

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

**Petition #:** 19-018-05-1-4-00009  
**Petitioner[s]:** Sam Polen  
**Respondent:** Bainbridge Township Assessor (Dubois County)  
**Parcel #:** 018-01941-00  
**Assessment Year:** 2005

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 Dubois County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated May 4, 2005.
2. The Petitioner received notice of the decision of the PTABOA on August 30, 2005.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on September 29, 2005. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated November 22, 2005.
5. The Board held an administrative hearing on Jan. 23, 2006, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. Persons present and sworn in at hearing:
  - a) For Petitioner: Sam Polen, Petitioner
  - b) For Respondent: Natalie Jenkins, Dubois County PTABOA  
Marvin M. Folkerts, Bainbridge Twp. Assessor contractor

**Facts**

7. The subject property is a commercial parcel with an improvement located at Highway 64, Jasper, in Bainbridge Township, Dubois County.
8. The ALJ did not conduct an on-site visit of the subject property.

9. The PTABOA determined the assessed value of the subject property to be \$1,900 for the land and \$9,400 for the improvements, for a total assessed value of \$11,300.
10. The Petitioner requested an assessment of \$50 for the land and \$-0- for the improvements, for a total assessed value of \$50.

### **Issues**

11. Summary of Petitioner's contentions in support of an error in the assessment:
  - a. The Petitioner contends that the 2005 assessed value of the subject parcel is overstated. *Polen testimony; Petitioner Exhibit 1.* According to the Petitioner, a comparable parcel, that is larger than the subject parcel at 0.07 acres, is assessed at \$240. *Polen testimony; Petitioner Exhibit 3.* Thus, the Petitioner argues, the subject property should be assessed for \$50. *Polen testimony.*
  - b. The Petitioner further contends that the economy is causing his business to decline and that is reflected in the decreases of the utility charges for the subject carwash and another carwash he owns in Jasper. *Polen testimony.* In support of this contention, the Petitioner submitted a list of the total utility payments for the years 1999 through 2004 for two carwashes. *Polen testimony; Petitioner Exhibit 4.*
  - c. Finally, the Petitioner contends that when he filed the Form 130 appeal to the PTABOA, the PTABOA granted him a change in the value of the land but then penalized him for filing the appeal by assessing a retaining wall. *Polen testimony.* The Petitioner claimed that there are many retaining walls at Jasper businesses that are not assessed and that a retaining wall costs far less to build than its assessed value. *Id*
12. Summary of Respondent's contentions in support of the assessment:
  - a. The Respondent contends that the subject parcel is an integral part of the carwash facility and is appropriately valued. *Folkerts testimony.* The Respondent testified that the PTABOA made adjustment to the assessed value of the subject property for 2005 to correct an error and to bring the subject property into conformity with the adjacent land value. *Folkerts testimony; Respondent Exhibits 6 and 7.*
  - b. The Respondent testified that the PTABOA's decision to assess the retaining wall on the subject property was appropriate and was not intended to penalize the Petitioner for appealing his assessment. *Folkerts testimony.* The Respondent argues that the assessed value placed on the improvement was correct under the 2002 REAL PROPERTY ASSESSMENT GUIDELINES (GUIDELINES). *Id.*
  - c. In support of its contentions, the Respondent submitted a group of four photographs of the subject property, a copy of the GUIDELINES app. G page 28, and a summary of contentions supporting the 2005 assessed value. *Respondent Exhibits 1 through 8.*

## Record

13. The official record for this matter is made up of the following:
- a. The Petition.
  - b. The CD recording of the hearing labeled Jackson #19-018-05-1-4-00009.
  - c. Exhibits:
    - Petitioner Exhibit 1 - Summary of contentions
    - Petitioner Exhibit 2 - The subject property's 2002 property record card (PRC) printed May 4, 2005
    - Petitioner Exhibit 3 - A 2002 PRC for parcel #01-829330-02 printed October 10, 2003
    - Petitioner Exhibit 4 - A list of utility payments for two Jasper carwashes for the years 1999 through 2004
  
    - Respondent Exhibit 1 - Photograph of the subject parcel and retaining wall
    - Respondent Exhibit 2 - Photograph of vending machines on subject parcel
    - Respondent Exhibit 3 - Photograph of longer view of machines and retaining wall
    - Respondent Exhibit 4 - Photograph of adjoining carwash
    - Respondent Exhibit 5 - Summary statement of photographs
    - Respondent Exhibit 6 - Summary of contentions
    - Respondent Exhibit 7 - Subject property's 2002 PRC printed January 10, 2006
    - Respondent Exhibit 8 - GUIDELINES app. G at 28
    - Respondent Exhibit 9 - Notice of Appearance dated January 12, 2006
    - Respondent Exhibit 10 - List of Respondent's witnesses
    - Respondent Exhibit 11 - Copy of Form 131, Form 115 and Form 130
    - Respondent Exhibit 12 - Copy of Notice of Hearing
  
    - Board Exhibit A - Form 131 Petition
    - Board Exhibit B - Notice of Hearing on Petition
    - Board Exhibit C - Sign-in Sheet
  - 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 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. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a. The Petitioner contends that the assessment on the subject parcel is excessive. *Polen testimony*. In support of this contention, the Petitioner alleges that the subject property was improperly valued based on a comparable property. Further, the Petitioner complains that a retaining wall was added to his assessment.<sup>1</sup> Finally, the Petitioner asserts that the assessment should account for the influence of a declining economy on the subject property.

