

FOR PETITIONER: Milo Smith, Certified Tax Representative.

FOR RESPONDENT: Marilyn Meighen, Attorney.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

KOOSHTARD PROPERTY I, LLC.,)	Petition Nos. 53-017-10-1-4-00001
)	53-017-12-1-4-00021
)	
Petitioner,)	Parcel No. 53-02-33-100-017.000-017
)	
v.)	
)	Monroe County
MONROE COUNTY ASSESSOR,)	Washington Township
)	Assessment Years: 2010, 2012
Respondent.)	

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

March 14, 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 these assessment appeals, the Petitioner contested the subject properties' 2010 and 2012 assessments. The case ultimately rests on the weighing the valuation opinions of the parties' experts. In the end, the Board is more persuaded by the opinion of the Assessor's expert,

Wayne Johnson, whose appraisal included the cost approach that arrived at a value that is generally supportive of the land assessment.

PROCEDURAL HISTORY

1. The property is a convenience store with gas pumps located at 7340 Wayport Road, Bloomington, Indiana.
2. The Petitioner initiated the 2010 assessment appeal by filing a Form 130 on September 14, 2010, petitioning for a review of the assessment by county officials. On December 6, 2012, the Monroe County Property Tax Assessment Board of Appeals (PTABOA) issued a determination (Form 115) making no change to the assessment.
3. The Petitioner filed a timely Form 131 Petition for Review of Assessment petitioning the Indiana Board of Tax Review (Board) to conduct an administrative review of the 2010 assessment. The Petitioner elected to have this matter heard pursuant to the Board's small claims procedures.
4. The Petitioner initiated the 2012 assessment appeal by filing a Form 130 on August 31, 2012, petitioning for a review of the assessment by county officials. On May 8, 2013, the Monroe County Property Tax Assessment Board of Appeals (PTABOA) issued a determination (Form 115) denying the appeal.
5. The Petitioner filed a timely Form 131 Petition for Review of Assessment petitioning the Board to conduct an administrative review of the 2012 assessment. The Petitioner elected to have this matter heard pursuant to the Board's small claims procedures.
6. The Respondent filed motions to have these matters transferred from the small claims procedure to the plenary procedures set forth in 52 IAC 2. The Board granted the Respondent motions on March 18, 2011, and September 23, 2013.

7. Administrative Law Judge Elizabeth Rogers held the hearing on December 18, 2013. Neither she nor the Board inspected the property.
8. Milo Smith represented the Petitioner and testified. Milo Smith, Belinda Graber, County Assessor Judy Sharp, Wayne Johnson, and Ken Surface were all sworn as witnesses. Only Wayne Johnson testified.
9. The Petitioner presented the following exhibits:
 - Petitioner Exhibit 1 – Property Record Card for the subject property
 - Petitioner Exhibit 2 – Appraisal
 - Petitioner Exhibit 4 – Indiana Board of Tax Review determination, *Love, et. al. v. Porter County Assessor*.¹
10. The Assessor presented the following exhibits:
 - Respondent Exhibit A – Real Estate Appraisal Report, March 1, 2012
 - Respondent Exhibit B – Real Estate Appraisal Report, March 1, 2010.
11. The following additional items are recognized as part of the record:
 - Board Exhibit A – The 2010 Form 131 Petition
 - Board Exhibit A1 – The 2012 Form 131 Petition
 - Board Exhibit B – 2010 Notice of Hearing
 - Board Exhibit B1 – 2012 Notice of Hearing
 - Board Exhibit C – Hearing Sign in Sheet.
12. For 2010, the PTABOA determined the market value-in-use of the property is \$1,200,000 for land and \$314,500 for improvements for a total of \$1,514,500. The Petitioner contends the land should be assessed for \$300,000 and the improvements for \$314,500 for a total assessment of \$614,500.
13. For 2012, the PTABOA determined the market value-in-use of the property is \$1,200,000 for land and \$355,700 for improvements for a total of \$1,555,700. The Petitioner

¹ There is no Petitioner Exhibit 3.

contends the land should be assessed for \$300,000 and the improvements for \$355,700 for a total assessment of \$655,700.

14. The Petitioner challenged only the land assessment. *Board Exs. A, A1.*

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 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). Recently, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

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.

