ATTORNEY FOR PETITIONERS:
TIMOTHY J. VRANA
TIMOTHY J. VRANA LLC
Columbus, IN

ATTORNEYS FOR RESPONDENT:
STEVE CARTER
ATTORNEY GENERAL OF INDIANA
KEVIN D. SHEPHERD
DEPUTY ATTORNEY GENERAL
Indianapolis, IN

IN THE
INDIANA TAX COURT

FRANKLIN PAUL DOWELL and KAY ELINOR DOWELL,	)	
Petitioners,	)	
v.	)	Cause No. 49T10-0611-TA-100
WASHINGTON TOWNSHIP ASSESSOR,	)	
Respondent.	)	

ON APPEAL FROM THE FINAL DETERMINATION OF
THE INDIANA BOARD OF TAX REVIEW

NOT FOR PUBLICATION
October 11, 2007

FISHER, J.

Franklin Paul Dowell and Kay Elinor Dowell (the Dowells) appeal the final determination of the Indiana Board of Tax Review (Indiana Board) valuing their real property for the 2002 tax year (the year at issue). The issue before the Court is whether the Indiana Board erred in affirming the decision of the Brown County Property Tax Assessment Board of Appeals (PTABOA).

FACTS AND PROCEDURAL HISTORY

During the year at issue, the Dowells owned two parcels of land in Nashville, Indiana. The land is located in Nashville's central business district neighborhood and is classified as commercial property.

For the March 1, 2002 assessment date, the Washington Township Assessor (Assessor) valued the land in the first parcel at $20,600; the land in the second parcel was valued at $136,500.[1] In arriving at these values, the Assessor used a base rate of $20 per square foot. The Dowells subsequently appealed to the PTABOA, arguing that the base rate used to determine the land assessments had been improperly increased from $10 per square foot to $20 per square foot without holding a public hearing as required under Indiana Code § 6-1.1-4-13.6.[2]

On August 29, 2005, the PTABOA issued its decision, rejecting the Dowells's claim. On September 22, 2005, the Dowells filed appeals with the Indiana Board.[3] On

[1] The second parcel also has improvements, but their value is not disputed. (Oral Argument Tr. at 3.)

[2] In their brief, the Dowells actually rely on Indiana Code § 6-1.1-4-13.8 as supplying the proper procedures by which land values are determined and subsequently modified. (Pet'r Br. at 3.) This statute, however, did not become effective until July 1, 2002. IND. CODE ANN. § 6-1.1-4-13.8 (West 2007). Consequently, the Assessor briefly argues that the Dowells waived any argument relating to Indiana Code § 6-1.1-4-13.6 because they did not cite to it in their brief. (Resp't Br. at 9-10.) The Court disagrees. Under either statutory section, the thrust of the Dowells's claim is that the PTABOA did not have authority to amend the land base rate without holding a public hearing. Therefore the argument was not waived. *See Pub. Serv. Indiana, Inc. v. Nichols*, 494 N.E.2d 349, 355 n.1 (Ind. Ct. App. 1986) (holding that a strict-liability theory was not waived merely because the party cited to the new version of the products-liability statute and not the old version, where the thrust of the argument under either version was the same).

[3] On appeal to the Indiana Board, the Dowells also claimed that the depreciation on their improvements was improperly calculated. (Cert. Admin. R. at 3.) This claim, however, was waived at oral argument. (Oral Argument Tr. at 3.)

October 6, 2006, after conducting a hearing, the Indiana Board issued a final determination upholding each of the assessments.

The Dowells filed an original tax appeal on November 17, 2006. The Court heard the parties' oral arguments on July 31, 2007. Additional facts will be supplied as necessary.

STANDARD OF REVIEW

This Court gives great deference to final determinations of the Indiana Board when it acts within the scope of its authority. *Wittenburg Lutheran Vill. Endowment Corp. v. Lake County Prop. Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 486 (Ind. Tax Ct. 2003), *review denied*. Consequently, the Court will reverse a final determination of the Indiana Board only if it is:

> (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
>
> (2) contrary to constitutional right, power, privilege, or immunity;
>
> (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations;
>
> (4) without observance of procedure required by law; or
>
> (5) unsupported by substantial or reliable evidence.

IND. CODE ANN. § 33-26-6-6(e)(1) - (5) (West 2007). The party seeking to overturn the Indiana Board's final determination bears the burden of proving its invalidity. *Osolo Twp. Assessor v. Elkhart Maple Lane Assocs.,* 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003).

