial in district court is not, strictly speaking, a retroactive application of the law” because the court has not yet “done the affected thing” when the new law is applied. *Brown v. Amoco Oil Co.*, 793 F. Supp. 846, 851 (N.D. Ind. 1992).

29. In *City of Indianapolis v. Wynn*, 157 N.E.2d 828, 834-835 (Ind. 1959), the Indiana Supreme Court held that a statutory amendment, which specified that evidence of certain factors would constitute primary determinants of an annexation’s merit, was a procedural amendment and therefore applied to a proceeding where the remonstrators has filed their challenge, but no hearing had yet occurred. The Court reasoned that because the amendment “changes the method of procedure and elements of proof necessary to sustain an annexation ordinance, and does not change the tribunal or the basis of any right, it must be presumed that the Legislature intended that the proceedings instituted under the [prior version of the statute] should be continued to completion under the method of procedure prescribed by the [amendment].” *Id.*, see also *Tarver v. Dix*, 421 N.E.2d 693, 696 (Ind. Ct. App. 1981) (A statutory presumption of legitimacy applied to a case filed prior to its enactment but heard after the legislation was passed because “the new legislation ... provided a substantially similar remedy while delineating more clearly the procedure to be followed in determining and enforcing this right.”).
30. The Respondent’s counsel argues that the assessment is the “thing affected.” *Meighen argument*. However, Indiana Code § 6-1.1-15-17.2 does not change the rules or standards for determining whether an assessment is correct. Nor does the statute make any change to the assessor’s duties in making assessments. Assessors are tasked with assessing property based on its “true tax value” which is defined as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2

(incorporated by reference at 50 IAC 2.3-1-2). This definition “sets the standard upon which assessments may be judged.” *Id.* Moreover, under the trending rules, property values are to be adjusted each year to reflect the change in a property’s market value between general reassessment years. Ind. Code § 6-1.1-4-4.5. Whether the assessor will have the burden of proof at trial based on how much that property’s value changes year over year should have no impact on the assessor’s obligation to value property according to its market value-in-use. In fact, the Respondent made no claim that it would have assessed the Petitioner’s property differently if the burden shifting provision had been promulgated prior to the time that the assessment was made.

31. Indiana Code § 6-1.1-15-17.2 places the burden of proof on an assessor when the assessed value of a property increases by more than five percent between assessment years. Thus, the “affected thing” would be the evidentiary hearing wherein the Board evaluates the proof offered by the parties. If the General Assembly had not intended the law to apply to pending appeals, it could have inserted language to that effect, stating that the law only applied to future assessments. This the legislature did not do. Because the law applies to all pending appeals and because the property’s assessed value for 2008 increased by more than 5% over the property’s assessed value in 2007, the Board finds that the Respondent has the burden of proof for the March 1, 2008, assessment year. By contrast, the subject property’s assessed values for 2009 and 2011 did not increase by more than 5% over the property’s assessed values for 2008 and 2010. Thus, the Petitioner has the burden of proof for the March 1, 2009, and March 1, 2011, assessment years.

ANALYSIS

32. The Petitioner’s representative agreed with the Respondent’s valuation of the improvements on the subject property. *Smith testimony.* Therefore the only values at issue in these appeals are the property’s land value for 2008, 2009 and 2011.

33. Pursuant to Indiana Code § 6-1.1-15-18(c), “To accurately determine market-value-in-use, a taxpayer or an assessing official may ... introduce evidence of the assessments of comparable properties located in the same taxing district or within two (2) miles of a boundary of the taxing district...” Ind. Code § 6-1.1-15-18. The “determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices.” *Id.*
34. Here, the Respondent’s witness argues that the Petitioner’s land was correctly valued based on the assessed value and the sales prices of properties located in the neighboring area. *Surface testimony; Respondent Exhibits D, E and J.* In support of this contention, Mr. Surface submitted property record cards, photographs, sales disclosure forms, a land abstraction grid and a map. *Respondent Exhibit A, D, E and F.* Mr. Surface testified that land on properties in the Petitioner’s property’s neighborhood were assessed for \$25 per square foot and a similarly situated corner lot was given a 100% influence factor for its location – like the subject property. *Respondent Exhibit D.* The Petitioner’s evidence likewise confirms that land in the Petitioner’s property’s neighborhood was almost universally assessed for \$25 per square foot. The only exceptions were land used for rental properties, which by statute are assessed differently than other residential or commercial properties pursuant to Indiana Code § 6-1.1-4-39.⁴ While the Petitioner’s representative argued that several “corner” lots were not assessed with a 100% influence factor like the subject property, Mr. Surface testified that those lots were not “comparable” to the subject property because they were corner lots to an alley, a dead end street, or a one way street into a residential area that had little commercial development.
35. In addition, the Respondent’s witness argues, sales in the area of the Petitioner’s property support the assessed value of the land. According to Mr. Surface, the county used the

