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

Petition #:	**07-005-02-1-5-00025**
	07-005-02-1-4-00017
Petitioners:	**Franklin Paul and Elinor Kay Dowell**
Respondent:	**Washington Township Assessor (Brown County)**
Parcel #:	**001-093-19.22-051.01**
	001-093-19.22-051.00
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 Petitioners 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 mailed notice of its decision on August 29, 2005.

3. The Petitioners initiated an appeal to the Board by filing Form 131 petitions with the Brown County Assessor on September 22, 2005. The Petitioners elected to have this case heard in small claims.

4. The Board issued notices of hearing to the parties dated April 25, 2006.

5. The Board held a consolidated administrative hearing with regard to the above referenced petitions on June 1, 2006, before the duly appointed Administrative Law Judge Alyson Kunack.

6. Persons present and sworn in at hearing:

    a) For Petitioners: Milo Smith, taxpayer representative
    Donna Kelp Lutes, Brown County Assessor

    b) For Respondent: Frank Kelly, Nexus Group, Respondent's representative

Facts

7. The above referenced parcels are classified as commercial property, as is shown on the property record cards for parcels 001-093-19.22-051.01 and 001-093-19.22-051.00. The parcels are located on Van Buren Street in Nashville, Indiana. The Board shall refer to the two parcels collectively as the "subject property" and to the land portions of those parcels collectively as the "subject land" unless otherwise indicated.

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

9. Assessed Value of subject property as determined by the PTABOA:

Parcel: 001-093-19.22-051.01		
Land: $20,600	Improvements: $0	Total: $20,600
Parcel: 001-093-19.22-051.00		
Land: $136,500	Improvements: $399,900	Total: $536,400

10. Assessed Value requested by Petitioners:

Parcel: 001-093-19.22-051.01		
Land: $10,300	Improvements: $0	Total: $10,300
Parcel: 001-093-19.22-051.00		
Land: $46,000	Improvements: $300,000	Total: $346,000

Issues

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

    a) On Petition No. 07-005-02-1-4-00017, the Petitioners claimed that the subject improvement should receive a grade of "C." *Board Ex. A*. The Petitioners withdrew that claim at the hearing. *Smith testimony; Board Ex. D.*

    b) The Petitioners contend that the Respondent assessed the subject property using an improper base rate. *Smith testimony*. The subject property is located in the central business district of Nashville. Mr. Smith obtained a copy of the Commercial and Industrial Neighborhood Valuation Form for Neighborhood 0140100 from the Brown County Assessor's office. *Smith testimony; Pet'rs Ex. 3.* That neighborhood valuation form shows a land base rate of $10 per square foot. *Id*. The property record cards, however, show that the subject land is assessed using base rate of $20 per square foot. *Id; Pet'rs Ex. 4*.

    c) The subject land appears to be assessed using the Commercial and Industrial Neighborhood Valuation Form for Neighborhood 7014010. *Smith testimony*. The

neighborhood valuation form for neighborhood 7014010 contains the following notation at the bottom: "Nexus Amendment: Nexus revised the original NBHD 7014010 to $20 per sq ft for the specific area mentioned above." *Id*. Mr. Smith first received a copy of that form at the PTABOA hearing concerning the Petitioners' appeals on July 21, 2005. *Smith testimony; Pet'rs Ex. 5*. The Brown County Assessor, Donna Kelp Lutes, also testified that she first saw the neighborhood valuation form for neighborhood 7014010 at the Petitioners' hearing before the PTABOA. *Lutes testimony*. According to Ms. Lutes, Neighborhood 0140100 and Neighborhood 7014010 are the same. *Id*. The difference in numbers is attributable to local officials having been instructed to use a county designation code of "7" at the beginning of all of their forms. *Id*.

d) The PTABOA did not conduct a public hearing regarding the revised base rate reflected on the neighborhood valuation form for neighborhood 7014010. *Lutes testimony.* After receiving a copy of the revised neighborhood valuation form, Mr. Smith attempted to determine the procedures used by the PTABOA in arriving at the revised base rate of $20 per square foot. Mr. Smith requested documents from the Department of Local Government Finance ("DLGF") pertaining to the amendment of the neighborhood valuation form for neighborhood 7014010 as well as copies of statutes and regulations describing the procedures used to amend the form. *Smith testimony; Pet'rs Ex. 6.*

e) In response to Mr. Smith's request, Kathryn A. Densborn, Public Information Officer/Legislative Liaison for the DLGF, indicated that the DLGF would be unable to provide the documents requested by Mr. Smith, because counties are not required to submit that information to the DLGF. *Smith testimony; Pet'rs Ex. 7*. Ms. Densborn subsequently identified internet links pursuant to which Mr. Smith could find the statutes and regulations he had requested. *Pet'rs Ex. 8*.

