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

Petition No.: **07-005-02-1-4-00020**
Petitioner: **Lois A. Waltman**
Respondent: **Brown County Assessor**
Parcel No.: **001093192301900**
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 an assessment appeal with the Brown County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 23, 2005.

2. The PTABOA issued its decision on August 29, 2005.

3. The Petitioner filed a Form 131 petition with the Board on September 22, 2005. The Petitioner elected to have her case heard pursuant to the Board's small claims procedures.

4. The Board issued a notice of hearing to the parties dated May 21, 2009.[1]

5. The Board held an administrative hearing on August 4, 2009, before the duly appointed Administrative Law Judge Alyson Kunack.

6. The following were present and sworn in at the hearing:

    a) For Petitioner: Milo Smith, the taxpayer's representative

    b) For Respondent: Stephen Gore, the Brown County Assessor
    Frank Kelly, the county's witness

Facts

7. The property is a retail building located at 191 Van Buren Street South, in the town of Nashville, Washington Township in Brown County.

[1] The Board notes that the hearing was originally scheduled for July 11, 2006, but the Petitioner's representative filed multiple requests for continuance before the matter was finally heard three years later.

8. The Administrative Law Judge (ALJ) did not inspect the property.

9. For 2002, the PTABOA determined the assessed value of the subject property to be $161,800 for the land and $155,200 for the improvements, for a total assessed value of $317,000.

10. The Petitioner requests an assessed value of $48,000 for the land and $110,000 for the improvements, for a total assessed value of $158,000.

Issues

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

    a) The Petitioner's representative contends that the land value should not exceed sixteen percent of the improvement value for the subject property, based on the neighborhood land valuation form. *Smith argument; Petitioner Exhibit 1.* According to the Petitioner's representative, the land is over-valued because the County applied an incorrect base rate to the subject property's land. *Id.* Mr. Smith argues that the neighborhood valuation form in Petitioner Exhibit 1 shows an upper limit of $10 per square foot for neighborhood 0140100. *Id.* However, Mr. Smith testified that he received a second neighborhood valuation form at a PTABOA hearing on July 21, 2005, for neighborhood 7014010, the subject property's neighborhood, which shows an upper limit of $20 per square foot. *Smith testimony; Petitioner Exhibit 2 and 7.* According to Mr. Smith, the revised valuation form has a notation at the bottom which states, "Nexus amendment: Nexus revised the original NBHD 7014010 to $20 per sq. ft. for the specific area mentioned above." *Id.* According to Mr. Smith, the county assessor at the time, Donna Kelp Lutes, testified in a previous hearing before the Board that the two neighborhoods were the same. *Smith testimony; Petitioner Exhibit 5.* Mr. Smith argues that, according to Ms. Lutes, the second form had the number 7 at the front because county officials were instructed that they were required to have a county designation on their forms. *Id.* Moreover, Mr. Smith contends, Ms. Lutes testified that the PTABOA never held a hearing to approve the valuation form with the $20 rate. *Id.*

    b) The Petitioner's representative argues that the "Nexus Amendment" is invalid and therefore the $10 per square foot value in Petitioner Exhibit 1 should apply to the subject property rather than the $20 per square foot from the Nexus Amendment. *Smith argument.* In support of his contention, Mr. Smith presented a letter from attorney Timothy Vrana to C. Kurt Barrow of the Department of Local Government Finance (DLGF) and Mr. Barrow's response. *Petitioner Exhibit 3.* Mr. Smith argues that in his letter Mr. Barrow states that "[f]or the 2002 general reassessment, the setting of land value base rates was the responsibility of the township and trustee assessors." *Smith testimony; Petitioner Exhibit 3.* Further, Mr. Smith contends that, according to Mr. Barrow's letter, the PTABOA's public hearing on and approval of any base rates or any modification to the base rates

should be recorded in the minutes of the PTABOA. *Id.* Mr. Smith also cited to a report from the State Board of Accounts which stated that "Information presented for audit also indicates that the original assessed values for parcels were changed at some point with no supporting documentation or approval." *Smith testimony; Petitioner Exhibit 6.*

c) The Petitioner's representative further contends the effective age of the property is incorrect. *Smith argument.* According to Mr. Smith, based on the measurements on the property record card, 95% of the building is the original 1959 construction and 5% is a 1995 addition. *Smith testimony; Petitioner Exhibit 7.* Mr. Smith argues that, if the calculations are done in the manner prescribed by the Guidelines, the building's effective age is 1961. *Smith testimony.* In support of his contention the county failed to follow the Guidelines in the Petitioner's assessment, Mr. Smith presented an electronic mail message from Frank Kelly of Nexus Group to the Brown County PTABOA stating that the effective age of buildings were adjusted upward to get property assessments closer to market value. *Smith testimony; Petitioner Exhibit 8.*

d) Finally, the Petitioner's representative argued that the subject property's assessment increased by 130% and therefore the county had the burden to prove the assessment was correct. *Smith argument.* According to Mr. Smith, Indiana Code § 6-1.1-15-1(p), which was signed into law on July 1 of this year, states, "[t]his subsection applies if the assessment for which a notice of review is filed increased the assessed value of the assessed property by more than five percent (5%) over the assessed value finally determined for the immediately preceding assessment date. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct." *Id.*; *Petitioner Exhibit 1b.*

