

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

**Petition #:** 72-007-02-1-4-00001  
**Petitioner:** Kooshtard Property I, LLC  
**Respondent:** Vienna Township Assessor, Scott County  
**Parcel:** 051924001500007  
**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 Scott County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 9, 2003.
2. The PTABOA’s Notification of Final Assessment Determination (Form 115) was mailed to the Petitioner on September 19, 2003.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the County Assessor on October 17, 2003. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated May 19, 2004.
5. The Board held an administrative hearing on June 23, 2004, before the duly appointed Administrative Law Judge Jennifer Bippus.
6. On December 13, 2004, the Board issued its order extending the time within which to issue its determination through and including February 3, 2005.
7. Persons present and sworn in at the hearing:
  - a. For Petitioner:  
Milo Smith, Petitioner’s representative
  - b. For Respondent:  
Teresa Rigsby, Scott County Assessor  
Richard Schultz, Accurate Assessments, representing Vienna Township.

## Facts

8. The property is classified commercial, as is shown on the property record card (PRC) for parcel # 051924001500007.
9. The Administrative Law Judge did not conduct an inspection of the property.
10. Assessed Values of the subject property as determined by the Jennings County PTABOA (2002 assessment year) are:  
Land: \$310,000      Improvements: \$59,200
11. Assessed Values requested by Petitioner as shown on the Form 131 petition are:  
Land: \$60,000      Improvements: \$59,200

## Issue

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

### Method of Valuation

- a. The Petitioner contests only the land valuation of the subject property and does not contest the valuation of the improvements located thereon. *Smith testimony; Board Exhibit A.*
- b. The Petitioner contends that the Scott County Neighborhood Valuation Form allows for platted lots to be assessed at a maximum of \$400 per front foot. *Smith testimony.*
- c. According to the Petitioner, the PRC shows that the subject parcel is a platted lot - part of Lot 109. *Smith testimony; Petitioner Exhibit 8.* However, the PRC indicates that the subject parcel is valued on an acreage basis (1.244 acres). *Id.* The Petitioner contends that, in order for the County to be uniform in its pricing, the subject parcel should be valued on a front foot basis at a maximum of \$400 per front foot, as other platted lots have been valued. *Smith testimony; Petitioner Exhibit 1.*
- d. According to the Petitioner, the \$250,000 base rate pricing for acreage is not valued in a uniform and equal manner when compared to similar properties. *Smith testimony.*

### Assessment of Right of Way for Public Highway

- e. The Petitioner also contends that 51 feet on the south side of the subject parcel is used for public highway and should not be valued in assessing the subject property. *Smith testimony & Petitioner Exhibit 7.*

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

Method of Valuation

- a. The Respondent contends that it valued the subject parcel uniformly with other land in the area and in accordance with the appropriate Neighborhood Valuation Form. *Schultz testimony*. The Respondent contends that the subject property is located in a mixed area of commercial and residential properties. *Id.* According to the Respondent, all of the commercial lots were converted to acreage and all of the residential lots were valued as platted lots. *Schultz testimony; Respondent Exhibit C*. The Respondent further contends that sales of comparable properties demonstrate that the assessment of the subject parcel is in line with land values in the area. *Schultz testimony*. The Respondent acknowledges that the sales were not all within the time frame of January 1999, but the Respondent contends that those sales demonstrate that land values in the area are high. *Shultz testimony; Respondent Exhibits F-K*. The Respondent attributes the elevated value of some of the commercial land in the area to the proximity of one of the town's main thoroughfares. *Shultz testimony*.
- b. The Respondent presented a map showing the locations of the comparable properties and the subject property. *Shultz testimony & Respondent Exhibit L*.
- c. The Respondent also provided information about a sale of the subject property on October 16, 2001, for \$608,165. According to the Respondent, this sale price indicates that the total assessment on the subject property of \$369,200 is not out of line and, if anything, indicates that the subject property might be undervalued. *Schultz testimony; Petitioner Exhibit 8; Respondent Exhibit D*.

