

REPRESENTATIVE FOR PETITIONER:
Milo Smith, Certified Taxpayer Representative

REPRESENTATIVE FOR RESPONDENT:
Marilyn S. Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

BKMM Holdings, LLC,)	Petition Nos.: 53-009-06-1-3-00183
)	53-009-07-1-3-00188
Petitioner,)	53-009-08-1-3-00020
)	
v.)	Parcel No: 015-32700-01
)	
Monroe County Assessor,)	County: Monroe
)	
Respondent.)	Assessment Years: 2006, 2007 and 2008

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

October 13, 2011

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 2006, 2007, and 2008 assessment years.

PROCEDURAL HISTORY

2. The Petitioner, BKMM Holdings, LLC (BKMM Holdings), through its certified taxpayer representative, Milo Smith, initiated its assessment appeals by filing Form 130 Petitions with the Monroe County Property Tax Assessment Board of Appeals (the PTABOA) on December 21, 2006, for the 2006 assessment year, on January 14, 2008, for the 2007 assessment year, and on July 14, 2009, for the 2008 assessment year. The PTABOA issued its determinations on May 29, 2007, for the 2006 assessment year, on April 25, 2008, for the 2007 assessment year, and on September 25, 2009, for the 2008 assessment year.
3. Pursuant to Indiana Code § 6-1.1-15-1, Mr. Smith filed Form 131 Petitions for Review of Assessment with the Board on June 27, 2007, for the 2006 assessment year, on June 9, 2008, for the 2007 assessment year, and on November 6, 2009, for the 2008 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 10, 2011, 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 – A list of eleven vacant land sales and a sales analysis for 1715 South Walnut Street, Bloomington, 1901 South Walnut Street, Bloomington, 2640 South Walnut Street, Bloomington, 2660 South Walnut Street, Bloomington, That Road, Bloomington, 5079 West State Road 46, Bloomington, 1503 West Third Street, Bloomington, 900 South Clarizz Boulevard, Bloomington, West State Road 46, Ellettsville, 5790 West State Road 46, Ellettsville, and 573 West Simpson Chapel Road, Bloomington,¹
- Petitioner Exhibit 2 – Three memorandums issued by the Department of Local Government Finance (DLGF) on the assessment appeal process,
- Petitioner Exhibit 3 – Excerpt of the Monroe County 2006 Sales Ratio Study.

7. The Respondent presented the following exhibits:

- Respondent Exhibit A – Indiana Property Tax Equalization Study – Monroe County Equalization Report, dated December 2, 2004,
- Respondent Exhibit B – 2006, 2007 and 2008 property record cards for the Petitioner’s property,
- Respondent Exhibit C1 – Street map,
- Respondent Exhibit C2 – Multiple listing sheet and property record card for 3100 South Walnut Street, Bloomington,
- Respondent Exhibit C3 – Property record card and photograph for 3160 South Walnut Street, Bloomington,
- Respondent Exhibit C4 – Sales disclosure form for 4155 South Old State Road 37, Bloomington,
- Respondent Exhibit D – Color coded parcel map,

¹ Mr. Smith testified that the 2002, 2006, 2007 and 2008 property record cards were attached to Petitioner Exhibit 1. However, Mr. Smith did not attach or submit any property record cards for the property.

- Respondent Exhibit E – Sales disclosure form for 911 West Simpson Chapel Road, Bloomington,
- Respondent Exhibit F – Property record card for 5790 West State Road 46, Bloomington,
- Respondent Exhibit G – Photograph of 1503 West Third Street, Bloomington.

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 May 25, 2011,
- Board Exhibit C – Hearing sign-in sheet.

9. The subject property is an 18,535 square foot light industrial manufacturing building located at 3001 South Walnut Street, Bloomington, in Monroe County.

10. The ALJ did not conduct an on-site inspection of the subject property.

11. For 2006, the PTABOA determined the assessed value of the Petitioner's property to be \$193,800 for the land and \$581,600 for the improvements, for a total assessed value of \$775,400. For 2007, the PTABOA determined the assessed value of the property to be \$193,800 for the land and \$538,600 for the improvements, for a total assessed value of \$732,400 and for 2008, the PTABOA determined the assessed value of the property to be \$193,800 for the land and \$467,600 for the improvements, for a total assessed value of \$661,400.

