REPRESENTATIVE FOR PETITIONER:
Marilyn S. Meighen, MEIGHEN & ASSOCIATES, P.C.

REPRESENTATIVE FOR RESPONDENTS:
Beth H. Henkel, SHUCKIT & ASSOCIATES, P.C.

BEFORE THE
INDIANA BOARD OF TAX REVIEW

R.R. DONNELLEY & SONS, CO., INC.,	)	Petitions: 54-030-03-3-3-00001
	)	54-030-04-3-3-00001
Petitioner,	)	54-030-05-3-3-00001
	)	54-030-03-1-3-00001
	)	54-030-04-1-3-00001
v.	)	54-030-05-1-3-00001
	)	
UNION TOWNSHIP ASSESSOR and	)	Parcel: 0230419310
MONTGOMERY COUNTY ASSESSOR,	)	Montgomery County
	)	Union Township
Respondents.	)	2003, 2004, and 2005 Assessments[1]

Appeal from the Final Determination of the
Montgomery County Property Tax Assessment Board of Appeals

September 8, 2008

FINAL DETERMINATION ON SUMMARY JUDGMENT

Issue

This case is about 2003, 2004, and 2005 real property assessments, but it relates directly to a previous appeal by R.R. Donnelley & Sons, Inc. for the 2002 assessment on the same property. The final assessment determination of the Indiana Board of Tax Review (Board) reduced the 2002 assessment to $12,350,000 and there was no judicial review. Where the physical property and its use remain unchanged, was the Assessor precluded from changing the 2003, 2004, and 2005 assessments?

[1] On October 3, 2007, a motion to consolidate these six petitions was granted. Three are Petitions for Correction of Error (Form 133) and three are Petitions for Review of Assessment (Form 131). They all involve the same property and raise similar claims.

Facts

The subject property is an owner-occupied manufacturing facility identified for tax purposes as parcel number 0230419310 in Montgomery County, Union Township. The location is in Crawfordsville. *Sams Declaration*.

For 2002, the Assessor[2] determined the assessed value of the property was $27,459,800. Donnelley appealed that assessment, contending that its improvements were entitled to more functional obsolescence than the Assessor allowed. The Assessor already had recognized some degree of obsolescence. Consequently, both parties focused primarily on how to measure obsolescence:

> The parties agreed that both buildings experience functional obsolescence as a result of excess operating expenses caused by an inefficient floor plan. This agreement means the first prong of the *Clark* test has been met. Accordingly, the dispute centers on measuring that obsolescence.

R.R. Donnelley & Sons v. Union Twp. Assessor, No. 54-030-02-1-3-00005, at 9 (Ind. Bd. of Tax Review, July 22, 2005).[3]

The Assessor failed to present substantial evidence to support the existing assessment. The Board concluded that some assessment change was necessary. Donnelley sought an assessment based on either of two substantially lower opinions of value, which are identified as the VanKirk Opinion and the Kelly Opinion. The Assessor sought an assessment based on the Thomas Opinion.

> VanKirk Opinion—total value $12,350,000
>
> Kelly Opinion—total value $8,861,780
>
> Thomas Opinion—total value $23,776,300

Id. at 10. The Board weighed the evidence regarding all three opinions and ultimately found one to be the most persuasive:

> 32. Only the VanKirk opinion is based upon appraisals. Those appraisals, by Richard Nichols and Associates, Inc., provide detailed, specific facts that support their conclusions of value. The appraisals were performed by two licensed, certified general appraisers. They are certified as conforming to the requirements of the Uniform Standards of Professional Practice and the Professional Ethics and Standards of Professional

[2] In this determination, reference to "the Assessor" means the Union Township Assessor.
[3] Sams Declaration Exhibit A and Pet'r Exhibit 1 are both copies of the Board's Final Determination for Donnelley's 2002 assessment.

> Appraisal Practice of the Appraisal Institute. The appraisals used two of the three generally recognized methods to determine market value for the property, both the sales comparison and the income approach. The appraisals did not use the cost approach, but specifically recognized this fact and explained a reasonable basis for not using that approach . . . . The appraisals, together with VanKirk's testimony provide a highly credible opinion of value for the assessment of the property.