DISCUSSION AND ANALYSIS

Under Indiana's assessment system, real property is assessed on the basis of its "market value-in-use." 2002 REAL PROPERTY ASSESSMENT MANUAL (2004 Reprint) (hereinafter, Manual) (incorporated by reference at 50 IND. ADMIN. CODE 2.3-1-2 (2002 Supp.)) at 2. *See also* IND. CODE ANN. § 6-1.1-31-6(c) (West 2002). In order to determine the market value-in-use of real property, Indiana has promulgated a series of guidelines that explain the valuation process for land. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A (2004 Reprint) (hereinafter, Guidelines) (incorporated by reference at 50 I.A.C. 2.3-1-2(c)), Book 1, Chapter 2. Pursuant to this process, township assessors generally "determine the values of all classes of commercial, industrial, and residential land . . . in the township using [the aforementioned] guidelines" and then submit the proposed values to the county property tax assessment board of appeals (ptaboa). IND. CODE ANN. § 6-1.1-4-13.6(a) (West 2002).

Next, the ptaboa is required to hold a public hearing on those values. *Id.*; Guidelines, Book 1, Chapter 2 at 11. Before determining a final value, the ptaboa must also "review the [proposed] values . . . and [ ] make any modifications it considers necessary to provide uniformity and equality." A.I.C. § 6-1.1-4-13.6(b). *See also* Guidelines, Book 1, Chapter 2 at 11 (requiring "[t]he [ptaboa] [to] conduct a public hearing on the township's proposed values and [ ] modify the values, if necessary, to insure an equitable assessment of land"). Finally, the ptaboa returns the finalized values to the county assessor who, in turn, notifies the township assessors of the values as modified by the ptaboa. A.I.C. § 6-1.1-4-13.6(c).

To succeed on their claim that the $20 base rate was improperly promulgated, the Dowells must demonstrate that the base rate applied to their real property did not result from the process described above. In other words, the Dowells were required to show that the $20 base rate used in their assessments was not the final value as established by the PTABOA. Alternatively, the Dowells could demonstrate that the $10 base rate *was* the final value as established by the PTABOA and not merely a value proposed during the land valuation process. The Dowells have done neither.

To support their claim that the base rate applied to their property was improperly promulgated, the Dowells presented a Neighborhood Valuation Form, indicating a $10 base rate, which they obtained from the Brown County Assessor's office. (Cert. Admin. R. at 89, 132-33.) The Dowells claim that the $10 base rate was the final value as approved by the PTABOA through the land valuation process described above. (*See* Pet'r Br. at 4-5.) The Dowells admit, however, that during the PTABOA hearing, the PTABOA provided them with a different Neighborhood Valuation Form indicating that the approved final value was $20. (*See* Cert. Admin. R. at 85, 92, 134-35.)

There is no evidence in the record indicating that the form obtained by the Dowells from the Brown County Assessor's office contained the final value as approved by the PTABOA. Indeed, the form has no date on it and at the top of the form are the words "[t]o be submitted to the County [PTABOA] by Township Assessor[.]"[4] (Cert. Admin. R. at 89 (footnote added).) This seems to indicate that the form containing the

[4] Furthermore, the Dowells provided no testimony indicating that this form was the final value as approved by the PTABOA, nor did they submit any minutes from the PTABOA's public hearing that would indicate that the $10 base rate was the final value approved by the PTABOA. In fact, the Dowells did not indicate the date they obtained the Neighborhood Valuation Form from the Brown County Assessor's office.

$10 rate was the one submitted by the Assessor to the PTABOA at the beginning of the land valuation process (i.e., the proposed value). The Dowells admit that a public hearing was held regarding the $10 rate. (*See* Pet'r Br. at 4-5.)

In contrast, the form containing the $20 rate, which was presented by the PTABOA, carries a presumption of correctness that the Dowells have not rebutted. *See* Manual at 5. In other words, the Dowells have not shown that the $20 value was not the result of a modification by the PTABOA as part of the land valuation process. Consequently, the Dowells have neither demonstrated that the Neighborhood Valuation Form with the $10 base rate was the final value as approved by the PTABOA, nor that the form with the $20 base rate was *not* the final value. As such, the Dowells have not demonstrated that another public hearing was required before the value was modified.

CONCLUSION

For the foregoing reasons, the Indiana Board's final determination is AFFIRMED.