f) The Petitioners apparently contend that the Respondent erred in assessing the subject property using the revised $20 per square foot base rate because the PTABOA did not hold a public hearing prior to making the revision. In support of their position, the Petitioners cite generally to Ind. Code § 6-1.1-4-13.6 and Ind. Code § 6-1.1-4-13.8(g) - (h). *Smith testimony; Pet'rs Exs. 2, 10*. The Petitioners further point to an excerpt from page 19 of the 2002 Real Property Assessment Manual (Manual) indicating that PTABOAs are responsible for conducting public hearings on land base rates set by township and county assessors prior to those rates being used to assess real property. *Smith testimony; Pet'rs Ex. 12.*

g) The Petitioners also contend the Respondent incorrectly based the depreciation applied to the subject building on the building's "effective age" rather than upon its actual year of construction. *Smith argument.* The property record card for Parcel No. 001-093-19.22-051.00 lists the subject building as having been constructed in 1979, but assesses the building based upon an "effective year" of 1990. *Pet'rs Ex. 4*. The Petitioners submitted a copy of an e-mail from Frank

Kelly of Nexus Group to "bauerls@sbcglobal.net," in which Mr. Kelly indicates: "[T]o get property assessments closer to market value, the effective ages had to be adjusted upward in many cases. This adjustment recognizes the updates and maintenance to such buildings. These adjustments were done 'across the board' to every property." *Pet'rs Ex. 16*.

h) The Respondent relies on Ind. Admin. Code tit. 50, r. 2.3-1-1(d), which provides that technical failures to comply with the Real Property Assessment Guidelines for 2002 – Version A (Guidelines) do not invalidate an assessment as long as the assessment is a reasonable measure of true tax value. To counter that position, Mr. Smith submitted a letter from an attorney, Timothy J. Vrana, in which Mr. Vrana argues that the specific language in the Guidelines regarding how to calculate physical depreciation based on a determination of the actual ages of structures controls the more general language in the regulation cited by the Respondent. *Pet'rs Exs. 13-14, 17.* Mr. Smith noted that two cases involving issues similar to those presented in the instant case are currently on appeal to the Indiana Supreme Court. *Smith testimony*.

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

a) The Respondent first notes that the Petitioners did not present any evidence concerning the market value of the subject parcels. The Respondent points to Ind. Admin. Code tit. 50, r. 2.3-1-1(d), which provides that an assessment is deemed accurate if it is a reasonable measure of "true tax value," and that no technical failure to comply with a specific assessing method violates 50 IAC 2.3 as long as the assessment is a reasonable measure of "true tax value." *Kelly argument; Resp't Ex. 1.*

b) Nexus Group, which was hired to complete the 2002 general reassessment in Brown County, had information suggesting that the land values originally provided for the central business district in Nashville were in error and that application of those values would not result in assessments reflective of market value-in-use. *Kelly testimony.* The original land base rates were not representative of market value, so they were revised. *Kelly testimony.* The $20 per square foot base rate was established with the knowledge and approval of the Department of Local Government Finance (DLGF). *Id.*

c) Nexus Group changed the effective ages of the subject building and other buildings in downtown Nashville. *Kelly testimony.* The change to the effective ages was designed to account for updates and improvements made to those buildings in order to more accurately reflect market value-in-use. *Id*. Owners of properties in downtown Nashville have done things to improve their properties, such as improvements to the electrical systems and roofs of their buildings and other modernization. *Kelly testimony*. Mr. Kelly did not testify as to any specific improvements to the subject building, but Mr. Smith testified that the taxpayers had performed maintenance

comparable to the maintenance performed on other buildings in the surrounding area. *Smith testimony*.[1]

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:

Petitioners' Exhibits[2]