16. The parties agreed the Petitioner has the burden. The Petitioner challenged the land assessment only. The land assessment for 2010 was \$1,200,000 and for the prior year was \$1,200,000. The land assessment for 2012 was \$1,200,000 and for the prior year was \$1,200,000. *Petitioner Exhibit 1.*
17. Between them, the parties offered two expert opinions by licensed appraisers who testified that they followed the Uniform Standards of Professional Appraisal Practice (USPAP) in reaching their conclusions. Thus, the Board must weigh those various

opinions to determine which one most reliably estimates the subject property's land value.

FINDINGS OF FACT

18. The subject property is located at 7340 Wayport Road, Bloomington, Indiana, and includes 3 acres of a limited business zoned parcel with a 4,942 square foot convenience store and a 7,125 square foot detached canopy covering gas pumps. The subject property is located directly off State Road 37 in a relatively undeveloped area, and is the first convenience store/gas station most travelers pass coming into Bloomington from the north. *Petitioner Ex. 2, p. 15.*

19. Monroe County government severely limits zoning and re-zoning. There are very few commercial locations on State Road 37 where the subject property is located, and none are planned in the master plan because the County wants to preserve State Road 37 as the entry corridor to Monroe County. *Respondent Ex. A, p. 36, 56; Johnson testimony.* Additionally, the nearest gas station north of the subject property is approximately 20 miles away in Martinsville, and the nearest gas station south is over 5 miles away near the intersection of State Roads 46 and 37. *Respondent Ex. A, p. 52.*

Valuation Opinions:

20. The Petitioner presented the appraisal of Belinda Graber as evidence, but did not call her as a witness. The Assessor presented the appraisal and testimony of Wayne Johnson.

Belinda Graber

21. Belinda Graber, an Indiana Certified Appraiser and candidate for Member of the Appraisal Institute (MAI) prepared an appraisal in accordance with USPAP for the Petitioner. *Petitioner Ex. 2, 46.*

22. Her task was to estimate the market value of the site as though vacant as of March 1, 2006. *Petitioner Ex. 2, pg. 1-2, 10.* The intended use of the appraisal report is for the assessment years of 2006-10. *Petitioner Ex. 2, pg. 43.*
23. Graber's appraisal was performed as if the site was vacant. *Petitioner Ex. 2, pg. 21-22.* The land is zoned as limited business. *Petitioner Ex. 2, pg. 32.* Limited Business is defined as that which is primarily intended to meet the essential needs and convenience of neighboring residents. The number of uses permitted in a limited business district is restricted. *Petitioner Ex. 2, pg. 32.* The parcel is currently being used in its highest and best use as improved. *Petitioner Ex. 2, pg. 33.*
24. Graber relied solely on the sales comparison approach. *Petitioner Ex. 2, p. 11, 34.* The sales comparison approach compares sales of similar properties with the subject property. Each comparable sale is adjusted for its inferior or superior characteristics. The values derived from the adjusted comparable sales form a range of value for the subject property, from which a final value is established. *Petitioner Ex. 2, pg. 34.*
25. For her analysis, Graber looked at four commercial properties in the Bloomington-Ellettsville area that sold between 2005 and 2009. The first property, the Bakehouse, is in Bloomington. The second property is in Ellettsville. The third property is a medical facility in Bloomington. The fourth property is in Ellettsville. Graber adjusted each property's sale price to account for the differences in lot size, topography, and utilities. Although the sales occurred between November of 2005 and August of 2009, Graber did not adjust the price to relate to March 1, 2010, because she stated that "land is stable in the area of the subject property." *Petitioner Ex. 2, pgs. 43-44.*
26. The adjusted prices for the comparable sales range from \$82,781 to \$113,297 per acre, with the average being \$99,646 per acre. Based on the comparable properties and the relevant adjustments, the subject property land is valued at \$100,000 an acre, for a land value of \$300,000. *Petitioner Ex. 2, p. 44-45.*
27. Graber's appraisal does not address 2012.

