

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

Petitioner: Greensburg Plaza Co., Inc.
Respondent: Washington Township Assessor (Decatur County)
Assessment Year: 2002
Petition #: 16-016-02-1-4-00011
16-016-02-1-4-00012
Parcel #: 09511093544100a
09511093544100b

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 Decatur County Property Tax Assessment Board of Appeals (PTABOA) by written document dated September 5, 2003.
2. The PTABOA issued its Notification of Final Assessment Determination on October 31, 2003, but it does not appear that the Petitioner received notice of the assessment until on or after April 7, 2004. *See Board Exhibit A.* The Petitioner filed an appeal to the Board by filing a Form 131 petition with the county assessor on May 5, 2004. The Petitioner elected to have this case heard in small claims.
3. The Board issued a notice of hearing to the parties dated December 14, 2004.

Hearing Facts and Other Matters of Record

4. Pursuant to Ind. Code Sections 6-1.1-15-4 and 6-1.5-4-1, two hearings were held on February 23, 2005, in Decatur County, Indiana, before Jennifer Bippus, the duly designated Administrative Law Judge ("ALJ") authorized by the Board under Ind. Code Section 6-1.5-3-3. Together, the hearings addressed the two petitions and parcels referenced in the caption to these findings and conclusions. The Board therefore has consolidated the petitions for purposes of issuing a final determination.

5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner: Milo Smith, Petitioner Representative

For the Respondent: Helen Wagener, Appraisal Research Company,
Washington Township Representative

6. The Petitioner submitted the following exhibits:

Petition # 16-016-02-1-4-00011; Parcel # 09511093544100a

Petitioner Exhibit 1a¹: Copy of the current PRC
Petitioner Exhibit 2a: Copy of the Auditor's site drawing
Petitioner Exhibit 3a: Copy of the Neighborhood Valuation Form for the
subject area
Petitioner Exhibit 4a: Copy of purposed PRC with the changes made
Petitioner Exhibit 5a: Copy of the PRCs for Kalb & Kalb, Inc. with
influence factors given by the county

Petition # 16-016-02-1-4-00012; Parcel # 09511093544100b

Petitioner Exhibit 1b: Copy of the current PRC
Petitioner Exhibit 2b: Copy of the Auditor's site drawing
Petitioner Exhibit 3b: Copy of the Neighborhood Valuation Form for the
subject area
Petitioner Exhibit 4b: Copy of McDonalds' photograph found in
Appendix E of Real Property Assessment
Guidelines for 2002 – Version A
Petitioner Exhibit 5b: Photograph of the subject McDonald's restaurant
Petitioner Exhibit 6b: Copy of "Assigning Intermediate Quality Grade
found in Appendix E Real Property Assessment
Guidelines for 2002 – Version A
Petitioner Exhibit 7b: Photograph and PRC for McDonald's located at
2205 Jonathan Moore, Columbus, Indiana
Petitioner Exhibit 8b: Photograph and PRC for McDonald's located at
1435 State Road 44, Shelbyville, Indiana
Petitioner Exhibit 9b: Photograph and PRC for McDonald's located at 102
Enterprise Way, Scottsburg, Indiana
Petitioner Exhibit 10b: Copy of the proposed PRC for the subject property
Petitioner Exhibit 11b: Copy of Intent of DLGF prepared by Milo Smith

¹ The parties did not use designations "a" and "b" in numbering their exhibits. In order to promote clarity, the Board uses such designations in its findings and conclusions.

7. The Respondent submitted the following exhibits:

Petition # 16-016-02-1-4-00011; Parcel # 09511093544100a

Respondent Exhibit 1a: Copy of area sales
Respondent Exhibit 2a: Copy of Land Order
Respondent Exhibit 3a: Copy of PRC
Respondent Exhibit 4a: Township Authorization Letter for Ms. Wagener to represent the Township at the hearing

Petition # 16-016-02-1-4-00012; Parcel # 09511093544100b

Respondent Exhibit 1b: Copy of property record card
Respondent Exhibit 2b: Copy of Land Order
Respondent Exhibit 3b: Appendix E, p. 55 Real Property Assessment Guidelines for 2002 – Version A
grade category for structure
Respondent Exhibit 4b: Photographs from 1995 Manual detailing grade breakdown for different fast food structures
Respondent Exhibit 5b: Township Authorization Letter for Ms. Wagener to represent the Township at the hearing

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A: Form 131 Petition
Board Exhibit B: Notice of Hearing on Petition
Board Exhibit C: Hearing Sign-In Sheet

9. The two parcels at issue in this consolidated appeal are classified as commercial property and are located at 1903 N. Lincoln Street, Greensburg, Washington Township, Decatur County. Parcel 09511093544100a (hereinafter “parcel ‘a’”) consists of 4.83 acres and contains commercial buildings and other improvements. Parcel 09511093544100b (hereinafter “parcel ‘b’”) consists of .823 acres and contains a McDonald’s restaurant and paving.

