

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

Petition #: 03-003-03-1-4-00009
Petitioner: Lala Byrd Isom
Respondent: Columbus Township Assessor (Bartholomew County)
Parcel #: 199524425500
Assessment Year: 2003

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Bartholomew County Property Tax Assessment Board of Appeals (PTABOA) by written document dated July 30, 2004.
2. The Petitioner received notice of the decision of the PTABOA on January 13, 2005.
3. The Petitioner initiated an appeal to the Board by filing a Form 131 petition with the Bartholomew County Assessor on February 8, 2005. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated August 10, 2006.
5. The Board held an administrative hearing on October 3, 2006, before the duly appointed Administrative Law Judge, Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Milo Smith, Taxpayer Representative
 - b) For Respondent: Barbara Hackman, Columbus Township Assessor
Cathi Gould, Tyler-CLT

Facts

7. The property contains a four (4) unit apartment building located at 630 7th Street, Columbus, as is shown on the property record card for parcel #199524425500.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.

9. Assessed Value of subject property as determined by the PTABOA:
Land \$15,100 Improvements \$88,700 Total \$103,800.
10. Assessed Value requested by Petitioner on the Form 131 petition:
Land \$11,500 Improvements \$36,600 Total \$48,100.
11. Assessed Value requested by Petitioner at the hearing (see Petitioner Exhibit 9):
Land \$11,500 Improvements \$65,800 Total \$77,300.

Issues

12. Summary of the Petitioner’s contentions in support of alleged error in assessment:
 - a) The Respondent erred in determining the effective age of the subject building under the Real Property Assessment Guidelines for 2002 – Version A (Guidelines). *Smith argument*. According to the Petitioner, the subject building would have an effective age of no more than forty (40) years if the Guidelines were applied properly. *Smith testimony*.
 - b) Under the Guidelines, an assessor determines the effective age of a structure by reference to effective age classification tables that are based upon the actual age and condition of the structure. *Id.*; *Pet’r Ex. 2*. The subject structure was constructed in 1906 and later converted into four (4) residential units. The subject structure has not been well maintained and it is located in an average neighborhood, as noted on the Property Record Card (PRC). *Smith testimony*; *Pet’r Ex. 6*.
 - c) Even if a condition rating of “excellent” – the highest condition rating permitted by the Guidelines – were used to assess the subject building, its effective age would be forty (40) years. *Smith testimony*; *Pet’r Ex. 1*. That would equate to a year of construction of 1959, not 1966 as shown on the PRC. *Id.*; *Pet’r Ex. 6*. According to the Guidelines, Wood joist apartment buildings have an effective economic life of fifty (50) years. *Id.*; *Pet’r Ex. 4*. Using an effective age of forty (40) years and an economic life of fifty (50) years, the subject building would be entitled to depreciation of 64%. *Smith testimony*; *Pet’r Ex. 5*.¹
 - d) The current PRC classifies the subject structure as apartments and prices the subject structure from the GCR Apartment Schedule. *Smith testimony*; *Pet’r Ex. 6*. Therefore, the subject land should be priced as apartment land. *Smith testimony*. Columbus Township apartment land in an average neighborhood is valued at \$30,000 per acre. *Id.*; *Pet’r Ex. 7*. The PRC clearly shows the neighborhood for the subject property is average. *Id.*; *Pet’r Ex. 6*.
 - e) The subject land has .1618 acres which the Petitioner determined by multiplying the width by the depth then dividing by 43,560 ($47 \times 150 = 7050 \div 43,560 = .1618$).

¹ The building currently receives depreciation of fifty-one percent (51%). *See Pet’r Ex. 6*.

Smith testimony. Applying an adjustment factor of 2.36, which the Petitioner determined from the Acreage Size Adjustment Table contained in the Guidelines, results in a total land value of \$11,500. *Id.*; *Pet'r Ex. 9.*

- f) Ind. Admin. Code tit. 50, r. 2.3-1-1 provides that no method other than the method selected by the county assessor may be used for the assessment of real property within a county. *Smith argument; Pet'r Ex. 7.* The Bartholomew County Assessor adopted the Guidelines as the method to be used in assessing real property. Thus, in order to maintain uniformity and equality, the Board must change the Petitioner's assessment to comply with the Guidelines. *Smith Argument.*

