

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

Petition #: 19-018-05-1-4-00010
Petitioner: Sam Polen
Respondent: Bainbridge Township Assessor (Dubois County)
Parcel #: 018-29650-01
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 rescheduled hearing to the parties dated November 22, 2005.
5. The Board held an administrative hearing on January 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's contractor.

Facts

7. The subject property is a commercial car wash located on Indiana Highway 164 in Jasper.
8. The ALJ did not conduct an on-site visit of the property.

9. The PTABOA determined the assessed value of the subject property to be \$45,900 for the land and \$108,600 for the improvements, for a total assessed value of \$154,500.
10. The Petitioner requested an assessment of \$20,000 for the land and declined to request a specific value for the improvements.

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 land is over-stated. *Petitioners Exhibit 1*. According to the Petitioner, the land is only a half-acre and is located off a main road on a side street with little traffic. *Polen testimony*. The Petitioner testified that the subject land is assessed at \$45,900 and it would probably list for \$80,000. *Id.* However, the Petitioner argues, a property across from Walmart is assessed for only \$55,700. *Id.* According to the Petitioner, the property is three times the size of the subject property and would probably list for \$500,000. *Id.* In support of this contention, the Petitioner submitted a property record card for the subject property and the allegedly comparable property. *Petitioner Exhibits 3 and 4*.
 - b. The Petitioner further contends that the building assessment is in error. First, the Petitioner alleges that the property is assessed as two automatic bays and four self-service bays but should be assessed as six self-service bays, the same as the car wash in Vanderburgh County. *Polen testimony; Petitioner Exhibit 6*. The Petitioner also contends the grade of the building as "C" is over-stated and should be "D." *Polen testimony*. According to the Petitioner, the building is of masonry construction with a flat, g-rib roof and is very basic in design. *Petitioner Exhibit 1*. Petitioner also contends the carwash has a 20-year life expectancy, according to the state manual, so it should have 35% depreciation, instead of the 15% it is receiving. *Id.* Further, Petitioner contends the asphalt paving assessment is over-stated at \$2.55 per square foot and should be \$1.50 according to the manual. *Id.* In support of these contentions, the Petitioner submitted copies of pages that he alleges are from the state manual and an assessment from Vanderburgh County on a similar carwash property that the Petitioner owns. *Petitioner Exhibits 2 and 6*.
 - c. Finally, the Petitioner alleges that the property should be granted a reduction for obsolescence. According to the Petitioner, business is down 30%-35% and there are two new car washes located in town. *Polen testimony; Petitioner Exhibit 1*. In support of this contention, the Petitioner submitted a chart identifying the property's annual utility costs with his Form 131 Petition. *Board Exhibit A*. According to the Petitioner, the decrease in utility use from 1999 to 2004 shows the decline in his business. *Polen testimony*.
12. Summary of Respondent's contentions in support of the assessment:

- a. The Respondent contends that the property is assessed correctly. According to the Respondent, a 1998 sale of a land-only parcel in the subject property's neighborhood supports the current land assessed value. *Respondent Exhibits 5 and 12.*
- b. The Respondent also alleges that photographs of the subject property and the Petitioner's testimony show that the property has two automatic bays and four self-service bays. *Jenkins testimony; Respondent Exhibit 1.* Further, the Respondent contends that the subject property is assessed appropriately from the 2002 REAL PROPERTY ASSESSMENT GUIDELINES (GUIDELINES) and that the Petitioner's contentions about grade, paving, depreciation and type of car wash are based upon figures and rules from the out-dated 1995 Real Property Assessment Manual. *Respondent Exhibit 5.*
- c. Finally, the Respondent contends that the Petitioner has failed to provide income data as requested by the PTABOA to determine whether or not obsolescence is appropriate on the subject. *Jenkins testimony.* According to the Respondent, the figures submitted based on utility costs for the subject and another Jasper car wash owned by Petitioner for the years 1999 through 2004 are inadequate to establish an argument for obsolescence. *Id.*

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 Polen #19-018-05-1-4-00010.
- c. Exhibits:

Petitioner Exhibit 1: Summary of contentions from Form 130 appeal,

Petitioner Exhibit 2: Copies of seven pages identified as from the state manual,

Petitioner Exhibit 3: 2002 property record card for subject parcel #018-298650-01 printed May 4, 2005,

Petitioner Exhibit 4: 2002 property record card for parcel #018-08690-01 printed March 18, 2004,

Petitioner Exhibit 5: 2005 property record card for parcel #019-008-0017-009 printed May 10, 2005,

Petitioner Exhibit 6: 2002 property record card for parcel #09-440-14-136-008 printed Dec. 5, 2003,

Petitioner Exhibit 7: A note and sketch of a parcel owned by Jerome Schneider, dated January 4, 1994,

Petitioner Exhibit 8: A photograph of Petitioner's Evansville car wash looking west,

Petitioner Exhibit 9: A photograph of Petitioner's Evansville car wash looking east,