10. The ALJ did not conduct an inspection of the property.

11. For 2002, the PTBOA determined the assessed values of the subject parcels to be:

Petition # 16-016-02-1-4-00011; Parcel # 09511093544100a
Land: \$524,500 Improvements: \$376,000

Petition # 16-016-02-1-4-00012; Parcel # 09511093544100b
Land: \$108,300 Improvements: \$147,800

12. The Petitioner contends the assessed values of the subject parcels should be:

Petition # 16-016-02-1-4-00011; Parcel # 09511093544100a

Land: \$303,100 Improvements: \$376,000

Petition # 16-016-02-1-4-00012; Parcel # 09511093544100b

Land: \$61,700 Improvements: \$126,900

Issues

13. Summary of Petitioner's contentions in support of alleged errors in assessment:

Land

- a) The subject property consists of 5.28 acres. McDonald's Corp. leases .823 acres of the total 5.28 acre tract from the Petitioner.
- b) For business purposes, McDonald's Corp. requested that it receive a separate tax bill for the portion of the subject property that it leases, and the assessor agreed to accommodate that request. *Smith testimony; Petitioner Exhibit 2a.* The assessor divided the original tract of land into two (2) separate parcels (4.83 acres under parcel "a" and .823 acres under parcel "b").² *Smith testimony.*
- c) The original tract of 5.28 acres had a negative influence factor of fifty percent (50%) applied to the portion of the tract classified as primary land. The tract received that influence factor in accordance with the applicable Neighborhood Valuation Form, which recommends the application of a fifty percent (50%) negative influence factor to parcels between five (5) and ten (10) acres in size. *Petitioner Exhibit 3a.* After the assessor divided the subject property into two parcels, the Respondent reduced the negative influence factor applied to the primary land from fifty percent (50%) to twenty-five percent (25%) because neither parcel exceeded five (5) acres. *Smith testimony; Petitioner Exhibits 1a, 3a, 10b.*
- d) The Petitioner would not have made its request for separate billing if it had known that the overall tax assessment would increase. *Smith testimony.*
- e) The Petitioner owns the entire 5.28-acre tract. The Petitioner did not transfer ownership of any land to McDonald's Corp. The entire tract of land is still one (1) parcel, and it is entitled to receive a negative influence factor of fifty percent (50%). *Smith testimony.*

² When combined the two parcels equal 5.653 acres. Parcel "a," however, includes a .323-acre portion that is described as a "Road right of way" that receives a negative influence factor of 100%. *Petitioner Exhibit 1a.* Excluding the "Road right of way," the combined area of the parcels is 5.28 acres.

- f) Additionally, the Respondent applied a negative influence factor of twenty-five percent (25%) only to the portion of parcel “a” classified as primary land. The Respondent did not apply an influence factor to the portion of the parcel classified as usable undeveloped land. *Smith testimony; Petitioner Exhibits 1a, 3a.* The Neighborhood Valuation Form provides for the application of influence factors for tracts of land of over three (3) acres. It does not specify that the classification is for primary land only. *Smith testimony.*
- g) The county has applied negative influence factors to usable undeveloped land owned by other taxpayers. *Smith testimony; Petitioner Exhibit 5a; see also, Wagener testimony.* The county should be consistent in its application of negative influence factors. *Smith testimony.*
- h) On the PRC for parcel “a,” the 2.17 acres classified as primary land are valued at a lower rate than are the 2.33 acres classified as usable undeveloped land. This is because the Respondent applied a negative twenty-five percent (25%) to the primary land but did not apply any negative influence factor to the usable undeveloped land. The value of the usable undeveloped land should not be higher than the value of the primary land. *Smith testimony; Petitioner Exhibits 1a, 5a.*
- i) The total land value for the two parcels should be \$364,800 instead of the current value of \$632,800. The parcels should be valued as one tract with a negative influence factor of fifty percent (50%) applied to the entire tract. *Smith testimony; Petitioner Exhibit 10b.*