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

a) The Respondent's representative argues that, for the 2002 general reassessment, the township assessor had the final authority to determine a set value for assessments. *Kelly argument; Petitioner Exhibit 3.* Therefore, according to Mr. Kelly, although Nexus Group made changes to assessments, those changes still had to be approved by the township assessor. *Kelly testimony.* Furthermore, the Department of Local Government Finance (DLGF) reviewed and approved the ratio study based on these assessments. *Id.*

b) Further, the Respondent's representative argues that the Petitioner cannot rely on the land order to support a change in her assessed value. *Kelly argument.* According to Mr. Kelly, in Petitioner Exhibit 3, Mr. Barrow stated that for the 2002 reassessment, land orders were not required. *Kelly testimony; Petitioner Exhibit 3.* Therefore, Mr. Kelly argues, it is unclear how either of the land valuation forms in Petitioner Exhibits 1 and 2 could be "wrong or right" because neither of the land values carried the weight of law. *Kelly argument.* In addition,

Mr. Kelly contends, the Petitioner failed to submit any evidence that the land valuation form for neighborhood 0140100 was properly approved. *Id.* Thus, Mr. Kelly suggests, if the land valuation form for neighborhood 7014010 is invalid, the land valuation form for neighborhood 0140100 is equally invalid. *Id.*

c) The Respondent's representative also argues that the land valuation orders submitted by the Petitioner's representative are for two different neighborhoods. *Kelly testimony; Petitioner Exhibits 1 and 2.* According to Mr. Kelly, the neighborhood 7014010 listed on Petitioner Exhibit 2 was developed from sales information, appraisals, and income information from properties in the downtown central business district. *Kelly testimony; Petitioner Exhibit 2.* The income information in particular showed a significant difference in rental amounts between properties on Van Buren Street, which is the main north-south street through downtown Nashville, and properties located a few blocks off the main streets. *Kelly testimony.* Thus, Mr. Kelly argues, neighborhood no. 7014010 was created as a "subsection" of neighborhood 0140100. *Id.* Further, Mr. Kelly argues, despite the Petitioner's evidence regarding Ms. Lutes' testimony at a previous hearing that the neighborhoods were "identical," she was not involved in the Nexus reassessment and therefore the evidence should be disregarded. *Id.*

d) Further, the Respondent's representative argues, the property's effective age was properly changed to more accurately reflect the market values of properties in the neighborhood. *Kelly argument.* According to Mr. Kelly, the Manual requires the assessor to determine the true tax value of a property as of January 1, 1999, regardless of the result of applying the Guidelines. *Id.* Mr. Kelly testified that after the revised land base rates were applied, it was clear that more changes were needed to reach the actual true tax value of many properties in the central business district. *Kelly testimony.* Therefore, the effective ages of many of these properties, including the subject property, had to be modified to better reflect their true tax values. *Id.*

e) Finally, Mr. Kelly contends that the shifting of the burden to the Respondent under the statute cited by the Petitioner's representative is "unconscionable" where appeals have been delayed, often at the Petitioner's request, for some time. *Kelly testimony.* According to Mr. Kelly, the law itself fails to state when it comes into effect, so to change the burden on appeals that have been on file for several years is unreasonable. *Id.*

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 digital recording of the hearing.

c) Exhibits:[2]

Petitioner Exhibit 1a: The Petitioner's Witness and Exhibit List,
Petitioner Exhibit 1b: A summary of the Petitioner's presentation,
Petitioner Exhibit 1: The commercial and industrial land valuation form for neighborhood 0140100,
Petitioner Exhibit 2: The commercial and industrial land valuation form for neighborhood 7014010,
Petitioner Exhibit 3: A copy of a letter from C. Kurt Barrow dated February 28, 2005,
Petitioner Exhibit 5: The Board's determination in *Franklin Paul and Elinor Kay Dowell*, Petition Nos. 07-005-02-1-5-00025 and 07-005-02-1-4-00017 (Oct. 6, 2006),
Petitioner Exhibit 6: "Special Examination of 2002 Reassessment Contracts and Subsequent Tax Billing, Collection and Distribution Processes" from the State Board of Accounts,
Petitioner Exhibit 7: The subject property's property record card (PRC) for 2001,
Petitioner Exhibit 8: A copy of an electronic mail message from Frank Kelly dated July 18, 2005,
Petitioner Exhibit 9: A revised PRC showing the Petitioner's requested changes,

Board Exhibit A: Form 131 Petition,
Board Exhibit B: Notice 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).

