

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

Petition #s: 07-005-02-1-4-00019
07-005-02-1-4-00022
Petitioner: Gordon R. Miller
Respondent: Washington Township Assessor (Brown County)
Parcel #s: 001093192202701
001093192202700
Assessment Year: 2002

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 Petitioner initiated the assessment appeals with the Brown County Property Tax Assessment Board of Appeals ("PTABOA") by written documents dated May 23, 2005.
2. The Petitioner received notice of the decisions of the PTABOA on August 29, 2005.
3. The Petitioner filed appeals to the Board by filing the Form 131 petitions with the Brown County Assessor on September 22, 2005. The Petitioner elected to have these cases heard in small claims.
4. The Board issued the notices of hearing to the parties dated April 21, 2006.
5. The Board held an administrative hearing on June 1, 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
Donna Kelp Lutes, Brown County Assessor
 - b) For Respondent: Frank Kelly, Nexus Group
Linda Bauer, Brown County PTABOA

Facts

7. The subject parcels are classified as commercial, as is shown on the property record cards for parcel numbers 001093192202701 and 001093192202700. The parcels are located at 131 Van Buren Street North, Nashville, Indiana. Unless otherwise indicated, the Board

shall refer to the subject parcels collectively as the “subject property” and to the land portions of those parcels as the “subject land.”

8. The Administrative Law Judge (“ALJ”) did not conduct an inspection of the property.

9. Assessed Value of subject properties as determined by the PTABOA:

Parcel Number	Land	Improvements
001093192202701	\$161,800	\$16,800
001093192202700	\$161,800	- 0 -

10. Assessed Values requested by Petitioner at the hearing and on Petitioner’s Exhibit 13:

Parcel Number	Land	Improvements
001093192202701	\$80,900	\$16,800
001093192202700	\$80,900	- 0 -

Issue

11. Summary of Petitioner’s contentions in support of alleged error in assessment:

- a) On his Form 131 petitions, the Petitioner claimed that each of the subject parcels was entitled to a negative influence factor for misimprovement. The Petitioner also claimed that the total land value for Parcel No. 001093192202701 should not exceed 16% of the value of the improvements on that parcel. *See Board Ex. A.* The Petitioner, through its authorized representative, withdrew those two claims at the hearing. *Smith testimony.*
- b) The Petitioner contends that the Respondent assessed the subject land using an improper base rate. *Smith testimony.* The subject property is located in the central business district of Nashville. *Id.* Mr. Smith obtained a copy of the Commercial and Industrial Neighborhood Valuation Form for Neighborhood 0140100 from the Brown County Assessor’s office. *Smith testimony; Pet’r Ex. 3.* That Neighborhood Valuation Form shows a land base rate of \$10 per square foot. *Id.* The property record cards, however, show that the subject land is assessed using base rate of \$20 per square foot. *Id; Pet’r Ex. 4.*
- c) The subject property appears to have been assessed using a Commercial and Industrial Neighborhood Valuation Form for Neighborhood 7014010. *Smith testimony.* Mr. Smith first received a copy of that form at the PTABOA hearing on the Petitioner’s appeals on July 21, 2005. *Smith testimony; Pet’r Ex. 5.* The Brown County Assessor, Donna Kelp Lutes, also testified that she first saw the revised neighborhood valuation form showing a base rate of \$20 per square foot at the Petitioner’s hearing before the PTABOA. *Lutes testimony.* According to Ms. Lutes, Neighborhood 0140100 and Neighborhood 7014010 are the same. *Lutes testimony.* *Id.* The difference in numbers is attributable to local officials having been instructed to use a county designation code of “7” at the beginning of all of their forms. *Id.* The neighborhood valuation form for neighborhood 7014010 contains the following

notation at the bottom: “Nexus Amendment: Nexus revised the original NBHD 7014010 to \$20 per sq ft for the specific area mentioned above.” *Id.*

