

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

**Petition:** 07-005-06-1-5-00003  
**Petitioner:** Camelot Company, LLC  
**Respondent:** Brown County Assessor  
**Parcel:** 07-07-19-100-596.000-005  
(alternate parcel ID 0011750001)  
**Assessment Year:** 2006

The Indiana Board of Tax Review (Board) issues this determination in the above matter, finding and concluding as follows:

**Procedural History**

1. The Petitioner initiated an assessment appeal with the Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 dated December 24, 2008.
2. The PTABOA decision on Form 115 made no change to the assessed value.<sup>1</sup>
3. On February 7, 2011, the Petitioner appealed to the Board by filing Petition for Review of Assessment, Form 131. The Petitioner elected to have this case heard according to small claims procedures.
4. Administrative Law Judge Paul Stultz held the Board's administrative hearing on September 05, 2012. He did not inspect the property.
5. Milo Smith represented Petitioner and was sworn as a witness. Kay Schwade represented the Respondent and was sworn as a witness. Frank Kelly and Dean Layman also were sworn as witnesses.

**Facts**

6. The property is a gas station and convenience store. The bulk of the evidence indicates it is located at 201 Van Buren Street in Nashville.

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<sup>1</sup> The record contains two different notices of the PTABOA determination. They both indicate the PTABOA hearing was held on December 15, 2009, and both give the same assessed values for land and improvements, although the parcel numbers are different. One notice states the property is in Freetown and the other states it is in Nashville. One notice indicates it was mailed on December 10, 2010, and the other indicates it was mailed on February 28, 2011. No explanation was offered, but perhaps the second notice was intended to correct mistakes on the first. Neither party claimed these discrepancies are significant to this appeal.

7. The PTABOA determined the assessed value for the land is \$233,200 and the improvement is \$389,500 (total \$622,700).
8. The Petitioner did not specify a requested value for this appeal.

### **Record**

9. The official record for this matter contains the following:
  - a. Digital recording of the hearing,
  - b. Respondent Exhibit A – Property record card (PRC) and photographs,  
Respondent Exhibit B – “Assessment Change Summary,”  
Respondent Exhibit C – Map and comparable sales data,  
Respondent Exhibit D – “Land value analysis,”  
Respondent Exhibit E – Map and comparable sales data,  
Petitioner Exhibit 1 – PRC,  
Petitioner Exhibit 2 – The 2002 Real Property Assessment Manual, page 18,  
Petitioner Exhibit 3 – The 2002 Peal Property Assessment Guideline, Appendix F,  
page 7,  
Petitioner Exhibit 4 – Worksheet, old PRC, and letter regarding prior calculation  
of effective age for the subject property,  
Petitioner Exhibit 5 – State Board of Accounts (SBOA) Report on Special  
Examination,  
Petitioner Exhibit 6 – Email from Frank Kelly to “baueris” dated July 18, 2005,  
Board Exhibit A – Form 131 and attachments,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing Sign In Sheet,
  - c. These Findings and Conclusions.

### **Contentions**

10. Summary of the Respondent’s case:
  - a. The 2006 assessment of the land was based on \$22 per square foot. The extracted land values from three comparable sales during 2004 and 2005 show that \$22 per square foot for the land is reasonable. These comparables are also downtown Nashville commercial property sales. The number of sales in downtown Nashville during 2004 and 2005 was very limited. *Kelly testimony; Resp’t Ex. C, D.*
  - b. The subject property, the BP and the Speedway are the only three gas stations in Nashville. All three are in close proximity. The BP and the Speedway are assessed higher than the subject property when comparing assessed value per square foot. The BP building has 2,900 square feet and its total assessed value is

\$600,200. Dividing the total assessed value by the square footage of the building equals \$207 per square foot. The Speedway building has 3,874 square feet and its total assessed value is \$904,400. Dividing the total assessed value by the square footage of the building equals \$233.45 per square foot. The subject property has an assessed value that computes to only \$128 per square foot. *Kelly testimony; Resp't Ex. E.*

- c. Considering these assessments of comparable properties is authorized by Ind. Code § 6-1.1-15-18. *Kelly testimony.*

