

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

Petition #: 34-024-02-1-4-00008
Petitioner: Koostard Properties LLC
Respondent: Taylor Township Assessor (Howard County)
Parcel #: TA254A001
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. Petitioner initiated an assessment appeal with the Howard County Property Tax Assessment Board of Appeals (PTABOA) by written document dated April 16, 2003.
2. Petitioner received notice of the decision (Form 115) of the PTABOA on December 31, 2003.
3. Petitioner appealed to the Board by filing a Form 131 with the Howard County Assessor on January 26, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing on the petition to the parties dated February 5, 2004.
5. The Board conducted an administrative hearing on April 13, 2004, before duly appointed Administrative Law Judge Dalene McMillen.
6. The following persons were present and sworn in at the hearing:
 - a. For Petitioner: Milo Smith, Taxpayer Representative
 - b. For Respondent: Brian Thomas, County Representative
James Morris II, County Representative
Ann Harrigan, Howard County Assessor

Facts

7. The property is classified as commercial convenience market with gas, as is shown on the property record card for parcel #34-10-19-101-001.000-024 (Tax ID #TA254A001).
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.

9. Assessed value of the subject property as determined by the Howard County PTABOA:

Land: \$219,100 Improvements: \$303,800 Total: \$522,900

10. Assessed value requested by Petitioner:

Land: \$147,000 Improvements: \$303,800 Total: \$450,800

Contentions

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

- a. The Petitioner contends the positive 50% influence factor should be removed because the value of the land exceeds the County's land valuation highest value per acre established for this neighborhood (#100405).
- b. In support of this contention, the Petitioner testified the land value range established for this area is \$70,000 to \$150,000 per acre, the most expensive land in this geographic area is \$150,000 per acre, therefore the subject land should not have a true tax value above \$150,000.
- c. The Petitioner testified the land is not assessed in accordance with the 2002 Real Property Assessment Manual that states, "[t]here shall be a presumption that the value determined according to rules prescribed in this manual is the true tax value of the subject property." *Smith testimony*. Further, Indiana Code § 6-1.1-4-13.6 states the township assessor shall determine the values of all classes of commercial, industrial, and residential land, then the PTABOA shall review the values submitted and finally, the township assessor shall use the values determined. *Pet'r Ex. 4-7*.

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

- a. The Respondent testified that the subject land was assessed in accordance with the instruction contained within chapter 2 (land), Version A-Real Property Assessment Guideline. *Morris testimony*.
- b. The Respondent submitted a page from the Version A Guideline that demonstrates that a positive influence factor can be used to adjust the base acreage value established for a neighborhood when it is determined through the analysis of sales that a comparable corner tract has a higher value than the tracts used to establish the base value for the area. *Resp't Ex. 3*.
- c. The Respondent submitted three comparable properties located on each corner of the subject area demonstrating that the parcels are being assessed fair and equitable. *Resp't 4-6*.
- d. In addition the Respondent submitted a copy of the Howard County Commercial/Industrial Land Analysis for neighborhood 0100404 indicating the subject land and improvements sold on January 1, 1997, for \$225,000 therefore indicating the subject land value as of January 1, 1999, was \$214,214. *Resp't Ex. 7*. The Respondents further testified that due to a clerical error the map boundary

lines were drawn placing the subject property in neighborhood 100405, therefore the positive influence factor was necessary to reflect the true tax value of the subject land. *Morris testimony*.

Record

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

- a. The Petition, and all subsequent pre-hearing, or post-hearing submissions by either party.
- b. The tape recording of the hearing labeled BTR #5746.
- c. Exhibits:
For the Petitioner:
Petitioner's Exhibit 1 – A summary of the issue prepared by Milo Smith.
Petitioner's Exhibit 2 – A copy of the 2002 property record card for Kooshtard Properties LLC.
Petitioner's Exhibit 3 – A copy of the Howard County Land Analysis for commercial/industrial acreage containing the subject neighborhood.
Petitioner's Exhibit 4 – A copy of Indiana Code § 6-1.1-4-13.6 “submission of values to county property tax assessment board of appeals; review”.
Petitioner's Exhibit 5 – A copy of 50 IAC 2.3-1-1 “Applicability, provisions, and procedures” for assessing real property after February 28, 2002.
Petitioner's Exhibit 6 – A copy of page 1, Version A-Real Property Assessment Guideline “Elements of Cost”.
Petitioner's Exhibit 7 – A copy of page 6, 2002 Real Property Assessment Manual.