⁴ Under Indiana Code § 6-1.1-4-39(a), a rental property with more than four units is to be assessed according to the lowest valuation determined from the three generally accepted approaches to value: the cost approach, the sales comparison approach, or the income capitalization approach. Ind. Code § 6-1.1-4-39 (a).

“abstraction method” to determine the portion of the sales price that is attributed to the land value. *Id.* In the abstraction method the “value of the land is determined by subtracting the depreciated value of the improvements from the sales price. The result indicates the contribution of the land value to the total sale. REAL PROPERTY ASSESSMENT GUIDELINES – Version A, chap. 2 at 15. Thus, the abstraction method is a “generally accepted” assessment practice under Indiana Code § 6-1.1-15-18(c). According to Mr. Surface, sale prices ranged from \$620,000 to \$1,345,000, with the abstracted value of the land ranging from \$62 per square foot to \$231 per square foot. *Surface testimony; Respondent Exhibit E.* Moreover, the property identified as “H” on the Respondent’s map sold for \$660,000 in 2006 and the purchaser tore down the building – which suggests the land alone was worth at least \$660,000 or \$125 per square foot. *Surface testimony; Respondent Exhibits D and E.*

36. Thus, the Board finds that based on the assessed value of land in the Petitioner’s neighborhood, supported by the abstracted value of land from sales in the area, the Respondent has provided some evidence to support the subject property’s 2008 assessed value under Indiana Code § 6-1.1-15-18(c). Once a party raises a prima facie case, the burden shifts to the opposing party to rebut or impeach the evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004).
37. Here, the Petitioner’s evidence supported a finding that the land value in the Petitioner’s property’s neighborhood was \$25 per square foot for the assessment years at issue. However, the Petitioner’s representative contends the 100% positive influence factor applied to the Petitioner’s land should be removed to bring the Petitioner’s land assessed value in line with other properties in the geographical neighborhood. *Smith testimony; Petitioner Exhibit 2.* But as the Board found above, the Respondent’s witness sufficiently showed that another similarly situated corner lot received the same 100% influence factor for its location and that the properties that the Petitioner’s representative contends were “comparable” corner lots were not, in fact, comparable because they “cornered” on an alleyway or dead end street. While some of the Petitioner’s

representative's comparable properties were calculated to have a land value below \$25 per square foot, Mr. Smith failed to present any property record cards to show how the "comparable" properties were assessed. And while the Petitioner's "summary sheet" purports to show the size of each parcel and each parcel's assessed land value, there is no evidence what base rate was applied to each parcel or what adjustments were applied to that base rate for each property. Thus, the Board has no means of comparing the Petitioner's land assessment to the land assessments on the other properties that Mr. Smith argues are comparable, sufficient to rebut the Respondent's witness' testimony that parcels in the Petitioner's property's neighborhood that were not assigned a \$25 per square foot base rate were rental properties, which by statute are assessed according to their lowest value under the cost approach, the income approach or the sales comparison approach to value.

38. To the extent that the Petitioner's representative argues that its property should not have had an influence factor applied to the land based on the property's market value, the Petitioner's representative failed to provide any market evidence of the property's value. He merely alleged that the county assessor should remove the 100% positive influence factor applied to the Petitioner's land. Thus, the Petitioner's representative failed to rebut or impeach the Respondent's prima facie case that the Petitioner's property's land value was not over-assessed for the 2008 assessment year.
39. For the same reasons, the Board finds that the Petitioner's representative failed to raise a prima facie case that the Petitioner's property's land assessment was over-valued for the 2009 and 2011 assessment years.

SUMMARY OF FINAL DETERMINATION

40. The Respondent raised a prima facie case its land assessment was correct for the March 1, 2008, assessment date. The Petitioner failed to establish to impeach or rebut the Respondent's evidence and failed to sufficiently show that its property was over-valued

for the March 1, 2009, and March 1, 2011, assessment years. The Board therefore finds in favor of the Respondent and holds that the property's assessed values should not be changed.

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>.