Petitioners' Exhibit 1: Summary of issues
Petitioners' Exhibit 2: Copy of I. C. 6-1.1-4-13.6
Petitioners' Exhibit 3: Neighborhood Valuation form obtained from County Assessor
Petitioners' Exhibit 4: Current property record cards (PRCs)
Petitioners' Exhibit 5: Neighborhood Valuation form provided at PTABOA hearing
Petitioners' Exhibit 6: Petitioner Exhibit 6: Information request to DLGF
Petitioners' Exhibit 7: Initial response to information request
Petitioners' Exhibit 8: Second response to information request
Petitioners' Exhibit 9: Printout of first website from DLGF's response
Petitioners' Exhibit 10: Indiana Code § 6-1.1-4-13-8
Petitioners' Exhibit 11: Printout of second website from DLGF's response
Petitioners' Exhibit 12: 2002 REAL PROPERTY ASSESSMENT MANUAL, p. 19

[1] The Respondent also contends that the Board should not consider the Petitioners' claims regarding the assessment of the subject land. In support of its contention, the Respondent argues that the Petitioner's representative, Mr. Smith, engaged in the unauthorized practice of law by citing to and interpreting statutes (Ind. Code §§ 6-1.1-4-13.6, 6-1.1-4-13.8 and 6-1.1-4-13.6 and 6-1.1-31-6), and by questioning the procedures by which the base rate used to assess the subject property was established. *Kelly testimony*. Mr. Kelly is correct that the Board's procedural rules prohibit certified tax representatives from engaging in any representation that involves the practice of law. Ind. Admin. Code tit. 52. r. 1-2-1. Although, in response to cross-examination by Mr. Kelly, Mr. Smith testified that he was giving his "interpretation" or "opinion" regarding the statutes at issue, Mr. Smith did not actually argue any particular interpretation of the statues beyond simply reading the statutory language into the record. The parameters of what constitutes the practice of law are not clearly defined. While Mr. Smith may have walked up to the line by citing to the above-referenced statutes, the Board does not believe that he crossed over it. In fact, Mr. Kelly, himself a certified tax representative, engaged in much the same behavior as Mr. Smith when he cited to Ind. Admin. Code tit. 50, r. 2.3-1-1(d) to support the Respondent's position that technical failures in applying the Guidelines do not constitute error as long as the assessment is a reasonable measure of true tax value. *See Kelly testimony*.

[2] The Petitioners submitted two separately labeled packets of exhibits. Exhibits 1-12 for each parcel are identical, except for Exhibit 4, which is parcel specific. The Board has also noted the difference in each packet with regard to Exhibit 13. Finally, the packet for Petition No. 07-005-02-1-4-00025 doest not contain Exhibits 14-19.

Petitioners' Exhibit 13 (Pet. No. 07-005-02-1-4-00017): REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Appendix F, p. 5
Petitioners' Exhibit 13 (Pet. No. 07-005-02-1-5-00025): Copy of PRC with requested values
Petitioners' Exhibit 14: REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Appendix F, p. 7[3]
Petitioners' Exhibit 16: Copy of email from Frank Kelly to Brown County PTABOA
Petitioners' Exhibit 17: Copy of legal opinion prepared by Timothy J. Vrana, attorney[4]
Petitioners' Exhibit 18: I.C. 6-1.1-31-6
Petitioners' Exhibit 19: copy of PRC with requested changes

Respondent's Exhibits

The Respondent did not submit any exhibits

Board Exhibits

Board Exhibit A: Form 131 petitions
Board Exhibit B: Notices of hearing
Board Exhibit C: Hearing Sign-in Sheet
Board Exhibit D: Withdrawal of Issue

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

[3] The Petitioner did not submit any exhibit labeled as 15.
[4] While the Board does not agree with the Respondent that Mr. Smith's general citation to and reliance upon various sections of the Indiana Code violated the Board's rules concerning certified tax representatives, *see* note 2, *supra,* Mr. Smith's submission of and reliance upon Mr. Vrana's letter is more problematic. In that letter, Mr. Vrana clearly engages in legal argument by applying principles of statutory construction. *See Pet'rs Ex. 17.* If Mr. Vrana wished to represent the Petitioners before the Board, he should have filed an appearance and attended the hearing. He did not do so. Instead, Mr. Smith appeared on behalf of the Petitioners and he is bound by the Board's rules prohibiting certified tax representatives from engaging in representation involving the practice of law. Ind. Admin. Code tit. 52 r. 1-2-1(b)(4). The Board will not allow Mr. Smith to do indirectly what he is prohibited from doing directly. The Board therefore does not consider Petitioners' Exhibit 17 or any of Mr. Smith's statements regarding that exhibit in reaching its decision. Moreover, the Board strongly cautions Mr. Smith against any further attempts to evade the Board's rules governing representation by certified tax representatives.

