

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition #: 03-003-03-1-4-00008
Petitioners: Joy G. and George A. Dutro
Respondent: Columbus Township Assessor (Bartholomew County)
Parcel #: 199524438800
Assessment Year: 2003

The Indiana Board of Tax Review (the "Board") issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated an assessment appeal with the Bartholomew County Property Tax Assessment Board of Appeals (the "PTABOA") by written document dated June 30, 2004.
2. The Petitioners received notice of the decision of the PTABOA on January 13, 2005.
3. The Petitioners filed an appeal to the Board by filing a Form 131 petition with the Bartholomew County Assessor on February 8, 2005. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated October 6, 2005.
5. The Board held an administrative hearing on November 29, 2005, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: Milo Smith, Petitioners' Representative
 - b) For Respondent: Barbara Hackman, Columbus Township Assessor's Office
Cathi Gould, Tyler-CLT

Facts

7. The property is classified as commercial, as is shown on the property record card for parcel #199524438800.

8. The subject property is located at 425 Washington Street, Columbus, Indiana, Columbus Township.
9. The Administrative Law Judge (“ALJ”) did not conduct an inspection of the property.
10. Assessed Value of subject property as determined by the Bartholomew County PTABOA:

Land \$12,800	Improvements \$107,500	Total \$120,300
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11. Assessed Value of subject property as requested by the Petitioners:

Land \$12,800	Improvements \$34,100	Total \$46,900
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Issues

12. Summary of Petitioners’ contentions in support of alleged error in assessment:
 - a) The assessment of the subject property “does not provide for a uniform and equal rate of property assessment and taxation that secures a just valuation of taxation, pursuant to Article X, Section 1 of the Indiana Constitution.” *Pet’rs Ex. 1; Smith argument.* Therefore, the assessment is unconstitutional. *Id.*
 - b) The assessment is not uniform and equal. A comparison of ten (10) comparable properties shows that the Respondent did not determine the effective age for any of the structures situated on those properties in accordance with the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”). *Smith testimony; Pet’rs Exs. 1, 5.*
 - c) The Respondent pulled the effective age of 1982 used to assess the subject structure “out of the air.” The Guidelines call for the effective age of a structure to be determined in accordance with its condition. The condition of the subject structure is “average.” *Smith testimony; Pet’rs Ex. 1.* Following the Guidelines, the subject structure is entitled to depreciation of 80%. *Id.; Pet’rs Ex. 4.*
13. Summary of Respondent’s contentions in support of the assessment:
 - a) The subject property is a brick office building that currently houses a restaurant. *Hackman testimony, Resp’t Ex.1.* The building is located on a main downtown street. *Id.*
 - b) The Respondent submitted a sales disclosure form showing that the Petitioners sold the subject property for \$175,000 on July 1, 2005. *Resp’t Ex. 5.* The subject property currently is assessed for \$120,300. Barbara Hackman contacted the current owner and verified that no personal property was included in the sale. *Hackman testimony.*

- c) The Tax Court has stated that “a technical failure to comply with the procedures set forth in the Guidelines’ cost approach does not render an assessment invalid as long as the individual assessment is a reasonable measure of true tax value. *Resp’t Ex. 8.*
- d) Effective age is the number of years of age of the improvement as indicated by its condition. Effective age may or may not be the same as actual or chronological age, because maintenance, design, and location are factors that may increase or decrease the aging process. If an improvement has had better than average maintenance, its effective age may be less than the actual age. By contrast, if there has been inadequate maintenance, the improvement’s effective age may be greater than its actual age. *Hackman testimony; Resp’t Ex. 7.*
- e) The Respondent submitted both an income approach calculation and trended sales information to support the assessment of the subject property. *Resp’t Ex. 8.*
- f) The Respondent also submitted a sales ratio study for the subject neighborhood. The study was based on sales occurring between 1998 and 2005. The results of that study were within applicable guidelines. *Hackman testimony; Resp’t Ex. 9.*