For the Respondent:
Respondent's Exhibit 1 – The Respondent's response to the issue for Kooshtard Properties LLC prepared by Brian Thomas, Ad Valorem Solutions.
Respondent's Exhibit 2 – A copy of a letter from Jay Morris to Milo Smith, dated October 17, 2003.
Respondent's Exhibit 3 – A copy of Page 86, Version A-Real Property Assessment Guideline, on assessing land.
Respondent's Exhibit 4 – A copy of the 2002 property record card for Emro Marketing Company (Speedway Super America) comparable property.
Respondent's Exhibit 5 – A copy of the 2002 property record card for SEE USA LLC (Shell Oil Co.) comparable property.
Respondent's Exhibit 6 – A copy of the 2002 property record card for Rinehart Martin (Stewart's Used Car Sales) comparable property.
Respondent's Exhibit 7 – A copy of the Howard County Commercial/Industrial Land Analysis for neighborhood 0100404.
- d. These Findings and Conclusions.

Analysis

14. The most applicable statute, rules and governing cases are:

- a. It is the taxpayer's duty to walk the Indiana Board ...through every element of the analysis; arguments that (1) generically claim without explanation that the taxpayer made a prima facie case and (2) cite to large portions of the record as though the evidence speaks for itself do not constitute probative evidence.

Indianapolis Racquet Club, Inc. v. Washington Township Assessor, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (citing *Clark v. State Board of Tax Commissioners*, 779 N.E.2d 1277, 1282 n. 4 (Ind. Tax Ct. 2002)).

- b. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. Conclusory statements are of no value to the Board in its evaluation of the evidence. *See generally, Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
- c. The Petitioner must do two things: (1) prove the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. *See Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711 (Ind. Tax Ct. 2002).
- d. The township assessor shall establish a base rate for pricing each neighborhood. The township shall also establish a base lot to represent the typical and average characteristics of lots in the neighborhood for the purpose of making price adjustments. *Version A – Real Property Assessment Guideline*, at 9.
- e. The township assessor shall establish criteria relating to influence factors that may be applied to individual parcels. The criteria shall include:
 1. criteria for identifying and determining the existence of unique features that are inconsistent with the norm for the neighborhood;
 2. specific conditions that will be considered as evidence that a parcel deserves an influence factor;
 3. a method for evaluating whether a particular condition actually influences the value of the parcel; and
 4. any factors, criteria, or conditions relating to influence factors that are promulgated in a rule.

Version A – Real Property Assessment Guideline, at 11.
- f. The township assessor establishes commercial and industrial acreage base rates for a neighborhood. Often, there are conditions peculiar to specific tracts within a

neighborhood that must be analyzed on an individual basis. These conditions require the assessor to make an adjustment to the value of the tract. This adjustment is an influence factor. *Version A – Real Property Assessment Guideline*, at 89.

15. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a. The subject property currently has a 50% positive influence factor¹ in order to bring it into conformance with the other corner properties at this intersection. *Morris testimony*.
 - b. Petitioner’s sole argument is that the influence factor should be removed because the manual does not allow such an adjustment. *Smith argument*. The argument is as follows:
 - (i) The land valuation range set by the county for this neighborhood gives a base rate of \$70,000 to \$150,000. *Pet’r Ex. 3*. The subject property is assessed at the highest possible base rate of \$150,000, but has also been given a positive influence factor adjustment of 50%.²
 - (ii) The Neighborhood Land Valuation Form establishes the “upper limit” for the land’s assessed value, and influence factors cannot be used to raise the value above this range. *Smith argument; see also, Pet’r Ex. 5*.
 - c. The Board finds Petitioner’s argument to be unpersuasive. Petitioner does not dispute that \$150,000 is the correct base rate. *Smith testimony; Morris testimony*. However, it asserts that the following passage from the manual limits the addition of any further positive influence factor:

The goal of the assessor is to estimate the true tax value for the land and the improvements. The calculation cost is merely the starting point for estimating the true tax value of the improvements or structures. It sets the upper limits of value for the improvements.

