

REPRESENTATIVE FOR PETITIONERS:  
Milo Smith, Certified Taxpayer Representative

REPRESENTATIVE FOR RESPONDENT:  
Marilyn S. Meighen, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Harold S. and Alta Marie Nethery,	)	Petition Nos.: 53-009-06-1-4-00188
	)	53-009-07-1-4-00189
	)	53-009-08-1-4-00018
Petitioners,	)	53-009-09-1-4-00018
	)	53-009-10-1-4-00052
	)	
v.	)	Parcel No: 015-39480-00
	)	(53-08-04-302-052.000-009)
	)	
Monroe County Assessor,	)	
	)	County: Monroe
	)	
Respondent.	)	Assessment Years: 2006 through 2010
	)	

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

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**October 24, 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 Petitioners' land is overstated for the 2006, 2007, 2008, 2009, and 2010 assessment years.

### **PROCEDURAL HISTORY**

2. The Petitioners, Harold S. and Alta Marie Nethery, through their certified taxpayer representative, Milo Smith, initiated 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; on July 15, 2009, for the 2008 assessment year; on May 14, 2010, for the 2009 assessment year; and on September 14, 2010, for the 2010 assessment year. The PTABOA issued its determinations on July 5, 2007, for the 2006 assessment year; on April 25, 2008, for the 2007 assessment year; on September 25, 2009, for the 2008 assessment year; on August 9, 2010, for the 2009 assessment year; and on December 6, 2010, for the 2010 assessment year.
3. Pursuant to Indiana Code § 6-1.1-15-1, Mr. Smith filed Form 131 Petitions for Review of Assessment on August 3, 2007, for the 2006 assessment year; on June 9, 2008, for the 2007 assessment year; on November 5, 2009, for the 2008 assessment year; on September 14, 2010, for the 2009 assessment year; and on January 19, 2011, for the 2010 assessment year, petitioning the Board to conduct an administrative review of its petitions.

## 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 Petitioners:

Milo Smith, Taxpayer Representative

For the Respondent:

Judy Sharp, Monroe County Assessor  
Ken Surface, Nexus Group

6. The Petitioners 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,

Petitioner Exhibit 2 – The Petitioners' exhibit and witness sheet.

7. The Respondent presented the following exhibits:

Respondent Exhibit A – A photograph of the Petitioners' property,

Respondent Exhibit B – 2006, 2007, 2008, 2009, and 2010 property record cards for the Petitioners' property,

Respondent Exhibit C – An aerial map and plat map of the Petitioners' property,

- Respondent Exhibit D – Property record cards for 1103 South Walnut Street, Bloomington and 1109 South Walnut Street, Bloomington,
- Respondent Exhibit E – A sales disclosure form for 911 West Simpson Chapel Road, Bloomington,
- Respondent Exhibit F – A property record card for 5790 West State Road 46, Bloomington,
- Respondent Exhibit G – A photograph of 1503 West Third Street, Bloomington,
- Respondent Exhibit H – A street map showing the subject property and comparable properties,
- Respondent Exhibit I – A photograph, a sales disclosure form and a property record card for 3324 West Third Street, Bloomington,
- Respondent Exhibit J – Two photographs, a sales disclosure form and a property record card for 1705 North Kinser Pike, Bloomington,
- Respondent Exhibit K – A photograph, a sales disclosure form and a property record card for 1604 South Walnut Street, Bloomington,
- Respondent Exhibit L – Two photographs, a sales disclosure form and a property record card for 501 West 17<sup>th</sup> Street, Bloomington,
- Respondent Exhibit M – A photograph, a sales disclosure form and a property record card for 901 North Indiana Avenue, Bloomington,
- Respondent Exhibit N – A photograph, a sales disclosure form and a property record card for 1320 East 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 a 1,512 square foot convenience store and a detached service station canopy on a .42 acre parcel of land located at 1115 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 Petitioners' property to be \$367,300 for the land and \$154,300 for the improvements, for a total assessed value of \$521,600. For 2007, the PTABOA determined the assessed value of the property to be \$367,300 for the land and \$148,600 for the improvements, for a total assessed value of \$515,900. For 2008, the PTABOA determined the assessed value of the property to be \$433,900 for the land and \$154,700 for the improvements, for a total assessed value of \$588,600. For 2009, the PTABOA determined the assessed value of the property to be \$433,900 for the land and \$158,300 for the improvements, for a total assessed value of \$592,200 and for 2010, the PTABOA determined the assessed value of the property to be \$433,900 for the land and \$136,300 for the improvements, for a total assessed value of \$570,200.
  