Assessment of Right of Way for Public Highway

- d. The Respondent disputes the Petitioner's contention that the Respondent erroneously included 51 feet of highway in assessing the subject property. The Respondent contends that it actually failed to include a portion of the subject property in its assessment. *Shultz testimony; Rigsby testimony*.
- e. According to the Respondent, the subject property consists both of an unplatted area and a part of Lot 109 of the Forest Park Subdivision. *Id.* The Respondent contends that it inadvertently valued only the unplatted portion of the subject property, amounting to 1.24 acres and did not value the platted portion. *Id.* The Respondent contends that the total area amounts to a little over 1.5 acres. *Rigsby testimony*. The Respondent provided a map of the area, which it claims demonstrates that the highway was not included in computing the total acreage of the subject parcel. *Schultz testimony; Respondent Exhibit L*.

## Record

13. The official record for this matter is made up of the following:
  - a. The Petition, and all subsequent pre-hearing and post-hearing submissions by either party.
  - b. The tape recording of the hearing labeled BTR #5868.
  - c. Exhibits:
    - Petitioner Exhibit 1: Commercial Area I – Neighborhood Valuation Form
    - Petitioner Exhibit 2: Ind. Code § 6-1.1-4-13-6
    - Petitioner Exhibit 3: 2002 Real Property Assessment Manual, page 2
    - Petitioner Exhibit 4: 2002 Real Property Assessment Manual, page 3
    - Petitioner Exhibit 5: Real Property Assessment Guidelines for 2002 – Version A, Ch. 2, page 7
    - Petitioner Exhibit 6: Real Property Assessment Guidelines for 2002 – Version A, Ch. 2, page 28
    - Petitioner Exhibit 7: Legal description for the subject property.
    - Petitioner Exhibit 8: PRC for the subject property
  
    - Respondent Exhibit A: Authorization for Richard Schultz to represent Vienna Township/Scottsburg Corp. Assessor
    - Respondent Exhibit B: Authorization for Teresa Rigsby to represent Vienna Township/Scottsburg Corp. Assessor
    - Respondent Exhibit C: Commercial Area I Neighborhood Valuation Form – Scottsburg Corp.
    - Respondent Exhibit D: Subject PRC, photograph and sales disclosures
    - Respondent Exhibit E: Comparable property sales disclosure with PRC
    - Respondent Exhibit F through K: Comparable property sales disclosures with PRCs and photographs
    - Respondent Exhibit L: Map of comparable properties
  
    - Board Exhibit A – Form 131 petition
    - Board Exhibit B – Notice of Hearing On Petition
  - d. These Findings and Conclusions

## Analysis

14. The most applicable governing case law is:
  - a. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Board of Tax Commissioners*, 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 Township 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. Petitioner did not provide sufficient evidence to support its contention that the property should have been assessed from the platted portion of the Neighborhood Valuation Form. This conclusion was arrived at because:
  - a. The Petitioner contends that the subject property is platted and therefore should have been valued on a front foot basis like other platted properties. *Smith Testimony*.
  - b. As an initial matter, the evidence is ambiguous regarding whether the subject property is even a platted lot. The legal description presented by the Petitioner describes the subject property as “Part of the Southeast Quarter of the Northwest Quarter of Section 19, Township 3 North, Range 7 East, and also part of Lot 109 of the Forest Park Subdivision, and Addition to the Town of Scottsburg, Indiana, described as follows . . . .”<sup>1</sup> *Petitioner Exhibit 7 (emphasis added)*. It is not clear from the evidence presented whether the entire parcel is part of a platted lot, or whether the parcel consists of unplatted land together with a portion of a platted lot.
  - c. Assuming the subject property is a platted lot, the Petitioner essentially contends that an assessor necessarily errs when it assesses a platted lot on an acreage basis. However, the Petitioner’s position is at odds with the intent of the relevant administrative rules, which provide that “[I]t should be stressed that the pricing method for valuing the neighborhood is of less importance than arriving at the correct value of the land as of the valuation date.” *2002 Real Property Assessment Guideline – Version A, Ch. 2, p. 16 (Incorporated by reference at 50 IAC 2.3-1-2)*. The correct value of