Wayne Johnson

28. Wayne Johnson, an Indiana Certified General Appraiser and MAI, prepared appraisals for the Assessor for both 2010 and 2012 in accordance with USPAP. *Respondent Exs. A, p. 6, 15; B, p. 6-7; Johnson testimony.* He prepared the report on April 4, 2013, to provide a fee simple appraisal of the land and the improvements as of March 1, 2012. The intended use is for a property tax assessment for assessment years 2010 and 2012.
29. To arrive at the ultimate value estimate of \$1,450,000 for 2010 and \$1,500,000 for 2012, Johnson considered all three generally accepted valuation approaches – the cost, the sales comparison, and the income approaches. *Respondent Ex. A, p. 10; B, p. 5; Johnson testimony.*
30. For 2010, he trended the value back from 2012. *Respondent Ex. B, p. 5; Johnson testimony.* The 2010 appraisal is a restricted use appraisal that does not contain a full discussion of all data, reasoning, and analyses used in the appraisal process. The 2010 appraisal report values the subject property and improvements as of March 1, 2010. *Respondent Ex. B, p. 2, 6; Johnson testimony.* The appraisal includes the underground storage tanks, piping, signs and pumps. *Respondent Ex. B, p. 11.* The 2010 appraisal relies on Exhibit A, the March 1, 2012, appraisal. *Johnson testimony.*

Cost Approach:

31. Under his cost-approach, Johnson used the sales comparison approach to arrive at a site value, estimated the cost to build a new similar improvement based on Marshall Valuation Services and then depreciated the estimate. *Respondent Ex. A, p. 97.* Under this approach, the value of the subject property was determined to be \$1,500,000 for 2010, and \$1,550,000 for 2012. *Respondent Exs. B, p. 12; A, p. 100.*
32. Johnson divided this approach into three segments: the land value estimate, the estimate of the cost new of the improvements, and the depreciation estimate. *Respondent Ex. A, p. 97.*

33. To establish the land estimate, Johnson used the sales comparison approach. Johnson looked at the sales of nine other properties. Comparables properties 2, 4-6, and 8 were all vacant at the time of sale. Comparables 1, 3, and 7 were purchased with an existing structure that was demolished and the site was re-developed into a commercial business. *Respondent Ex. A, pg. 75-91.*²
34. All of the comparable properties were in Bloomington and sold between 2006-2012. Johnson adjusted his price based on the cost of demolition or other costs necessary to develop the site. He also adjusted for market conditions caused by the time or date of the sales. This adjustment was determined by observing the market in Bloomington based on supply and demand. The other adjustments were made based on location, frontage or visibility, and access. Based on these sales, Johnson arrived at a site value for the subject property of \$1,050,000 for 2010. *Respondent Ex. A, pgs. 75-91; B, p. 12.* Using these same values, Johnson arrived at a site value for the subject property of \$1,100,000 for 2012. *Respondent Ex. A, p. 96.*
35. Next, Johnson estimated the replacement cost new for the convenience store/service station. He turned to the cost data published by Marshall Valuation service for all of the improvements and arrived at a depreciated value of \$450,000, rounded, for 2010. *Respondent Exs. B, p. 12; A, p. 98-100.*
36. For 2012, Johnson provided a more detailed calculator cost to determine value. Based on his calculations, he arrived at a total building cost of \$635,815. Once he depreciated the value and included other expenses, he arrived at a depreciated value of \$450,000 for the building. *Respondent Ex. A, p. 98-100.*

² It is not clear from the record the condition of comparable property 9 at the time of the sale. Further, Johnson provided data for nine properties, but appears to have only analyzed seven in his land comparison analysis. *Respondent Ex. 75-91, 94.*

Sales Comparison Approach:

37. For the sales-comparison approach, Johnson analyzed eight properties that sold between 2005-2012. The sales comparison approach estimates the total value of the subject property directly by comparing it to similar, or comparable, properties that have sold in the market. *Respondent Ex. A, p. 101*. Here, the comparables (except for 5 and 7) are all convenience stores with fuel pumps located in the Bloomington and Springville area. *Respondent Ex. B, p. 13; A, pgs. 102-117*.³ Johnson adjusted comparables 2, 3, 4, and 5 based on location. Regarding market conditions, the local market has appreciated over the past several years, and the sales were adjusted positively indicating such an appreciation. *Respondent Ex. B, p. 13; A, p. 120*.
38. Johnson's adjusted sales prices ranged from \$191.33 to \$355.17 per square foot of building space. He opined that comparable 1 is a good indication of value because, like the subject property, it is located on State Road 37, and the station was closed when it was purchased so it could not have included any business value but only should reflect the value in use. Based on the sales comparison approach, Johnson valued the subject property at \$1,400,000 for 2010 and \$1,450,000 for 2012. *Respondent Exs. B, p. 13; A, p. 122*.
39. The sale price for comparable 2 includes personal property valued at \$596,222. *Respondent Ex. A, p. Y*. The sale price for comparable 5 includes personal property valued at \$212,000. *Respondent Ex. A, p. II*.