[2] The Petitioner failed to offer any exhibit identified as Petitioner Exhibit 4. Further, Respondent chose not to submit any exhibits in support of the assessment.

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 for a reduction in the assessed value of her property. The Board reached this decision for the following reasons:

a) The 2002 Real Property Assessment Manual defines "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." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property's market value: the cost approach, the sales-comparison approach and the income approach to value. *Id*. at 3, 13-15. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.

b) A property's assessment under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005)*; P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id*.; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.

c) Here the Petitioners contend that they were entitled to have their property assessed using a base rate of $10 per square foot as reflected on the neighborhood valuation form for neighborhood 0140100 rather than the base rate of $20 per square foot set forth on the neighborhood valuation form for neighborhood 7014010. The Petitioner does not contend that other properties located in neighborhood 7014010 are assessed at the rate of $10 per square foot. The Petitioner likewise does not contend that the subject property is assessed for more than its market value. Instead, the Petitioner relies solely on her argument 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.

d) As an initial matter, the Board finds that the Petitioner failed to prove that the land valuation form for neighborhood 7014010 amended the land valuation form for neighborhood 0140100. According to Mr. Smith, Ms. Lutes, the county assessor at the time, testified in a previous hearing before the Board that the two neighborhoods were the same – the second form began with a number 7 because county officials were instructed to have a county designation on their forms. *Smith testimony; Petitioner Exhibit 5.* Ms. Lutes did not, however, appear to testify and be questioned on that testimony in this proceeding. Mr. Smith merely points to Ms. Lutes' conclusory testimony in a prior hearing before the Board. Conclusory statements do not constitute probative evidence. *See Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Mr. Kelly on the other hand argues that neighborhood 7014010 is a "subsection" of neighborhood 0140100 that was developed from sales disclosures, appraisals, and income information from properties in the downtown central business district. *Kelly testimony; Petitioner Exhibit 2.* According to Mr. Kelly, despite Ms. Lutes' testimony at a previous hearing that the neighborhoods were "identical," she was not involved in the Nexus reassessment and therefore her testimony should be disregarded. *Id.*

e) Based on the evidence, the Board finds that the two neighborhoods are not identical but, in fact, cover over-lapping territory. The notation on the bottom of the form for neighborhood 7014010 indicates that it was intended to revise "the original NBHD 7014010 to $20 per sq. ft. for the specific area mentioned above." *Petitioner Exhibit 2.* The "area mentioned above" is described as "Central Business District Parcels along Van Buren St. East of Jefferson, West of Locust Lane North of SR 46 South of Mound St." *Id.* While the form for Neighborhood 0140100 is for the "Central Business District, Nashville." *Petitioner Exhibit 1.* The most logical inference is that the PTABOA, through Nexus Group, modified the base rate for a portion of the original "Central Business District" covered by the valuation form for Neighborhood 0140100, and that modification is reflected in the form for Neighborhood 7014010.

f) The neighborhood of the Petitioner's property is identified as 7014010 and the Petitioner does not argue that her property was not located in neighborhood 7014010. Despite this, the Petitioner argues that the Board should apply a $10 per square foot valuation from neighborhood 0140100 because the PTABOA failed to hold a hearing to adopt the $20 per square foot valuation in neighborhood 7014010. The only support the Petitioner presents for its contention that the land valuation form for neighborhood 7014010 was improperly adopted, however, was a letter from Mr. Barrow to Mr. Timothy Vrana wherein Mr. Barrow stated that for "the 2002 general reassessment, the setting of land value base rates was the responsibility of the township and trustee assessors. These base rates were subject to review by the county PTABOA prior to being applied. The entire

procedure is outlined in the *2002 Real Property Assessment Guidelines* issued by [the Department of Local Government Finance]." *Petitioner Exhibit 3.* Nothing in that letter addresses the actual requirements for adopting a land valuation order. *Id.* Thus, nothing in Mr. Barrow's letter is probative evidence that the county failed to follow any requirements for adopting a land valuation order.[3]