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<sup>1</sup> The description goes on to provide a metes and bounds description of the property. *Petitioner Exhibit 7*.

property is its “true tax value,” which is defined as “the market value-in-use of property for its current use, as reflected by the utility received by the owner or a similar user of the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2)(Manual).

- d. The Petitioner did not present any probative evidence to demonstrate that the assessment of the subject property exceeds its market value-in-use. Even if the Petitioner had established an error in assessment, it did not present any evidence to support its requested valuation of \$53,000. A mere assertion of a property’s value is insufficient to establish a prima facie case. See *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113 (Ind. Tax 1998)(mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error).
- e. Consequently, the Petitioner has failed to present a prima facie case of error with regard to the assessment of the subject property.

16. The Petitioner did not present sufficient evidence to support its contention that the Respondent erroneously assessed a portion of the subject property used as a public highway.

- a. The Petitioner contends that the Respondent erroneously included “51 feet by parallel lines off the South side” of the subject property in its assessment of the subject property. *Smith testimony; Board Exhibit A; Petitioner Exhibit 7.*
- b. The Guidelines are not particularly clear regarding how the assessment of land burdened by a right-of-way for a public highway should be reflected. The Guidelines alternately state, on the one hand, that such land *should not be* assessed to an “adjacent property holder,” and, on the other hand, that such land *should be* assessed to the adjacent property holder, but that the assessing official should deduct the value of the land subject to the right of way from the assessed value of the adjacent property holder’s land. *Guidelines, Ch. 2, p. 28.* Regardless, two principles seem clear: (1) the existence of the right of way should be reflected on the PRC for the property burdened by the right-of-way; and (2) the value of the portion of the land burdened by the right-of-way should not be assessed to the legal title holder of that land.
- c. Here, the PRC of the subject property does not separately address the existence of the right-of-way set forth in the legal description of the subject property. *Petitioner Exhibits 7-8.* This evidence, if not contradicted, is sufficient to support a reasonable inference that the Respondent erred by including the portion of the subject property burdened by the right-of-way in computing the overall value of the subject property.
- d. However, the Respondent presented evidence to rebut the Petitioner’s claim that it included the right-of-way at issue in valuing the subject property. As explained above, the Respondent contends that the subject

property consists both of an unplatted area and of part of Lot 109 of the Forest Park Subdivision. *Schultz testimony*. The Respondent presented testimony from Richard Schultz that it inadvertently valued only the unplatted portion of the subject property, amounting to 1.24 acres, and did not value the remainder of the subject property. *Id.* The Respondent also presented testimony that the total area encompassed by the subject property amounts to a little over 1.5 acres. *Rigsby testimony*.

- e. The Respondent provided a map of the area, which it claims demonstrates that the highway was not included in computing the total acreage of the subject parcel. *Schultz testimony; Respondent Exhibit L*. However, it is not readily apparent from an examination of face of the map submitted by the Respondent whether the right of way was included in the valuation of the subject property. The Respondent failed to provide any explanation in that regard.
- f. Nonetheless, the Board credits the testimony of the Respondent's representatives that the total area covered by the subject property is 1.5 acres, which is more than the 1.244 acres valued in the assessment, and that the assessed area does not include the portion of the subject property that is burdened by the right-of-way. The Petitioner did not present any evidence to impeach or otherwise contradict this testimony.
- g. The preponderance of the evidence therefore fails to support a finding in favor of the Petitioner on this issue.

### **Conclusion**

- 16. The Petitioner failed to demonstrate that the assessment was in excess of the subject property's true tax value. 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 land assessment for the subject property 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.**