Respondent Exhibit 1: Photograph of frontal view of subject,
Respondent Exhibit 2: Photograph of side view of subject,
Respondent Exhibit 3: Photograph of rear view of subject,
Respondent Exhibit 4: Summary statement of photographs,
Respondent Exhibit 5: Summary of contentions,
Respondent Exhibit 6: 2002 subject property record card dated January 13, 2006,
Respondent Exhibit 7: Version A Guidelines, pages 27 and 36,
Respondent Exhibit 8: Notice of Appearance dated January 12, 2006,
Respondent Exhibit 9: List of Respondent's witnesses,
Respondent Exhibit 10: Copy of Form 131, Form 115 and Form 130,
Respondent Exhibit 11: Copy of Notice of Hearing,
Respondent Exhibit 12: Property record card showing land sale,

Board Exhibit A: Form 131 Petition,
Board Exhibit B: Notice of Hearing,
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 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 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:

Land

- a. The Petitioner contends that the land is over-valued compared to a 1.265 acre parcel that is assessed for \$55,700. The Petitioner testified that the subject land is approximately ½ acre that is located off of a main road. *Polen testimony; Petitioner Exhibit 1*. According to the Petitioner, the land is assessed for \$45,900 and would list for \$80,000. *Id.* In comparison, the Petitioner argues, a property located on Highway 231 in front of Walmart that would list for \$500,000 is assessed for \$55,700.¹ *Polen testimony; Petitioner Exhibit 4*.
- b. 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.*
- c. 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).
- d. Here, the Petitioner failed to meet his burden. The Petitioner made no attempt to explain why or how the property in front of Walmart is comparable to the subject property. At best, the Petitioner’s evidence shows that a larger parcel of land is assessed higher than the subject property. This falls far short of the burden that the

¹ Apparently the Petitioner does not allege that his property is over-assessed based on its market value because the Petitioner testified that the parcel would sell for \$80,000 despite being assessed for only \$45,900. Thus, Petitioner’s only argument appears to be that his property is not assessed like other properties.

Petitioner faces. 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).

Errors in the Assessment

- e. The Petitioner contends the car wash should be assessed with six self-service bays, similar to the Petitioner’s car wash in Vanderburgh County. However, the Petitioner testified that two of the bays used “modified” automatic devices to wash vehicles. *Polen testimony*. The Petitioner’s argument was further refuted when the Respondent presented photographs of the subject improvements, which clearly show the car wash has two automatic bays and four self-service bays. *Respondent Exhibit 1*. The car wash is currently assessed as such. *Respondent Exhibit 10, pages 10 and 11*. Thus, the Petitioner failed to prove an error in the assessment based upon the assessment of the structure as having two automatic bays and four self-service bays.
- f. The Petitioner also argues that the structure should be graded a “D” instead of a “C”. According to the Petitioner, the building is of masonry construction with a flat, g-rib roof and is very basic in design. Under Indiana’s tax value system, improvements are assigned various grades based upon their design and the quality of the materials and workmanship used in their construction. *Sollers Pointe Co. v. Dep’t of Local Gov’t Fin.*, 790 N.E. 2d at 185 (Ind. Tax Ct. 2003). “Construction quality and the resultant quality grade assigned is a composite characteristic.” GUIDELINES, app. E at 3. Quality grade specification tables are provided to assist in the determination of appropriate quality grades. *Id.* at 9. A taxpayer may establish a prima facie case of error in assignment of grade by offering “specific evidence tied to the descriptions of the various grade classifications.” *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax 1998). Here the Petitioner’s conclusory statements concerning the masonry construction and metal roof fail to meet the level of evidence required by the Indiana Tax Court in *Whitley*.
- g. Further, the Petitioner contends the building should have 35% depreciation because it is 12 years old. The Petitioner bases his argument on excerpts from the 1995 Manual. Depreciation is based on the number of years that have lapsed from the date of construction and the effective date of the valuation. Therefore, the age of a structure is the difference between its date of construction and the January 1, 1999, valuation date. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, app. F at 5 (incorporated by reference at 50 IAC 2.3.1.2). The subject car wash is valued using the GCM schedule, was built in 1994, is graded “C”, and the condition is average. This puts the effective age of the structure at five years and its economic life at 25 years, resulting in 15% depreciation. GUIDELINES, app. F at 24, 25, and 31; *Respondent Exhibit 10, pages 10 and 11*. This is the current depreciation factor. Therefore, there is no error. Similarly, the Petitioner claims that the paving on the subject property should be \$1.50 per square foot from the 1995 Manual. The current value is \$2.55 per square foot according to the 2002 Guidelines. *Respondent Exhibit*

6; GUIDELINES, app. G at 27. The Petitioner's submission of evidence related to assessment methods and values in 1995 is irrelevant to his 2005 assessment. 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)). Thus, the Board finds that the Petitioner has failed to raise a prima facie case related to any alleged "error" in his assessment.

Obsolescence

- h. 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*.
- i. 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.*
- j. 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.

- k. Where the Petitioner has not supported his 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**

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>. 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.