12. For 2006, the Petitioner's representative requested an assessed value of \$111,600 for the land and \$581,600 for the improvements, for a total assessed value of \$693,200. For 2007, the Petitioner's representative requested an assessed value of \$111,600 for the land and \$538,600 for the improvements, for a total assessed value of \$650,200 and for 2008,

the Petitioner's representative requested an assessed value of \$111,600 for the land and \$467,600 for the improvements, for a total assessed value of \$579,200.²

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.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

14. 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
15. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township 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”).
16. 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*,

² The Petitioner's representative testified that he agreed with the Monroe County Assessor's established improvement values for 2006, 2007 and 2008. However, during Mr. Smith's testimony, he inadvertently testified that for 2008 the improvement value was \$423,100 rather than the \$467,600 value established by the local officials.

803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

PETITIONER'S CONTENTIONS

17. The Petitioner's representative argues that an assessment is comprised of both a land value, and an improvement value. *Smith argument*. Mr. Smith argues that the components of an assessment can be examined separately and that one component can be adjusted without the other. *Id.* According to Mr. Smith, the Petitioner agrees with the county's use of updated commercial and industrial cost tables that reflect actual construction costs and appropriate depreciation to value the buildings on the property. *Id.* The Petitioner, however, disputes the increase in the land's base rate from \$66,000 per acre to \$125,000 per acre for the 2006, 2007, and 2008 assessment years. *Id.*
18. Mr. Smith argues that the property's land is assessed in excess of its market value-in-use. *Smith argument*. According to Mr. Smith, of the eleven sales analyzed by the assessor in the county's ratio study, only two were located in Bloomington City – Perry Township. *Smith testimony; Petitioner Exhibit 3*. The first sale involved a 0.88 acre parcel of vacant industrial land that sold on April 7, 2004, for \$45,760, or \$52,000 per acre. *Id.* The second sale involved a 0.3025 acre parcel of vacant industrial land that sold on September 10, 2004, for \$29,500, or \$97,521 per acre. *Id.* Because the two sales averaged \$71,761 per acre, Mr. Smith contends, the Petitioner's land should be assessed at \$72,000 per acre, or \$111,600 for 2006, 2007 and 2008. *Smith argument*.
19. Finally, the Petitioner's representative testified that vacant land sales do not support an 89% increase in land value between 2005 and 2006. *Smith argument*. According to Mr. Smith, he hired Belinda Graber, an Indiana certified appraiser to research vacant land sales. *Smith testimony*. Mr. Smith testified that Ms. Graber identified eleven sales that occurred between 2005 and 2011, with prices ranging from \$66,226 per acre to \$475,285

per acre.³ *Smith testimony; Petitioner Exhibit 1.* In support of this contention, Mr. Smith submitted a summary sheet and sales information for the eleven vacant land sales.

Petitioner Exhibit 1. Mr. Smith contends that Ms. Graber's information "confirms" that the land base rates are too high. *Smith testimony.* In response to cross examination, however, Mr. Smith admitted that eight of the eleven "comparable" sales had a higher per acre sale price than the subject property's assessed value per acre. *Id.*

RESPONDENT'S CONTENTIONS

20. The Respondent's witness testified that on December 2, 2004, Nexus Group conducted the Indiana Property Tax Equalization Study – Monroe County Equalization Report (Equalization Study) on the county's property assessments to measure the level of assessments of each property class.⁴ *Surface testimony; Respondent Exhibit A.* The Equalization Study, which was conducted after the 2002 general reassessment, showed that industrial properties were being undervalued by approximately 34%. *Id.*; *Respondent Exhibit A at 12.*⁵
21. Mr. Surface testified that in 2006 annual adjustments were to be applied to property assessments to account for changes in property values and to assess property according to its market value-in-use.⁶ *Surface testimony.* According to Mr. Surface, Monroe County reevaluated all land values and land base rates and updated building cost tables. *Id.* As a result of this reevaluation, Mr. Surface testified that the Petitioner's property, as well as

