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

Petition #:	82-027-02-1-5-00089
Owner:	B. Tylan Nelson
Petitioner:	Knight Township Assessor (Vanderburgh County)
Respondent:	Vanderburgh County Property Tax Assessment Board of Appeals
Parcel #:	0937014011002
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 Owner initiated an assessment appeal with the Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 7, 2003.

2. The Petitioner received notice of the decision of the PTABOA on October 2, 2003.

3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on November 3, 2003. Petitioner elected to have this case heard in small claims.

4. The Board issued a notice of hearing to the parties dated January 22, 2004.

5. The Board held an administrative hearing on March 16, 2004, before the duly appointed Administrative Law Judge Debra Eads.

6. Persons present and sworn in at hearing:

   a) For Petitioner: Joseph B. Gries, Knight Township Deputy Assessor

   b) For Respondent: Tammy Elkins, Vanderburgh County Chief Deputy
      Candy Wells, Vanderburgh County Hearing Officer

Facts

7. The property is classified as residential, as is shown on the property record card for parcel # 0937014011002.

8. The Administrative Law Judge did not conduct an inspection of the property.

9. Assessed Value of subject property as determined by the Vanderburgh County PTABOA: Land $ 7,600 Improvements $ 94,400.

10. Assessed Value requested by Petitioner: Land $ 7,600 Improvements $ 87,400.

Issues

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

    a) The Knight Township Assessor and the property owner reached an agreement regarding the appropriate assessed value for the subject property, $95,000 *(Petitioner Exhibit 4)*.
    b) The value agreed upon was based on the 2002 appraisal (Petitioner's Exhibit 2) value of the property with a time adjustment of 2.5% per year to January 1, 1999.
    c) The 2.5% per year adjustment was based on information provided by two licensed fee real estate appraisers *(Petitioner Exhibit 3)*.
    d) The Vanderburgh PTABOA accepted the portion of the agreement based on the appraisal presented by the Petitioner. However, the PTABOA disagreed with the trending calculation using 2.5%. The agreement was therefore not approved by the PTABOA.

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

    a) The Vanderburgh County PTABOA acted within its authority in establishing a value for the subject property other than the value agreed upon by the Township and the property owner.
    b) The value determined by the PTABOA was based on the value indicated on the 2002 sales disclosure for the subject property.
    c) The 2.5% time adjustment applied by the Township was not appropriate for the subject property due to the wide parameters indicated by the fee appraiser in the time adjustment support document *(Petitioner Exhibit 3)*.

Record

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

    a) The Petition, and all subsequent pre-hearing and post-hearing submissions by either party.
    b) The tape recording of the hearing labeled BTR #5983.

c) Exhibits:

Petitioner Exhibit 1: Copy of 2002 sales disclosure
Petitioner Exhibit 2: Copy of 2002 and 2003 appraisals
Petitioner Exhibit 3: Time adjustment information
Petitioner Exhibit 4: Copy of agreement between the Township officials and the Owner
Petitioner Exhibit 5: Copy of the memorandum of the County Hearing Officer to the PTABOA
Petitioner Exhibit 6: Copy of draft of the Bill Waltz memorandum

Respondent Exhibit 1: Memorandum with attached PTABOA minutes

d) These Findings and Conclusions.

Analysis

Ability of County to Reject Stipulations Made By Township and Taxpayer

14. The most applicable governing law is:

IC 6-1.1-15-1:

* * *

(g) Immediately upon receipt of a timely filed petition on the form prescribed under subsection (e), the county assessor shall forward a copy of the petition to the township assessor who made the challenged assessment. The township assessor shall, within thirty (30) days after the receipt of the petition, attempt to hold a preliminary conference with the petitioner and resolve as many issues as possible. Within ten (10) days after the conference, the township assessor shall forward to the county auditor and county assessor a completed response to the petition on the form prescribed under subsection (f). The county assessor shall immediately forward a copy of the response form to the petitioner and the county property tax assessment board of appeals. If after the conference there are no items listed in the petition on which there is disagreement:

(1) the township assessor shall give notice to the petitioner, the county property tax assessment board of appeals, and the county assessor of the assessment in the amount agreed to by the petitioner and the township assessor; and

(2) the county property tax assessment board of appeals may reserve the right to change the assessment under IC 6-1.1-9.

