

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

Petition #: 03-033-04-1-5-00002
Petitioners: Howard R. & Susan L. Proctor
Respondent: Columbus Township Assessor (Bartholomew County)
Parcel #: 199524419900
Assessment Year: 2004

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 November 9, 2004.
2. The Petitioners received notice of the decision of the PTABOA on April 13, 2005.
3. The Petitioners filed an appeal to the Board by filing a Form 131 petition with the Bartholomew County Assessor on May 10, 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 16, 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:

For Petitioners: Milo Smith, Petitioners' representative

For Respondent: Barbara Hackman, Columbus Township Assessor's office
Cathi Gould, Tyler-CLT

Facts

7. The property is classified as residential, as is shown on the property record card for parcel #199524419900.

8. The subject property is located at 803 Chestnut 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 \$17,700	Improvements \$139,000	Total \$156,700
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11. Assessed Value requested by Petitioners:

Land \$12,000	Improvements \$88,200	Total \$100,200 ¹
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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 was not uniform and equal, because all of the PTABOA’s changes were made to bring the True Tax Value (TTV) closer to the subject property’s September 6, 2002, sale price of \$160,000. *Smith testimony; Pet’rs Exs. 1-2.* The Respondent used the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”), rather than sale prices, to assess neighboring properties. *Smith testimony; Pet’rs Exs. 1, 3.*
 - c) The Respondent did not properly apply the Guidelines in determining the effective age of the subject structure. The Respondent pulled its effective age of 1975 “out of the air.” *Smith testimony; Pet’rs Ex. 1.* The subject structure is in “fair” to “average” condition. *Id.* The minimum allowable depreciation for a structure in “excellent” condition is 30% and the minimum allowable depreciation for a structure in “good” condition is 40%. *Id.; Pet’rs Ex. 6.*
 - d) In their Form 131 petition, the Petitioners further alleged that the subject land should be priced as apartment land and that the subject structure should be priced using the General Commercial Residential (“GCR”) price schedule. *Board Ex. A.*

¹ On the Form 131 Petition, the Petitioners stated requested a land value of \$5,700, and an improvement value of \$37,000. At the hearing, the Petitioners’ representative submitted testimony and evidence requesting the values stated above (Land \$12,000, Improvements \$88,200).

13. Summary of Respondent's contentions in support of the assessment:
- a) The subject property is a single-family residence that has been converted to four apartments. *Hackman testimony; Resp't Ex. 2.*
 - b) The Respondent submitted a sales disclosure form for the subject property. That form indicates that the subject property sold for \$160,000 on September 6, 2002. *Hackman testimony; Resp't Ex. 5.* The current assessed value is \$156,700. Barbara Hackman contacted the previous owner to verify the data on the sales disclosure form, and she was informed that the sale price included a stove and a refrigerator for each unit. *Hackman testimony; Resp't Ex. 9.* Ms. Hackman also contacted Bob Elliot, a commercial real estate agent familiar with commercial properties in Bartholomew County. *Hackman testimony; Resp't Ex. 9.* Mr. Elliot said that the market had not experienced large increases since 1999, and he indicated that an increase of between 1.5% and 2.0% per year would be an appropriate factor to use in trending sales data. *Id.* The Respondent used a factor of 1.5% to adjust the sale price of the subject property to a 1999 value of \$153,400. *Id.*
 - c) The Respondent submitted a sales ratio study for the subject neighborhood based upon sales occurring between January 1, 1997 and December 31, 1999. *Hackman testimony; Resp't Ex. 6.* That sales ratio study shows that assessments within the neighborhood were within accepted guidelines.
 - d) The Respondent also estimated the market value of the subject property using two additional approaches to value. First, the Respondent estimated the subject property's market value to be \$136,340 using the income approach to value. Next, the Respondent arrived at an estimated value of \$134,320 using a gross rent multiplier (GRM). The GRM method is recommended for rental properties with fewer than five (5) units. *Hackman testimony; Resp't Exs. 9, 11.*
 - e) Effective age may or may not be the same as actual age. Effective age is defined as the number of years of age of an improvement as indicated by its condition. *Hackman testimony; Resp't Ex. 8.*

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: Subject property record cards (PRCs) before and after changes

Petitioners Exhibit 3: Comparison packet of neighboring properties

Petitioners Exhibit 4: 2002 REAL PROPERTY ASSESSMENT GUIDELINES, Appendix B, page 5

Petitioners Exhibit 5: Photographs of subject property

Petitioners Exhibit 6: 2002 REAL PROPERTY ASSESSMENT GUIDELINES, Appendix B, page 12

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: Sales ratio study

Respondent Exhibit 7: IBTR Final Determination, *Eckerling v. Wayne Twp Deputy Assessor*, Pet. No. 49-900-02-1-5-02171

Respondent Exhibit 8: IAAO Property Assessment Valuation Manual, pgs. 160-161 & 182-183

Respondent Exhibit 9: Income approach, GRM, and trended sale data for the subject property

Respondent Exhibit 10: Digest of HB 1001

Respondent Exhibit 11: E-mail from Barry Wood, DLGF

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 of Assessment

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.² While the Petitioners could have raised such a claim on

² 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.