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.

Objections

15. The Respondent objects to the admission of Petitioners' Exhibit 16, a copy of an e-mail from Mr. Kelly to "bauerls@sbcglobal.net," on grounds that the e-mail was a private communication**.** *Kelly objection***.** The Respondent, however, does not identify any statute, rule of evidence or other authority to support the proposition that a "private communication" is not admissible as evidence. The Respondent likewise does not assert that Mr. Kelly stands in such a relationship to the recipient of the e-mail as to give rise to an evidentiary privilege protecting their communications from disclosure. Moreover, Mr. Smith testified that the document was provided to him at the hearing before the PTABOA to support "why the land value was raised." *Smith testimony.* Although Mr. Smith's explanation is somewhat curious, given that the e-mail refers to the assessment of improvements rather than land, the Respondent did not rebut Mr. Smith's testimony. Thus, to the extent that the e-mail was a privileged communication, that privilege was waived by the disclosure of the document at the PTABOA hearing. *See* Ind. Evidence Rule 501(b) ("A person with a privilege against disclosure waives the privilege if the person or person's predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter. . ."). The Board therefore overrules the Respondent's objection to the admission of Petitioners' Exhibit 16.

The Merits of Petitioners' Claims

16. The Petitioners did not provide sufficient evidence to support their contentions. The Board reaches this conclusion for the following reasons:

Base Rate Used to Assess the Subject Land

a) 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 original neighborhood valuation form for neighborhood 0140100 rather than the revised base rate of $20 per square foot set forth on the neighborhood valuation form for neighborhood

7014010. The Petitioners do not contend that other properties located in neighborhood 7014010 are assessed at the rate of $10 per square foot. The Petitioners likewise do not contend that the subject property is assessed for more than its market value. Instead, the Petitioners rely solely on the fact 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.

b). As an initial matter, the parties disagree regarding whether the valuation form for Neighborhood 0140100 covers the same territory as the valuation form for neighborhood 7014010. Ms. Lutes testified that the two forms refer to the same neighborhood. *Lutes testimony.* According to Ms. Lutes, the second form has the number "7" at the front because county officials were instructed that they were required to have a county designation on their forms. *Lutes testimony*. Mr. Kelly, however, testified that the forms refer to two separate geographic areas, although both are within the "central business district." *See Kelly testimony*. The Board finds that the two forms cover overlapping 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." *Pet'rs Ex. 5*. 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.* The most logical inference is that the PTABOA, through Nexus Group, modified the base rate for a portion of original "Central Business District" covered by the valuation form for Neighborhood 0140100, and that modification is reflected in the form for Neighborhood 7014010.

c). In support of their position, the Petitioners cite generally to Ind. Code § 6-1.1-4-13.6 and Ind. Code § 6-1.1-1-4-13.8. The former statute addresses actions to be taken by a county PTABOA after receiving land values determined by township assessors. The latter statute addresses actions to be taken by a county PTABOA after receiving land values determined by a county land valuation commission. It is not clear which of the two statutes applies in this case, because the record is silent regarding whether the original land values submitted to PTABOA were determined by the Washington Township Assessor or a land valuation commission. Regardless, neither of those statutes provides the Petitioners with the remedy they seek.

d). Ind. Code § 6-1.1-1-4-13.6 provides, in relevant part:

> a) The township assessor shall determine the values of all classes of commercial, industrial, and residential land (including farm homesites) in the township using guidelines determined by the department of local government finance. Not later than November 1 of the year preceding the year in which a general reassessment becomes effective, the assessor determining the values of land shall submit the values to the county property tax assessment board of appeals. Not later than December 1 of

the year preceding the year in which a general reassessment becomes effective, the county property tax assessment board of appeals shall hold a public hearing in the county concerning those values. The property tax assessment board of appeals shall give notice of the hearing in accordance with IC 5-3-1 and shall hold the hearing after March 31 and before December 1 of the year preceding the year in which the general reassessment under IC 6-1.1-4-4 becomes effective.

