REPRESENTATIVE FOR PETITIONERS:
Brad Zimmer, Attorney at Law

REPRESENTATIVE FOR RESPONDENT:
Marilyn S. Meighen, Meighen & Associates, P.C.

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Stardust Development LLC, David Ferguson, Stephen Ferguson, and David L. and Stephen L. Ferguson,	)	Petition No.: 53-005-05-1-4-00912A
	)	53-005-05-1-4-00912B
	)	53-005-05-1-4-00912C
	)	53-005-05-1-4-00915
	)	53-005-05-1-4-00918
	)	53-005-05-1-4-00920A
Petitioners,	)	53-005-05-1-4-00920B
	)	53-005-05-1-4-00923A
	)	53-005-05-1-4-00923B
v.	)	Parcel: 013-07380-00
	)	013-27260-00
	)	013-27270-00
Bloomington Township Assessor,	)	013-38290-00
	)	013-51540-00
	)	013-12560-00
	)	013-02290-00
Respondent.	)	013-14510-00
	)	013-14520-00
	)	
	)	County: Monroe
	)	Township: Bloomington
	)	Assessment Year: 2005
	)	

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

March 11, 2008

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:

ISSUES

1. The Petitioners raised five common issues on their nine petitions for consideration by the Board:[1]

ISSUE 1 – Was the assessor's depth factor update an improper attempt to reassess the properties before the next general assessment when there was no change in the use or condition of any of the properties that might result in an increase in the assessed value of the properties?

ISSUE 2 – Did the assessor fail to apply the Manual or Guidelines correctly when it applied a depth factor because the properties are platted lots from the original plat of the city to which a depth factor would not apply?

ISSUE 3 – Are the properties over-assessed based on the appraised value of the land?

ISSUE 4 – Was the interim assessment done incorrectly because it did not apply the same rules and regulations used in the preceding assessment?

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[1] Judge Barter held a preliminary hearing by teleconference on October 16, 2007. During that conference, counsel for the parties stipulated that the hearing would include the five common issues raised on the Petitioners' Form 131 petitions as well as two additional issues specific to two of the properties under appeal. *See Board Exhibit E.* Despite this agreement, at hearing Petitioners' counsel moved to introduce a new issue common to all nine appeals. Ms. Meighen objected, citing the Indiana Code requirements for amending a petition. Judge Barter took the objection under advisement and allowed Mr. Zimmer to present his argument that the Petitioners received "defective notice." 52 IAC 2-5-2 states in pertinent part, "…(a) Timely filed amendments to appeal petitions are permitted…(g) Only issues raised in the appeal petition or any approved amendments to the petition may be raised at the hearing. " The Board finds that the Petitioners failed to amend their petitions. Thus, the Petitioners are barred from raising their "defective notice" argument. The Respondent's objection is sustained and the Board will take no notice of the additional issue.

ISSUE 5 – Did the assessor fail to treat commercial properties equitably with residential properties because residential properties did not have the same "depth factor adjustment" that the subject properties received?

2. In addition, the Petitioners raised an issue specific to Petition 53-005-05-1-4-00920A:[2]

ISSUE 6 – In the matter of Petition 53-005-05-1-4-00920A, was the Amended Form 115, Notice of Final Assessment Determination, issued in an untimely manner because it was issued after the deadline to appeal had expired?

PROCEDURAL HISTORY

3. The Monroe County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determinations upholding the Bloomington Township Assessor's 2005 assessment of the subject properties on February 10, 2006.

4. Pursuant to Ind. Code § 6-1.1-15-1, the Petitioners' representative filed Form 131 Petitions for Review of Assessment on March 10, 2006, petitioning the Board to conduct an administrative review of the properties' 2005 assessments.

5. The Petitions were consolidated for hearing and, pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Rick Barter, held a hearing on October 17, 2007, in Bloomington, Indiana. Commissioner Terry G. Duga joined the ALJ presiding over the hearing.

6. The following persons were sworn and presented testimony at the hearing:

[2] The Petitioners also contend that the land in Petition 53-005-05-1-4-00920B was mistakenly increased to $125,500. The assessment, however, was later corrected by the county assessor. The Petitioners entered a motion to withdraw this issue and Respondent's counsel objected to the extent that the Petitioners raised an issue of whether a Form 115 can be amended once it has been issued. The Board agrees that a Form 115 can be corrected whether that correction increases or decreases the assessment. Here, however, the Petitioners agree with the corrected assessment. Therefore, this matter is withdrawn.