Id. at 11. The Board concluded "Petitioner's 2002 assessment must be changed because the VanKirk opinion of value provides the best evidence of what the assessment should be." *Id.* at 13. The Board held that the assessment should be changed to $12,350,000. The Assessor did not appeal and changed the 2002 assessment to $12,350,000. *Sams Declaration*. She did not agree with that value, but "tolerated" it for the 2002 assessment. *Pet'r Exhibit 12 at 32-34.*

The physical status and industrial use of the land and improvements had no material changes between March 1, 2002, and December 31, 2005. *Pet'r Exhibit 5, Exhibit 12 at 14-17, Exhibit 14 at 25-26* .

The Assessor issued Notices Of Assessment By Assessment Officer (Form 113) dated September 23, 2005, increasing the 2003, 2004, and 2005 assessments on the subject property to $23,776,300. *Pet'r Exhibits 2, 3, 4*. The increased value was exactly the same figure that the Assessor's representative had proposed for the 2002 assessment (the Thomas Opinion). Each notice gave the following reason for the increased assessment: "A change is necessary to the assessed value due to applicable data in regards to the correct value-in-use, per guidelines for the 2002 Indiana general reassessment, relative to the January 1, 1999, lien date of the subject property." *Id.*

Procedural Background

The Board initially became aware of the dispute about the 2003, 2004, and 2005 assessments on June 9, 2006.[4] At that time, Donnelly filed three Petitions for Correction of Error (Form 133), contending that the Assessor's assessment increases for those years were "illegal as a matter of law" or "mathematical error." In essence, those petitions claim the assessment was conclusively decided for the 2002 assessment, and absent a

[4] The Board received Donnelley's Form 131 Petitions much later on September 20, 2007.

change in circumstances, the Assessor was estopped from changing the assessment before the next reassessment. *Pet'r Exhibits 6, 7, 8.*

The PTABOA determination on the Form 133s upheld the assessment for a total of $23,776,300. It discussed how Donnelley's circumstances differ from those in *Lindemann v. Wood*, 799 N.E.2d 1230 (Ind. Tax Ct. 2003) regarding estoppel or *res judicata* principles. In addition, the PTABOA explained:

> The law requires the Assessor to maintain a just and equal basis of assessment among taxpayers within applicable jurisdictions. These laws provide the means (Form 113) to assess property between general reassessments. This process allows the petitioner due process by providing a timeline for filing any disagreements or rebuttals with regards to the assessment.
>
> Nothing sneaky or underhanded has taken place; the Assessor simply researched necessary evidence, established a case with new and more appropriate evidence and mailed the required forms to the taxpayer allowing them due process.

Pet'r Exhibits 6, 7, 8. The PTABOA determination revealed several additional points about the Assessor's position:

- The Assessor unsuccessfully sought rehearing after losing the 2002 appeal.
- The Assessor discussed filing an appeal to Tax Court, but the county attorney would not comply because no additional evidence could be submitted at the Tax Court level.
- "Due to the fact that the County Attorney refused to file this case on to the Tax Court, the Assessor **was** bound by the principles of '*res judicata*', therefore, the ordered value stands for the 2002 assessment year."
- "The Assessor realized that the IBTR and Tax Court are only weighing evidence deciding which side presents the better case; therefore, the Assessor was forced to review the case as a whole and establish whether the ordered value itself was erroneous or the evidence employed to substantiate the overturned value was faulty."

- "After accommodating the order for the 2002 assessment year, more effective representation and evidence was sought after and established to be applied for the 2003 assessment year to present. [Please note the value for the 2002 assessment year was never agreeable and was merely a special consideration tolerated by the Assessor due to the technicalities and circumstances.]"