- d) The PTABOA did not conduct a public hearing regarding the revised base rate reflected on the neighborhood valuation form for neighborhood 7014010. *Lutes testimony.* After receiving a copy of the revised form, Mr. Smith attempted to determine the procedures used by the PTABOA in arriving at the revised base rate of \$20 per square foot. Mr. Smith requested documents from the Department of Local Government Finance (“DLGF”) pertaining to the amended neighborhood valuation form for neighborhood 7014010, as well as copies of statutes and regulations regarding the procedures used to amend the form. *Smith testimony; Pet’r Ex. 6.*
- e) In response to Mr. Smith’s request, Kathryn A. Densborn, Public Information Officer/Legislative Liaison for the DLGF, indicated that the DLGF would be unable to provide the documents requested by Mr. Smith, because Brown County was not required to submit that information to the DLGF. *Smith testimony; Pet’r Ex. 7.* Ms. Densborn subsequently identified internet links pursuant to which Mr. Smith could find the statutes and regulations he had requested. *Pet’r Ex. 8.*
- f) The Petitioner apparently contends that the Respondent erred in assessing the subject property using the revised \$20 per square foot base rate because the PTABOA did not hold a public hearing prior to making the revision. In support of his position, the Petitioner cites generally to Ind. Code § 6-1.1-4-13.6 and Ind. Code § 6-1.1-4-13.8(g) - (k). *Smith testimony; Pet’rs Exs. 2, 10.* The Petitioner further points to an excerpt from page 19 of the 2002 Real Property Assessment Manual indicating that PTABOAs are responsible for conducting public hearings on land base rates set by township and county assessors prior to those rates being used to assess real property. *Smith testimony; Pet’r Ex. 12.*

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

- a) The Respondent first notes that the Petitioner did not present any evidence concerning the market value of the subject parcels. The Respondent points to Ind. Admin. Code tit. 50, r. 2.3-1-1(d), which provides that an assessment is deemed accurate if it is a reasonable measure of “true tax value,” and that no technical failure to comply with specific assessing method violates 50 IAC 2.3 as long as the assessment is a reasonable measure of “true tax value.” *Kelly argument.*
- b) The Respondent submitted property record cards for three (3) parcels located in downtown Nashville. *Resp’t Exs. 3-6.* Those properties are not located in the central business district, but rather on the “fringe.” *Kelly testimony.* They are in Neighborhood 7014011, which has a base rate of \$10 per square foot.
- c) Ms. Bauer testified that, for the 2002 reassessment, she served as the coordinator among the PTABOA members and between the PTABOA and trustee assessors in organizing the flow of the reassessment process. *Bauer testimony.* On more than one

occasion, the PTABOA and the monthly review committee discussed land orders and base rates with the DLGF. *Id.* Based on the information provided, including sales disclosures, the DLGF ordered revisions to various neighborhoods and values. *Id.* It was agreed that Nexus Group would make the revisions in order to keep the values equalized. *Id.* Representatives of the DLGF indicated that it was unnecessary to hold a public hearing under the circumstances. *Id.* The PTABOA notified the township assessors of the changes and of any differences between the original land orders and revised land orders. *Id.*

- d) Ms. Bauer identified Petitioner's Exhibit 3 as the original land valuation sheet for Neighborhood 0140100 prepared by Appraisal Research. *Bauer testimony; Pet'r Ex. 3.* To the best of Ms. Bauer's knowledge, the Respondent did not assess any property using the land valuation sheet for Neighborhood 0140100. *Id.; see also Kelly testimony.* Instead, parcels in the central business district are assessed pursuant to the revised "land order" for Neighborhood 7014010, and parcels on the "fringe" are assessed pursuant to the revised "land order" for Neighborhood 7014011. *Kelly testimony.*
- e) The Petitioner did not present any evidence to show a discrepancy between the assessment of the subject parcels and the assessments of the surrounding parcels.
- f) Ms. Bauer testified that based on her experience and expertise as a real estate appraiser, \$20 per square foot is reasonable value for the subject land, but \$10 per square foot is too low. *Bauer testimony.*