For the Petitioners:

David L. Ferguson, Petitioner
Michael Szakaly, Indiana Licensed Appraiser

For the Respondent:

Judith A. Sharp, Monroe County Assessor
Ken Surface, Nexus Group, Consultant to Monroe County

7. The Petitioners presented the following exhibits:[3]

Petitioners' Exhibit 1 – Form 113, property record card (PRC), previous PRC, and work sheets for the property at issue in 00912A,[4]

Petitioners' Exhibit 2 – PRCs for all nine subject properties,

Petitioners' Exhibit 3 – Copy of *K.P. Oil v Madison Twp Assessor*, 818 N.E.2d 1006 (Ind. Tax Ct. 2004),

Petitioners' Exhibit 4 – Spreadsheet showing parcels, size and change in assessment value based on adjustment factors,

Petitioners' Exhibit 5 – Valuation date information from the Board's website.

8. The Respondent presented the following packet including these exhibits:

Respondent's Exhibit 1-A – PRCs for the Petitioners' nine appealed properties,

Respondent's Exhibit 1-B – Version A - Real Property Assessment Guidelines, Chapter 2,

Respondent's Exhibit 1-C – Monroe County Land Valuation Summary Reports for three Bloomington neighborhoods,

Respondent's Exhibit 1-D – Land value calculation summary example,

Respondent's Exhibit 1-E – PRCs for six comparable properties,

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[3]During Mr. Szakaly's testimony he stated he would later submit a copy of his professional resume from which he was reading in response to questions from Ms. Meighen. Mr. Zimmer also indicated he would submit it as evidence. Both failed to do so.

[4] Mr. Zimmer indicated in his arguments when submitting Exhibit 1 on the property that he would submit similar exhibits for each of the other eight subject properties. He failed to do so.

Respondent's Exhibit 1-F – The Board's summary judgment ruling in *Michigan City Development LLC v. Michigan Township Assessor*,[5]

Respondent's Exhibit 1-G – The Board's Final Determination in *Gordon v. Bloomington Twp. Assessor*,[6]

Respondent's Exhibit 1-H – Map of downtown Bloomington with the location of the subject properties, ten sold properties, and six comparable properties marked by the Respondent,[7]

Respondent's Exhibit 1-I – March 17, 2006, letter from Judy Sharp to David Ferguson,

Respondent's Exhibit 1-J – Form 115 for parcel 013-12560-00 as amended,

Respondent's Exhibit 1-K – Form 115 for parcel 013-02290-00 as amended.

9. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – The Petition, the Form 115 and the Form 130 and subsequent submissions to the Board for each parcel,

Board Exhibit B – Notices of Hearing dated July 16, 2007,

Board Exhibit C – Order Denying Continuance, request for continuance and objection to request for continuance,

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[5] The Petitioners' counsel objected to Respondent's Exhibit 1-F, arguing that a summary judgment ruling is not a final determination. According to Mr. Zimmer, the decision is merely a determination that there was a genuine issue of fact in dispute in the case. The Petitioners' objection was overruled by the Judge Barter, who noted the objection went to the weight of the evidence, not its admissibility.

[6] Mr. Zimmer also objected to Respondent's Exhibit 1-G, arguing that Board decisions offer no precedential value, and that the issues are unlike the issues in the case at hand. Commissioner Duga overruled the objection, noting that the Board can take administrative notice of its determinations. Thus, while the Board is not bound by its prior determinations, parties may reference those determinations in making their arguments.

[7] The Petitioners objected to Respondent's Exhibit 10H, which is a map of downtown Bloomington with the location of the subject properties indicated and the location of ten properties sold between September 2000 and October 2004 marked and their 2004 assessed values noted. Mr. Zimmer contends it is "comparing apples to oranges," because the assessed values and sales values were not broken down into the assessed value for the land and the assessed value for the improvements. Further, he contends the dates of the sales cited were outside the appropriate time frame. Ms. Meighen argues that the objection came well into the testimony and too long after the exhibit had been entered into evidence to be valid. The Board finds that the Petitioners' objection goes to the weight and not the admissibility of the Respondent's evidence. The Petitioners' objection to Exhibit 10H is therefore overruled.

Board Exhibit D – Hearing Sign-In Sheet,

Board Exhibit E – Stipulated list of orders, petitions, parcels, street addresses and the assessed value of the land on each