11. Summary of the Petitioner's case:

- a. One reason for the dramatic increase in the assessment from 2005 to 2006 is an error in computing depreciation. The Respondent incorrectly changed the effective age. The PRC for 2006 shows an effective age computed from 1985, which is wrong. *Smith testimony; Pet'r Ex. 1.*
- b. The Real Property Assessment Manual states assessors are required to use the 2002 Real Property Assessment Guidelines (Version A). In Appendix F at page 7, the Guidelines explain how to determine effective age. *Smith testimony; Pet'r Ex. 2, 3.*
- c. For the 1995 assessment the Brown County Assessor computed the effective age from 1977. There was mutual agreement with that calculation. *Smith testimony; Pet'r Ex. 4.*
- d. The SBOA did a special examination of 2002 reassessment contracts and subsequent tax billing, collection and distribution processes. The report says on page 9, "information presented for audit also indicates that the original assessed values for parcels were changed at some point with no supporting documentation or approval". On page 10 it states, "Unit officials should follow the rules, regulations, and standards for assessment that are in effect. Additionally, control procedures should be implemented to ensure that property is originally valued or subsequently valued correctly." *Smith testimony; Pet'r Ex. 5.*
- e. An email from Frank Kelly to the Brown County Assessor dated July 18, 2005, stated, "Nexus Group recommended that the effective ages of many commercial structures in Brown Co. be adjusted to obtain a better measure of True Tax Value. In other words, to get property assessments closer to market value, the effective ages has to be adjusted upward in many cases. This adjustment recognizes the updates and maintenance to such buildings." This email cautioned the PTABOA about altering assessments on such properties without proof of underlying property value such as a sale or appraisal. *Smith testimony; Pet'r Ex. 6.*
- f. Condition rating should be used to adjust for updates and maintenance, not effective age. *Smith testimony.*

## Analysis

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving the assessment is wrong and what its correct assessment should 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). But the General Assembly enacted Ind. Code § 6-1.1-15-17.2, which shifts the burden to the assessor in cases where the assessment under appeal increased by more than 5%:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor\_or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

13. Both parties agreed the 2006 assessment under appeal increased more than 5% from the assessor's 2005 assessment. Therefore, the Respondent had the burden of proving the 2006 assessment is correct.
14. In other words, the Respondent needed to prove the 2006 assessed value is an accurate measure of market values-in-use. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
15. The Respondent did not make a prima facie case that existing 2006 assessment is correct.
  - a. Real property is assessed based on its "true tax value," which means "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." Ind. Code § 6-1.1-31-6(c); MANUAL at 2. There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. Indiana has Guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. Other evidence is permitted to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5. Furthermore, the assessments of comparable properties may be introduced as evidence, but "[t]he determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices." Ind. Code § 6-1.1-15-18.

- b. The Respondent attempted to use comparable sales and comparable assessments to prove the existing assessment of the subject property is correct, but failed to successfully make that case.
- c. The Respondent's principle witness, Mr. Kelly, relied on three 2004-2005 sales of purportedly comparable properties in downtown Nashville to support the assessed land value of the subject property. Other than showing the location of the properties on a map and identifying them as commercial, Mr. Kelly failed to provide the detailed analysis of similarities and differences in the properties as well as their relative values as required for valid conclusions. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that conclusory statements about comparability are not probative evidence). He used the abstraction method to get land values from the total sale prices. He concluded that "comparable" land was selling at \$18.49 to \$24.97 per square foot. Mr. Kelly testified that the land base rate for the subject property was \$22 per square foot. Mr. Kelly did not establish how he determined the land base rate for the subject property was \$22 per square foot. According to Mr. Kelly, his comparison shows the assessed land value of the subject property is correct. But actually that kind of unsupported conclusion does not substantially support the assessed land value or the total assessed value of the subject property.
- d. The Respondent and Mr. Kelly also relied on the assessments of two purportedly comparable gas stations in downtown Nashville to prove the disputed assessment is correct. This attempted comparative analysis suffers from a similar lack of development. Only two similarities were mentioned, the properties are gas stations in Nashville. But Mr. Kelly failed to identify the subject property's characteristics, explain how those characteristics compare to the purportedly comparable properties with specifics about how they are similar. He also needed to recognize differences between the properties. And he needed to explain how any differences affect the relative values of the properties. Failing to present the necessary facts and walk the Board through all the steps of a meaningful analysis, Mr. Kelly's attempted assessment comparison does not help to prove a more accurate assessment for the subject property.
- e. In addition, nothing in the record indicates that Mr. Kelly's method of merely calculating and comparing assessed value per square foot of the buildings satisfies generally accepted appraisal or assessment practices. In fact, his methodology appears to be overly simplistic. Even if it is true that the BP assessment works out to \$207 per square foot, the Speedway assessment works out to \$233.45 per square foot, and the assessment of the subject property works out to \$128 per square foot, that comparison alone does not help to prove what the market value-in-use of the subject property really is. Similarly, it does not help to prove the current assessed value is actually correct.

16. The Respondent failed to provide probative evidence that the current assessment is correct. Therefore, the Petitioner's duty to provide substantial evidence to support a more accurate assessment is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
17. In other cases where the Respondent had the burden to prove the assessment is correct and the Respondent failed to carry that burden the Board has ordered that the assessment be returned to the assessed value of the year before. In this case doing so reduces the assessment to \$487,700.

### **Conclusion**

18. The Respondent failed to make a prima facie case that supported the assessed value of subject property. The Board finds in favor of the Petitioner.

### Final Determination

In accordance with the above findings and conclusions, the assessment will be changed to \$487,700.

ISSUED: December 17, 2012

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Commissioner, Indiana Board of Tax Review

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**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>