Donnelley disagreed with the PTABOA and sought correction from the Board via Form 133. Donnelley filed its first motion for summary judgment on December 4, 2006. Donnelley claimed the increase for its 2003-2005 assessments results in taxes that are "illegal as a matter of law" or they constitute "mathematical error" because there had been no intervening changes and the 2002 determination must carry forward to those subsequent years. In response, the Assessor argued that Donnelley cannot make its claims with a Form 133 and that Donnelley failed to file the appropriate type of appeal for 2003-2005 within 45 days as would be allowed by Ind. Code § 6-1.1-15-1. The Assessor also argued that the Board's final determination for 2002 does not bar reassessing the property for later years. The Assessor asked for summary judgment upholding the assessment changes for 2003-2005.

The Board denied the first summary judgment motions from Donnelley and the Assessor on June 6, 2007. While dealing with the initial summary judgment motions, the parties disclosed that Donnelley also had sent the Assessor a letter to start the assessment review process allowed by Ind. Code § 6-1.1-15-1, but no action had been taken on it because the letter was purportedly too late.[5] Donnelley, however, claimed the letter to the Assessor was timely. Donnelley's effort to use the procedure that the Assessor claimed to be appropriate apparently was frustrated by the failure to make any decision about the request in the letter.[6] Therefore, during an attorney's conference the Assessor's counsel agreed to convey a request to the county board[7] to make a determination about

[5] The assessment review process initiated under Ind. Code § 6-1.1-15-1 comes to the Board with a Petition For Review (Form 131). Ind. Code § 6-1.1-15-3.
[6] At the time, Ind. Code § 6-1.1-15-1 did not permit a taxpayer to come to the Board until after the county board had made a written determination. Subsequent amendments would now permit a taxpayer to do so when the county board allows its designated time for making a determination to pass without doing so, but that provision does not apply in this case. Ind. Code § 6-1.1-15-1(o).
[7] The county board is commonly known as the PTABOA, which stands for Property Tax Assessment Board of Appeals.

Donnelley's request for assessment review, even if it was only a determination that the request was untimely—as the Assessor claimed—in order to permit all aspects of this dispute to be presented, considered, and determined at the same time.

There is no longer any dispute that Donnelley initiated the appeal process allowed by Ind. Code § 6-1.1-15-1 for parcel 0230419310 with a letter dated November 4, 2005, from Frank Kelly to Township Assessor Sue Sams. *Pet'r Exhibits 10, 10A, 11*. In part, this letter said, "Please consider this letter as an **official appeal** of the above referenced parcel in regards to the change of assessment notice (FORM 113) for assessment years 2003, 2004 and 2005. *** [T]his case was heard by the Indiana Board of Tax Review for the 2002 assessment year, decided in favor of the petitioner and a value of $12,350,000 was assigned to the parcel in question. Your action to change the assessed value for 2003 and future years (absent a change in the property itself) is illegal and violates the legal principle of "*Res judicata[.]*" *Pet'r Exhibit 10A.*

On September 6, 2007, the PTABOA mailed Donnelley a Notification Of Final Assessment Determination (Form 115)[8] stating that the "official appeal" letter was untimely for the 2003, 2004, and 2005 assessments. *Pet'r Exhibit 13 at 18-21*. On September 20, 2007, the Board received Donnelley's Form 131 Petitions. They claim Donnelley initiated the appeal process within the time allowed and the Assessor's changes for 2003, 2004, and 2005 were not authorized or appropriate. Donnelley summarized its position as follows:

> By Final Determination issued July 22, 2005, the Indiana Board of Tax Review established a value of $12,350,000 for the subject property as of January 1, 1999. The Board's Determination was not appealed. The Determination is a conclusive adjudication of the value of the subject property as of January 1, 1999.
>
> The Board's Determination is the determination of a superior assessing official and "trumps' any decisions of value by inferior assessing officials.
>
> *Res judicata* or collateral estoppel bars subsequent litigation regarding the value of the subject property as of January 1, 1999.

[8] This Form 115 is attached to the Form 131 Petition, which is marked "Plaintiff's Exhibit 9" with the Peggy Hudson deposition, and that deposition is Petitioner's Summary Judgment Exhibit 13.

> The assessor has the burden of proof in this appeal regarding authority to increase the assessed value of the subject property for tax years 2003, 2004, and 2005, including but not limited to, the burden of proving changes to the property, use of the property, or changes in economic circumstances that increased the assessed value…. R.R. Donnelley contends that such changes did not exist and did not increase the value of the subject property. The assessor inappropriately and without authority increased the value of the subject property….