10. Parcel No. 013-07380-00, on Petition No. 53-005-05-1-4-00912A, contains 3,960 square feet of land and is located at 112 W. Sixth Street (00912A). Parcel No. 013-27260-00, on Petition No. 53-005-05-1-4-00912B, contains 4,356 square feet of land and is located at 120 S. College Avenue (00912B). Parcel No. 013-27270-00, on Petition No. 53-005-05-1-4-00912C, contains 6,418 square feet of land and is located at 114 S. College Avenue (00912C). Parcel No. 013-38290-00, on Petition No. 53-005-05-1-4-00915, contains 2,970 square feet of land and is located at 108 E. Sixth Street (00915). Parcel No. 013-51540-00, on Petition No. 53-005-05-1-4-00918, contains 5,808 feet of land and is located at 114 N. Walnut (00918). Parcel No. 013-12560-00, on Petition No. 53-005-05-1-4-00920A, contains 2,904 square feet of land and is located at 112 N. Walnut Street (00920A). Parcel No. 013-02290-00, on Petition No. 53-005-05-1-4-00920B, contains 2,463 square feet of land and is located at 211 N. Washington Street (00920B). Parcel No. 013-14510-00, on Petition No. 53-005-05-1-4-00923A, contains 4,356 square feet of land and is located at 403 E. Sixth Street (00923A). Parcel No. 013-14520-00, on Petition No. 53-005-05-1-4-00923B, contains 4,356 square feet of land and is located at 403 E. Sixth Street (00923B). *Petitioner Exhibit 4*.

11. All of the properties at issue in this appeal are improved commercial lots located in Bloomington Township, Monroe County, except the parcel at issue in 00923A, which is an unimproved commercial property.

12. The ALJ did not conduct an on-site inspection of the subject properties.

13. For 2005, the PTABOA determined the assessed value of the property at issue in 00912A to be $163,900 for the land and $95,300 for the improvements, for a total assessed value of $259,200. The PTABOA determined the assessed value of the property at issue in 00912B to be $176,400 for the land and $68,400 for the improvements, for a total

assessed value of $244,800. The PTABOA determined the assessed value of the property at issue in 00912C to be $231,100 for the land and $106,100 for the improvements, for a total assessed value of $337,200. The PTABOA determined the assessed value of the property at issue in 00915 to be $128,300 for the land and $66,900 for the improvements, for a total assessed value of $195,200. The PTABOA determined the assessed value of the property at issue in 00918 to be $219,500 for the land and $187,700 for the improvements, for a total assessed value of $407,200. The PTABOA determined the assessed value of the property at issue in 00920A to be $125,500 for the land and $67,000 for the improvements, for a total assessed value of $192,500. The PTABOA determined the assessed value of the property at issue in 00920B to be $47,500 for the land and $82,800 for the improvements, for a total assessed value of $130,300. The PTABOA determined the assessed value of the property at issue in 00923A to be $176,000 for the land and $298,800 for the improvements, for a total assessed value of $474,800. The PTABOA determined the assessed value of the property at issue in 00923B to be $176,400 for the land. There are no improvements on the property at issue in 00923B.

14. For 2005, the Petitioners contend the assessed value of the property at issue in 00912A should be $59,400 for the land and $95,300 for the improvements, for a total assessed value of $154,700. For 2005, the Petitioners contend the assessed value of the property at issue in 00912B should be $65,300 for the land and $68,400 for the improvements, for a total assessed value of $133,700. For 2005, the Petitioners contend the assessed value of the property at issue in 00912C should be $96,300 for the land and $106,100 for the improvements, for a total assessed value of $202,400. For 2005, the Petitioners contend the assessed value of the property at issue in 00915 should be $32,076 for the land and $66,900 for the improvements, for a total assessed value of $98,976. For 2005, the Petitioners contend the assessed value of the property at issue in 00918 should be $87,100 for the land and $187,700 for the improvements, for a total assessed value of $274,800. For 2005, the Petitioners contend the assessed value of the property at issue in 00920A should be $43,600 for the land and $67,000 for the improvements, for a total assessed value of $110,600. For 2005, the Petitioners contend the assessed value of the property at issue in 00920B should be $6,969 for the land and $67,000 for the

improvements, for a total assessed value of $73,969. For 2005, the Petitioners contend the assessed value of the property at issue in 00923A should be $47,045 for the land and $298,800 for the improvements, for a total assessed value of $345,845. For 2005, the Petitioners contend the assessed value of the property at issue in 00923B should be $47,045 for the land.

JURISDICTIONAL FRAMEWORK

15. 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; and (3) property tax exemptions; 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 Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PARTIES' CONTENTIONS

16. Summary of the Petitioners' contentions:

A. The Petitioners contend that the land values were not properly assessed. According to the Petitioners, the land at issue in 00912A land was assessed for $59,400 in 2002. *Petitioner Exhibit 2.* The assessor increased the land value to $163,900 in 2005. Similarly, the land at issue in 00912B was assessed for $65,300 in 2002 and increased to $176,400 in 2005. *Id.* The land at issue in 00912C was assessed for $96,300 in 2002 and increased to $231,100 in 2005. *Id.* The land at issue in 00915 was assessed for $44,600 in 2002 and increased to $128,300 in 2005. *Id.* The land at issue in 00918 was assessed for $87,100 in 2002 and the assessor increased the land value to $219,500. *Id.* The land at issue in 00920A was assessed for $43,600 in 2002. *Id.* The assessor increased the land value to $125,500 in 2005. The land at issue in 00920B was assessed for $15,800 in 2002 and increased to $47,500 in 2005 and the land at issue in 00923A was assessed for $65,300 in 2002 and increased to $176,000 in 2005. *Id.* Finally, the land at issue in 00923B was assessed for $65,300 in 2002.