Grade

- j) The McDonald’s restaurant located on parcel “b” should be assessed based upon a quality grade of “B”, rather than upon a grade of “B+2,” as is presently the case. *Smith testimony.*
- k) The 1995 Manual provided a photograph of a McDonald’s restaurant as an illustration of a “B+2” grade fast food restaurant. The Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”) provide the exact same photograph, but they now use that photograph to illustrate a fast food restaurant entitled to a grade of “B”. *Smith testimony; Petitioner Exhibit 4b, 5b.*
- l) The Guidelines provide that: “[T]he assessor should steer away from using intermediate quality grades if at all possible. Most improvements will be designed and constructed using materials, workmanship, and design that are typical for the base quality grade assigned to the subject without the need to assign intermediate quality grades. Thus, the assessor must use careful judgment when assigning any quality grade that varies from the base quality grade.” *Petitioner Exhibit 6b, REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Appendix E at 5 (incorporated by*

reference at 50 IAC 2.3-1-2). Thus, under the Guidelines, the subject McDonald's restaurant should be assigned a quality grade of "B."

- m) The Respondent did not follow the Guidelines. *Smith testimony; Petitioner Exhibit 6b.* The State Board of Tax Commissioners approved Guidelines. *Petitioner Exhibit 11b.* The Guidelines must be used by county officials unless the county submits a proposed alternative method of assessment to the DLGF for approval. *Id.* Decatur County did not submit an alternative assessment method of assessment. Therefore, the Respondent should not have deviated from the Guidelines. *Smith testimony.*
- n) Three (3) comparable McDonald's restaurants have been assessed using a quality grade of "B." *Smith testimony; Petitioner Exhibits 7b - 9b.*

15. Summary of Respondent's contentions in support of the issues:

Land

- a) McDonald's Corp. leases a portion of the 5.28 acre tract from the Petitioner. McDonald's Corp. requested an individual tax statement. The auditor divided the subject property and created two parcels. Parcel "a" consists of 4.83 acres and parcel "b" consists of .823 acre. The land order provides that parcels between five (5) and ten (10) acres should receive a negative influence factor of fifty percent (50%). Neither parcel is between five (5) and ten (10) acres. The negative influence factor for tracts between three (3) and five (5) acres is twenty-five percent (25%). Parcel "a" received a negative influence factor of twenty-five percent (25%). *Wagner testimony; Respondent Exhibits 2a, 3a.*
- b) The Petitioner requested the separate tax bill and the auditor's office did not know that the change would affect the assessment. *Wagner testimony.*
- c) The influence factor on the Neighborhood Valuation Form is just a recommendation. The assessor did not have to apply the influence factor, but the assessor chose to do so for the primary land. The usable undeveloped land was valued lower than primary land, thus it did not need to be reduced further by the application of an influence factor.

Grade

- d) The 2002 Real Property Assessment Manual ("Manual") permits assessors to choose which type of assessment methods they will use. The Manual is only a guideline. The assessor chose to use plus and minus increments in determining quality grades. *Wagner testimony; Respondent Exhibit 1a.*
- e) The Guidelines permit assessors to use grade increments and the assessor did so throughout the county for all structures. The assessor was consistent in her assessments of commercial property. She considered the quality of construction for

all commercial properties throughout the county. The assessor determined that the construction materials used for the McDonalds restaurant at issue corresponded with the materials listed in the “B+2” category. *Wagener testimony*.

Analysis

16. The most applicable governing cases are:
- 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 Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - 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 276 (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, 281 (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.
17. The Petitioner provided sufficient evidence to demonstrate an error in assessment. This conclusion was arrived at because:

Land

- a) The tract of land in question encompasses a total of 5.28 acres. The Petitioner leases a .823-acre portion of the tract to McDonald’s Corp. It is undisputed that either McDonald’s Corp. or the Petitioner requested that McDonald’s Corp. receive its own tax bill. It is unclear, however, whether that request was made to the auditor or the assessor, or whether the Petitioner actually requested that the property be split into separate parcels for assessment purposes. Moreover, it does not appear that the Petitioner sold any portion of the original tract or otherwise partitioned that tract. Thus, it is not entirely clear under what authority the tract was divided into separate parcels. *See IND. CODE § 6-1.1-5-5 (2004)* (If there is any division, partition or change in ownership, the auditor shall transfer the property and apportion the assessed value of the real estate among the owners; *see also IND. CODE § 6-1.1-5-5.5 (2004)* (Parcels may be subdivided in order to transfer an ownership interest in the real property as long as the owner submits the transferring instrument to the auditor).