Record

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

- a) The Petitions.
- b) The digital recording of the hearing.
- c) Exhibits:
 - Petitioner Exhibit 1: Summary of issues
 - Petitioner Exhibit 2: Copy of Ind. Code § 6.1.1-4-13.6
 - Petitioner Exhibit 3: Neighborhood Valuation Form obtained from County Assessor
 - Petitioner Exhibit 4: Current Property Record Card ("PRC")
 - Petitioner Exhibit 5: Neighborhood Valuation Form obtained at PTABOA hearing
 - Petitioner Exhibit 6: Information request to DLGF
 - Petitioner Exhibit 7: Initial response to information request
 - Petitioner Exhibit 8: Second response to information request
 - Petitioner Exhibit 9: Printout of first website from DLGF's response
 - Petitioner Exhibit 10: Ind. Code § 6-1.1-4-13.8(g)

Petitioner Exhibit 11: Printout of second website from DLGF's response
Petitioner Exhibit 12: 2002 REAL PROPERTY ASSESSMENT MANUAL, p. 19
Petitioner Exhibit 13: Subject PRC with requested changes¹

Respondent Exhibit 1: 50 IAC 2.3-1-1
Respondent Exhibit 2: Revised Neighborhood Valuation Form for 7014010
Respondent Exhibit 3: Revised Neighborhood Valuation Form for 7014011
Respondent Exhibit 4: PRC for parcel 001093192200700
Respondent Exhibit 5: PRC for parcel 001093192200800
Respondent Exhibit 6: PRC for parcel 001093192201000

Board Exhibit A: Form 131 Petitions
Board Exhibit B: Notices 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 his contentions. The Board reaches this conclusion for the following reasons:

- a) The Petitioner contends that he was entitled to have his property assessed using a base rate of \$10 per square foot as reflected on the original Neighborhood Valuation Form for Neighborhood 0140100 rather than the revised base rate of \$20 per square foot set

¹ The Petitioner presented separate exhibits for each petition. The exhibits in the two packets are identical except for Exhibit 13, which is parcel specific.

forth on the neighborhood valuation form for neighborhood 7014010. The Petitioner does not appear to dispute Ms. Bauer's testimony that none of the other properties located in neighborhood 7014010 are assessed at the rate of \$10 per square foot. Petitioner likewise does not contend that the subject property is assessed for more than its market value. Instead, the Petitioner relies solely on the fact that the PTABOA did not hold a public hearing regarding its decision to revise the base rate from \$10 per square foot to \$20 per square foot.

- b) In support of his position, the Petitioner cites to Ind. Code § 6-1.1-4-13.6 and Ind. Code § 6-1.1-4-13.8. The former statute addresses actions to be taken by a county PTABOA after receiving land values determined by township assessors. The latter statute addresses actions to be taken by a county PTABOA after receiving land values determined by a county land valuation commission. It is not clear which of the two statutes applies in this case, because the record is silent regarding whether the original land values submitted to PTABOA were determined by the Washington Township Assessor or a land valuation commission. Regardless, neither of those statutes provides the Petitioner with the remedy he seeks.
- c) Ind. Code § 6-1.1-4-13.6 provides, in relevant part:

- a) The township assessor shall determine the values of all classes of commercial, industrial, and residential land (including farm homesites) in the township using guidelines determined by the department of local government finance. Not later than November 1 of the year preceding the year in which a general reassessment becomes effective, the assessor determining the values of land shall submit the values to the county property tax assessment board of appeals. Not later than December 1 of the year preceding the year in which a general reassessment becomes effective, the county property tax assessment board of appeals shall hold a public hearing in the county concerning those values. The property tax assessment board of appeals shall give notice of the hearing in accordance with IC 5-3-1 and shall hold the hearing after March 31 and before December 1 of the year preceding the year in which the general reassessment under IC 6-1.1-4-4 becomes effective.

- b) The county property tax assessment board of appeals shall review the values submitted under subsection (a) and may make any modifications it considers necessary to provide uniformity and equality. The county property tax assessment board of appeals shall coordinate the valuation of property adjacent to the boundaries of the county with the county property tax assessment board of appeals of the adjacent counties using the procedures adopted by rule under IC 4-22-2 by the department of local government finance. If the county assessor or township assessor fails to submit land values under subsection (a) to the county property tax assessment board of appeals before November 1 of the year before the date the general assessment under IC 6-1.1-4-4 becomes effective, the county property tax assessment board of appeals shall determine the

values. If the county property tax assessment board of appeals fails to determine the values before the general reassessment becomes effective, the department of local government finance shall determine the values.