Id. The assessor increased the land value to $176,400 in 2005. The increased assessment on each parcel was made through a Form 113 Notice of Assessment by an Assessing Officer. *Zimmer argument.* According to the Form 113, the increase was based on a "depth factor update." *Id.*

B. Mr. Ferguson testified that no changes had occurred to the subject properties or to the use of the properties between the 2002 general assessment and 2005. *Ferguson testimony.* The Petitioners argue that when no changes occur to the property, the assessed value must be carried forward until the next general re-assessment pursuant to *K.P. Oil, Inc. v. Madison Twp Assessor*, 818 N.E.2d 1006 (Ind. Tax Ct. 2004). *Petitioner Exhibit 3, Zimmer argument.* According to the Petitioners, in *K.P. Oil,* the Tax Court concluded that interim assessments were inappropriate when no changes to property had occurred. *Id.* As a result, the Petitioners contend, the assessed value of the properties should remain at their 2002 assessment values. *Zimmer argument.*

C. The Petitioners further contend that the subject properties were assessed incorrectly. *Zimmer argument.* According to the Petitioners, the subject lots are part of the original plat of the city. *Id.* The Manual states, "The front foot method is the method generally used to value platted lots." 2002 REAL PROPERTY ASSESSMENT MANUAL (incorporated by reference at 50 IAC 2.3-1-2 (MANUAL)) at p. 40. Thus, the Petitioners argue, the properties should have been assessed on a front-foot basis as called for in the Manual instead of the acreage basis used by the assessor. *Zimmer argument*.

D. The Petitioners contend that using an acreage unit of measure on the subject properties caused the properties to be penalized in terms of assessed value, because the front-foot method of measure would result in a lower adjustment factor. *Ferguson testimony, Zimmer argument.* For example, the land at issue in 00912A received a 2.76 factor adjustment when assessed by the assessor using the acreage method, an increase of 276% over the 2002 assessed value. *Ferguson testimony*;

Petitioner Exhibit 3. When assessed using the front foot method, the Petitioners argue, the adjustment factor would be 1.00. *Id.*

E. The Petitioners also argue that the parcels of land are over-assessed based on the market value-in-use of the subject properties. *Zimmer argument.* In support of this contention, the Petitioners presented Michael Szakaly, a licensed Indiana appraiser. Mr. Szakaly testified that he developed an opinion of value for the land on each of the properties using a USPAP[8] standard comparable-sales approach. *Szakaly testimony.* According to Mr. Szakaly, he used three sales of properties that occurred between August 6, 1999, and April 21, 2000. *Id.* Mr. Szakaly testified that he determined the properties were comparable in size, use, and location to the subject properties. *Id.* Mr. Szakaly adjusted the sale price of each of the comparable sales to the January 1, 1999, valuation date and determined a price range of $18.94 per square-foot to $20.20 per square-foot. *Id.*

F. Mr. Szakaly then applied the average per-square-foot value of the three sales of about $20 per-square-foot to estimate the value of the land on each of the properties at issue. *Szakaly testimony.* According to Mr. Szakaly, he estimated the value of the land at issue in 00912A to be $80,000; the value of the land at issue in 00912B to be $90,000; the value of the land at issue in 00912C to be $125,000; the value of the land at issue in 00915 to be $60,000; the value of the land at issue in 00918 to be $120,000; the value of the land at issue in 00920A to be $60,000; the value of the land at issue in 00920B to be $40,000; the value of the land at issue in 00923A to be $90,000; and the value of the land at issue in 00923B to be $90,000. *Id.* In response to questioning, Mr. Szakaly agreed that the properties were income-producing properties and that an income capitalization method is an appropriate method to value income producing properties. *Szakaly testimony.* Mr. Szakaly argued, however, that he did not appraise the property as a whole. *Id.* According to Mr. Szakaly, the Petitioners retained him to only value the land and not the improvements. *Id.*

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[8] Uniform Standards of Professional Appraisal Practices.