Record

14. The official record for this matter is made up of the following:

- a) The Petition.
- b) The recording of the hearing.
- c) Exhibits:

- Petitioners Exhibit 1: Summary of Petitioners’ arguments
- Petitioners Exhibit 2: 2002 REAL PROPERTY ASSESSMENT GUIDELINES—
VERSION A, Appendix F, page 7
- Petitioners Exhibit 3: Subject Property Record Card (PRC)
- Petitioners Exhibit 4: 2002 REAL PROPERTY ASSESSMENT GUIDELINES—
VERSION A, Appendix F, pages 24, 26 & 31
- Petitioners Exhibit 5: Comparison packet of 10 properties
- Petitioners Exhibit 6: Subject PRC with requested changes

- Respondent Exhibit 1: Photographs of subject property
- Respondent Exhibit 2: Subject PRC
- Respondent Exhibit 3: Form 130 petition
- Respondent Exhibit 4: Form 115
- Respondent Exhibit 5: Sales disclosure form for subject property

Respondent Exhibit 6: *Kooshtard Property VI, LLC, v. White River Township Assessor*, 836 N.E. 2d 501 (Ind. Tax. 2005).

Respondent Exhibit 7: IAAO Property Assessment Valuation Manual, pages 160-161 & 182-183

Respondent Exhibit 8: Income approach & trended sale data

Respondent Exhibit 9: Sales ratio study

Board Exhibit A: Form 131 Petition

Board Exhibit B: Notice of Hearing

Board Exhibit C Sign-in Sheet

d) These Findings and Conclusions.

Analysis

15. 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. Washington 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.

Constitutionality

16. The Petitioners, through their representative, Milo Smith, claim that the current assessment of the subject property violates Article X Section 1 of the Indiana Constitution. *Smith argument; Pet’rs Ex. 1.*
17. The Board’s procedural rules for small claims allow parties to appear by “any representative expressly authorized by the party. . . .” 52 IAC 3-1-4(a). Nonetheless, the Board’s rules concerning tax representatives under 52 IAC 1 apply with equal force to small claims proceedings. 52 IAC 3-1-4(b). Thus, both the Petitioners and Mr. Smith

were required to comply with the limitations on the scope of representation by tax representatives set forth in 52 IAC 1.

18. Pursuant to 52 IAC 1-2-1, a property tax representative may not be certified to practice before the Board with regard to “claims regarding the constitutionality of an assessment,” or “any other representation that involves the practice of law.” 52 IAC 1-2-1(b)(3) and (4).
19. Mr. Smith’s claim, on behalf of the Petitioners, that “this assessment does not provide for a uniform and equal rate of property assessment and taxation that secures a just valuation of taxation, pursuant to Article X, Section 1 of the Indiana Constitution,” clearly involves a claim regarding the constitutionality of an assessment.
20. Moreover, by raising that claim, Mr. Smith engaged in the unauthorized practice of law. The Indiana Supreme Court addressed an almost identical scenario in *State ex rel. Indiana State Bar Ass’n v. Miller*, 770 N.E.2d 328, 330 (Ind. 2002). In that case, the Indiana State Bar Association sought to enjoin a certified tax representative from engaging in the practice of law. Among other things, the tax representative raised a constitutional challenge based on Article X Section 1 of the Indiana Constitution. *Id.* A majority of the Court found that by making such a claim, the tax representative engaged in the practice of law. *Id.*; 770 N.E.2d at 331-32 (Shepard, J. dissenting).
21. Consequently, Mr. Smith was not authorized to contest the constitutionality of the assessment at issue in this case.¹ While the Petitioners could have raised such a claim on their own, they did not appear at the hearing in order to do so. The Petitioner have waived their Constitutional argument. The Board therefore will not address whether the assessment violated Article X Section 1 of the Indiana Constitution.

