

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

**Petition #:** 03-003-03-1-4-00028a  
**Petitioner:** Seve LLC  
**Respondent:** Columbus Township Assessor (Bartholomew County)  
**Parcel #:** 19-95-24.12-15801  
**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 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 Petitioner: Milo Smith, taxpayer representative
  - b) For Respondent: Barbara Hackman, Columbus Township Assessor's Office  
Cathi Gould, Tyler-CLT

**Facts**

7. The property is an office building located at 1428 Franklin Street, Columbus, as is shown on the property record card for parcel 19-95-24.12-15801.
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 \$33,100 for the land and \$99,100 for the improvements for a total assessed value of \$132,200.<sup>1</sup>
10. At hearing, the Petitioner requested a value of \$33,100 for the land and \$49,900 for the improvements for a total value of \$83,000.

### Issue

11. Summary of the Petitioner's contentions in support of alleged error in assessment:
  - a) The subject building was constructed in 1968 and has an effective age of 1985. *Smith testimony*. Under the Real Property Assessment Guidelines for 2002 – Version A (Guidelines), a wood joist building constructed in 1968 with a condition rating of average has an effective age of thirty-two (32) years. *Smith testimony; Pet. Ex. 7*. Because the subject property has wood joist framing, it should be depreciated using a 45-year life expectancy, as specified in Appendix F from the Guidelines. *Smith argument; Pet'r Ex. 8*. A building with an effective age of thirty-two (32) years and an economic life expectancy of forty-five (45) years should receive 56% depreciation. *Smith testimony; Pet'r Ex. 9*.
  - b) The Petitioner contends that the subject property should be priced from the General Commercial Retail (GCR) office cost schedule rather than from the General Commercial Mercantile (GCM) office cost schedule. Although the Petitioner did not list that issue on its Form 131 petition, it raised the issue at the hearing before the PTABOA. *Smith testimony; See also Board Ex. A*. The Respondent does not object to the Board addressing that issue in the instant appeal. *Hackman testimony*.
  - c) The Petitioner submitted information regarding four (4) purportedly comparable properties. *Pet'r Exs. 4-6*. The buildings on those properties were constructed between 1956 and 1971, and the effective ages of those buildings range from 1980 to 1985. *Id; Smith testimony*. The physical depreciation applied to the buildings ranges from 27% to 48%. *Id*. The subject property, by contrast, is assessed based on an effective age of 1985 and receives only 21% depreciation. *Smith testimony; Pet'r Ex. 10*. Consequently, the subject property is not assessed in a uniform and equal manner in comparison to the other properties identified by the Petitioner. *Smith argument*.
  - d) The Petitioner acknowledges that it bought the subject property for \$140,000 in 1999. *Smith testimony*. The Petitioner, however, contends that the Board should not rely upon the subject property's sale price in issuing its determination. To do

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<sup>1</sup> Ms. Hackman testified at the hearing that a change to the paving had been made by the PTABOA, but was not accounted for on the Form 115. As a result, the improvement value of record for the subject property is \$99,100, rather than the \$103,700 stated on the Form 115.

so would result in a lack of uniformity and equality because the Respondent did not assess other properties based upon sale prices. *Smith argument.*

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

- a) A sales disclosure form for the subject property indicates that the property was sold for \$140,000 on January 29, 1999. *Resp't Ex. 5.* In a conversation with the previous owner, Ms. Hackman verified that the sale was an arms-length transaction and that no personal property was included. *Hackman testimony.* There was no need to trend the sale price, because the transaction occurred so close to the valuation date of January 1, 1999. *Hackman argument.*
- b) The Board has issued decisions supporting 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. *Id; Resp't Ex.6 at 7; Resp't Ex. 8.* An assessor should take into consideration approaches to value other than the cost approach, and it certainly should consider a sale of the subject property, whenever possible. *Hackman argument.*
- c) The effective age of a building may or may not be the same as its actual age. *Id.* Effective age is defined as the number of years of age of an improvement as indicated by its condition. *Id; Resp't Ex. 7.* In the case of the subject property, the building has been remodeled and its economic life subsequently extended. *Hackman testimony.*