15. The County officials contend that they may reject a stipulated agreement between the taxpayer and Township officials.

16. The Township officials contend that the value agreed upon at the preliminary conference should be documented on a Notification of Final Assessment Determination, Form 115, and issued as a ministerial function of the PTABOA. The Township officials contend

that, if the PTABOA disagrees with the new determination issued, it may on its own motion challenge the findings by issuing a new notice of assessment that includes a new opportunity to seek review. *See Gries testimony.*

17. The relevant language of IC 6-1.1-15-1(g) indicates that:

> If after the [preliminary] conference there are no items listed in the petition on which there is disagreement:
>
> (1) the township assessor shall give notice to the petitioner, the county property tax assessment board of appeals, and the county assessor of the assessment in the amount agreed to by the petitioner and the township assessor; and
>
> (2) the county property tax assessment board of appeals may reserve the right to change the assessment under IC 6-1.1-9.

Ind. Code § 6-1.1-15-1(g).

18. The Board tends to agree with the logic outlined in Petitioner's argument suggesting the most appropriate application of Ind. Code § 6-1.1-15-1(g) would be to honor the results reached by the township assessor and the taxpayer at the preliminary conference. However, the Board feels obligated to respect other plausible interpretations of Ind. Code § 6-1.1-15-1(g) as it read prior to amendment P.L. 1 – 2004.

19. The Respondent's contention is essentially that:
    i. the law contemplates the PTABOA having the ability to reject an agreement between the township assessor and a taxpayer – it is only the manner and process that is in dispute; and
    ii. the process used by the PTABOA in this case provided sufficient due process protections and should be upheld.

20. Although there is disagreement regarding the proper application of Ind. Code § 6-1.1-9, there was no dispute among the parties regarding the sufficiency of due process afforded to both the township officials and the taxpayer relative to the PTABOA decision. Indeed, both parties presented arguments to the IBTR concerning the accuracy of the trending calculation in response to the PTABOA decision.

21. Additionally, Ind. Code § 6-1.1-15-1(g) was amended in a manner that reinforces the position that the PTABOA must be allowed a means for ultimately overriding the township assessor and taxpayer agreements. The amendment preserved the right of the PTABOA to reject such an agreement; by changing only the statutory means.

22. It would be a waste of resources to refuse jurisdiction based on procedural error when neither party has alleged any harm. The likely outcome, if jurisdiction was not accepted, would be for the PTABOA to change the assessment in accordance with all provisions of IC 6-1.1-9, resulting in yet another appeal and another IBTR hearing to decide the substantive issue concerning the trending calculation.

23. Accordingly, although the Board does not endorse this method, we nevertheless conclude that the Vanderburgh County PTABOA acted within its authority in re-examining the appropriate value for the subject property and that the PTABOA appropriately notified both the property owner and the Knight Township Assessor of a scheduled hearing.

The Trending Calculation

24. The most applicable governing case law is:

> *Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475 (Ind. Tax Ct. 2003).
> *Canal Square Ltd. Pshp. v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801 (Ind. Tax Ct. 1998).

25. The Courts have recognized the need to trend that evidence to values for the year under appeal. *See State Bd. of Tax Comm'rs v. Garcia*, 766 N.E.2d 341 (Ind. 2002) (finding the use of the consumer price index to adjust cost data was permissible); *Inland Steel v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (finding that the amount of deflator adjustments must be supported by the record).