Income Approach:

40. The income approach is typically used for income producing properties and attempts to convert an estimate of what the property is expected to produce into a value through a mathematical process known as capitalization. Here, the income approach was based on known market leases and rates, as no lease information was known for the subject

³ Comparables 5 and 7 are fuel pump stores, but do not sell sundry items.

property. As a result, the income approach is not heavily weighed. *Respondent Ex. A, 123.*

41. Johnson compared leases in four regions in central Indiana. The net leases ranged from \$25.00 a square foot per year to \$49.77 a square foot per year. The property in the Bloomington area had the highest lease but also needed foundation and structural repairs. *Respondent Ex. A, p. 124.*
42. This correlated to a market rent per square foot of \$33.50, for a total potential gross income of \$165,557. Johnson calculated a vacancy and collection loss rate of 10% which represents the loss caused by physical vacancy and credit loss for an effective gross income of \$149,001. Johnson deducted fixed expenses and operating expenses and arrived at a net operating income of \$130,636. *Respondent Exs. A, pgs. 125-26; B, p. 14.*
43. Johnson explained that the most reliable way to develop a direct capitalization rate is by abstracting the capitalization rates from comparable leased, improved property sales. This rate was 9.25%. From this Johnson valued the subject property at \$1,415,000. *Respondent Ex. B, p. 14.*
44. For 2012, Johnson arrived at a market rent per square foot of \$35 based on the comparable leases for a potential gross income of \$172,970. *Respondent Ex. A, p. 124-25.* He calculated vacancy and collection loss rate of 10% which represents the loss caused by physical vacancy and credit loss for an effective gross income of \$155,673. He then deducted fixed expenses and operating expenses and arrived at a net operating income of \$136,741. *Respondent Ex. A, p. 125, 129.* Based on a capitalization rate of 9.25%, Johnson valued the subject property at \$1,500,000.

Johnson's reconciliation of values:

45. In reconciling his value estimates under the three approaches, Johnson examined four factors: 1) social, economic, environmental and governmental on the region and the

neighborhood; 2) the highest and best use of the property; 3) the condition of the site and its improvements; and 4) the influence of zoning patterns. *Respondent Ex. A, p. 130; B, p. 8.*

46. Johnson explained that the cost approach was only slightly reliable because the details of the property's construction were not readily available. Similarly, the income approach was not heavily weighted due to lack of information concerning leases of convenience stores, the prevalence of owner-operators, and the reliability of the value of all assets versus the value-in-use. *Respondent Ex. A, pgs. 123, 130.* In contrast, Johnson stated that the sales-comparison approach is likely the most reliable and best indication of value because it provided sales that were comparable to the subject property. He gave the most weight to this approach. His final opinion of market value for the subject property is \$1,050,000 for land and \$400,000 for improvements for a total valuation of \$1,450,000 for 2010. *Respondent Exs. A, p. 130; B. p. 5.* To arrive at a value for 2010, Johnson trended the value from 2012 using depreciation. *Johnson testimony.*
47. For 2012, Johnson valued the land at \$1,100,000 for land and \$400,000 for improvements for a total valuation of \$1,500,000. *Respondent Ex. A, p. 10, 130.* He opined that his appraisal for both 2010 and 2012 generally supports the assessments. *Johnson testimony.*

Johnson's review of Graber's comparables:

48. Johnson reviewed the properties Graber used as comparables in her appraisal. He explained why her comparable properties were not the best comparables on the market. For comparable 1, he stated that it is a bakery. Comparable 2 is in Ellettsville and Ellettsville is zoned separately from Bloomington.⁴ Additionally, comparable 2 was tied to the sale of a restaurant on West 3rd Street. Comparable 3 is the Monroe Medical Park and the seller was under duress because of a medical malpractice issue and was forced to sell this property. Johnson did not consider this comparable because of the

⁴ Johnson was not sure which jurisdiction had zoning authority over comparable 2. *Johnson testimony.*

conditions of the sale and the presence of a retention pond that would make the development of a convenience store difficult. Finally, comparable 4 is a current Tractor Supply store location with a steep slope also located in Ellettsville. Johnson felt there were better sales near better intersections that did not have such conditions. *Johnson testimony.*