Effective Age

22. The Petitioners also contend that the Respondent erred in applying the Guidelines to the subject property when it assigned an effective age of “1982”² to the subject structure. The Petitioners’ claim regarding the effective age of the subject structure arguably is distinct from their claims regarding the constitutionality of the assessment. The Board

¹ The Board is forwarding a copy of its Final Determination Findings and Conclusions (“Final Determination”) to the Department of Local Government Finance, which oversees the certification and de-certification of tax representatives. *See* 50 IAC. 15-5-8. The Board is also forwarding a copy of its Final Determination to the Attorney General, the Indiana Supreme Court Disciplinary Commission and the Indiana State Bar Association, all of which are authorized to bring actions to restrain or enjoin the unauthorized practice of law. *See* Ind. Admission and Discipline Rule 24.

² In his argument, the Petitioners’ representative, Milo Smith, actually referred to the Respondent as using an effective age of “1982.” *Smith testimony; Pet’rs Ex. 1.* Mr. Smith apparently was referring to the fact that the property record card for the subject property indicates “1982” under the heading “effective year.” *See Pet’rs Ex. 2.* The effective age, however, is expressed as a number of years not as a date certain. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A*, App. F at 7, 24. Presumably, Mr. Smith contends that the Respondent used an effective age of seventeen (17) years (the number of years between 1982 and the relevant valuation date of January 1, 1999).

therefore will address the Petitioners' claim regarding the effective age of the subject structure.

23. The Petitioners did not provide sufficient evidence to support their contention that the Respondent erred in assessing the subject structure. The Board reaches this conclusion because:
- a) The Petitioners' contentions center on the fact that the Respondent did not determine the effective age of the subject structure in accordance with the Guidelines. According to the Petitioners, the effective age of the subject structure should be the same as its actual age. *Smith testimony; Pet'rs Exs. 1-2, 4, 6.*
 - b) The Petitioners are correct that, under the Guidelines, the subject structure's effective age should be computed as eighty (80) years based upon its actual year of construction of 1900 and its condition rating of "average." *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A*, app. F at 7, 24 (incorporated by reference at 50 IAC 2.3-1-2)(the effective age of building seventy-nine (79) years old or older with a condition classification of "average" is 80 years). The Petitioners are also correct that, given the structure's quality grade of "C+1" and framing, it has an economic life of no more than fifty (50) years. *GUIDELINES*, app. F at 26. A structure with an effective age of eighty (80) years and an economic life expectancy of fifty (50) years is entitled to physical depreciation of 80%, rather than the 37% depreciation that is currently applied to the subject structure. *Id.*, at 31
 - c) The Respondent, however, contends that its assessment of the subject property is not excessive in light of the fact that the Petitioners bought the property for \$175,000 on or about July 1, 2005. The Respondent further cites to the 2002 Real Property Assessment Manual ("Manual") for the proposition that a technical failure to comply with the Guidelines does not render an assessment invalid. *See Resp't Ex. 8.*
 - d) The Indiana Tax Court recently decided a case addressing largely the same issues raised by the parties in the instant case. *See Kooshtard Property VI, LLC, v. White River Twp. Assessor*, 836 N.E. 2d 501 (Ind. Tax. 2005). In *Kooshtard*, the taxpayer claimed that the assessor had improperly calculated the effective age of structure at issue. *Kooshtard*, 836 N.E.2d at 505. The court agreed with the taxpayer that, under the Guidelines, the structure had an effective age of seventeen (17) years. *Id.* at 506. Nevertheless, the assessor had "tweaked" the effective age of the structure to reflect the modernization and maintenance resulting from its 1995 remodeling and to make the assessment more consistent with its 2001 purchase price. *Id.* Because the taxpayer did not account for those effects in its claim that the structure should have an effective age of seventeen (17), the court found that the taxpayer failed to present a prima facie case that the assessment was in error. *Id.*
 - e) In a footnote, the court expanded upon its holding as follows:

To the extent that *Kooshtard* suggests that the Assessor should have perhaps "tweaked" the improvement's condition rating rather than its

effective age (see Pet'r Reply Br. At 1), the Court agrees. *See* Guidelines, Book 2, App. F at 24 (stating that an improvement's effective age is computed by correlating its actual age with its condition rating). Nevertheless, a technical failure to comply with the procedures set forth in the Guidelines' cost approach does not render an assessment invalid as long as the individual assessment is a *reasonable measure of true tax value*. 50 IAC 2.3-1-1(d)(emphasis added). To this end, the Assessor seems to assert in this case that, when challenging an assessment, a taxpayer cannot base its claim on how the cost approach (as contained in the Guidelines) was applied; rather the taxpayer must present evidence indicating that the property's market value-in-use as determined through the cost approach is not an accurate indicator as to its market value-in-use (i.e. an appraisal).

While the Manual and Guidelines do not appear to prohibit a taxpayer from challenging its assessment on the grounds that the cost approach was misapplied, the Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP). Turn-around, however, is fair play. Thus, to the extent that assessing officials themselves utilize other market value-in-use evidence to justify their assessments, their evidence must conform to the same standards to which they would hold taxpayer's evidence.

Id. at n.6 (emphasis added). The Court went on to find that the assessor's statement that the subject improvement sold for \$1,127,320 in 2001 was insufficient to support the assessment of \$195,400. *Id.* The Court noted that the same type of evidence would have been insufficient if offered by a taxpayer who failed, among other things, to present closing documents to verify the sale price, to trend the sale price to a relevant valuation date, or to account for the vast difference between the sale price and the assessment. *Id.*

- f) Read as a whole, *Kooshtard* appears to stand for the proposition that a taxpayer may establish a prima facie case of error through proof that the assessor failed to properly apply the cost approach as set forth in the Guidelines, but that an assessor may rebut the Petitioners' case with probative evidence demonstrating that the assessment is a reasonable measure of the property's market value-in-use.
- g) In this case, the Petitioners demonstrated that the assessor did not follow the formula set forth in the Guidelines for determining the effective age of, and the amount of physical depreciation to apply to, the subject structure. Unlike *Kooshtard*, however, there is no evidence that the assessor simply "tweaked" the effective age in order to account for improvements made to the structure after its original date of construction.

- h) Nonetheless, the Respondent presented probative evidence that the assessment as a whole is a reasonable measure of the subject property's true tax value, or at least that the assessment does not exceed the property's true tax value. The Respondent presented evidence that the Petitioners sold the subject property for \$175,000 on July 1, 2005. Barbara Hackman testified that she verified both the sale price and the fact that the sale was for real property only. *Hackman testimony*. Moreover, Ms. Hackman testified that she spoke with Bob Elliot, a commercial real estate agent familiar with commercial property in Bartholomew County. *Hackman testimony; Resp't Ex. 8*. Mr. Elliot informed Ms. Hackman that the market had not seen a large increase since 1999, and that a rate of 1.5% to 2% per year would be appropriate to use in trending sales data. While the hearsay statement of Mr. Elliot borders on being conclusory, it constitutes at least some evidence that the subject property did not appreciate more than \$54,700 (the difference between the sale price of \$175,000 and the assessed value of \$120,300) between the January 1, 1999, valuation date prescribed by the Manual and the July 1, 2005, sale date.
- i) In that respect, this case differs from *Kooshtard*, where the Court rejected the assessor's testimony concerning the sale price of the building at issue, apparently on grounds that the assessor had not verified the sale price or trended that price to an appropriate valuation date.
- j) Based on the foregoing, the Petitioners failed to establish by a preponderance of the evidence that the assessment of the subject improvement is in error.

Conclusions

Constitutionality

24. The Petitioners' certified tax representative was not authorized to raise any claims regarding the constitutionality of the assessment. The Board therefore does not consider any claims purportedly raised on behalf of the Petitioners that the current assessment violates Article X Section 1 of the Indiana Constitution

Effective Age

25. The Petitioners failed to establish that the assessment of the subject structure is in error. The Board finds in favor of Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code § 4-21.5-5-7(b)(4), § 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.