

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

Petition #: 43-032-02-1-4-00001
Petitioner: Howard E. Woodward, Jr.
Respondent: Wayne Township Assessor (Kosciusko County)
Parcel #: 4-78-57-04-723004-31
Assessment Year: 2002

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 Kosciusko County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated September 10, 2003.
2. The Petitioner received notice of the decision of the PTABOA on April 2, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on April 15, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated November 23, 2005.
5. The Board held an administrative hearing on February 2, 2006, before the duly appointed Administrative Law Judge (ALJ) Dalene McMillen.
6. Persons present and sworn in at hearing:¹
 - a. For Petitioner: Howard E. Woodward, Jr., Owner
 - b. For Respondent: Charles A. Ker, PTABOA Member
Gerald Bitner, PTABOA Member
Susan Myrick, PTABOA Member
Richard Shipley, PTABOA Member
Laurie A. Renier, Kosciusko County Assessor
Kristy Mayer, Wayne Township Assessor

¹ Ms. Jean Lynch and Ms. Jan Chiddister were present during the administrative proceedings, but they were not sworn in to present testimony.

Darby L. Davis, Wayne Township Deputy Assessor
Gail Chapman, Wayne Township Deputy Assessor

c. Others In Attendance: Jean Lynch, Observer, Jan Chiddister, Observer

Facts

7. The subject property is an 8,780 square foot commercial general office located on 1.90 acres at 827 South Union Street, Warsaw, in Wayne Township.
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 \$68,700 for the land and \$198,500 for the improvements, for a total assessed value of \$267,200.
10. The Petitioner requested a total assessed value of \$192,000.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner contends that the building warrants the application of functional and economic obsolescence. *Woodward testimony*. The Petitioner testified that when the subject building was constructed in 1960, it was located four blocks from the Murphy Medical Center. *Id.* Several years later, the Medical Center was torn down and relocated across town. *Id.* According to the Petitioner, the move affected the original use of the building. *Id.* Presently the structure is being utilized as a general office. *Id.* The Petitioner contends, however, that the layout of the building is not efficient for the current use. *Id.* The Petitioner alleges that a 1,450 square foot unit in the building has been vacant for over a year. *Id.* The Petitioner also testified that the property was rezoned. *Board Exhibit A at 2; Woodward testimony*. According to the Petitioner, the current zoning restricts the Petitioner's use of the property. *Id.*
 - b. As a general office building, the Petitioner contends that the subject property should be assessed using the income approach to value. *Woodward testimony*. According to the Petitioner, the subject property had a total income of \$41,111.26 in 1999 and the total expenses for the property were \$23,371.58 in 1999. The Petitioner used the actual income (\$41,111.26) and deducted the expenses (\$23,371.58) leaving a net income of \$17,739.68.² *Respondent Exhibit 2 at 8*. The Petitioner's calculation then shows that he added the expense of property taxes paid (\$6,323.56) to the net income of \$17,739.68 for a total income of \$24,063.24. Dividing the net income by a

² At the hearing Mr. Woodward testified that the evidence showing his 1999 income and expenses was submitted by Wayne Township as Respondent Exhibit 2 page 8.

capitalization rate of 12.59 percent establishes an income value of \$191,129.78 or rounded to a value of \$192,000. *Board Exhibit A at 7; Woodward testimony.*