49. When asked by Smith whether there should be adjustments based on financing, Johnson said that no adjustments were necessary. Johnson did not make any adjustment based on financing. *Respondent Ex. A, pgs. 93,120.* Smith asserted that Johnson's appraisal was flawed because Johnson failed to make necessary adjustments for financing. *Smith testimony.*

50. Johnson's appraisal of the subject property includes personal property, including underground storage tanks, pipes, signs and pumps. *Respondent Ex. B, p.11; Johnson testimony.*

ANALYSIS AND CONCLUSIONS OF LAW

A. **Burden**

51. For 2010, real property is assessed based on "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); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2).⁵ The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. The primary method for assessing officials is the cost approach. *Id.* at 3. Indiana has Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines is presumed to be

⁵ 50 IAC 2.3-1-2 was repealed and replaced by the REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2).

accurate, but it is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. 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. MANUAL at 5.

52. Beginning in 2012, 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. Assessing officials primarily use the cost approach. *Id.* at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost of improvements to arrive at a total estimate of value. *Id.* at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. *Id.* at 3.
53. Regardless of the method used to rebut the presumed accuracy of an assessment, a party must explain how its evidence relates to the required valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2010 assessment is March 1, 2010. The valuation date for a 2012 assessment is March 1, 2012. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

B. Discussion:

54. Between them, the parties each offered one expert opinion by a licensed appraiser whose appraisal followed USPAP in reaching their conclusions. Only Johnson testified as to how his valuation opinion related to the relevant valuation dates for both 2010 and 2012.

In contrast, Graber's appraisal clearly states that it is for assessment years 2006-2010. The Board must weigh the 2010 opinion to determine which one most reliably estimates the subject property's market value-in-use. Both appraisals were persuasive even though they were very far apart on land value. This difference appears to stem from the different choices each appraisal relied on with respect to the comparable properties.

1. Graber's opinion.

55. The Board starts with Graber's opinion. Graber is a certified appraiser and has been so since the mid-1980's. *Petitioner Ex. 2, p. 52-53*. She provided an appraisal that used the sales comparison approach to determine the fee simple value of the land only.
56. Graber's sales comparison analysis looked at four commercial properties in the Bloomington-Ellettsville area that sold between 2005 and 2009. *Petitioner Ex. 2, p. 36*. Graber did not testify, and her appraisal provides no information as to how she selected the comparable properties. Further, while all of her comparable properties were zoned commercial and Graber's appraisal was only valuing land, none of the comparable properties were a convenience store/gas station.⁶ Finally, none of her sales occurred in 2010 or 2012, and she failed to relate any of the sales or evidence to the March 1, 2012, assessment date.
57. Johnson convincingly testified as to why three of Graber's comparable properties were not persuasive. Specifically, comparable 2 is in Ellettsville and Ellettsville is zoned separately from Bloomington.⁷ Additionally, comparable 2 was tied to the sale of a restaurant on West 3rd Street. Comparable 3 is the Monroe Medical Park and the seller was under duress to sell because of a medical malpractice issue. Johnson did not consider this comparable because of the conditions of the sale and because the presence of a retention pond would make the development of a convenience store

⁶ Comparable 4 is zoned NT. It is not clear from the record what NT zoning is.

⁷ Johnson was not sure which jurisdiction had zoning authority over comparable 2. *Johnson testimony*.

difficult. Finally, comparable 4 is a current Tractor Supply store location with a steep slope also located in Ellettsville. Johnson felt there were better sales near better intersections that did not have such conditions.

58. Finally, Graber's appraisal was not prepared for 2012. Specifically, the appraisal states "[t]he intended use of this report is to appeal the assessment for the subject site for the assessment years of 2006, 2007, 2008, 2009, and 2010." *Petitioner Ex. 2, p. 43*. The summary on pages 1 and 2 was prepared on August 7, 2011, well before the 2012 assessment date of March 1, and in fact, the Board is unable to find a reference to assessment year 2012 anywhere in the appraisal. *Petitioner Ex. 2*.
59. Further, at the hearing, the Petitioner stated that the appraiser estimate of the value of the land would be the same through 2011. *Smith testimony*. The tax years on appeal, however, are 2010 and 2012. Graber's appraisal does not relate the analysis in the report to 2012. Only Smith addressed the value of 2012 when he stated that the value for the land should be \$300,000. *Smith testimony*.
60. As such, the appraisal is not probative evidence for assessment year 2012, and the Petitioner provided no other evidence challenging the assessment for 2012. The Petitioner failed to raise a prima facie case that the land was over-valued for assessment year 2012. When a taxpayer fails to provide probative evidence supporting the position that an assessment should be changed, the Respondent duty to support the assessment with substantial evidence is 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)