- b) The Board is unable to answer the above questions because neither party presented anything more than vague testimony concerning the request that led to the tract being split into separate parcels. Nonetheless, the weight of the evidence demonstrates that two separate parcels were created as a result of the Petitioner's request (or of request of McDonald's Corp. made with the Petitioner's approval) - a .823 acre parcel leased by McDonald's Corp. and a 4.83 acre parcel. *Smith testimony; Petitioner Exhibit 1a.*
- c) Prior to the Petitioner's request, the .823 acre parcel was valued as part of a larger tract of land. Because it was a single tract of land over five (5) acres, the Respondent applied a negative influence factor of fifty (50%) to the primary land within that tract.
- d) After the tract was divided into separate parcels, the Respondent reduced the amount of the negative influence factor applied to the land from fifty percent (50%) to twenty-five percent (25%). The Respondent apparently made this adjustment in order to conform to the Neighborhood Valuation Form, which recommends that a negative influence factor of twenty-five percent (25%) be applied to tracts between three (3) and five (5) acres. *Petitioner Exhibit 3a; Respondent Exhibit 2a.*
- e) The Neighborhood Valuation Form recommends a negative influence factor of fifty percent (50%) for tracts between five (5) and ten (10) acres, and the Respondent appears to apply such a factor to such tracts uniformly. Thus, even though the Petitioner itself devotes portions of the tract to two separate uses, the tract well might have received a fifty percent (50%) negative influence factor had it not requested separate treatment of the parcels for billing purposes. This is true even though it is highly unlikely that a five (5) acre property devoted to two independent commercial uses would suffer the same diminution in value as a result of excessive size as would properties of the same size devoted to a single use.
- f) The fact remains, however, that the Petitioner did request separate treatment of the two portions of the tract, and that separate treatment is entirely consistent with the Petitioner's use of the tract. Consequently, the Petitioner needed to do more than simply point to the treatment of other tracts of a similar size in order to quantify the amount of negative influence factor to which it is entitled. The Petitioner, however, failed to present any evidence regarding how the size of the tract impacts its market value-in-use. Thus, the Petitioner failed to establish a prima facie case that it is entitled to a negative influence factor of fifty percent (50%).
- g) The Petitioner also claims that the Respondent erred by applying a negative influence factor only to the portion of parcel "a" that is classified as primary land and not to the portion of that parcel that is classified as usable undeveloped land. According to the Petitioner, the Respondent has applied a negative twenty-five percent (25%) influence factor to other usable undeveloped land within the county. The Petitioner argues that the subject land should receive the same treatment. *Smith testimony.* Moreover, the Petitioner points out that the Neighborhood Valuation Form does not specify that the recommended negative influence factors for large tracts of land should be applied only to primary land. *Smith testimony.*

- h) Negative influence factors and land classification are not interdependent. *White Swan Realty v. State Bd. of Tax Comm'rs*, 712 N.E.2d 555, 562 (Ind. Tax Ct. 1999). Negative influence factors are applied when the land has a particular condition (e.g. shape or size) that necessitates either a positive or negative adjustment. *Id.* The assessor identifies deviations from the norm and then quantifies this deviation and expresses it as a percentage. *Id.* This process has been completed. The Neighborhood Valuation Form recommends that parcels of land between three (3) and five (5) acres receive a negative influence factor of twenty-five percent (25%). The Neighborhood Valuation Form does not differentiate between primary land and other land classifications in setting forth its recommendations concerning influence factors. *Petitioner Exhibit 3b.*
- i) Moreover, the Respondent's decision to apply the influence factor only to the primary land on parcel "a" led to an irrational result in this case. The Respondent assessed the primary land on parcel "a" at an effective rate of \$112,500 per acre when one factors-in the negative influence factor of twenty-five percent (25%). *Petitioner Exhibit 1a.* By contrast, the Respondent assessed the useable undeveloped land at the rate of \$120,000 per acre. *Id.* There is no indication that the primary land differs in any way from the useable undeveloped land other than the fact that the primary land is developed for commercial use. That difference, however, should make primary land more valuable - not less valuable - than the usable undeveloped land.
- j) Based on the foregoing, the Petitioner established a prima facie case that all of parcel "a" should receive a negative influence factor of twenty-five percent (25%).
- k) The Respondent failed to impeach or rebut the Petitioner's evidence. The Respondent simply argued that the lower base rate applied to the useable undeveloped land already accounts for the effect of the parcel's excessive size. The Respondent, however, presented no evidence in support of that assertion.
- l) Based on the foregoing, the Board finds that the Petitioner demonstrated, by a preponderance of the evidence, that the assessment of parcel "a" is in error, and that a negative influence factor of twenty-five percent (25%) should be applied to the portion of that parcel classified as useable undeveloped land.