2002 REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A at 1 (incorporated by reference at 50 IAC 2.3-1-2). Petitioner’s reliance on this passage is clearly misplaced as it refers only to the upper limits of value for *improvements* – not land. *See id.; Thomas testimony*. Further, Petitioner’s argument contradicts other sections of the manual – most notably the following:

¹ An influence factor refers to a condition peculiar to the land that dictates an adjustment to the extended value to account for variation from the norm. 50 IAC 2.3. An influence factor is expressed as a percentage increase or decrease in the land’s assessed value, with the percentage representing the composite effect of the factor that influences the value. *Quality Farm and Fleet, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 88, 90 (Ind. Tax. Ct. 2001).

² The property record card show a base rate of \$150,000, an extended value of \$146,060, and a 50% influence factor bringing the true tax value to \$219,090. *Pet’r Ex. 2*.

Example 2: The small acreage commercial tracts located in Neighborhood #32 are similar in size and used for commercial purposes. The base acreage value was established for the neighborhood to reflect the typical tract which is a parcel that has restricted access to the highway due to the small number of crossovers located in the highway. However, parcel Z, located at the intersection of the same highway and a similar highway, has very good access from both roads. The township assessor has determined through the analysis of a sale of a comparable corner tract that parcel Z has a higher value than the tracts used to establish the base value for the area. The assessor determines that a positive influence factor is necessary to adjust parcel Z's value. The difference between the higher value and the estimated value is expressed as a percentage and applied to parcel Z's estimated value. The corner influence associated with parcel Z is the reason for assigning this positive influence factor adjustment.

2002 REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A at 90; *Resp't Ex. 3*. Our supreme court has repeatedly said that “when the meaning of an administrative regulation is in question, the interpretation of the administrative agency is given great weight unless the agency's interpretation would be inconsistent with the regulation itself.” *See State Bd. of Registration for Professional Eng'rs v. Eberenz*, 723 N.E.2d 422, 428 (Ind. 2000). Example 2 represents such an interpretation of the manual. The Board will give deference to that interpretation. If further upward adjustments were not allowed, as Petitioner suggests, portions of the guidelines relating to influence factors would be rendered meaningless. The Board will not endorse such an interpretation. Finally, the Petitioner does not identify any similar properties in which land located on a corner lot, as that under review in this appeal, was not assessed with a positive influence factor for the corner location. In failing to do so, the Petitioner failed to show that the subject property might have been treated differently than other similarly situated properties.

- d. Further, Petitioner argues that Ind. Code § 6-1.1-4-13.6 limits the assessor to using only the values determined by the Neighborhood Land Valuation Process – implying that this forbids the use of an influence factor. *Smith testimony; Pet'r Ex. 4, 6*. Petitioner has misinterpreted this statute. Ind. Code § 6-1.1-4-13.6(c) states that “[t]ownship assessors shall use the values determined under this section.” *Id.* This means only that the assessor must use a base rate that has been formulated, modified, and approved in conformance with Ind. Code § 6-1.1-4-13.6(a) and (b). This does not in any way affect the use of influence factors.

- e. In this case, the Assessor did use a base rate within the range established in conformance with Ind. Code § 6-1.1-4-13.6.³ *Pet'r Ex. 3*. The assessor then applied an influence factor as contemplated by the guidelines. Based on the evidence presented, the Board cannot find fault with the Assessor's selection of base rate and use of an influence factor. *See Thomas testimony; Morris testimony; Resp't Ex. 1, 2*.
- f. The Petitioner did not present evidence to demonstrate that the system prescribed by statute and regulation was improperly applied to the assessment of the subject property. The Board finds in favor of the Respondent.

Conclusion

16. The Petitioner failed to make a prima facie case. There is no change to the assessment as a result of this determination.

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.

³ In this case, Respondent used the influence factor to correct the "clerical error" of putting the property in the wrong neighborhood. *Morris testimony*. While the Board does not endorse this practice and encourages assessing officials to properly reclassify such properties into their correct neighborhoods, it is aware that this is a reasonably practical solution. Regardless, Petitioner did not press this point further and established no harm from the use of the influence factor in this manner. *See Smith testimony*.