(c) The county assessor shall notify all township assessors in the county of the values as modified by the county property tax assessment board of appeals. Township assessors shall use the values determined under this section.

d) Nothing in the above-quoted language explicitly limits the ability of a county PTABOA to reconsider its original decision with regard to land values submitted by the township assessors. Instead, the statute simply requires the county PTABOA to hold a hearing on the values originally submitted by township assessors and allows the PTABOA to modify those values to provide uniformity and equality in assessment. Ms. Bauer testified that the PTABOA held a hearing on the original values submitted to the PTABOA. Thus, it appears that the PTABOA complied with the hearing requirements set forth in the statute.

e) Ind. Code § 6-1.1-1-4-13.8 provides, in relevant part:

g) The county property tax assessment board of appeals shall review the values, data, and information submitted under subsection (f) and may make any modifications it considers necessary to provide uniformity and equality. The county property tax assessment board of appeals shall coordinate the valuation of property adjacent to the boundaries of the county with the county property tax assessment board of appeals of the adjacent counties using the procedures adopted under IC 4-22-2 by the department of local government finance. If the commission fails to submit land values under subsection (f) to the county property tax assessment board of appeals before January 1 of the year the general reassessment under IC 6-1.1-4-4 begins, the county property tax assessment board of appeals shall determine the values.

h) The county property tax assessment board of appeals shall give notice to the county and township assessors of its decision on the values. The notice must be given before March 1 of the year the general reassessment under IC 6-1.1-4-4 begins. Not later than twenty (20) days after the notice, the county assessor or a township assessor in the county may request that the county property tax assessment board of appeals reconsider the values. The county property tax assessment board of appeals shall hold a hearing on the reconsideration in the county. The county property tax assessment board of appeals shall give notice of the hearing under IC 5-3-1.

i) Not later than twenty (20) days after notice to the county and township assessor is given under subsection (h), a taxpayer may request that that the

county property tax assessment board of appeals reconsider the values. The county property tax assessment board of appeals may hold a hearing on the reconsideration in the county. The county property tax assessment board of appeals shall give notice of the hearing under IC 5-3-1.

j) A taxpayer may appeal the value determined under this section as applied to the taxpayer's land as part of an appeal filed under IC 6-1.1-15 after the taxpayer has received a notice of the assessment. . . .

- f) The procedures laid-out in Ind. Code § 6-1.1-1-4-13.8 are more detailed than those contained in Ind. Code § 6-1.1-4-13.6. For example, Ind. Code § 6-1.1-1-4-13.8 provides an avenue for assessors and taxpayers to request that a PTABOA reconsider its decision on land values. If an assessor timely files such a request, the PTABOA *shall* hold a public hearing, whereas if a taxpayer timely files such a request, the PTABOA *may* hold a hearing. The statute, however, does not purport to limit a PTABOA's ability to reconsider its original decision regarding the values submitted by a county land valuation commission on its own motion or to require a PTABOA to schedule a public hearing when it does so.
- g) At best, the statute expressly permits a taxpayer, such as the Petitioner, to appeal the values determined by the PTABOA as applied to the taxpayer's land as part of an individual assessment appeal. Thus, even where a PTABOA has followed statutory procedures in approving base rates, a taxpayer may present evidence that his land is worth less than the assessed value derived from applying those base rates. As noted above, however, the Petitioner did not present any evidence to show that subject property is assessed in excess of its market value.
- h) Moreover, when read as a whole, the statutes and administrative regulations governing the assessment of real property do not contemplate the remedy sought by the Petitioner in this case. Under Indiana's current system of assessment, real property is to be assessed in a uniform and equal manner based upon its market value-in-use. *See* Ind. Code §6-1.1-2-2 ("All tangible property which is subject to assessment shall be assessed on a just valuation basis and in a uniform and equal manner."); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2)(defining "true tax value" as: "The market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property."). The Petitioner, however, seeks to have his land assessed using a base rate that is not applied to any other parcel in the subject property's assessment neighborhood and that, as far as the evidence presented in this case is concerned, bears no relationship to the land's market value.

Conclusion

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