Grade

- m) The Petitioner also contends that the Respondent erroneously assigned a quality grade of “B+2” to the McDonald’s restaurant located on parcel “b,” and that the building instead should be assigned a grade of “B.”
- n) In order to establish a prima facie case of error in the assignment of a quality grade, a “taxpayer can offer ‘specific evidence tied to the descriptions of the various grade classifications.’” *Sollers Pointe Co. v. Dept of Local Gov’t Fin.*, 790 N.E.2d 185, 191 (Ind. Tax Ct. 2003) (quoting *Whitley Prods., Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998)). However, “mere references to photographs or State Board regulations without explanation, do not qualify as probative evidence for purposes of grading issues.” *Lacy Diversified Indus., LTD v. Dept of Local Gov’t Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (LDI submitted photos and property record cards of properties, but did not explain how they were comparable to the subject property).
- o) The Petitioner did not meet its burden in this case. The Petitioner did not discuss the quality of the design, materials or workmanship used to construct the subject restaurant, nor did the Petitioner tie any of its evidence to the grade classification descriptions contained in the Guidelines. *See* GUIDELINES, Appendix E at 8 (setting forth descriptions of design and construction elements for various quality grades). The Petitioner did submit a photograph of a McDonald’s restaurant from the Guidelines, which the Guidelines describe as representing a “Grade B Fast Food” restaurant. *Petitioner Exhibit 4*, GUIDELINES, Appendix E at 55. Other than the photograph, however, the Petitioner did not provide any evidence to demonstrate how the subject restaurant compares to the restaurant depicted in the Guidelines. Moreover, the Guidelines themselves caution that the photographs contained therein “are only an indication of grade and not a determination of the actual grade of the structure shown.” GUIDELINES, Appendix E at 9. Thus, the Guidelines instruct, “the grade determination must be based on individual inspection of the type of materials, design and quality of workmanship of the subject structure.” *Id.*
- p) Mr. Smith also identified other McDonald’s restaurants that he described as being comparable to the subject restaurant. *Smith testimony*. Each of those restaurants is assigned a quality grade of “B.” *Id.*; *Petitioner Exhibits 7b - 9b*. While Mr. Smith submitted photographs and property record cards of those restaurants and of the subject restaurant, he failed to provide any explanation regarding how the structures compare to each other. Mr. Smith’s testimony therefore amounts to nothing more than a series of conclusory statements, which do not qualify as probative evidence. *See Lacy Diversified Indus.*, 799 N.E.2d at 1221 (“Testimonial statements that a building’s characteristics are ‘architecturally similar’ or that another building is ‘comparable’ . . . are nothing more than conclusions. . . . Conclusory statements do not qualify as probative evidence.”).

Conclusions

18. The Petitioner established by a preponderance of the evidence that the portion of parcel “a” classified as “Undeveloped Usable C/I Land” is entitled to the application of a negative influence factor of twenty-five percent (25%). The Petitioner failed to establish a prima facie case for any further reduction in the land portion of the assessment of either parcel. The Petitioner failed to establish a prima facie case for a reduction in the quality grade assigned to the McDonald’s restaurant located on parcel “b”.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment shall be changed in the following manner:

- a) A negative twenty-five percent (25%) influence factor shall be applied to the land classified as “Undeveloped Usable C/I Land” on parcel # 09511093544100a.
- b) The grade of the structure on parcel # 09511093544100b shall remain at “B+2”.

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/inde.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.