12. Summary of Respondent's contentions in support of the assessment:

- a. The Respondent testified that it calculated the market value of the subject property using the income approach to value. *Davis testimony.* According to the Respondent, the calculation was based on the guidelines set forth by the International Association of Assessing Officers (IAAO). *Id.* The Respondent argues that the IAAO guidelines require an assessor to use market information regarding income, expenses, vacancy and capitalization rates in estimating the market value of a property under the income approach. *Respondent Exhibit 4 at 18 thru 22; Davis testimony.*
- b. In calculating the subject property's income, the Respondent used the Petitioner's advertised rates of \$7.38 per square foot and \$5.00 per square foot and determined a general office potential gross income of \$49,752. *Davis testimony.* According to the Respondent, the vacancy rate, miscellaneous income and expenses were calculated based on the local market. *Id.* The vacancy rate was estimated at 10% or \$4,975.20, and the miscellaneous income was estimated at \$9,444, for an estimated gross income of \$54,220. *Id.* Then, the Respondent testified, a deduction was made for expenses in the amount of 36% or \$19,520 leaving a net operating income of \$34,700. *Id.* The net operating income was then divided by the capitalization rate of 11% plus the local tax rate of 1.59% for an overall rate of 12.59% to establish an income value of \$275,600 for the subject property in 1999. *Respondent Exhibit 4 at 1 & 2; Davis testimony.* Thus, the Respondent concludes, the assessed value of the subject property is fair and accurate at \$267,200. *Davis testimony.*

Record

13. The official record for this matter is made up of the following:

- a. The Petition,
- b. The tape recording of the hearing labeled STB # 5178,
- c. Exhibits:

Respondent Exhibit 1 – Witness list,

Respondent Exhibit 2 – Form 131 petition with the following attachments:

Petitioner's PTABOA presentation, letter from Howard Woodward to Kristy Mayer, dated February 16, 2003, Income and Expense for 827 South Union, Wayne Township's estimated value on subject property, Wayne Township's per square foot income approach on the

- subject, Lease & Rental Information for Wayne Township, and three comparable lease properties,
- Respondent Exhibit 3 – Notification of Final Assessment Determination (Form 115) and subject property record card,
- Respondent Exhibit 4 – Calculation of the income approach to value on subject property, capitalization rates from the area, map showing current rents, seven commercial real estate listing, five pages from the PROPERTY ASSESSMENT VALUATION, 2nd edition, and 2002 pay 2003 Kosciusko County net tax rates,
- Respondent Exhibit 5 – *Gerber Lewis Partnership v. Center Township Assessor*, Indiana Board of Tax Review, Petition Nos. 34-002-02-1-4-00113 & 34-002-02-1-4-00212, Wayne Township calculation of subject property value using inflation factor, inflation calculator from Inflationdata.com, dated January 26, 2006,
- Respondent Exhibit 6 – Map showing cost per square foot based on sales, sixteen property record cards for the following; Ray Plummer, Homer Schmucker, Steven Silveus, UM ENG, Kralis Enterprises LP, Vnica Inc., Symmetry Medical USA Inc., Susan Owens, Stephen Harris, Lake City Bank, Welsh Properties LLC, Trinity Trust, Northern Lakes Investment Group LLC, Tom Hamilton, Chapman Smith Properties LLC, and Howard Woodward, Jr.,
- Respondent Exhibit 7 – Five exterior photographs of the subject property,
- Respondent Exhibit 8 – Proposed Findings of Fact and Conclusions of Law submitted by Kosciusko County Property Tax Assessment Board of Appeals,
- Board Exhibit A - Form 131L petition (four pages) and 31 pages of attachments,
- 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. 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 probative 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 of the subject property is excessive. In support of this contention, the Petitioner alleged that the property suffers from functional and economic obsolescence and presented a calculation based on the income approach to value. *Board Exhibit A; Respondent Exhibit 2; Woodward testimony*.

Income Approach to Value

- b. The Petitioner contends that his property is over-valued based on its income. In support of this contention, the Petitioner testified regarding the income generated and the expenses incurred through the rental of the subject property. *Woodward testimony*. Based on the property’s net income, the Petitioner calculated a market value of \$192,000 using a 12.59% rate of return.³ *Id.*
- c. The 2002 Real Property Assessment Manual (the MANUAL) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual’s definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. *See MANUAL* at 5. Thus, a taxpayer may establish a prima facie case based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. *See Meridian Towers*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74%

³ The capitalization rate is fundamental in the use of the income approach, but the Petitioner presented no documentation to support it. However, the Respondent used this same rate and claimed this was indicated by different things found in the market. *Respondent Exhibit 2*.

obsolescence depreciation adjustment based on an appraisal quantifying the improvements' obsolescence through cost and income capitalization approaches).