13. Summary of Respondent's contentions in support of the assessment:

- a) The PTABOA changed the pricing of the subject structure to apartment pricing. The effective age is still an issue. *Hackman testimony; Resp't Exs. 1, 4.*
- b) With regard to effective age, the Respondent points to a determination by the Board, *Dutro v. Columbus Twp. Assessor* No. 03-003-03-1-4-00008 (February 1, 2006), and a decision from the Indiana Tax Court, *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501 (Ind. Tax Ct. 2006). *Hackman testimony; Resp't Exs. 5, 6.* The Respondent also points to Ind. Admin. Code tit. 50, r. 2.3-1-1(d) for the proposition 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. *Hackman testimony; Resp't Ex. 8 at 2.*
- c) The Respondent points to a publication of the International Association of Assessing Officials (IAAO), which defines effective age as the number of years of age of the improvement as indicated by its condition. *Hackman testimony; Resp't Ex. 7.* That publication also explains that the effective age of a structure may not be the same as its chronological age. *Id.*
- d) The Respondent estimated the market value of the subject property using the income approach. The Respondent used the actual monthly rent of the subject structure and subtracted 5% for vacancy and collection losses, and 30% for expenses since the structure is older. With a 10% capitalization rate, the estimated value is \$113,316. With an 11% capitalization rate, the estimated value is \$103,000, which is close to the value determined by the cost approach. *Hackman testimony; Resp't Ex. 9 at 1.*
- e) The Petitioner previously provided a gross income multiplier worksheet to the Respondent. *Hackman testimony; Resp't Ex. 9 at 2.* Two of the properties upon which the Petitioner based its analysis, however, are not comparable to the subject property. *Id.* One of those properties contains a ten (10) unit apartment building and the other is a single family residential home. *Id.* Using the information from the other two properties, both of which contain four (4) unit buildings like the subject

property, yields a gross rent multiplier of 6.25. *Id.* When applied to the subject property's rental income, that multiplier results in a value of \$106,500. *Id.*

Record

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

- a) The Form 131 petition.
- b) The digital recording of the hearing.
- c) Exhibits:

Petitioner Exhibit 1: REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 –
VERSION A (Guidelines), Appendix F, Table F-1

Petitioner Exhibit 2: Guidelines, Appendix F, p. 7

Petitioner Exhibit 3: Guidelines, Appendix F, Table F-2

Petitioner Exhibit 4: Guidelines, Appendix F, Table F-3c

Petitioner Exhibit 5: Guidelines, Appendix F, Table F-4

Petitioner Exhibit 6: Subject Property Record Card (PRC)

Petitioner Exhibit 7: Columbus Township Apartment Land Pricing Sheet

Petitioner Exhibit 8: Guidelines, Chapter 2, Table 2-11

Petitioner Exhibit 9: PRC showing changes requested by the Petitioner

Petitioner Exhibit 10: 50 IAC 2.3-1-1

Respondent Exhibit 1: Subject PRC

Respondent Exhibit 2: Photographs (2) of Subject Property

Respondent Exhibit 3: Form 130 Petition

Respondent Exhibit 4: Form 115

Respondent Exhibit 5: IBTR Final Determination, *Dutro*, Petition No. 03-003-03-
1-4-00008

Respondent Exhibit 6: Tax Court Decision, *Kooshtard Property VI, LLC v. White
River Twp. Assessor*, 836 N.E.2d 501 (Ind. Tax Ct. 2006)

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

Respondent Exhibit 8: 50 IAC 2.3-1-1(d)

Respondent Exhibit 9: Income approach

Board Exhibit A: Form 131 Petition

Board Exhibit B: Notice of Hearing

Board Exhibit C: Hearing 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 a 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.
16. The Petitioner did not provide sufficient evidence to support her contentions. The Board reaches this conclusion for the following reasons:

Effective Age

- a) The Petitioner contends that the Respondent did not sufficiently depreciate the replacement cost new of the subject building because it did not correctly determine the building’s effective age. The Petitioner bases its claim solely upon the Respondent’s failure to follow the directions for determining effective age and physical depreciation set forth in the Guidelines. Even if the Board accepts the Petitioner’s claim that the Respondent did not apply the Guidelines properly, that failure is insufficient, by itself, to establish an error in assessment.
- b) The rules promulgated by the State Board of Tax Commissioners and adopted by the Department of Local Government Finance provide: “No technical failure to comply with the procedures of a specific assessing method violates this rule so long as the individual assessment is a reasonable measure of “True Tax Value, and failure to comply with the . . . Guidelines . . . does not in itself show that the assessment is not a reasonable measure of ‘True Tax Value[.]’). Ind. Admin. Code tit. 50, r.2.3-1-1(d).
- c) Moreover, the Indiana Tax Court repeatedly has rejected appeals by taxpayers who relied upon perceived errors in the methodology applied by assessing officials rather than upon market-based evidence to establish the value of their property. *See, e.g., O'Donnell v. Dep't of Local Gov't Fin.* 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006)(finding that taxpayers failed to establish prima facie case based on various

alleged errors by assessing officials, because the taxpayers focused solely on methodology and did not demonstrate that the assessment did not accurately reflect their property's market value-in-use); *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 764 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. White River Twp. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (“[W]hen a taxpayer challenges its assessment under this new system, it cannot merely argue form over substance. Rather, the taxpayer must demonstrate that the assessed value as determined by the assessing official does not accurately reflect the property’s market value-in-use.”).²

- d) The Board likewise is not persuaded by the Petitioner’s claim that its assessment must be adjusted to comply with the Guidelines in order to maintain uniformity and equality in assessment. The Petitioner failed to develop that argument by citing to any authority other than an administrative rule that does not expressly address statutory or constitutional requirements concerning uniformity and equality of assessment. The Board is extremely reluctant to decide such a claim in the abstract without cogent argument. Moreover, the Petitioner made no evidentiary showing to support its claim. Although Mr. Smith made the conclusory assertion that other properties were assessed using the Guidelines, he did not present any evidence concerning those properties or their assessments.
- e) Based on the foregoing, the Petitioner failed to establish a prima facie case for a change in assessment of the subject building.

Land Classification

- f) The Petitioner next contends that the Respondent erred by failing to assess the subject land using the base rates established by Columbus Township for apartment land. *Smith argument*. Once again, the Petitioner relies upon the Respondent’s methodology in assessing the subject property rather than upon market-based evidence of the property’s value. For the reasons set forth above, the Petitioner’s claims area insufficient to establish a prima facie case of error.
- g) Moreover, the Petitioner failed to establish that the Respondent erred in its application of the Guidelines. The Respondent used the GCR apartment cost schedule from the Guidelines to assess the subject structure. The Guidelines provide models of typical improvements in order to “facilitate the assessor in estimating the

² In a footnote in *Kooshtard Property VI*, the Tax Court appeared to hold open the possibility that, at least in some cases, a taxpayer might establish a prima facie case by relying solely on errors by assessing officials in applying the Guidelines. See *Kooshtard Property VI*, 836 N.E.2d at 506 n. 6 (“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 Standard of Professional Appraisal Practice”) (emphasis added). As noted above, however, the Tax Court subsequently has rejected taxpayer claims based solely on the methodology employed by assessors. See, e.g., *O’Donnell v. Dep’t of Local Gov’t Fin.* 854 N.E.2d 90, 95 (Ind. Tax. Ct. 2006); *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 764 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. White River Twp. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006).

replacement cost new of the subject improvements as of the effective valuation date to serve as the *starting point* in the application of the cost approach to value” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. D at 2 (emphasis added). The models are divided into three major categories based upon occupancy type: General Commercial Mercantile (GCM), General Commercial Industrial (GCI), and General Commercial Retail (GCR). *Id.* Each major category has several use-specific models within it, such as banks, retail stores, and motels. *Id.* at 2-41. The purpose of the model descriptions is to assist assessors in determining whether adjustments are necessary to account for variations between the subject improvement and the model selected to compute its replacement cost new. *Id.*

- h) Thus, while the use designations in the individual models provide a helpful guide for assessors in determining the appropriate model to utilize in assessing a given building, the choice of model is governed by the physical descriptions contained in those models. The more closely a building conforms to a model’s description, the fewer the adjustments that the assessor will need to make. Consequently, the Respondent’s choice of the GCR apartment cost schedules to assess the subject structure is not dispositive of the appropriate classification of the subject land.

Conclusion

- 17. The Petitioner failed to make a prima facie case for a change in assessment. The Board finds in favor of the 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>>.