G. In addition, the Petitioners contend that the assessor changed the assessments for commercial property for 2005, citing a depth factor adjustment as the reason, and did not change residential property assessments resulting in disparate treatment of commercial properties. *Zimmer argument.*

H. Finally, the Petitioners contend that the assessor issued an amended Form 115 after the deadline to appeal had passed for the property at issue in 00920A. *Zimmer argument.* According to the Petitioners, the assessor issued a Form 115 with an assessed value of $47,500 for the land. *Ferguson testimony.* After the deadline for appeal had passed, the assessor issued an amended Form 115 raising the land assessment to $125,000. *Id.* The Petitioners argue that the amended Form 115 denied it the right to appeal and was an arbitrary and capricious act. *Zimmer argument.*

17. The Respondent presented the following evidence and testimony in regard to the issues:

A. The Respondent argues that, in order to successfully challenge an assessment, a petitioner has to meet the standard set by the Indiana Tax Court in *Long.*[9] *See Long v. Wayne Township Assessor,* 821 N.E. 2d 466, 471 (Ind. Tax Ct. 2005). *Meighen argument.* Thus, the Respondent contends, it is clear under Indiana law and subsequent court rulings that it is the bottom line value that counts in assessments. *Meighen argument.* According to Ms. Meighen, in determining the bottom line value of the properties, land and improvements cannot be separated. *Meighen argument.*

B. The Respondent also argues that, under the assessment Manual, assessing officials determine which of the types of unit values are appropriate for valuing land in the county. *See* MANUAL *at 2, Pg. 16; Surface testimony.* According to the Respondent's witness, commercial platted lots can be assessed by a square foot or

[5]Mr. Zimmer objected to Ms. Meighen's citation of the *Long* case in her argument because the case was not listed on Respondent's list of witnesses and exhibits. His objection was over-ruled by Commissioner Duga, who noted the citation was legal argument, not evidence.

front foot method. *Surface testimony.* Mr. Surface argued, however, that the Petitioners' attempt to compare the adjustment factor for a square footage assessment to the adjustment for a front foot assessment is meaningless because the front foot assessment would have a different base rate than a square foot assessment. *Id.* Regardless, the Respondent contends, it is the value of the property that is important, not the method of assessing that value. *Meighen argument.*

C. The Respondent further contends that there was no disparate treatment of commercial properties. *Meighen argument.* According to the Respondent's witness, when the county changed software systems, it discovered that properties valued using the acreage method had not received an adjustment factor as prescribed by the Manual.[10] *Surface testimony.* Mr. Surface testified that the adjustment was applied to the properties, resulting in a change of assessment. *Id.* The assessor testified that, while the county could have gone back to change the assessments for each of the previous three tax years under Indiana code Indiana Code § 6-1.1-9-3, it did not. *Sharp testimony.* Instead, it reassessed those properties for 2005 only. *Respondent Exhibit 1-C, 1-D and 1-E; Sharp testimony; Meighen argument.*

D. In response to the Petitioners' argument, the Respondent argues that *K.P. Oil* was decided under a unique set of facts unlike the circumstances of this case. *Meighen argument*. According to the Respondent, *K.P. Oil* was decided on the grounds of *res judicata* rather than a finding based on the assessor's statutory duty to value under-valued property. *Id*.

E. Further, in response to the Petitioners' oral appraisal, the Respondent contends that the three comparable properties cited by the Petitioners' appraiser are not comparable. *Meighen argument.* According to Mr. Surface, the properties are located within a few blocks of the subject properties, but their value is far different in use and demand. *Surface testimony*

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[10] An equalization study also showed that the commercial and industrial properties in Monroe County were undervalued by approximately 20%. *Sharp testimony.*

F. The Respondent contends that the sales of properties in the area show that downtown properties are assessed below their market value. *Meighen argument.* In support of this argument, the Respondent presented a map showing the location of the subject properties and ten commercial properties that have sold in the same area. *Respondent's Exhibit H.* According to the Respondent, the map shows that the 2005 assessed values are substantially lower than the sales prices of properties in the downtown area. *Meighen argument.*

G. Finally, regarding the property at issue in 00920A, the assessor testified that the Form 115 on the Petitioners' appeal of this parcel stated that the Petitioners' claims were denied, but that when the assessed value was recorded on the Form 115, the numbers were transposed. *Sharp testimony.* According to Ms. Sharp, the assessor issued an amended Form 115 and the Respondent was given thirty days to appeal as the existing rules allowed. *Id.*

ANALYSIS

18. The most applicable governing cases are:

A. 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 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).

B. 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. Wash. 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").

C. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id; Meridian Towers*, 805 N.E.2d at 479.