26. In order to time adjust taxpayer submitted appraisals, the Township commissioned a study by C. David Matthews, a General Certified Real Estate Appraiser, documenting changes in the Vanderburgh County real estate market from 1997 through 2003. *Petitioner Ex. 3.*[1]

27. The Matthews study explains that its purpose is to provide a general trend analysis of properties throughout Vanderburgh County to assist the assessors in adjusting property owner appraisals to the valuation date set forth in the Manual. *See Petitioner Ex. 3 at 1, 2.* The Matthews study was prepared in accordance with generally recognized appraisal practices. *Gries testimony.*

28. The Matthews study used three methodologies: (1) Paired Sales; (2) Average Price of Homes Sold; and (3) Consumer Price Index. *Petitioner Ex. 3.* The methodologies are discussed at *Petitioner Ex. 3 at 2, 3.* The study discusses why the use of each method is appropriate and the relative weight each carries. *Id.*

[1] The first page of Petitioner Exhibit 3 appears to be similar information from Evansville for 1999 through 2003 suggesting an adjustment of 2.5% to 3% per year. However, this brief letter from William R. Bartlett does not have any supporting information to allow the Board to understand the calculations asserted. The Board finds the Bartlett letter to be conclusory and gives it no weight. *See Inland Steel v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (stating that testimony of a recognized appraisal expert without explanation is conclusory and lacks probative value). Further references to Petitioner Exhibit 3 will be discussing only the study done by C. David Matthews.

29. The Matthews study reconciles the three methods and arrives at an expert opinion that "an annualized rate of 2% per year should be used to adjust sales of properties that have occurred since 1997 to the effective date of January 1, 1999." *Petitioner Ex. 3 at 4.*

30. The Board finds the Matthews study to be probative evidence and to establish a prima facie case that a 2% per year adjustment is appropriate for properties in Vanderburgh County.[2]

31. The PTABOA submitted a Memorandum that attempts to rebut the Matthews study. *Respondent Ex. 1*. The Memorandum raises several issues regarding the study, and the Board will address each in turn.

1. No basis for adjustment factor

32. The PTABOA argues that "there is no evidence in the record as to the source of the 2.5% adjustment factor. The underlying methodology has not been disclosed, and it is therefore impossible to determine if the factor is correct or appropriate for the subject property." *Respondent Ex. 1 at 2*.

33. The Board accepts this analysis as it pertains to the Bartlett letter and agrees that it is "unsubstantiated and conclusory." *See supra, footnote 1.* However, this argument clearly does not apply to the Matthews study. The study thoroughly explains each step of the analysis and methodology and documents the source of its data. The Board finds this argument to be simply incorrect in regard to the Matthews study.

2. Adjustment factor not specific to subject property

34. The PTABOA contends that the adjustment factor is "irrelevant and immaterial" because it is for the entire county. *Respondent Ex. 1 at 2.*

35. In essence, the PTABOA is arguing that the countywide study is too broad, and that specific neighborhood data should be used. *Respondent Ex. 1 at 2.* The Board recognizes that a study of only the neighborhood within which this residence is located would be better evidence than a study of the entire county. However, neither party has presented evidence of time adjustment trends for this neighborhood.

36. The fact that it may be possible to come up with better evidence does not rebut the Matthews study.[3] The study is still probative as to value changes over time in

[2] The Township Assessor argues that the adjustment should be 2.5% per year, perhaps based on an average of the Bartlett letter and the Matthews study. *See Board Ex. A; Gries testimony.* Because the Board has found the Bartlett letter to be conclusory and lacking of probative value, the 2.5% adjustment established therein is not supported by substantial evidence. *See, e.g., Hamm v. Dep't of Local Gov't Fin.*, 788 N.E.2d 440, 445 (Ind. Tax Ct. 2003) (stating that decisions of the Board must be supported by substantial evidence). However, the Board does find the Matthews study to provide substantial evidence to support a determination that 2% per year adjustment is appropriate. While this is less than the adjustment requested by the Petitioner, it is the only adjustment that is supported by his evidence.

Vanderburgh County. The subject property is in Vanderburgh County. *Board Ex. A*. In order to prove that a different time adjustment should be used, the PTABOA needed to offer an alternate calculation or evidence rebutting the calculations found in the Matthews study. *Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003); *see also Canal Square Ltd. Pshp. v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 806 (Ind. Tax Ct. 1998).