**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: none submitted

Petitioner Exhibit 2: Indiana Code §6-1.1-2-2

Petitioner Exhibit 3: 2002 REAL PROPERTY ASSESSMENT MANUAL, p.6

Petitioner Exhibit 4: Table of comparable properties

Petitioner Exhibit 5: Map showing location of comparable properties

Petitioner Exhibit 6: Property record Cards (PRCs) for comparable properties

Petitioner Exhibit 7: REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002  
– VERSION A, Appendix F, p. 24

Petitioner Exhibit 8: REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002  
– VERSION A, Appendix F, p. 26

Petitioner Exhibit 9: REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002  
– VERSION A, Appendix F, p. 31

Petitioner Exhibit 10: Subject PRC showing requested changes

Respondent Exhibit 1: Subject PRC

Respondent Exhibit 2: Two photographs of subject property

Respondent Exhibit 3: Form 130

Respondent Exhibit 4: Form 115

Respondent Exhibit 5: Sales disclosure form for subject property dated  
January 29, 1999

Respondent Exhibit 6: IBTR Final Determination, *Joy G. & George A.  
Dutro*, petition no. 03-003-03-1-4-00008

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

Respondent Exhibit 8: 50 I.A.C. 2.3-1-1(d)

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 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.

15. The Petitioner did not provide sufficient evidence to support its 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 facts in this case are 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 bring its assessment in line with its sale price. *Hackman testimony*. The Petitioner does not provide any market-based evidence to establish that the assessment does not reflect the subject property's market value-in-use. 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, 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.”).

#### Choice of Model

- e) The Petitioner also contends that the Respondent erred by using the GCM office model to assess the subject building rather than the GCR office model. Once again, however, the Petitioner simply attacks the Respondent’s methodology rather than presenting market-based evidence of the subject property’s market value-in-use.
- f) Moreover, the Petitioner failed to establish that the Respondent erred in its application of the Guidelines. The Guidelines provide models of typical improvements in order to “facilitate the assessor in estimating the 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: GCM, General Commercial Industrial (GCI), and GCR. *Id.* Each major category has several use-specific models within it, such as banks, retail stores, offices, 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.*
- g) 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. The Petitioner, however, did not offer any evidence to show that the subject building conforms more closely to the GCR office model than to the GCM office model other than Mr. Smith's testimony that the building is constructed of wood joist framing. *See Smith testimony*. Consequently, the Petitioner failed to establish that the Respondent erred in using the GCM office model to assess the subject building.

#### Uniformity and Equality of Assessment

- h) The Petitioner contends that the subject building is not assessed in a uniform and equal manner in comparison to several nearby buildings.
- i) The Petitioner, however, does not compare relevant features of the subject property to those of the purportedly comparable properties upon which it bases its uniformity and equality argument. The Petitioner identifies some basic information concerning the physical features of the subject building and the other buildings it contends were assessed in a more favorable manner. For example, all of the buildings contain (1) story and have forced air heating and cooling. *Smith testimony; Pet'r Ex. 4*. The Petitioner, however, fails to compare numerous other features relevant to the market value-in-use of the respective properties.
- k) Moreover, the Respondent presented evidence that the subject property sold for \$140,000 on January 29, 1999. *Hackman testimony; Resp't Ex. 5*. That sale price is \$7,800 more than the subject property's assessment, and the sale occurred less than one month after the relevant valuation date of January 1, 1999. *See 2002 REAL PROPERTY ASSESSMENT MANUAL at 2, 4, 8* (indicating that properties are valued as of January 1, 1999, for 2002 – 2005 assessment dates).
- l) The Petitioner, however, contends that other properties are not assessed based upon their sale prices. Thus, according to the Petitioner, relying on the sale price of the subject property to support its assessment would result in a lack of uniformity and equality. The Petitioner does not cite to any authority for its position in that regard. The Board notes that 2002 Real Property Assessment Manual expressly recognizes the sale price of a subject property as relevant evidence in an assessment appeal. *See MANUAL at 5*. The Board will not simply disregard such evidence absent cogent legal argument as to why it must do so.

#### **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: \_\_\_\_\_

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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](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>.