When Donnelley filed the Form 131 Petitions it also filed a Motion To Consolidate the three 131 Petitions and the three 133 Petitions. The Board granted that motion and consolidated all six appeals as of October 3, 2007. *See* Ind. Admin. Code tit. 52, r. 2-6-7.

On November 11, 2007, the Assessor filed another Motion For Summary Judgment. In response, Donnelley filed an opposition and its own Cross Motion For Summary Judgment. The second round of summary judgment motions presents several intertwined issues that are very similar to those Donnelley and the Assessor raised with their first motions, but with substantially more supporting materials. The two fundamental issues in those motions were as follows:

1. Did Donnelley challenge the Assessor's changes on its 2003, 2004, and 2005 assessments in a timely manner?
2. Where there were no changes to the physical status or use of the subject property, do the Assessor's increases for 2003, 2004, and 2005 result in assessments or taxes that are "illegal as a matter of law" or constitute a "mathematical error" because of the Board's previous final determination for 2002 that was not appealed?

Some of the materials that Donnelley submitted addressed the circumstances of mailing the appeal letter to the Assessor, specifically the Affidavits of Frank S. Kelly (Exhibit 10) and Jeff S. Wuensch (Exhibit 11). According to both Affidavits, the appeal letter, which is dated November 4, 2005, was mailed on November 8, 2005—Mr. Kelly and Mr. Wuensch personally deposited the letter into the mail box at the Carmel post office. On February 18, 2008, the Assessor and the Montgomery County Assessor filed a notice that included the following statement:

1. The Assessor heretofore filed a motion for summary judgment on consolidated appeals asking that the Indiana Board find that Petitioner . . . failed to file timely requests for review under Ind. Code § 6-1.1-15-1 of its 2003, 2004, and 2005 assessments.

2. The Assessor now has determined to withdraw this portion of its motion for summary judgment and to stipulate that RR Donnelley did file timely requests for review under Ind. Code § 6-1.1-15-1 of its 2003, 2004, and 2005 assessments.

The Board acknowledges the withdrawal of that issue and accepts the stipulation. Therefore, any doubt about the timeliness of the Form 131 Petitions has been resolved. At this point, both summary judgment motions pose essentially the same question. A hearing on those motions was held on March 18, 2008.

Summary Judgment Standard

The Board's procedural rules permit a party to move for summary judgment pursuant to the Indiana Rules of Trial Procedure. Ind. Admin. Code tit. 52, r. 2-6-8. Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Wittenberg Lutheran Village Endowment Corp. v. Lake Co. Property Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 487 (Ind. Tax Ct. 2003). Cross-motions for summary judgment do not alter this standard. *Word of His Grace Fellowship v. State Bd. of Tax Comm'rs*, 711 N.E.2d 875, 877, (Ind. Tax Ct. 1999); *Hyatt Corp. v. Dep't of State Rev.*, 695 N.E.2d 1051, 1053 (Ind. Tax Ct. 1998). Where there is no genuine issue of material fact, the Board's task is to apply the law to those facts. *Knauf Fiber Glass v. State Bd. of Tax Comm'rs*, 629 N.E.2d 959, 960 (Ind. Tax Ct. 1994).

Analysis

1. The 131 Petitions provide sufficient legal business for The Board to render a final determination.

The parties initially argued at length about what type of petition was appropriate: Can the claim be raised properly with 133 Petitions or must it be on 131 Petitions? When it appeared that the 133 Petitions might be the only viable avenues for Donnelley's claims, that question was significant because only errors that can be corrected without

resort to subjective judgment can be corrected on a Form 133. *Barth v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 802 (Ind. Tax Ct. 1998); *Bender v. State Bd. of Tax Comm'rs*, 676 N.E.2d 1113, 1115 (Ind. Tax Ct. 1997). A Petition for Correction of Errors is governed by Ind. Code § 6-1.1-15-12 and must be based on certain specific reasons. Donnelley argued that the increases for 2003, 2004, and 2005 were either "mathematical error" as listed in subsection 12(a)(4), or "illegal as a matter of law" as listed in subsection 12(a)(6). The Assessor argued that neither of those characterizations fit. The Board does not have to answer the question about granting relief based on the 133 Petitions to make a final determination about this case and declines the Donnelley's invitation to do so.