b) The county property tax assessment board of appeals shall review the values submitted under subsection (a) and may make any modifications it considers necessary to provide uniformity and equality. The county property tax assessment board of appeals shall coordinate the valuation of property adjacent to the boundaries of the county with the county property tax assessment board of appeals of the adjacent counties using the procedures adopted by rule under IC 4-22-2 by the department of local government finance. If the county assessor or township assessor fails to submit land values under subsection (a) to the county property tax assessment board of appeals before November 1 of the year before the date the general assessment under IC 6-1.1-4-4 becomes effective, the county property tax assessment board of appeals shall determine the values. If the county property tax assessment board of appeals fails to determine the values before the general reassessment becomes effective, the department of local government finance shall determine the values.

(c) The county assessor shall notify all township assessors in the county of the values as modified by the county property tax assessment board of appeals. Township assessors shall use the values determined under this section.

e). Nothing in the above-quoted language explicitly limits the ability of a county PTABOA to reconsider its original decision with regard to land values submitted by township assessors. Instead, the statute simply requires the county PTABOA to hold a hearing on the values originally submitted by township assessors and allows the PTABOA to modify those values to provide uniformity and equality in assessment. There is no evidence in this case that the PTABOA failed to hold a hearing on the values originally submitted.

f). Ind. Code § 6-1.1-1-4-13.8 provides, in relevant part:

g) The county property tax assessment board of appeals shall review the values, data, and information submitted under subsection (f) and may make any modifications it considers necessary to provide uniformity and equality. The county property tax assessment board of appeals shall coordinate the valuation of property adjacent to the boundaries of the county with the county property tax assessment board of appeals of the adjacent counties using the procedures adopted under IC 4-22-2 by the

department of local government finance. If the commission fails to submit land values under subsection (f) to the county property tax assessment board of appeals before January 1 of the year the general reassessment under IC 6-1.1-4-4 begins, the county property tax assessment board of appeals shall determine the values.

h) The county property tax assessment board of appeals shall give notice to the county and township assessors of its decision on the values. The notice must be given before March 1 of the year the general reassessment under IC 6-1.1-4-4 begins. Not later than twenty (20) days after the notice, the county assessor or a township assessor in the county may request that the county property tax assessment board of appeals reconsider the values. The county property tax assessment board of appeals shall hold a hearing on the reconsideration in the county. The county property tax assessment board of appeals shall give notice of the hearing under IC 5-3-1.

i) Not later than twenty (20) days after notice to the county and township assessor is given under subsection (h), a taxpayer may request that that the county property tax assessment board of appeals reconsider the values. The county property tax assessment board of appeals may hold a hearing on the reconsideration in the county. The county property tax assessment board of appeals shall give notice of the hearing under IC 5-3-1.

j) A taxpayer may appeal the value determined under this section as applied to the taxpayer's land as part of an appeal filed under IC 6-1.1-15 after the taxpayer has received a notice of the assessment. . . .

g). The procedures laid out in Ind. Code § 6-1.1-1-4-13.8 are more detailed than those contained in Ind. Code § 6-1.1-4-13.6. For example, Ind. Code § 6-1.1-1-4-13.8 provides an avenue for assessors and taxpayers to request that a PTABOA reconsider its decision on land values. If an assessor timely files such a request, the PTABOA *shall* hold a public hearing, whereas if a taxpayer timely files such a request, the PTABOA *may* hold a hearing. The statute, however, does not purport to limit a PTABOA's ability to reconsider its original decision regarding the values submitted by a county land valuation commission on its own motion or to require a PTABOA to schedule a public hearing when it does so.

h). At best, the statute expressly permits a taxpayer to appeal the values determined by the PTABOA as applied to the taxpayer's land as part of an individual assessment appeal. Thus, even where a PTABOA has followed statutory procedures in approving base rates, a taxpayer may present evidence that his land is worth less than the assessed value derived from applying those base rates. As noted above, however, the Petitioners did not present any evidence to show that subject land is assessed in excess of its market value.

i). Moreover, when read as a whole, the statutes and administrative regulations governing the assessment of real property do not contemplate the remedy sought by the Petitioners in this case. Under Indiana's current system of assessment, real property is to be assessed in a uniform and equal manner based upon its market value-in-use. *See* Ind. Code §6-1.1-2-2 ("All tangible property which is subject to assessment shall be assessed on a just valuation basis and in a uniform and equal manner."); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2)(defining "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."). The Petitioners, however, seek to have their land assessed using a base rate that is not applied to any other parcel in the subject property's assessment neighborhood and that, as far as the evidence presented in this case is concerned, bears no relationship to the land's market value.