19. The Petitioners first argue that once a general reassessment is completed, the Respondent cannot change the assessment until the next general reassessment unless there is a change in the property. *Zimmer argument*. The Petitioners' witness testified that no changes had occurred to the property or its use since the 2002 reassessment. *Ferguson testimony.* The Respondent contends that the Petitioners' argument ignores the statutes specifically allowing for interim assessments and reassessments of undervalued property. *Meighen argument; Sharp testimony.*

20. According to Indiana's statutory system for assessing and taxing real property, the value of all individual properties is determined periodically with a general reassessment. Indiana Code § 6-1.1-4-4. The assessed value of a piece of property as determined during the general reassessment normally carries forward until the next general reassessment. *Id.*; *see also K.P. Oil, Inc. v. Madison Twp. Assessor,* 818 N.E.2d 1006, 1008 (Ind. Tax Ct. 2004); *Wetzel Enterprises v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1259, 1260 n.3 (Ind. Tax Ct. 1995). "Nevertheless, assessing officials may reassess real property between general reassessments in order to reflect changes to the property itself or in the use of the property that may increase or decrease the assessment value." *K.P. Oil*, 818 N.E.2d at 1008 (citing Ind. Code § 6-1.1-4-25).[11] "When no changes occur to the property to affect its general reassessment value, the general reassessment values are merely carried over." *Williams Indus. v. State Bd. of Tax Comm'rs*, 648 N.E.2d 713, 716 (Ind. Tax Ct. 1995).

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[11] The most relevant part of Ind. Code § 6-1.1-4-25 states, "Each township assessor shall keep the assessor's reassessment data and records current by securing the necessary field data and by making changes in the assessed value of real property as changes occur in the use of the real property. The … records shall at all times show the assessed value of real property in accordance with the provisions of this chapter."

21. In *K.P. Oil*, the taxpayer originally appealed from the 1995 general reassessment of its property on the grounds that the assessor had valued its land using a base rate of $900 per front foot. According to the taxpayer, its land was unplatted, and consequently should have been assessed at the rate of $24,750 per acre. The assessor was prevented from seeking judicial review of the State Board's determination in favor of the taxpayer because the issue did not meet the minimum jurisdictional requirements existing at the time. *K.P. Oil*, 818 N.E.2d at 1009 n. 5. In 1999, the county board of review reassessed the land once again using a rate of $900 per front foot because the lot actually was platted. *Id.* at 1007. On reviewing the taxpayer's appeal of that reassessed land value, the Indiana Tax Court rejected the Respondent's claim that the property underwent a change from unplatted to platted status. Relying on Ind. Code § 6-1.1-4-4, and the decisions in *Wetzel Enterprises* and *Williams Indus*., the Tax Court held that the value assigned from the 1995 reassessment should carry forward because there had been no changes to the property between the 1995 general reassessment and the 1999 interim assessment. *Id.* Consequently, the Court found the State Board had abused its discretion in affirming the interim assessment. *Id*. at 1008-09.

22. Standing alone, *K.P. Oil* contains broad language indicating that assessors may conduct interim reassessments only when there has been intervening changes in the physical characteristics or use of the property. That decision and the *Wetzel Enterprises* and *Williams Indus.* decisions the Tax Court cites within it, however, do not address Indiana Code § 6-1.1-9-1 and the authority it provides for assessors to add omitted property and increase undervalued assessments.

23. Pursuant to Indiana Code § 6-1.1-9-1, assessors have the authority to assess or increase assessments in interim years between general reassessments. Indiana Code § 6-1.1-9-1 states:

> If a township assessor, county assessor, or county property tax assessment board of appeals believes that any taxable tangible property has been omitted from or undervalued on the assessment rolls or the tax duplicate for any year or years, the official board shall give written notice under… IC 6-1.1-4-22 of the assessment or increase in assessment. The notice shall

> contain a general description of the property and a statement describing the taxpayer's right to a preliminary conference and to a review with the county property tax assessment board of appeals under IC 6-1.1-15-1.

This statutory authority does not contain the limitation applied in *K.P. Oil* and urged by the Petitioners.[12]

24. The Tax Court itself did not read such a limitation into Ind. Code § 6-1.1-9-1 when faced with a claim that a county board of review had the authority to conduct an interim reassessment under that statute. *See Lakeview Country Club v. State Bd. Of Tax Comm'rs*, 565 N.E.2d 392, 397 (Ind. Tax Ct. 1991). In *Lakeview*, the Court explicitly recognized that Ind. Code § 6-1.1-9-1 provides local assessing officials with the authority to increase assessments for undervalued real property between general reassessments.[13] Moreover, it did so in a case where there had been no change to the use or zoning of the property at issue and where the purported basis for the interim assessment was that the property had been undervalued in the 1979 general reassessment.

25. Further, the facts in *K.P. Oil* are distinguishable from those presented by the Petitioners. In *K.P. Oil*, the county board of review issued its interim reassessment after the State Board had reviewed and determined the value as of the 1995 general reassessment. The Respondent seeks to relate the Tax Court's holding that precluded an interim change in the assessment to the doctrine of *res judicata*. The Tax Court did not purport to base its decision on that doctrine. Nevertheless, the prior adjudication in *K.P. Oil* is a significant fact distinguishing that case from both *Lakeview* and the instant case.