The 131 Petitions present an avenue for dispositive relief. The statutory authority for a 131 Petition, Ind. Code § 6-1.1-15-1, contains none of the limitations on issues as found in Ind. Code § 6-1.1-15-12. Therefore, a 131 Petition can be used to raise any issue regarding an assessment and characterizations of issues as "mathematical error" or "illegal as a matter of law" are irrelevant. The Assessor even admitted that Donnelley's claims were appropriate ones to make on a 131 Petition. Although there had been some dispute about the timeliness of the 131 Petitions, on February 18, 2008, the Assessor filed a stipulation that they were timely for the years in question. Therefore, the 131 Petitions provide an appropriate platform for the Board to determine whether the Assessor's changes should be sustained or the disputed assessments should be changed to $12,350,000 to match the determination for the 2002 assessment.

2. As a result of the determination for 2002 and the fact that there were no significant changes to the property during the next three years, the Assessor was precluded from changing the 2003, 2004, and 2005 assessments.

As a general principle, each year's property assessment stands on its own. *See Indianapolis Racquet Club v. State Bd. of Tax Comm'rs*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004); *Quality Stores, Inc. v. State Bd. of Tax Comm'rs*, 740 N.E.2d 939, 942 (Ind. Tax Ct. 2000); *Barth v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 806 n. 14 (Ind. Tax Ct. 1998). In addition, the Assessor cites Ind. Code § 6-1.1-9-1 as the primary

authority for her decision to increase Donnelley's 2003, 2004, and 2005 assessments because it state:

> If a township assessor, county assessor, or county property tax assessment board of appeals believes that any taxable tangible property has been omitted from or undervalued on the assessment rolls or the tax duplicate for any year or years, the official or board shall give written notice under IC 6-1.1-3-20 or IC 6-1.1-4-22 of the assessment or increase in assessment. The notice shall contain a general description of the property and a statement describing the taxpayer's right … to a review ….[9]

The Assessor also claims her change in the assessment is authorized under Ind. Code § 6-1.1-15-1(d), which provides:

> A change in an assessment made as a result of a notice for review filed by a taxpayer under subsection (c) becomes effective for the next assessment date. A change in an assessment made as a result of a notice for review filed by a taxpayer under subsection (b) or (c) remains in effect from the assessment date for which the change is made until the next assessment date for which the assessment is changed under this article.[10]

Furthermore, the Assessor points out that the Guidelines instruct her to reevaluate obsolescence on an annual basis. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, app. F at 4 (incorporated by reference at 50 IAC 2.3-1-2).

Nevertheless, Donnelley claims the Board's final adjudication determining a valuation for 2002 presents a very particular set of circumstances where *res judicata* overrides the Assessor's authority to revisit the question of what the proper assessment should be for the years in question. Based on the undisputed facts in this case, Donnelley is correct.

The doctrine of *res judicata* prevents the repetitious litigation of disputes that are essentially the same. *Afolbi v. Atl. Mortgage & Inv. Corp.*, 849 N.E.2d 1170, 1173 (Ind. Ct. App. 2006). It is divided into two branches: claim preclusion and issue preclusion. *Id.* Claim preclusion applies when a final judgment on the merits has been rendered and

[9] Since the Assessor's action, the provision has had minor amendments, but they are not pertinent to this analysis.
[10] Since the Assessor's action, the provision has had minor amendments, but they are not pertinent to this analysis.