37. The PTABOA did not offer an alternate calculation regarding the time adjustment factor appropriate for the neighborhood or evidence to prove that the Matthews study was incorrect. The PTABOA needed to present such evidence to the Board and explain in detail why it disproves the calculations found in the Matthews study in order to rebut Petitioner's prima facie case.

3. Adjustment factor application miscalculated

38. The PTABOA argues that the factor was misapplied – the Township multiplied 2.5% by the number of intervening years rather than applying 2.5% to each year's declining balance. *Respondent Ex. 1 at 2.* The PTABOA is correct on this point.

39. Because the Board does not accept 2.5% to be appropriate, the value must be recalculated using the declining balance method advocated by the PTABOA and a 2% per year time adjustment factor as established by the Matthews study.

4. Industry Standards Violated

40. The PTABOA also argues that the application of the adjustment factor does not conform to industry standards as outlined in this quote from INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, PROPERTY ASSESSMENT VALUATION at 77 (2d ed. 1996):

> *Time of Sale* When market value increases or decreases over time, an adjustment to the sale price of the comparable is required for time of sale. This adjustment is applied to the sale price of the *comparable property* after applying any adjustment required for atypical financing.

Id; (emphasis added in *Respondent Ex. 1 at 2*). The PTABOA claims this method requires adjustment of the comparable property to the valuation date, rather than the adjustment of the subject property to the valuation date as done by the Township Assessor. *See also Elkins testimony.*

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[3] The Matthews study contains a paragraph that explains that its best data is derived from the east and west sides of the county. It acknowledges that they did not have enough data to determine whether the north ends of the county changed at a rate similar to the south end, or whether the inner city changed at a different rate than the suburban areas. *Petitioner Ex. 3 at 4.* This "disclaimer" does not mean that the study is flawed or irrelevant. It simply acknowledges that the study has limitations and that better data may exist. However, neither party has supplied better evidence, so the Board will base its determination on the Matthews study.

41. The PTABOA's argument is misplaced. The quote it relies on is from the chapter on Land Valuation, and it is a sub-topic under the "Direct Sales Comparison Approach." *See* INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, PROPERTY ASSESSMENT VALUATION at 69-95 (2d ed. 1996). This chapter of the book discusses only collection and analysis of data required for land valuation. *Id.* at 69.

42. The direct sales comparison method "compares the subject property with comparable vacant parcels that have sold recently." *Id.* at 72. It is a method for determining the land value of a subject that may have an improvement by comparing unimproved parcels.

43. The standards set forth in this chapter are entirely unrelated to the Matthews study. Matthews used three methods: (1) a paired sales analysis; (2) an analysis of the average and median sale prices; and (3) the consumer price index. *Petitioner Ex. 3 at 2, 3.* These methods are used to estimate value trends in multiple properties over time – an entirely different process than the land valuation of one specific property as described in INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, PROPERTY ASSESSMENT VALUATION at 69-95 (2d ed. 1996). The PTABOA is attempting to impose standards for assessing individual properties on methods for analyzing aggregate data. This attempt to compare two methods that are clearly not comparable does not impeach the methodology of the Matthews study. The PTABOA has not rebutted the Matthews study on this point.

5. Assessment Manual Violated

44. The PTABOA asserts that the Petitioner's adjustment factor does not conform to the 2002 REAL PROPERTY ASSESSMENT MANUAL because the taxpayer's individual appraisal evidence does not conform to the aggregate data requirements and the adjustment does not use neighborhood data. *See Respondent Ex. 1 at 2, 3* (citing 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 IAC 2.3-1-2)).

45. The section quoted recognizes the need for a mass appraisal system, and that mass appraisals do not guarantee exact results for each individual property. The system must necessarily utilize "neighborhood" data (i.e. sales information), and "industry wide" data (i.e. cost information), that are objective and verifiable. *See, e.g., State Bd. of Tax Comm'rs v. Town of St. John,* 702 N.E.2d 1034, 1041 (Ind. 1998). It goes on to state that "challenges to [individual] assessments [must] be proven with aggregate data," and "[s]ince assessments are calculated using aggregate data, it is not permissible to use individual data without first establishing its comparability or lack thereof to the aggregate data." 2002 REAL PROPERTY ASSESSMENT MANUAL at 5.