12. For 2006, the Petitioners' representative requested an assessed value of \$165,300 for the land and \$154,300 for the improvements, for a total assessed value of \$319,600.<sup>1</sup> For 2007, the Petitioners' representative requested an assessed value of \$165,300 for the land and \$148,600 for the improvements, for a total assessed value of \$313,900. For 2008, the Petitioners' representative requested an assessed value of \$165,300 for the land and \$154,700 for the improvements, for a total assessed value of \$320,000. For 2009, the Petitioners' representative requested an assessed value of \$165,300 for the land and \$158,300 for the improvements, for a total assessed value of \$323,600 and for 2010, the Petitioners' representative requested an assessed value of \$165,300 for the land and \$136,300 for the improvements, for a total assessed value of \$301,600.

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<sup>1</sup> The Board notes that on the Form 131, Mr. Smith originally requested an assessed value of \$192,000 for the land and \$154,300 for the improvements for a total assessed value of \$346,300 for the property for 2006. However, Mr. Smith did not request any specific assessed values in any of the other petitions that he filed on behalf of the Petitioners. In hearing, Mr. Smith requested an assessed value of \$165,300 for the land for each tax year at issue in this appeal.

## 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*, 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 Petitioners' representative argues that an assessment is comprised of both a land value and an improvement value. *Smith argument*. Thus, Mr. Smith contends, 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 Petitioners agree with the county's use of updated commercial cost tables that reflect actual construction costs and appropriate depreciation to value the improvements on the property. *Id.* The Petitioners, however, dispute the land's base rate of \$10.00 per square foot with a 100% "market factor," which results in an assessed value for the land that is equivalent to over \$871,000 an acre.<sup>2</sup> *Smith testimony*. Instead, Mr. Smith argues that the Petitioners' land should be assessed at \$9.00 per square foot with no market factor, resulting in an assessed value of \$165,300 for the parcel for each tax year at issue. *Id.*
  
18. Further, Mr. Smith argues, the property's land is assessed too high based on the sales ratio studies submitted by the county to the Department of Local Government Finance in 2006, 2007, 2008, 2009, and 2010. *Smith testimony*. Mr. Smith testified that the county's 2006 ratio study showed that vacant commercial land sold for approximately \$100,000 per acre. *Id.* For 2007, Mr. Smith testified that the ratio study showed that vacant commercial land sold for no more than \$415,771 per acre, or an "average prime rate" of \$400,000 per acre. *Smith testimony*. For 2008, Mr. Smith testified, the ratio study showed there was only one vacant commercial land sale that sold for more than \$600,000 per acre and that the average sale price of commercial vacant land was \$400,000 per acre. *Id.* While the ratio study showed one vacant land sale of 0.256 acres for the equivalent of \$976,000 per acre in 2009, Mr. Smith testified that he considered the

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<sup>2</sup> The property record cards show that the land base rate was \$10.00 per square foot for 2006 and 2007. *Respondent Exhibit B*. However, for 2008, 2009, and 2010 the land base rate was \$10.50 per square foot. *Id.*

sale to be an “outlier.”<sup>3</sup> *Id.* According to Mr. Smith, the average sale price of commercial vacant land remained at \$400,000 per acre. *Id.* Finally, Mr. Smith testified that the average price per acre of land was \$225,000 in 2010 according to the county’s ratio study. *Id.* Thus, he concludes, the Petitioners’ land, which was assessed at the equivalent of \$871,000 an acre for the 2006 through 2010 assessment years, was over-valued. *Id.*

19. Finally, Mr. Smith argues that the property’s land is over-valued based on its market value-in-use. *Smith testimony.* 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, resulting in an average sale price of \$400,000 per acre. *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.* According to Mr. Smith, the purpose of Ms. Graber’s review was to verify whether the market in Monroe County would support the Petitioners’ land’s assessment and to verify the accuracy of the county’s ratio studies. *Smith testimony.* In response to questioning, however, Mr. Smith admitted that none of Ms. Graber’s eleven vacant land sales were transactions involving convenience stores. *Id.*

### **RESPONDENT’S CONTENTIONS**

20. The Respondent’s witness testified that the county’s ratio studies were calculated based on the total assessed values of properties. *Surface testimony.* According to Mr. Surface, although the ratio study shows land and improvement values separately on the report, the