g) Finally, the Petitioner failed to show that the county assessor was bound by either land valuation in its assessment of the Petitioner's property. The Petitioner's own evidence shows that "for the 2002 general reassessment, land orders were not required." *See Petitioner Exhibit 3,* letter from C. Kurt Barrow to Timothy J. Vrana. Because the Petitioner failed to show that the county was required to use a land order, it only follows that it cannot be an error for the county to have used the valuation it believed most accurately reflected the property's value.[4]

h) The Petitioner next contends that the county incorrectly calculated her building's "effective age" in its assessment of the property's improvements. *Smith argument.* According to Mr. Smith, 95% of the building is the original 1959 construction and 5% is a 1995 addition and therefore he contends that the building's effective age is 1961. *Id.* The Petitioner's representative, however, cites to no statute or regulation to support his calculation. Mr. Smith merely argues that he calculated the effective age of the building "in the manner prescribed by the Guidelines." This is insufficient to prove the assessment was in error. *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").

i) Further, even if the Petitioner was correct that the Respondent did not apply the Guidelines properly, that failure is insufficient, by itself, to establish an error in assessment. Here, the Petitioner failed to provide any market-based evidence regarding the subject property's value. Instead, the Petitioner rests its case solely on her claim that the Respondent committed a technical error in applying the Guidelines. However, "No technical failure to comply with the procedures of a specific assessing method violates this rule so long as the individual assessment is a reasonable measure of True Tax Value, and failure to comply with the …

[3] Similarly, *Petitioner Exhibit 6* fails to support the Petitioner's contentions here. While the State Board of Accounts finds that "Information presented for audit also indicates that the original assessed values for parcels were changed at some point with no supporting documentation or approval," it speaks only in general terms. Nothing in the report addresses any valuation change in the Petitioner's neighborhood or to the Petitioner's property.

[4] The Petitioner's representative also argues that the land value should not exceed 16% of the improvement value. *Smith argument.* Mr. Smith only points to the "Land Value Ratio" on the Neighborhood Valuation Form for neighborhood 0140100. First, Mr. Smith does not show this Board that a "Land Value Ratio: 16%" means that the land value cannot exceed 16% of the improvement value. He merely contends that without support. Conclusory statements do not constitute probative evidence. *See Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Further, even if Mr. Smith had proved the meaning of that entry on the form, no such entry exists on the land valuation form for neighborhood 7014010.

Guidelines … does not in itself show that the assessment is not a reasonable measure of 'True Tax Value[.]"). 50 IAC 2.3-1-1(d).

j) In fact, the Indiana Tax Court has repeatedly warned taxpayers against contesting the methodology used to assess a property instead of presenting probative evidence of the property's market value-in-use. *See, e.g., O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006) (finding that taxpayers failed to establish a prima facie case based on various alleged errors by assessing officials, because the taxpayers focused solely on methodology and did not demonstrate that the assessment did not accurately reflect their property's market value-in-use); *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 764 (Ind. Tax Ct. 2006) ("Therefore, when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct."); and *P/A Builders & Developers v. White River Twp. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) ("[W]hen a taxpayer challenges its assessment under this new system, it cannot merely argue form over substance. Rather, the taxpayer must demonstrate that the assessed value as determined by the assessing official does not accurately reflect the property's market value-in-use."). The Petitioner's representative apparently chose to ignore these warnings and focused solely on the methodology employed by the Respondent in assessing the subject property. That choice has led to a predictable result.

k) The Petitioner failed to raise a prima facie case that her property was assessed in excess of its market value-in-use. When a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered.[5] *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

[5] The Petitioner argues that – to the contrary – it was the Respondent's burden to prove the assessment was correct because the Petitioner's assessment increased 130% between assessments. The Board notes that the Petitioner initiated this assessment appeal by a written document filed with the PTABOA on May 23, 2005. The PTABOA issued its decision on August 29, 2005, and the Petitioner filed her Form 131, Petition for Review of Exemption, with the Board on September 22, 2005. Effective July 1, 2009, Indiana Code § 6-1.1-15-1(p) provides that a taxpayer may obtain a review of a county board's or township official's action with respect to the taxpayer's assessment. And if the assessment increased by more than five percent over the assessed value for the immediately preceding assessment, the assessor has the burden of proving that assessment is correct. The Petitioner, however, provided no evidence that this provision applies retroactively and the Board is aware of no authority for doing so. *See, e.g., Metro. Dev. Comm'n. of Marion County v. Pinnacle Media,* 836 N.E.2d 422 (Ind. 2005) (citing the general rule of law that ordinances and statutes that are substantive in their effect are not retroactive). Therefore, the Board finds that the burden of proof remained with the Petitioner.

Conclusion

16. The Petitioner failed to raise 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: _____

_____
Chairman,
Indiana Board of Tax Review

_____
Commissioner,
Indiana Board of Tax Review

_____
Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- 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.