acts as a complete bar to a subsequent action on the same claim between the parties and their privies. Issue preclusion (also referred to as collateral estoppel) bars the subsequent relitigation of the same fact or issue where that fact or issue was necessarily adjudicated in a former lawsuit or administrative proceedings and the same fact or issue is presented in a subsequent lawsuit or administrative proceeding. *See Tofany v. NBS Imaging Sys., Inc.*, 616 N.E.2d 1034, 1037 (Ind. 1993); *Lindemann v. Wood*, 799 N.E.2d 1230, 1233 (Ind. Tax Ct. 2003). Issue preclusion can be used offensively or defensively, but regardless of how it is used, it applies against a party who previously had a full and fair opportunity to litigate an issue and lost. *See Tofany*, 616 N.E.2d at 1037-39. When issue preclusion applies, the former adjudication is conclusive in the subsequent action even if the two actions are based on different claims. *See id*. In *Lindemann*, the Tax Court concluded that the assessor ignored a previous decision of a reviewing authority, thereby forcing the Lindemanns to return to the administrative appeals process to reargue the petition they successfully presented three years earlier. The Court found such repetitious proceedings are unacceptable. *Lindemann*, 799 N.E.2d at 1234.

To determine whether the litigation of an issue previously determined in an administrative proceeding is barred, the following factors are considered: (1) the issue sought to be estopped is within the statutory jurisdiction of the agency; (2) the agency acts in a judicial capacity; (3) both parties had a full and fair opportunity to litigate the issue; and (4) the decision of the administrative tribunal could be appealed to a judicial tribunal. *Lindemann*, 799 N.E.2d 1233. With respect to Donnelley's initial appeal of its 2002 assessment, these factors have been met. The Board possessed statutory jurisdiction to hear Donnelley's appeal. *See* Ind. Code § 6-1.1-15-3 and 4. The Board acted in a judicial capacity by providing notice to the parties, taking evidence, and rendering a decision. *See* Ind. Code § 6-1.1-15-4. Both Donnelley and the Assessor had the opportunity to present evidence to the Board and either of them could have appealed the decision to the Tax Court. *See* Ind. Code § 6-1.1-15-3, 4, 5; Ind. Code § 33-3-5-2.

Donnelley connected its *res judicata* argument with how the assessment system operated at the time. All real property in Indiana is assessed during a general reassessment. Ind. Code § 6-1.1-4-4. Prior to assessments for 2006, Indiana operated

with a system for assessing real property where values generally were carried forward from year to year until the next general reassessment unless there was some physical change to the property or its use changed (and no such change took place in this case). *See Wetzel Enters., Inc. v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1259, 1260 n. 3 (Ind. Tax Ct. 1998); *Williams Indus. v. State Bd. of Tax Comm'rs*, 648 N.E.2d 713, 715 (Ind. Tax Ct. 1995). The required valuation date for assessments from 2002 through 2005 was January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2); *see also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005).[11]

This decision turns on weighing the Assessor's authority to change the disputed assessments versus the principle of *res judicata* from the final determination for 2002. A big part of the Assessor's argument that *res judicata* and *Lindemann* do not apply here stems from the shift to a "market-value-in-use world" and no longer being tied to "mechanistic application of the Guidelines." Respondents' Memorandum In Support Of Motion For Summary Judgment On Consolidated Appeals at 17. The attempt to distinguish on that basis, however, fails to establish why the concept of *res judicata* should be different or less significant when it applies to a determination based on consideration and weighing of various kinds of market value evidence, rather than a determination confined to the strict, specific rules in the old method of valuation. While the distinction might very well be significant once the required valuation date starts to change from year to year, because this case involves a period where that date remained the same, January 1, 1999, the Assessor's arguments on that point are not persuasive.

The Assessor notes other decisions where the Board has upheld an assessor's authority to change assessments of properties they believe are undervalued, even if the use and physical aspects remain the same. *See Gordon v. Bloomington Twp. Assessor*, Petition No. 53-005-05-1-4-00914 (December 2006); *F/C Michigan City Development LLC v. Michigan Twp. Assessor*, Petition No. 46-022-03-1-4-00072 (August 2006); *Tri-*

[11] Starting with assessments for 2006, a system for annual adjustments was instituted. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Under that system, the required valuation date for each assessment year changes. *Id.* It should be noted that Donnelley's *res judicata* claim in this case only spans the original determination for 2002 and the assessment for 2003 through 2005.