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<sup>3</sup> “Outlier ratios are very low or high ratios as compared with other ratios in the sample. One extreme outlier can have a controlling influence over some statistical measures. Outlier ratios can result from an erroneous sale price, a non-market sale, unusual market variability, a mismatch between property sold and the property assessed, and other reasons.” *IAAO Standard on Ratio Studies*, Standard 5.2 (July 2007); *IAAO Standard on Ratio Studies*, Standard 6.6 (July 1999). *Petitioner Exhibit 3.*



study is a means by which to measure whether the total values of properties are being assessed uniformly and equal. *Id.*

21. Mr. Surface testified that the property under appeal is a convenience store with gas pumps and a canopy. *Surface testimony.* The Petitioners' representative, however, focuses his argument only on the property's land value between 2006 and 2010. *Id.* According to Mr. Surface, even if the property's land values were incorrect, the property's assessed value as a whole represented the property's market value-in-use for those years. *Id.* Mr. Surface also testified that there is an adjoining property north of the Petitioners' property, which is a carwash that is owned by Big Foot and operates in conjunction with the property at issue in this appeal. *Id.; Respondent Exhibits C and D.* Mr. Surface admitted that the assessor did not add a market factor to the car wash property. *Surface testimony.* However, Mr. Surface argues, the convenience store did not need the carwash to operate and therefore the carwash parcel was less valuable. *Id.* According to Mr. Surface, adding the market factor to the carwash property would cause the land to be over-valued. *Surface testimony.*
22. Further, Mr. Surface argues that the Petitioners' land is properly assessed on a square foot basis. *Surface testimony.* According to Mr. Surface, when the assessor established land base rates for properties in the Petitioners' neighborhood, she determined the average lot size and analyzed sales in the area to determine whether to price the land on a front foot, square foot, or on an acreage basis. *Surface testimony.* Based on those sales, Mr. Surface testified, the assessor determined that the most accurate measure of the market value-in-use of the Petitioners' land was to price it on a square foot basis. *Id.*
23. Mr. Surface also contends that the Petitioners' property was assessed correctly based on the sales of comparable properties in the area. *Surface testimony.* According to Mr. Surface, a convenience store with gas pumps and a canopy located at 3324 West Third

Street, sold on June 1, 2007, for \$925,000.<sup>4</sup> *Surface testimony; Respondent Exhibit C2.* In addition, a former gas station with an area for automotive repair and a small convenience store located at 1705 Kinser Pike, sold on April 11, 2006, for \$500,000. *Surface testimony; Respondent C3.* The property was remodeled and reopened in 2007 as a gas station and convenience store. *Id.* Similarly, the property located at 401 West 17<sup>th</sup> Street, sold on August 15, 2008, for \$350,000. *Surface testimony; Respondent Exhibit C5.* It was also a former service station which was remodeled into a gas station and convenience store after the sale. *Id.* Finally, a comparable gas station and convenience store located at 1602 South Walnut Street, sold on October 10, 2006, for \$735,900. *Surface testimony; Respondent Exhibit C4.* According to Mr. Surface, this property is located two-tenths of a mile from the Petitioners' property and is the most comparable property to the subject property. *Id.* Based on these sales, Mr. Surface concludes, the Petitioners' property is undervalued for the 2006 through 2010 assessment years, rather than over-valued as the Petitioners' representative argues. *Surface testimony.*

24. In addition, the Respondent argues that the sale of two convenience stores support its contention that the Petitioners' property's assessed value was correct for the assessment years at issue. *Surface testimony.* The first property is a Village Pantry located at 901 North Indiana Avenue, which sold on December 31, 2001, for \$325,000. *Surface testimony; Respondent Exhibit C6.* Because the convenience store does not sell gasoline, Mr. Surface argues, he considers it inferior to the property under appeal. *Id.* Similarly, a Village Pantry with no gas pumps or canopy, located at 1320 East Third Street, sold on September 28, 2004, for \$450,000. *Surface testimony; Respondent Exhibit C7.* According to Mr. Surface, these sales also support a finding that the Petitioners' property, which is a convenience store and gas station, is undervalued, rather than over-valued. *Id.*
25. Finally, Mr. Surface argues, the eleven vacant land sales compiled by the Petitioners' appraiser should be given little weight in this case. *Surface testimony.* Mr. Surface