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[12] Ind. Code § 6-1.1-4-30 also envisions that changes to assessments would occur between general reassessments. That section states that "[i]n making any assessment or reassessment of real property in the interim between general reassessments, the rules, regulations, and standards for assessment are the same as those used in the preceding general reassessment." Similarly, Ind. Code § 6-1.1-13-3 requires assessors to add undervalued or omitted properties to the tax roles and Ind. Code § 6-1.1-13-5 requires that assessments be increased or decreased to attain a just and equal basis of assessment between taxpayers. These statutes express a clear intent that assessments may change outside of the general reassessment procedures.

[13] "While the county board could have acted under IC 6-1.1-9-1 in 1986 increasing the value of undervalued property in 1985 and even in 1984, the county did not." *Lakeview*, 565 N.E.2d at 397.

26. Another significant distinction between *K.P. Oil* and the instant case is the relevant assessment years and methodologies. Prior to 2002, Indiana's assessment system determined assessments on the basis of specific cost methodology prescribed in an Assessment Manual. The practice under that system had been to promulgate an Assessment Manual that was used for general statewide reassessments and to continue using that Assessment Manual for all the interim years until another general statewide reassessment. Consequently, assuming that an assessed value was correctly determined according to the Assessment Manual, the same value would continue until the next general reassessment unless the property had some physical change or its use changed. The outcome in *K.P. Oil* relates to this old system and the fact that an administrative adjudication had determined what the "correct" assessment was for 1995.

27. The Petitioners' 2005 assessment, however, must be considered under Indiana's current assessment, which seeks to determine a property's market value-in-use without being absolutely tied to a specific set of classifications, models, cost tables, or depreciation tables comparable to the old Assessment Manual. While the new system has assessment Guidelines that are a starting point for assessors, other generally accepted valuation methods can also be used to establish what the property assessment should be. *P/A Builders & Developers v. Jennings Co. Assessor*, 842 N.E.2d 899,900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana and stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*"). In this case, the Respondent's position that it was appropriate to update the 2002 assessment for the subject properties because there was a software error resulting in undervalued assessment is consistent with the overall approach that Indiana now uses.

28. Finally, we note that from a policy standpoint, the Petitioners' argument is untenable. If the Board were to read *K. P. Oil* as prohibiting an assessor from correcting the assessed values of property between general re-assessment, only an over-assessment of property

would be addressed. Taxpayers can appeal their assessment. Thus, properties that are over-assessed can be corrected through the appeals process. Under the Petitioners' interpretation, however, assessors would be bound to an under-assessment until the following general reassessment at least five years later unless a taxpayer chose to appeal its property's low assessment. This interpretation violates the goal of just and equal assessments and cannot be the intent of the decision by the Tax Court. Accordingly, the Board does not read *K.P. Oil* to preclude a local assessor from increasing a real property assessment in years between general reassessments where such property has been undervalued. In this case the assessor acted within the authority provided by Ind. Code § 6-1.1-9-1 in making changes on the Petitioners' 2005 assessments. As a result, the Petitioners failed to raise a prima facie that the properties' assessed values could not be changed prior to the next general reassessment.

29. The Petitioners next argue that the Respondent erred in the assessment method it applied to the subject properties. According to the Petitioners, assessing officials are limited to only valuing platted lots, such as the subject properties, using the front-foot method as described in the Guidelines. *Zimmer argument.* The Respondent argues that commercial platted lots can be assessed by a square foot or front foot method. *Surface testimony.* According to the Respondent, under the assessment Manual, assessing officials determine which of the types of unit values are appropriate for valuing land in the county. *Id.*

30. It is presumed that the value determined according to the rules prescribed in the Manual "is the true tax value of the subject property." MANUAL at 5. However, "no technical failure to comply with the procedures of a specific assessing method violates [the administrative rules] so long as the individual assessment is a reasonable measure of 'True Tax Value'." 50 IAC 2.3-1-1(d). The Manual and Guidelines provide that assessing officials can use a variety of approaches to determine a property's market value-in-use more accurately. A taxpayer does not rebut the presumption that an assessment is correct simply by contesting the methodology the assessor used to compute the assessment. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the taxpayer must show that the assessor's methodology yielded an

assessment that does not accurately reflect its property's market value-in-use. *Id. See also P/A Builders & Developers, LLC v. Jennings Co. Assessor,* 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (the new assessment system "shifts the focus from mere methodology to determining whether the assessed value *is actually correct."*). Thus, the Petitioners' argument that the 2005 assessment of the subject land is incorrect merely as a result of the method used by the assessing official to come to the value fails.