State Investment, LLC v. Bainbridge Twp. Assessor, Petition No. 19-018-05-1-4-00024 (July 2006). In none of these cases, however, had there been a prior adjudication by the Board determining what an assessment should be. Therefore, those circumstances are not truly comparable to the current situation.

The Assessor correctly notes that the *Lindemann* decision does not mention Ind. Code § 6-1.1-9-1, which authorizes changes when an assessor believes a property has been undervalue, nor does it mention the new language in Ind. Code § 6-1.1-15-1(d) that talks about changes. This point is significant. It somewhat diminishes the persuasive power of *Lindemann* in this case, but not to the extent that the Board can dismiss it entirely. Furthermore, the important principle of *res judicata*, which demands an end to litigation, stands on its own. It is also clear that there is a hierarchy of assessing officials and reviewing bodies that cannot be ignored simply because an inferior official disagrees with a decision.

Although the Assessor now argues (in part) that obsolescence is an issue that can change from one year to another and that it was appropriate to look again at Donnelley's obsolescence in 2003, 2004, and 2005, the undisputed facts show that is not what this case is really about. The Assessor has not offered any probative evidence that obsolescence changed between 2002 and the following three years. Arguing that this case should proceed to full hearing so that the Assessor would have the opportunity to present evidence on that point (such as an appraisal) is not an adequate way to demonstrate a genuine issue of material fact in opposition to summary judgment.

The true heart of this dispute is revealed by the statement attached to the PTABOA determination on Donnelley's 133 Petitions and acknowledged during the Assessor' (Sue Sams) deposition. *Pet'r Exhibits 6, 7, 8, 12 at 31-33.* The Assessor disagreed with the Board's determination for 2002. She tried to appeal, but could not get an attorney that would take the case because no additional evidence could be submitted to the Tax Court. She "tolerated" the result and made the change for 2002, but then for the next three years simply returned the assessment to the exact amount her evidence for 2002 had proposed, which was $23,776,300 based on the Thomas Opinion. The

Assessor's arguments clearly reveal that she believes she should have another chance to prove what the value should be. Now she proposes to support it with an appraisal—she purportedly did not realize an appraisal was necessary during the prior proceedings.[12] Curiously, the Assessor argues that the Board's determination for 2002 is equivalent to a default because of her failure to present an appraisal. That comparison, however, is inappropriate. The Assessor had the opportunity to present whatever evidence she deemed appropriate in the 2002 case and she did so. The Board weighed the evidence and made a determination on the merits of what both parties presented. The fact that the Assessor could have presented a better case with better evidence does not equate to a default. Therefore, the Assessor's citation to *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs*, 550 N.E.2d 850, 853 (Ind. Tax Ct. 1990) and *Porter's South Shore Cleaners Inc. v. State*, 512 N.E.2d 895 (Ind. Tax Ct. 1987) for the proposition that a default judgment in a prior year tax appeal is not a collateral estoppel bar precluding re-litigating the same issues in subsequent year's tax appeal is misplaced.

An assessor's statutory authority to get the assessment correct is very broad. In most instances, if an assessor believes property has been omitted or undervalued, it allows for corrections to be made. The idea of *res judicata* is somewhat at odds with such authority and consequently, should be applied in very limited circumstances and with extreme caution. Nevertheless, Donnelley's dispute presents a rare instance where it is appropriate to call a halt. As the Tax Court said, "[T]he Assessor has ignored the previous decision of a reviewing authority, thereby forcing the [taxpayers] to return to the administrative appeals process to reargue the petition they successfully presented…. Repetitious proceedings such as this are unacceptable." *Lindemann*, 799 N.E. 2d at 1234.

[12] Significantly, the Assessor failed to offer such an appraisal in connection with these summary judgment proceedings.

Summary of Final Determination

The Board finds in favor of Donnelley's claim. The disputed assessments for 2003, 2004, and 2005 must be changed to the same value that was previously determined for this property, which is $12,350,000.

This Final Determination is issued on the date first written above.

_____

Chairman, Indiana Board of Tax Review

_____

Commissioner, Indiana Board of Tax Review

_____

Commissioner, Indiana Board of Tax Review

- 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>