³ In response to questioning, Mr. Smith admitted that Ms. Graber's eleven vacant land sales are not industrial land sales and that there was nothing specific in her report that would "help this assessment." *Smith testimony.*

⁴ Nexus Group is the company hired by Monroe County to perform various assessing functions such as compiling new construction data, establishing values, annual adjustments and appeals. *Surface testimony.*

⁵ Ms. Meighen renumbered each page of the Equalization Study in the lower right hand corner for ease of reference. *Meighen testimony; Respondent Exhibit A.*

⁶ Mr. Surface appears to be referring to Indiana Code § 6-1.1-4-4.5, which states "The department of local government finance shall adopt rules establishing a system for annually adjusting the assessed value of real property to account for changes in value in those years since a general reassessment of property last took place." Ind. Code § 6-1.1-4-4.5.

other properties in the county experienced dramatic increases in their land base rate in 2006.

22. Mr. Surface contends that the Petitioner's land value is correct based on the market value of land in the area. *Surface testimony*. In support of this contention, Mr. Surface offered a map and sales or listing information for three comparable properties located in the same neighborhood. *Id.*; *Respondent Exhibit C*. The first comparable property is located at 3100 South Walnut, which is directly across the street from the Petitioner's property. *Surface testimony*; *Respondent Exhibit C2*. The property is a three acre parcel with a building that is currently listed for sale for \$599,900. *Id.* The second comparable property is located at 3160 South Walnut, which is also directly across the street from the property under appeal. *Surface testimony*; *Respondent Exhibit C3*. It is a two acre parcel with a retail building that sold for \$485,000 on March 20, 2009. *Id.* Mr. Surface subtracted the building's assessed value from the property's sale price and determined that the land sold for approximately \$212,900 or \$135,000 per acre. *Id.* The third comparable property is located at 4155 South Old State Road 37. *Surface testimony*; *Respondent Exhibit C4*. It is a 2.86 acre property that sold for \$429,000 on June 22, 2005, or \$150,000 per acre. *Surface testimony*; *Respondent Exhibit C4*. According to Mr. Surface, the county considered the property to be a vacant land sale because the buildings were removed immediately after the property was purchased. *Surface testimony*. Based on these sales and listings, Mr. Surface argues, the Petitioner's land's base rate of \$125,000 per acre is correct. *Surface testimony*.
23. Mr. Surface also argues that the two sales from the ratio study that the Petitioner's representative relied upon in his case should be given little weight by the Board. *Surface testimony*; *Petitioner Exhibit 3*. While the two sales are located in Bloomington City-Perry Township, Mr. Surface argues, they are not located in the same neighborhood. *Surface testimony*. According to Mr. Surface, Perry Township has several hundred neighborhoods with several hundred land base rates. *Id.* Moreover, the two properties identified on the ratio study are a 0.3025 acre parcel and a 0.88 acre parcel – which are

smaller than the Petitioner's 1.55 acres. *Id.* Therefore, Mr. Surface argues, it would be physically impossible for the Petitioner's buildings to fit on the comparable properties. *Id.* Further, the Petitioner's representative presented no evidence to show that the two sales were comparable in terms of the topography or shape of the subject property. *Id.* In addition, the two properties sold in 2004, which may have some relevancy to the subject property's 2006 assessment, but is too far removed from the valuation date to be probative evidence of the property's value in 2007 and 2008. *Id.* Thus, the Respondent's witness concludes, the two sales cited by the Petitioner's representative are not reliable to establish that the subject property's land base rate should be lowered. *Id.*

24. Similarly, Mr. Surface argues, the eleven vacant land sales compiled by the Petitioner's appraiser should be given little weight in this case. *Surface testimony.* According to Mr. Surface, the property located at 573 West Simpson Chapel Road sold for \$405,000 on November 15, 2005, for land and improvements, but the appraiser reports the land "sold" for \$255,000 without any explanation of how she allocated the property's sale price between the land and the buildings. *Surface testimony; Respondent Exhibit E.* In addition, the property located at 5790 West State Road 46 sold for \$250,000 on August 20, 2009. *Surface testimony; Respondent Exhibit F.* After a building was constructed, the property sold for \$2,606,061 a year later. *Id.* Mr. Surface argues that the appraiser failed to show how the addition of the buildings impacted the value of the land. *Surface testimony.* Further, while the Petitioner's appraiser identifies the topography of the property located at 1503 West Third Street as level to grade, a photograph of the property shows that the land sits approximately eight feet below grade. *Surface testimony; Respondent Exhibit G.* Thus, Mr. Surface concludes, without further explanation the appraiser's vacant land sales are insufficient to show an error in the Petitioner's land value. *Surface testimony.*