Physical Depreciation/Effective Age

j). The Petitioners next contend that the Respondent incorrectly based the depreciation applied to the subject building on the building's "effective age" rather than upon its actual year of construction. *Smith argument.* The Petitioners base their claim solely upon the Respondent's failure to follow the directions for determining physical depreciation set forth in the Guidelines. Even if the Petitioners are correct that the Respondent did not apply the Guidelines properly, that failure is insufficient, by itself, to establish an error in assessment.

k). The facts of this case are squarely analogous to those involved in *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501 (Ind. Tax Ct. 2006), *reh'g den. sub nom. P/A Builders & Developers, LLC,* 842 N.E.2d 899 (Ind. Tax 2006), *review den*. In *Kooshtard Property VI*, the taxpayer claimed that, under the instructions set forth in the Guidelines, its building should have been assessed as having an effective age of seventeen (17) years. 836 N.E.2d at 503. The assessor admitted that it had "tweaked" the effective age to account for the modernization and maintenance to the building resulting from its 1995 remodeling and to make the building's true tax value closer to its 2001 sale price. 836 N.E.2d at 506. The Court acknowledged that the assessor should have "tweaked" the building's condition rating rather than its age. *Id*. at n. 6. Nonetheless, the Court noted that the taxpayer failed to account for the effects of the building's maintenance and modernization in arguing that the building should be assessed based upon having an effective age of seventeen (17). The Court therefore held that the taxpayer failed to establish a prima facie case. 836 N.E.2d at 506.

l). The record in this case is not quite as clear as the record in *Kooshtard Properties VI* regarding the Respondent's reasons for adjusting the effective age of the subject building. Nonetheless, Mr. Kelly's e-mail indicates that the effective ages of many buildings in downtown Nashville were adjusted upward to account for updates and maintenance to those buildings. *Pet'rs Ex. 16.* While Mr. Kelly was unable to testify as to specific maintenance or updates to the subject building, Mr. Smith

testified that the subject building had received maintenance similar to other buildings in the same area. *Kelly testimony; Smith testimony*. The Petitioners did not attempt to account for the effect of that maintenance on the market value-in-use of the subject property. Indeed, the Petitioners failed to provide any market-based evidence regarding the subject property's value. Instead, like the taxpayer in *Kooshtard Property VI*, the Petitioners rest their case solely on grounds that the Respondent committed a technical error in applying the Guidelines. The rules promulgated by the State Board of Tax Commissioners, however, provide: "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 … Guidelines … does not in itself show that the assessment is not a reasonable measure of 'True Tax Value[.]"). Ind. Admin. Code tit. 50, r.2.3-1-1(d).

m). In a footnote in *Kooshtard Property VI*, the Tax Court appeared to hold open the possibility that, at least in some cases, a taxpayer might establish a prima facie case by relying solely on errors by assessing officials in applying the Guidelines. *See Kooshtard Property VI,* 836 N.E.2d at 506 n. 6 ("*While the Manual and Guidelines do not appear to prohibit a taxpayer from challenging its assessment on the grounds that the cost approach was misapplied*, the Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standard of Professional Appraisal Practice") (emphasis added). Following its decision in *Kooshtard Property VI,* however, the Indiana Tax Court repeatedly has 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.* No. 49T10-0510-TA-79 2006 Ind. Tax LEXIS 51 at * 9-11(September 21, 2006)(finding that taxpayers failed to establish 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); *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 Petitioners apparently chose to ignore those warnings and to focus solely on the methodology employed by the Respondent in assessing the subject property. That choice has led to a predictable result.

Conclusion

17. The Petitioners failed to make a prima facie case. The Board finds in favor of 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>.