

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

Petition #: 03-003-03-1-4-00026A
Petitioner: ReKab-Baker & Associates
Respondent: Columbus Township Assessor (Bartholomew County)
Parcel #: 19-95-24.43-8500
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 May 12, 2003.
2. The PTABOA issued notice of its decision on January 12, 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 the Petitioner: Milo Smith, taxpayer representative
 - b) For the Respondent: Barbara Hackman, Columbus Township Assessor's Office
Cathi Gould, Tyler-CLT

Facts

7. The subject property contains an office building and it is located at 417 Washington Street, Columbus, as is shown on the property record card for parcel 19-95-24.43-8500.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.

9. The PTABOA determined that the assessed value of the subject property is \$34,500 for the land and \$934,900 for the improvements for a total assessed value of \$969,400
10. The Petitioner requests a value of \$34,500 for the land and \$329,000 for the improvements for a total value of \$363,500.

Issue

11. 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. *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 building was constructed in 1900 and it was remodeled in 2001. The building has characteristics that fit alternately within the Guidelines' descriptions of buildings in average, good and excellent condition, respectively. *Id.*; *Pet'r Ex. 1*.
 - c) Even if the condition rating of the subject building were changed from its current rating of "average" to "excellent," the building's effective age under the Guidelines would be forty (40) years. *Smith testimony*; *Pet'r Exs. 1-3, 6*. That would equate to a year of construction of 1959, not 1972 as is currently reflected on the property record card for the subject property. *Smith testimony*. If the subject building were assessed based upon an effective age of forty (40) years, it would be entitled to seventy-three percent (73%) depreciation. *Smith testimony*; *Pet'r Ex. 5*.¹
 - d) 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*.

¹ The property record card reflects that the building currently receives forty-three percent (43%) depreciation.

12. Summary of Respondent's contentions in support of the assessment:
- a) The subject property is located on one of the main streets in downtown Columbus. *Hackman testimony*. The same occupant has rented the subject property since 2002. *Id.*
 - b) The Board and the Indiana Tax Court have issued decisions holding that a technical failure to comply with the procedures set forth in the Real Property Assessment Guidelines for 2002 – Version A (Guidelines) 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. 5 at 7; Resp't Ex. 8*. Whenever possible, an assessor should consider other approaches to value in addition to the cost approach outlined in the Guidelines. *Hackman argument*.
 - c) Effective age is defined as the number of years of age of an improvement as indicated by its condition. *Hackman testimony; Resp't Ex. 7*. A building's effective age may or may not be the same as its actual age; it is a subjective determination. *Hackman argument*. The subject building was remodeled in 2001. *Hackman testimony*. Remodeling extends the economic life of a building. *Id.*
 - d) The Respondent estimated the market value of the subject property to be \$1,199,550 under the income capitalization approach to value. *Hackman testimony; Resp't Ex. 11*.

Record

13. 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, Appendix F, p. 23
 - Petitioner Exhibit 2: REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Appendix F, p. 7
 - Petitioner Exhibit 3: REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Appendix F, p. 24
 - Petitioner Exhibit 4: REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Appendix F, p. 26
 - Petitioner Exhibit 5: REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Appendix F, p. 31
 - Petitioner Exhibit 6: Revised property record card showing requested changes
 - Petitioner Exhibit 7: 50 IAC 2.3-1-1

Respondent Exhibit 1: Subject property record card
Respondent Exhibit 2: Photographs of subject property
Respondent Exhibit 3: Form 130 Petition
Respondent Exhibit 4: Form 115
Respondent Exhibit 5: IBTR Final Determination, *Joy G. & George A. Dutro*, petition no. 03-003-03-1-4-00008
Respondent Exhibit 6: *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*, pp. 160-161 & 182-183
Respondent Exhibit 8: 50 IAC 2.3-1-1
Respondent Exhibit 9: Income approach to value subject property

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

14. 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.

15. The Petitioner did not provide sufficient evidence to support its contentions. The Board reaches this conclusion for the following reasons:
- 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 facts in this case are closely analogous to those involved in *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501 (Ind. Tax Ct. 2006), *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006), *review den.* In *Kooshtard Property VI*, the taxpayer claimed that, under the instructions set forth in the Guidelines, its building should have been assessed as having an effective age of seventeen (17) years. 836 N.E.2d at 503. The assessor admitted that it had "tweaked" the building's effective age to account for modernization and maintenance stemming from the building's 1995 remodeling and to make the building's true tax value closer to its 2001 sale price. *Id.* at 506. The Court acknowledged that the assessor should have "tweaked" the building's condition rating rather than its age. 836 N.E.2d at 506 n.6. Nonetheless, the Court noted that the taxpayer failed to account for the effect of the building's maintenance and modernization in arguing that the building should be assessed based upon having an effective age of seventeen (17) years. The Court therefore held that the taxpayer failed to establish a prima facie case. 836 N.E.2d at 506.
 - c) Here, as in *Kooshtard Property VI*, the Respondent adjusted the effective age of the subject building to account for remodeling and modernization. Neither party provided details about the remodeling, although the Petitioner arguably attempted to account for the effect of the remodeling by premising its claim for relief on the building receiving a condition rating of excellent under the Guidelines. More importantly, the Petitioner did not provide any market-based evidence regarding the subject property's value. Instead, like the taxpayer in *Kooshtard Property VI*, the Petitioner rests its case solely on grounds that the Respondent made a technical error in applying the Guidelines. The rules promulgated by the State Board of Tax Commissioners and adopted by the Department of Local Government Finance, however, 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).
 - d) 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). Following its decision in *Kooshtard Property VI*, however, 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.”).

- e) Finally, the Board 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 assessment.
- f) Based on the foregoing, the Petitioner failed to establish a prima facie case for a change in assessment.

Conclusion

- 16. The Petitioner failed to make a prima facie case. 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>.