31. The Petitioners next rely on Mr. Szakaly's appraisal of the land on the subject properties as evidence that the properties were assessed incorrectly. Mr. Szakaly used a sales comparison method to establish the market value of the subject properties. The Respondent contends that the Petitioners' "comparable" properties are not comparable to the subject properties. Moreover, the Respondent argues, it is the bottom line value that counts and, in determining the bottom line value of the properties, land and improvements cannot be separated.

32. The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Long v. Wayne Twp. Assessor,* 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used is known as the "sales comparison approach." *Id.* The sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market." *Id.* In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two 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 purportedly comparable properties. *Id.* at 470-71. He or she must also explain how any differences between the properties affect their relative market values-in-use.

33. Here the Petitioners provided no evidence of lot shape, topography, geographical features, accessibility or uses as required to determine that the lots presented by the Petitioners were "comparable" to the subject properties. *See Blackbird Farms Apartments, LP v. Dep't of Local Gov't Finance*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). While it is true that an appraisal performed in accordance with generally recognized appraisal principles is sufficient to establish a prima facie case, Mr. Szakaly's conclusory statements that the three "comparable" lots are, in fact, comparable to each of the subject properties does not constitute probative evidence. *See Meridian Towers,* 805 N.E.2d at 479; *Whitely Products, Inc. v. State Bd. of Tax Commissioners,* 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

34. Further, the Petitioners failed to sufficiently show that presenting an appraisal valuing the land only on an improved property is probative of the market value-in-use of the property. In response to questioning, Mr. Szakaly agreed that the properties were income-producing properties and that an income capitalization method is an appropriate method to value income producing properties. Mr. Szakaly argued, however, that the Petitioners retained him to only value the land and not the improvements. That Mr. Szakaly's clients limited the scope of this review to the value of the land on the subject properties does not make his land valuation probative of the market value-in-use of the subject properties. Thus, Mr. Szakaly's testimony failed to raise a prima facie case.

35. The Petitioners also argued that assessing officials are required to re-assess the subject properties using the same rules and regulations that applied to the preceding general assessment. The only argument the Petitioners raised in support of this issue, however, was that assessing officials are limited to only valuing platted lots, such as the subject property, using the front-foot method as described in the Guidelines. *Zimmer argument.* As stated above, the Manual and Guidelines provide that assessing officials can use a variety of approaches to determine a property's market value-in-use more accurately.

36. Further, the Petitioners' argument that the 2005 assessment of the subject land is incorrect because different rules or regulations were applied in the process is contrary to

the evidence of record. The subject properties were assessed in 2002 using the acreage valuation method. That same method was employed in 2005. As established by the undisputed testimony of the county assessing officials, the only difference in the assessments was the application of an adjustment factor in 2005 as called for by the Guidelines and inadvertently omitted in the 2002 assessment. Thus, the Petitioners fail to raise a prima facie case for all properties.

37. Similarly, the Petitioners' argument that the Monroe County Assessor failed to treat commercial property equitably for the 2005 assessment year on the grounds that residential property assessments were not changed in the same manner as commercial property, was not supported by probative evidence. The Petitioners merely alleged that residential properties were treated differently, but presented no proof of any residential assessment. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Commissioners,* 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v State Bd. of Tax Commissioners,* 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).

38. Finally, the Petitioners contend that, in the matter of their Petition ending in 00920A, the Amended Form 115 was issued in an untimely manner because it was issued after the deadline to appeal had expired. The Petitioners argue that the final notice was marked "final and not appealable" on the form. The Respondent argues that the Petitioners were issued an amended Form 115, and given thirty days to appeal. The Petitioners presented no authority to support an argument that the PTABOA could not amend a Form 115 determination when it concluded an error had been made. Thus, we can only read the Petitioners' contention as claiming that their rights were somehow prejudiced by the amendment.

39. Due process requires "an opportunity to meet and rebut adverse evidence." *See Castello v. State Bd. of Tax Comm'rs,* 638 N.E.2d 1362, 1365 (Ind. Tax Ct. 1994). Here, despite any language that the Form 115 determination was "final and not appealable" the Petitioners' appeal was accepted and heard by the Board. The Petitioners had the

opportunity to present evidence in support of their position and the Board considered the Petitioners' arguments and evidence in issuing this determination. Thus, the Petitioners' due process rights were not denied.

SUMMARY OF FINAL DETERMINATION

40. The Board concludes that the Petitioners have failed to establish that the Respondent was without authority to change an undervalued assessment between general reassessments or to amend a Form 115 that was issued in error. Further, the Board finds that the Petitioners failed to raise a prima facie case that the 2005 assessments of the subject properties exceed their market value-in-use. The Board therefore finds in favor of the Respondent on all issues.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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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>.