

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-002-02-1-4-00485  
**Petitioner:** Steven Sukwoo Roh  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 001-25-44-0011-0024  
**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 informal hearing as described in Ind. Code § 6-1.1-4-33 was held on February 4, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$62,200. The DLGF sent its Notice of Final Assessment to the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 21, 2004.
3. The Board issued a notice of hearing to the parties dated March 8, 2005.
4. Special Master, Ken Daly, held a hearing on April 8, 2005, in Crown Point, Indiana.

### Facts

5. The subject property is located at 800 Broadway, Gary, in Calumet Township, Lake County, Indiana.
6. The subject property is a commercial two-story building on .072 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$19,300 for the land and \$42,900 for the improvements for a total assessed value of \$62,200.
9. The Petitioner requested an assessed value of \$2,800 for the land and \$9,000 for the improvements for a total assessed value of \$11,800.

10. Young U. Roh, representing the Petitioner under a Power of Attorney, and Terry Knee, representing the DLGF, appeared at the hearing and were sworn as witnesses.

### **Issues**

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) The Petitioner contends that the building warrants the application of an obsolescence factor. *Y. Roh testimony*. About one-third of the first floor is available for use. The rest of the area is vacant including the second floor. *Y. Roh testimony*. These areas are not available for use due to extensive interior obsolescence. *Y. Roh testimony & Petitioner Exhibit 5*.
  - b) Similarly, the Petitioner also alleges that the subject property is in poor condition. According to the Petitioner, the building is a deteriorated two-story building that is 100 years old. *Y. Roh testimony*. The Petitioner testified that the roof leaks and the ceilings are falling in. *Id.* Further, according to notations on the Petitioner's photographs, some areas have no gas, water or electricity. *Petitioner Exhibit 5*.
  - c) The Petitioner also testified that all other buildings in this area are deteriorated and have been torn down. Thus there is nothing to which his building can be compared. *Y. Roh testimony*. According to the Petitioner, the only way to estimate the value of this property is to depend on the Appraisal Report by Charles M. Hughes. *Y. Roh testimony & Petitioner Exhibit 7*.
  - d) Finally, the Petitioner testified that in 2001 the subject property was assessed for \$25,100. *Y. Roh testimony*. According to the Petitioner, this assessment was also appealed. *Id.*
12. Summary of Respondent's contentions in support of assessment:
- a) The Respondent contends that the Petitioner's appraisal is merely an opinion of value. *Knee testimony*. According to the Respondent, there is nothing in the appraisal that documents how any type of value was arrived at – no comparables, and no income or cost approaches. *Id.* Therefore, the Respondent argued, Petitioner's appraisal should not be considered a valid appraisal. *Id.*
  - b) The Respondent testified, however, that the value of the property is overstated. *Knee testimony & Respondent Exhibits 3 and 4*. According to the Respondent, the value of the subject property should be somewhere around \$33,900 as opposed to the value of record of \$62,200.<sup>1</sup> *Knee testimony*.

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<sup>1</sup> When asked by the Special Master for clarification regarding the \$33,900, the Respondent testified that it would be more in line with the comparables submitted. *Knee testimony & Respondent Exhibits 3 and 4*.

- c) Finally, in response to the Petitioner's reference to the 2001 assessed value on the subject property, the Respondent testified that the assessing methods in Indiana changed since the 2001 assessment. *Knee testimony*. According to the Respondent, the appeal at issue is for 2002. The Respondent contends that the entire method in Indiana of assessing real property changed dramatically and, therefore, the 2001 assessment would have no bearing on assessed value in 2002. *Id.*
13. The official record for this matter is made up of the following:
- a) The Petition.
  - b) The tape recording of the hearing labeled BTR #1508.
  - c) Exhibits:
    - Petitioner Exhibit 1: Form 139L Petition and Final Notice of Assessment
    - Petitioner Exhibit 2: Summary of Petitioner's Arguments
    - Petitioner Exhibit 3: Subject property record card (PRC) for the 2001 assessment
    - Petitioner Exhibit 4: Page 2, Form 139L Petition
    - Petitioner Exhibit 5: Copies of photographs of subject
    - Petitioner Exhibit 6: Power of Attorney
    - Petitioner Exhibit 7: Appraisal
  
    - Respondent Exhibit 1: Subject PRC
    - Respondent Exhibit 2: Subject photograph
    - Respondent Exhibit 3: Comparables and photographs
    - Respondent Exhibit 4: Comparables available on current GINAR listings
  
    - Board Exhibit A: Form 139L 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 laws 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 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 (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 provided sufficient evidence to support the Petitioner’s contentions that the subject structure is in “poor” condition. The Petitioner failed to raise a prima facie case on all other matters. This conclusion was arrived at because:
- a) The Petitioner contends that the subject property is over-assessed based on (1) obsolescence; (2) the condition of the structure; (3) an Appraisal Report; and (4) its 2001 assessment.

*Obsolescence*

- b) The Petitioner contends that the subject property suffers from abnormal obsolescence due to the interior condition of the building on the subject property.
- c) The REAL PROPERTY ASSESSMENT GUIDELINES, 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.* However, the calculation of cost only sets the upper limit of value for improvements. *Id.* The GUIDELINES also requires that accrued depreciation be account 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 accounts 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.*
- d) 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 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 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*.

- e) Here, the Petitioner was required to show how the building's condition caused an actual loss in value. The Petitioner provided no such information. The Petitioner did not testify as to lost rents, repair costs, or even a loss in the market value of the property. In failing to provide this evidence, the Petitioner has not quantified the obsolescence to which he believes he is entitled. Thus the Petitioner failed to raise a *prima facie* case that the subject property's assessment was incorrect in failing to apply an obsolescence factor.
- f) 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).