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<sup>4</sup> The sale price included \$100,000 for personal property; therefore Mr. Surface testified that the price allocated to the real estate was \$825,000. *Surface testimony*

testified that 1910 South Walnut Street is an out-lot to a strip center and the Petitioners' building would not physically fit on the property. *Surface testimony*. The property located at 2640 South Walnut Street is located south of the Petitioners' property; it is not a corner lot and has limited access. *Surface testimony*. In addition, the property located at 2660 South Walnut Street sits behind a shopping center and has no road frontage. *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*. 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 improvements impacted the value of the land. *Surface testimony*. Further, while the Petitioners' 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*. Moreover, while the property located at 1715 South Walnut Street is identified as being 1.07 acres, the parcel is a trapezoid shape. *Surface testimony*. Therefore, Mr. Surface argues, the Petitioners' improvements would not fit on the property. *Id.* Moreover, Mr. Surface argues, only 1715 South Walnut Street is located in the Petitioners' neighborhood and none of the properties have similar frontage or traffic counts as the Petitioners' property. *Id.* Thus, Mr. Surface concludes, without further explanation, the appraiser's vacant land sales are insufficient to show an error in the Petitioners' land value. *Surface testimony*.

## ANALYSIS

26. 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).

27. 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.
  
28. 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; for the March 1, 2008, assessment date, the valuation date was January 1, 2007; for the March 1, 2009, assessment date, the valuation date was January

1, 2008; and for the March 1, 2010, assessment date, the valuation date was March 1, 2010.<sup>5</sup>

29. The Petitioners' representative first argues that the Petitioners' land was over-valued based on sales in the county's ratio studies for 2006, 2007, 2008, 2009 and 2010. While Mr. Smith argues that land in the county sold for \$100,000 an acre in 2006, an "average" of \$400,000 an acre for 2007, 2008 and 2009, and an average of \$225,000 an acre in 2010, the Board notes that the Petitioners' representative failed to offer any ratio study as an exhibit in this case. Nor did he even identify the sales upon which he was basing his conclusions regarding the price of land in Monroe County during the relevant time period. While the rules of evidence generally do not apply in the Board's hearings, the Board requires some evidence of the accuracy and credibility of the evidence. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
30. The Petitioners' representative also argues that the land on the subject property was over-valued based on eleven vacant land sales collected by an appraiser. *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.*

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<sup>5</sup> For the 2006 through 2009 assessment years, the valuation date was "January 1 of the year preceding the year of the assessment date." 50 IAC 21-3-3 (2006). For assessment dates after December 31, 2009, "an adjustment in the assessed value of real property under this section shall be based on the estimated true tax value of the property on the assessment date that is the basis for taxes payable on that real property." Ind. Code § 6-1.1-4-4.5(f) (2010); 50 IAC 27-5-2(c) (2010).

at 470-71. They must also explain how any differences between the properties affect their relative market value-in-use. *Id.*

31. Here, the Petitioners' representative merely testified that the properties were located in the same county as the subject property and four of the properties were located on the same street at the Petitioners' 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). While the Petitioners' 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, the Petitioners' evidence fails to raise a prima facie case that the land on their property is over-valued.
  
32. To the extent the Petitioners' representative can be seen as arguing that it was an error to value the Petitioners' land on a square foot basis rather than on an acreage basis, the Board finds that Mr. Smith's argument similarly fails to raise a prima facie case. The Guidelines state that an assessor determines whether valuing land on a front foot basis, on a square foot basis, on an acreage basis, with a "site value," or by "unit density" is the most appropriate way to value different types of land. GUIDELINES, ch. 2 at 16. According to the Guidelines, "the size, dimensional data available on tax maps or plat maps, methods of comparison used by the typical buyer and seller, and the ease of application should determine the selection of the most applicable pricing method for the neighborhood." *Id.* Barring probative evidence to the contrary, the Board finds that the method of land valuation chosen by the assessor to value property in the Petitioners' property's neighborhood was reasonable.

33. Finally, even if the assessor had erred in valuing the Petitioners' property on a square foot basis, 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 Petitioners' representative failed to present evidence of the market value-in-use of the Petitioners' property, the Petitioners' representative failed to raise a prima facie case that the property was over-valued.
34. Where the Petitioners' representative has not supported the Petitioners' claims 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**

35. The Petitioners failed to raise a prima facie case that their land was over-valued for the 2006, 2007, 2008, 2009, or 2010, assessment year. 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.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>.**