46. In the paragraph following the above statement, the Manual specifies the value determined according to the mass appraisal rules may be presumed correct, "[h]owever, the taxpayer shall be permitted to offer evidence relevant to the fair market value-in-use of the property" to rebut the presumption. 2002 REAL PROPERTY ASSESSMENT MANUAL at 5. The Board reads these requirements to obligate a taxpayer to first show that any individual cost information, or individual sales information, is of the same nature as the categories of cost data or sales data that comprises the aggregate data used to generate the

value under the mass appraisal system. In other words, the individual data is comparable to, and could fairly be considered part of the same category as, the aggregate used under the rules.

47. The difficulty in this case is that the Manual does not contemplate "trending" the values, or time adjustments to the subject property based on the difference between the valuation date and the assessment date. *See generally,* 2002 REAL PROPERTY ASSESSMENT MANUAL at 1-7. The Department of Local Government Finance, however, did recognize the need for such trending subsequent to the rules being adopted. *See* Department of Local Government Finance, *Appeals and Preliminary Conference Reminders*, THE COMMUNICATOR, Winter 2004, at 8 (stating "[a]ppraisals do not need to have a January 1, 1999,valuation date. Appraisals that are more recent should be trended back in time for inflation/deflation.").

48. The overarching principle is that the taxpayer can bring in any relevant evidence as long as it is "consistent with the definition of true tax value." *See generally*, 2002 REAL PROPERTY ASSESSMENT MANUAL at 2-3. True tax value may be said to be equivalent to market value in the residential context. *Id.* The township assessor submitted evidence that the market value of residential properties in Vanderburgh County ought to be adjusted or "trended" in order to reflect the market value on the valuation date. The Respondents did not contest the appraiser's status as a real estate professional qualified to offer an opinion on the market trends. Instead they challenged his conclusions, and questioned the application of his conclusions to the subject property.

49. The difficulty the Board has in accepting the Respondent's contentions is expressed by the Tax Court in *Meridian Towers*, 805 N.E.2d at 479. Simply raising questions about the opinion of a qualified expert does not serve to rebut the evidence or properly founded opinion of an expert. The evidence supports the contention that sales of properties occurring in Vanderburgh County in 2002 would more accurately reflect the market value for such properties on the January 1, 1999, valuation date if they were adjusted according to the stated opinions. The Respondent only suggests that the trending may not be justified as applicable to the subject property because the analysis is countywide rather than by neighborhood. The inapplicability would need to be shown in order to render the general proposition unjustified. The Manual does not establish a means for trending, so it cannot be said to establish the aggregate category that the data must fall within in order to be properly considered. The Township's data relates to residential property and covers the broader jurisdiction within which the subject lies – the county. If the Respondent possessed evidence that the general adjustment factor is not representative of the changes in sales prices within the subject neighborhood, it chose not to submit it. The Board finds the Township's evidence sufficient to allow the conclusion that a 2% adjustment per year is not in violation of the Manual.

Conclusions

Ability of County to Reject Stipulations Made By Township and Taxpayer

50. The Vanderburgh County PTABOA acted within its authority in re-examining the appropriate value for the subject property and the PTABOA appropriately notified both the property owner and the Knight Township Assessor of the hearing.

The Trending Calculation

51. The Petitioner presented a prima facie case establishing that a 2% trending adjustment per year was generally appropriate for Vanderburgh County. Respondent failed to offer evidence rebutting the validity of Petitioner's trending calculation or to offer alternate calculations of its own. *See Meridian Towers*, 805 N.E.2d at 479. The Board finds in favor of the Petitioner on this issue.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to reflect the 2% per year trending adjustment.

_____ 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.