#### *Condition*

- g) The Petitioner's condition evidence can also be construed as alleging an error in the assessment based upon the subject property's condition rating.
- h) A condition rating is a "rating assigned each structure that reflects its effective age in the market." *See GUIDELINES*, app. B, at 5. A condition rating is determined by relating the structure to comparable structures within the subject property's neighborhood. *Id.* Presently, the structure is assessed as being in "fair" condition. A structure in "fair" condition is "badly worn." *GUIDELINES*, at Chap. 6, pg. 57. "There is a substantial amount of repairs needed to restore the facility" and "many items need refurbishing, overhauling, or are inadequate for the demands of today's market." *Id.* A structure in "fair" condition has deferred maintenance present and there "may be inadequate utilities such as wiring that is inappropriate or too light-duty for the demands of today's structures." *Id.* On the other hand, a structure in "poor" condition is a structure that is "almost worn out." *Id.* It is in need of "a substantial amount of repair, maintenance and upgrading on things such as roof structure, plumbing and utilities." *Id.* A "poor" structure is "typified by needing a great deal of maintenance, which has not been conducted and/or by abuse of the property." It "is in need of a major renovation and modernization." *Id.* Without such renovation, the structure is "nearly at the end of its actual utilization." *Id.*

- i) Here, the Petitioner testified that the subject building is 100 years old and deteriorating. *Y. Roh testimony*. According to the Petitioner, only one-third of the two-story structure is usable. The roof leaks and the ceilings are falling in. *Id.* In support of this argument, the Petitioner submitted copies of interior photographs of the subject building depicting the deterioration of floors and ceilings. *Petitioner Exhibit 5*. Notations are made indicating that some of the areas do not have gas, water, or lights. *Id.* The Petitioner's evidence shows that the structure is more than "badly worn" but is, in fact, "almost worn out." The structure's collapsing ceiling and lack of utilities in various areas shows that the structure is "in need of a major renovation and modernization." Based on the Petitioner's testimony and photographs submitted, therefore, the Board finds that the subject structure is best described as in "poor" condition.

#### *Appraisal Report*

- j) The Petitioner also submitted an Appraisal Report in support of his argument that the subject property is over-assessed. The appraisal, dated April 15, 2004, determined the market value to be \$11,000 as of April 13, 2004. *Petitioner Exhibit 7*.
- k) Real property in Indiana is assessed on the basis of its "true tax value". See I.C. 6-1.1-31-6(c). "True tax value" is defined as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (2001 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter "MANUAL")). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used in the appraisal profession is known as the "sales comparison approach." *Id.* The sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market." *Id.*
- l) Regardless of the approach used to prove the market value-in-use of a property, Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *Long*, at 471; *MANUAL* at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *Id.*
- m) Here, the Appraisal Report consisted only a cover letter with an opinion of market value, a statement as to the purpose of the appraisal, the definition of market value, two exterior photographs of the subject structure, and the appraiser's professional work history. *Petitioner Exhibit 7*. There was no indication that this Appraisal Report followed the Uniform Standards of Professional Appraisal Practice (USPAP). Further, as the Respondent argued, the Appraisal Report was nothing more than an opinion of value that lacked documentation as to how the estimated value was

determined. According to the Respondent, none of the accepted appraising approaches to value were used – no comparables, no income or cost approaches. *Knee testimony & Petitioner Exhibit 7*. On this basis, the Board finds that the appraisal lacks probative value as to the subject property's market value. *See Inland Steel Co. v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser's opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique). Even if the Board found the Appraisal Report to be credible, however, the Petitioner failed to show the relevance of the appraisal valuation as of April 13, 2004, to the January 1, 1999, valuation date. Thus, the Board holds that the Petitioner failed to raise a prima facie case that the assessed value of the property exceeds its market value.

- n) 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).

#### *2001 Assessment*

- o) The Petitioner also appears to contend that his property is over-assessed based upon an earlier assessment. According to the Petitioner, in 2001, the subject property was assessed for only \$25,100. *Y. Roh testimony & Petitioner Exhibit 4*.
- p) The Petitioner is mistaken in his reliance on the subject property's 2001 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, evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id.* Further, as stated by the Respondent, the methods for assessing real property in Indiana changed dramatically with the 2002 statewide general reassessment. *Knee testimony*. The method of assessment prior to the 2002 reassessment was based on a reproduction cost method. In 2002 the method of assessment changed to a market value-in-use of a property for its current use. MANUAL intro. at 2.
- q) The Board, therefore, finds that the Petitioner failed to raise a prima facie case that his property is over-assessed based upon its 2001 assessment.
- r) 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).

## Conclusions

15. The Petitioner made a prima facie case for a change in the condition rating from “fair” to “poor”. The Board finds in favor of the Petitioner on this issue. The Petitioner failed to raise a prima facie case on all other matters. Despite this, the Respondent testified that the subject property was overstated. *Knee testimony*. The Respondent indicated that the subject should be valued more around \$33,900 as opposed to the current assessment of \$62,200. *Knee testimony & Respondent Exhibits 1, 3, and 4*. Thus, the Board holds that the assessment as corrected should not exceed \$33,900.

## Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that subject structure should be assessed as in “poor” condition. To the extent that the assessed value of the subject property as corrected exceeds the \$33,900 value that the Respondent admitted the property value should be valued, the assessment should be changed to a value of \$33,900.

ISSUED: **January 31, 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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.**