ANALYSIS

25. The 2002 Real Property Assessment Manual defines “true tax value” 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). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales-comparison approach and the income approach to value. *Id.* at 3, 13-15. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (the GUIDELINES).
26. A property’s assessment, determined under the Guidelines, is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer may rebut that presumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
27. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006, assessment date, the valuation date was January 1, 2005; for the March 1, 2007, assessment date, the valuation date was January 1, 2006; and for the March 1, 2008, assessment date, the valuation date was January 1, 2007. 50 IAC 21-3-3.

28. The Petitioner's representative first argues that the land on the subject property was over-valued based on two sales from the county's ratio study. *Smith argument; Petitioner Exhibit 3*. In order to effectively use the sales comparison approach as evidence of a property's value, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property are not probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of the purportedly comparable properties. *See Id.* at 470-71. They must also explain how any differences between the properties affect their relative market value-in-use. *Id.*
29. Here, the Petitioner's representative merely testified that the two properties were in the same township as the subject property. However, when seeking to establish comparability between parcels of land, the relevant characteristics to compare include things such as location, accessibility, topography. *See Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that taxpayer failed to establish comparability of parcels of land where, among other things, taxpayer did not compare the topography and accessibility of parcels). Because the Petitioner's representative failed to provide any meaningful information regarding the comparability of the neighboring properties, the Petitioner failed to raise a prima facie case that its property was over-valued based on the sale prices of the two properties in the county's ratio study.
30. The Petitioner's representative also offered eleven vacant land sales which he contends supports a finding that the subject property's base rate was too high. Here, while the Petitioner's appraiser noted whether the comparable properties were located at or below grade, she made no attempt to value that difference. Further, Ms. Graber made no attempt to compare the location, access or amenities of the comparable properties. Thus, again, the Petitioner's evidence fails to raise a prima facie case that the land on its

property is over-valued. More importantly, the Board notes that eight of the eleven “comparable” sales had sale prices per acre far in excess of the subject property’s land value per acre. Thus, even if the Petitioner’s evidence had been sufficient to establish a land value for the Petitioner’s property, it would have supported a higher valuation.

31. To the extent that the Petitioner’s representative sought to show that the annual adjustment factor applied to the Petitioner’s land’s assessment was in error, the Petitioner’s case also must fail. Mr. Smith did not show that a different trending factor was applied to the subject property than to other properties in the same neighborhood or that an error was made in calculating the trending factor that was applied to the subject property. Similarly, Mr. Smith presented no alternative calculation or even suggested an alternative trending factor. Instead, he merely identified eleven sales which he claimed did not support an 89% increase in the subject property’s value. This falls far short of the burden imposed upon a Petitioner. To prevail in an appeal, a Petitioner must demonstrate both that an 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); *and Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

32. Finally, even if the assessor had erred in her calculations, a Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 677 (Ind. Tax Ct. 2006). Instead, the Petitioner must show the assessment does not accurately reflect the subject property’s market value-in-use. *Id.*; *See also P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (The focus is not on the methodology used by the assessor, but instead on determining whether the assessed value is actually correct. Therefore, the taxpayer may not rebut the presumption merely by showing an assessor’s technical failure to comply strictly with the Guidelines). Again, because the Petitioner’s representative failed to present evidence of the market value-in-use of the property, the Petitioner’s

representative failed to raise a prima facie case that the property was over-valued for the 2006, 2007 or 2008 assessment year.

33. Where the Petitioner's representative has not supported the Petitioner's claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

34. The Petitioner failed to raise a prima facie case that the land on its property was over-valued for the 2006, 2007, or 2008 assessment years. The Board 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>.