- d. Here, the Petitioner contends that his property has a value of \$192,000 based on the income approach to value. In support of this value, the Petitioner testified that he had provided income and expense information to the PTABOA showing an income of \$41,111.26 and expenses of \$23,371.58 for the office building in 1999. *See Respondent Exhibit 2*. The Petitioner, however, bore the burden of demonstrating that the calculation was probative of the market value-in-use of the subject property. The Petitioner failed to do so. The Petitioner provided no supporting documentation for the rental amounts collected or the expenses disbursed during the assessment period. Further, petitioner provided no evidence to establish vacancy history. The Petitioner's testimony is conclusory and conclusory evidence is not probative. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113, 1122 (Ind. Tax 1998). *See College Corner, L.P., v. Department of Local Government Finance*, 840 N.E. 2d 905, 907-8 (Ind. Tax Ct. 2006) ("Probative evidence is evidence sufficient to establish a given fact that, if not contradicted, will remain sufficient").
- e. Finally, as the Respondent notes, the Petitioner's calculation did not meet the standards set by the International Association of Assessing Officials (IAAO) for the application of the income approach to value. *Respondent Exhibit 4 at 18-22*. Rental income and expenses are to reflect market values because, as the Indiana Tax Court has stated, the property's individual income and expenses may reflect other non-property issues "such as quality of management, skill of the work force, competition and the like." *Thorntown Telephone Company, Inc. v. State Bd. of Tax Comm'rs*, 588 N.E.2d 613, 619 (Ind. Tax Ct. 1992). Thus, the Petitioner failed to raise a prima facie case that his property is over-valued on the basis of his income approach calculation.

Obsolescence

- f. The Petitioner further contends that the subject property suffers from functional and economic obsolescence due to the layout of the building, the location, vacancy and zoning restrictions.
- g. The REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A, app. B at 5, (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES) provides for the determination of the replacement cost new of structures through reference to cost tables. GUIDELINES, intro. at 1. The cost tables have been developed from objectively verifiable data by drawing cost information from publications of Marshall & Swift, L.P. *Id.* 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 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 must be estimated separately from normal depreciation. *Id.*
- h. 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 its 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 Board of Tax Commissioners*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001). "Probative evidence is evidence sufficient to establish a given fact that, if not contradicted, will remain sufficient." *College Corner, L.P., v. Department of Local Government Finance*, 840 N.E. 2d 905 (Ind. Tax Ct. 2006). 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.
- i. The subject building currently has a 40% negative adjustment for obsolescence. *Respondent Exhibit 6 at 24*. Therefore, the existence of obsolescence is not an issue, only the amount of obsolescence. Here, the Petitioner was required to show how the building's layout, location and zoning resulted in a more extensive loss in value than was recognized by the local assessing officials. The Petitioner provided no such information. The Petitioner did not show that the building's layout, location or zoning resulted in lost rents, or caused a loss in the market value of the property. The Petitioner merely alleged that a 1,450 square foot unit in the building has been vacant for over a year. To the extent that the Petitioner presented income and expense information, such information was not tied to market values to support a loss in value, nor was a percentage reduction calculated and applied to the office building's overall value as is required to prove the amount of obsolescence. 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 Board of Tax Commissioners*, 745 N.E.2d 928, 936 (Ind. Tax Ct. 2001), *review denied*. *See also Indian Industries, Inc. v. Dep't of Local Gov't Finance*, 791 N.E.2d 286, 290 (Ind. Tax Ct. 2003) ("All Indian has done in this case is provide the State Board with a laundry list of factors that may cause obsolescence to its improvements and then say 'as a result, we're entitled to a 70% obsolescence adjustment.' However, Indian needed to link one with the other by showing an actual loss of value.") Thus, attempts to quantify obsolescence must correlate to the causes of obsolescence. In failing to tie its income information to the

alleged causes of obsolescence, the Petitioner has failed to raise a prima facie case that the subject property's assessment was incorrect.

- j. The Petitioner failed to present probative evidence in support of his contentions. 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. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed 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: May 30, 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>.