#### *Comparable Property*

- b. The Petitioner contends the land value is too high and that the correct assessment is \$50 or less. *Polen testimony*. In support of this contention, the Petitioner submitted a PRC for a property that is larger (.07 acres) than the subject parcel (.02 acres) and has an assessed value less than that of the subject property. *Petitioner Exhibit 3*.
- c. Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. Thus to the extent that the Petitioner can prove that his property is not assessed uniformly or equal to comparable properties, the Petitioner’s assessment should be equalized. However, “taxpayers are required to make a detailed factual showing at the administrative level.” *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, “the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence.” *Id.*

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<sup>1</sup> The Petitioner contends that the retaining wall was added to the assessment of the subject property as a penalty because the Petitioner appealed his assessed value. *Polen testimony*. The Petitioner offered no evidence to support his contention that the retaining wall is over-assessed or that the retaining wall should not be valued. Unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax 1998).

- d. To introduce evidence of comparable properties, a taxpayer must explain *how* the properties are comparable. *See Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain *how* the properties were comparable). Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id.* *See also*, *Hoogenboom-Nofziger*, 715 N.E.2d at 1024 (holding that taxpayer failed to make prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).
- e. Here, the Petitioner failed to meet his burden. The PRC for the purportedly comparable property (parcel #018-29330-02) was printed October 3, 2003, showing an assessed value for the 2002 assessment year for land only of \$200. *See Petitioner Exhibit 3*. However, the assessment year under appeal in this hearing is as of March 1, 2005. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Further, the Petitioner offered some testimony concerning the location of the “comparable” property, but failed to detail how it was comparable to the subject property. The Petitioner has only made a “de minimis factual showing” and has failed to “sufficiently link [his] evidence” to the uniform and equal argument he raises. *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).

#### *Obsolescence*

- f. The Petitioner further contends that an obsolescence factor should be applied to the subject property because the Petitioner’s business is declining. In support of this contention, the Petitioner testified that business is down 30%-35% and there are two new car washes located in town. *Polen testimony; Petitioner Exhibit 1*. The Petitioner also submitted a chart identifying the property’s annual utility costs to show the decrease in utility use from 1999 to 2004 which, the Petitioner alleges, shows the decline in his business. *Polen testimony*.
- g. The GUIDELINES provide for the determination of the replacement cost new of structures through reference to cost tables. The cost tables have been developed from objectively verifiable data by drawing cost information from publications of Marshall

& Swift, L.P. *Id.* However, the calculation of cost only sets the upper limit of value for improvements. *Id.* The GUIDELINES also require that accrued depreciation be accounted for in valuing an improvement. GUIDELINES, app. F at 4. Under the GUIDELINES, depreciation consists of physical depreciation, functional obsolescence and external obsolescence. *Id.* Physical depreciation is a loss in value caused by building materials wearing out over time. *Id.* Functional obsolescence is a loss in value caused by inutility within the improvement. *Id.* External obsolescence represents a loss in value caused by an influence outside of the property's boundaries. *Id.* The GUIDELINES account for normal obsolescence through the assignment of typical life expectancies and structure condition classifications. GUIDELINES, app. F at 4 – 7. This normal depreciation includes both typical physical deterioration and typical obsolescence. *Id.* at 8. Any additional loss in value from atypical forms of obsolescence will be referred to as abnormal obsolescence and is estimated separately from normal depreciation. *Id.*

- h. However, for a Petitioner to show that he is entitled to receive an adjustment for obsolescence, the Petitioner must both identify the causes of obsolescence he believes is present in his improvement and also quantify the amount of obsolescence he believes should be applied to his property. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Thus, the Petitioner must present probative evidence that the causes of obsolescence identified by the Petitioner are resulting in an actual loss in value to its property. *See Miller Structures, Inc. v. State Bd. of Tax Comm'rs*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001). Further, the Petitioner's quantification of the amount of obsolescence must be converted into a percentage reduction and applied against the structure's overall value. *See Clark*, 694 N.E.2d at 1238. It is not sufficient for a Petitioner to merely identify random factors that may cause the property to be entitled to an obsolescence adjustment. The Petitioner must explain how those purported causes of obsolescence cause the property's improvements to suffer an actual loss in value. *See Champlin Realty Co. v. State Bd. of Tax Comm'rs*, 745 N.E.2d 928, 936 (Ind. Tax Ct. 2001), *review denied*. Here, the Petitioner's testimony about the economy and its impact on his business, and his list of utility costs for years 1999 through 2004 fall far short of the standard described. Thus, the Petitioner has failed to make a prima facie case for obsolescence.
- i. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

16. The Petitioner failed to provide sufficient evidence to establish a prima facie case. The Board finds in favor of the 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: **April 17, 2006**

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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](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>>. 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 days of the date of this notice.**