their own, they did not appear at the hearing in order to do so. The Petitioners 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 “1975” 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 therefore will address the Petitioners’ claim regarding the effective age of the subject structure.
23. The Petitioners failed to present sufficient evidence to support their contention that the Respondent erred in assigning an effective age to the subject structure. The Board reaches this conclusion because:
 - a) The Petitioners contend that the Respondent erred in using an effective age of “1975” to assess the subject dwelling.
 - b) The Guidelines recognize that not all residential structures depreciate at the same rate. Thus, two structures built in the same year might have different “effective ages.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002- VERSION A, app. B at 5 (incorporated by reference at 50 IAC 2.3-1-2). Things such as room additions and remodeling might alter the effective age of a structure. *Id.* Under the Guidelines, the “effective age” of a residential structure is reflected through the assignment of a “condition rating.” *Id.*
 - c) The depreciation tables account for different rates of depreciation based upon the condition rating assigned to a property. Thus, a property in “average” condition depreciates at a faster rate than a property in “fair” condition, but at a slower rate than a property in “good” condition. *See Id.* at 11-13.
 - d) Based on the year of construction of the subject structure (1880), its quality grade of “C” and its condition rating of “average,” the Guidelines provide that the subject structure is entitled to 45% depreciation. *See* GUIDELINES, app. B at 12. The PRC for the subject property indicates that the Respondent applied depreciation of only 22%. *Resp’t Ex. 2.*
 - e) The Respondent, however, contends that its assessment of the subject property is not excessive in light of the fact that the subject property sold for \$160,000 on September 6, 2002. *See Resp’t Ex. 5.* 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.*
 - f) The Indiana Tax Court recently decided a case addressing issues similar to those 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 a commercial structure. *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.*

g) 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.*

- h) 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.
- i) In this case, the Petitioners demonstrated that the assessor did not follow the formula set forth in the Guidelines for determining the amount of physical depreciation to apply to the subject structure.
- j) The Respondent attempted to support its assessment on grounds that such assessment is a reasonable measure of true tax value of the subject property as a whole based upon the September 6, 2002, sale price of the subject property. That sale price, however, does not support the assessment. It is true that, unlike the assessor in *Kooshtard*, the Respondent verified the sale price and trended it to a value as of 1999. Nonetheless, that time adjusted value of \$153,400 is actually less than the assessment. Moreover, the sale included personal property of an undisclosed value, which would further lower the amount of the sale price attributable to the market value of the real property.
- k) The Respondent cast further doubt upon the probative value of the sale price by presenting its own estimation of the market value of the subject property gleaned by capitalizing the subject property's net income and using a gross rent multiplier. *See Resp't Ex. 9.* The Respondent arrived at estimates of \$136,340 and \$134,400 respectively. *Id.* The Respondent did not provide sufficient explanation of its calculations or of the data underlying those calculations to render either estimation probative of the market value-in-use of the subject property. Nonetheless, those calculations represent a concession of sorts by the Respondent that the market value-in-use of the subject property is something less than the amount for which it is currently assessed.
- l) Finally, the Respondent submitted a sales ratio study examining the sales and assessments of other three (3) and four (4) unit apartments from the same area as the subject property. *Hackman testimony; Pet'r Ex. 6.* That study found a median ratio of .89, a COD³ of 6.1 and a PRD⁴ of 1.02. *Id.* The Respondent contends that the sales ratio study supports the assessment of the subject property, because it shows that the Respondent's assessments generally were within acceptable guidelines. *Hackman argument.*⁵

³ "COD" presumably refers to "coefficient of dispersion."

⁴ "PRD" presumably refers to "price related differential."

⁵ The Respondent also relied on the sales ratio study to show that its assessments of three (3) and four (4) unit apartment buildings were uniform and equal. *Gould testimony.* Because the Board finds that the Petitioners' tax

- m) The Respondent apparently confuses the standards for examining whether equalization measures are required under Ind. Admin. Code tit. 50 r. 14-1, with the standards for determining whether an individual assessment is correct. The former govern when it is necessary either to reassess one or more classes of property within a jurisdiction or to adjust individual assessments to attain greater uniformity and equality. The latter govern whether an individual taxpayer has established that his property is assessed in excess of its true tax value. The Manual clearly provides that a taxpayer may rebut the presumption that an individual assessment is correct by, among other things, offering evidence relevant to the market value-in-use of his property. 2002 REAL PROPERTY ASSESSMENT MANUAL 5 (incorporated by reference at 50 IAC 2.3-1-2). It does not provide for an assessor to rebut such evidence simply by showing that the assessment of property within the jurisdiction as a whole falls within acceptable standards for uniformity and equality.
- n) Based upon the foregoing, the Petitioners established by a preponderance of the evidence that current assessment of the subject structure is incorrect. The assessment of the subject structure should be changed to apply the appropriate amount of depreciation under the Guidelines based upon the actual year of construction of the subject property.

Pricing Schedules

- 24. The Petitioners failed to provide sufficient evidence to support their contentions that the Respondent erred by not valuing the subject land as apartment land and by not using the GCR pricing schedule in valuing the subject structure.
 - a) On the Form 131 Petition, the Petitioners contended that the subject land should be priced as apartment land and that the subject structure should be priced from the GCR pricing schedule. *Board Ex. A.*
 - b) The Petitioners' representative, however, failed to offer any evidence relating to those contentions at the hearing. The Petitioners therefore failed to establish a prima facie case of error with regard to either of those contentions.

Conclusions

Constitutionality

- 25. 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.

representative was not authorized to assert a constitutional claim regarding lack of uniformity and equality, the Board need not address the probative value of the sales ratio study to rebut such a claim.

Effective Age

26. The Petitioners established by a preponderance of the evidence that the current assessment is in error with regard to the amount of depreciation applied to the subject structure. The assessment should be corrected to apply the appropriate amount of depreciation under the Guidelines for a structure constructed in 1880 with a quality grade of “C” and a condition rating of “average, all as shown on the PRC for the subject property. See Resp’t Ex. 2.

Pricing Schedules

27. The Petitioners failed to establish a prima facie that the Respondent erred by not assessing the subject land as apartment land or by not valuing the subject structure under the GCR pricing schedule.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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>.