

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

Petition #: 53-017-05-1-4-00844
Petitioner: Kooshtard Properties LLC
Respondent: Washington Township Assessor (Monroe County)
Parcel #: 011-02310-04
Assessment Year: 2005

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 an assessment appeal with the Monroe County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated July 20, 2005.
2. The PTABOA mailed notice of its decision on October 21, 2005.
3. The Petitioner initiated an appeal to the Board by filing a Form 131 petition with the Monroe County Assessor on November 10, 2005. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated July 10, 2006.
5. The Board held an administrative hearing on September 13, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Persons present and sworn in at hearing:

For Petitioner: Milo Smith, Tax Representative,

For Respondent: Judy Sharp, Monroe County Assessor,
Ken Surface, Nexus Group,

Marilyn Meighen appeared as counsel for the Washington Township and Monroe County.

Facts

7. The subject property consists of a convenience store situated on a 2.5-acre parcel of land located at 7340 Wayport Road in Bloomington, Indiana.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the subject property to be \$45,000 for the land and \$282,500 for the improvements, for a total assessed value of \$327,500.
10. The Petitioner requests a total assessed value of not more than \$275,800.

Issues

11. Summary of the Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner contends that the assessor erred when it increased the subject property's assessment for the March 1, 2005, assessment date. On July 6, 2004, the Petitioner received a Form 113 notifying it that the Respondent had changed the condition rating assigned to the subject building to "very good." *Smith testimony*. The Petitioner appealed that assessment to the PTABOA, which changed the condition rating back to "average." *Id.* On June 17, 2005, the Petitioner received a second Form 113, pursuant to which the Respondent increased the condition rating of the building to "excellent." *Id.* The Petitioner did not make any changes to the subject property between the PTABOA's prior determination and the Respondent's issuance of the Form 113 changing the condition rating to "excellent." *Id.* The Petitioner therefore contends that the first PTABOA ruling should carry forward until the next general reassessment. *Smith argument*.
 - b. In rebuttal, the Petitioner contends that some of the sales reported in the Respondent's exhibits were sale-leasebacks involving both real and personal property. *Smith testimony*. According to the Petitioner, the seller simply entered the transaction in order to raise capital. *Id.* Thus, the Petitioner contends that the sales do not represent arm's length transactions. *Id.*
12. Summary of the Respondent's contentions in support of the assessment:
 - a. The Respondent contends that Monroe County changed the computer systems following the first PTABOA decision referenced by the Petitioner. *Surface testimony; Sharp testimony*. The Respondent originally had priced part of the subject building as convenience store and part of the building as a fast food restaurant. *Id.* The new computer system did not allow the Respondent to price different portions of the building separately. *Id.* The Respondent adjusted the condition rating applied to the building in order to make the assessment using the new computer system closely approximate the assessment as previously determined by the PTABOA. *Id.; Sharp testimony*.

- b. The Respondent contends that, pursuant to Ind. Code § 6-1.1-9 and § 6-1.1-13, assessors are authorized to change assessments when they discover errors. *Sharp testimony*. The Respondent sent the Petitioner a Form 113 notifying the Petitioner of the change in assessment. *Meighen argument; Smith testimony*.
- c. The Respondent cites to *Eckerling v. Wayne Township Assessor* for the proposition that a property's "bottom line" value is more important than the methodology the assessor uses to get to that value. *Meighen argument; Respondent Exhibit 2*. In that regard, the Respondent presented evidence that the subject property sold for \$1,644,670 on June 22, 2001. *Surface testimony; Respondent Exhibit 4*. According to the Respondent, the sale price of the subject property demonstrates that the property is grossly under-assessed. *Surface testimony; Meighen argument*.
- d. The Respondent also contends that a convenience store located at 527 3rd Street in Bloomington sold for \$1,016,116 on June 22, 2001. *Respondent Exhibit 5*. Another convenience store located at 5100 S. Victor Pike in Bloomington sold for \$1,550,000 on April 4, 2005. *Respondent Exhibit 6*. According to the Respondent, those sales illustrate that convenience stores located on both the north and south ends of Bloomington are worth in excess of \$1,000,000. *Surface testimony*.

Record

- 13. The official record for this matter is made up of the following:
 - a. The Form 131 petition,
 - b. The tape recording of the hearing labeled BTR # 6157,
 - c. Exhibits:

The Petitioner did not submit any exhibits.

Respondent Exhibit 1 – 50 IAC 2.3

Respondent Exhibit 2 – *Eckerling v. Wayne Township Assessor*,

Respondent Exhibit 4 – Photograph and sales disclosure form for 7340 N. Wayport Rd.,

Respondent Exhibit 5 – Photograph and sales disclosure form for 527 3rd Street,

Respondent Exhibit 6 – Photograph and sales disclosure form for 5100 S. Victor Pike,¹

Board Exhibit A - Form 131petition,

Board Exhibit B - Notice of Hearing,

¹ The Respondent did not offer any evidence labeled as "Exhibit 3." The packet of documents initially submitted by the Respondent contained documents labeled as "Exhibit 3;" however, counsel for the Respondent indicated that those documents did not relate to the instant appeal and did not offer them into evidence.

Board Exhibit C – Notice of Appearance by Marilyn Meighen,
Board Exhibit D – Notice of County Assessor Appearance for Township,
Board Exhibit E – 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 failed to provide sufficient evidence to establish a prima facie case of error in the subject property's assessment. The Board reaches this decision for the following reasons:
- a. The Petitioner contends that the Respondent lacked the authority to change the condition rating of the subject property following the PTABOA's decision in the Petitioner's previous appeal. *Smith testimony*.
 - b. The Petitioner, however, does not cite to any authority for that proposition. On its Form 131 petition, the Petitioner asserted that the Respondent was estopped under the principles of *res judicata* from changing the condition rating assigned to the subject building. *See Board Exhibit A*. The Petitioner, however, did not maintain that position at the administrative hearing.² Even if the Petitioner had maintained its position in that regard, the Petitioner did not present sufficient evidence to

² It is possible that the Petitioner's certified tax representative abandoned that claim given the Board's administrative rules prohibiting certified tax representatives from engaging in the practice of law before the Board. *See* Ind. Admin. Code tit. 52, r. 1-2-1(b). Indeed, *res judicata* is a complex legal doctrine, the application of which involves the interpretation of case law. Any attempt to argue under that doctrine likely would have involved the practice of law.

demonstrate that the Respondent should be estopped from changing the condition rating assigned to the subject building.

- c. At a minimum, the Petitioner would have been required to establish the identity of the issues actually litigated before the PTABOA in the prior appeal and that the PTABOA acted in a judicial capacity. *See Lindemann v. Wood*, 799 N.E.2d 1230, 1233 (Ind. Tax. Ct. 2003) (holding that factors to be considered in determining whether a prior administrative decision should bar or estop a subsequent cause of action include whether both parties had a fair opportunity to litigate the issues and whether the agency acted in a judicial capacity). The Petitioner, however, did not submit any documents relating to the prior appeal. In fact, the only evidence pertaining to the prior appeal offered by the Petitioner was Mr. Smith’s statement that the PTABOA had changed the condition rating of the subject building from “very good” to “average.” *Smith testimony*. Indeed, the factual showing made by the Petitioner is so deficient that the Board is unable to ascertain from the record whether the prior PTABOA determination involved the same assessment year as the assessment year under appeal in this case.
- d. Based on the foregoing, the Petitioner failed to establish a prima facie case of error in the subject property’s assessment.

Conclusion

- 16. The Petitioner failed to provide sufficient evidence to establish 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>.