2. Johnson's opinion.

61. The Board next turns to the Assessor's expert, Wayne Johnson. The Board gives the greatest weight to his testimony and opinion that the land was properly assessed for 2010 and 2012. *Johnson testimony*. His appraisal offered a more comprehensive analysis that included all three generally accepted valuation approaches – the cost, the sales comparison, and the income approaches. *Respondent Ex. A, p. 10; B, p. 5; Johnson*

testimony. And each approach arrived at a similar value. More specifically, for 2010, Johnson arrived at a land value of \$1,050,000 and a total value under the cost approach of \$1,500,000; under the sales comparison approach \$1,400,000; and under the income approach \$1,415,000 for a final value estimate of \$1,450,000. The 2010 assessment by the Assessor is \$1,514,500 (land \$1,200,000, improvements \$314,500).

For 2012, Johnson arrived at a land value of \$1,100,000 and a total value under the cost approach of \$1,550,000; under the sales comparison approach \$1,450,000; and under the income approach \$1,475,000 for a final value estimate of \$1,500,000. The 2012 assessment by the Assessor is \$1,555,700 (land \$1,200,000, improvements \$355,700).

62. Under the sales comparison approach, the only approach both parties prepared, Johnson offered eight comparable properties, whereas Graber offered four, three of which Johnson persuasively challenged. While Graber's task was to only appraise the value of the land, the Board is more persuaded by Johnson's appraisal even though it did not separate land and improvements. It offered comparables that only included similarly developed properties as the subject property, i.e., convenience stores/gas stations, and properties that sold closer to the relevant valuation dates.
63. This appeal involved the value of land only. In the cost approach analysis, Johnson relied on vacant properties to arrive at a land value. Comparables properties 2, 4-6, and 8 were all vacant at the time of sale. Comparables 1, 3, and 7 were purchased with an existing structure that was demolished and the site was re-developed into a commercial business. *Respondent Ex. A, pg. 75-91.* Based on these comparables, Johnson arrived at a land value of \$1,050,000 for 2010 and \$1,100,000 for 2012. *Respondent Ex. A, pgs. 75-91, 96; B, p. 12.*
64. Johnson's appraisal is not perfect. He includes personal property in both of the appraisals, and two of his sales disclosure forms include personal property for which he

did not make an adjustment.⁸ The Board nonetheless for the reasons stated above, finds it persuasive. *Respondent Ex. A, pgs. 65, Y, II*. These imperfections do not negate the value of his appraisal.

65. Finally, although Graber was the expert offered by the Petitioner, she provided no testimony or analysis of the Assessor's appraisal. The Petitioner's expert did not challenge or discredit the Assessor's appraisal.
66. The Petitioner appealed the land valuation only, and the Respondent did not challenge this limited appeal. A party is permitted to appeal the assessment for land only.
67. Graber did not testify and her appraisal does not even purport to address tax year 2012. The Board finds Johnson's testimony and appraisal more persuasive for both 2010 and 2012.

CONCLUSION

68. For 2010, the Board finds that even if the Petitioner established a prima facie case, the Respondent rebutted the Petitioner's case with substantial evidence. For 2012, the Petitioner failed to establish a prima facie case. The Board finds in favor of the Respondent. Nevertheless, because the 2010 and 2012 land assessments are higher than the appraisal value offered by the Respondent, the Board lowers the land assessments to \$1,050,000 for 2010 and \$1,100,000 for 2012.

⁸ Johnson included the canopy, UST, piping, signs and pumps in his appraisal. *Respondent Exs. A, p. 65; B, p. 11; Johnson testimony*. According to the 2002 and 2011 REAL PROPERTY ASSESSMENT MANUAL, above or below ground piping, pumps and signs are personal property. 2002 REAL PROPERTY ASSESSMENT MANUAL, at 7-12; 2011 REAL PROPERTY ASSESSMENT MANUAL, at 6-13.

SUMMARY OF FINAL DETERMINATION

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review 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>>.