

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-4-00860
Petitioner: Chauncey S. Dickey
Respondent: Department of Local Government Finance
Parcel #: 007-26-33-0153-0007
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 in December, 2003, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$86,700 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties on June 13, 2005.
4. A hearing was held on July 14, 2005, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 422 Conkey Street, Hammond, in North Township.
6. The subject property is a commercial building located on 0.083 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 \$22,200 for the land and \$64,500 for the improvements, for a total assessed value of \$86,700.
9. The Petitioner requested an assessed value of \$1,500 for the land and \$64,500 for the improvements, for a total assessed value of \$66,000.

10. Chauncey S. Dickey, the Petitioner, Arlene Risberg, witness for the Petitioner, and Everett Davis, representing the DLGF, appeared and were sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The Petitioner testified that the subject property was purchased in June of 1984 for \$40,000. *Risberg testimony*. In support of this testimony, the Petitioner submitted a Purchase Agreement dated June 14, 1984. *Petitioner's Exhibit 2*. According to the Petitioner's witness, the auto repair shop on the property is grandfathered in and if the business closes for a year, the property would lose its exception. *Risberg testimony*. Further, there are two apartments on the second floor of the building and a commercial rental in front of the car repair shop. The Petitioner argues that the residential rental exceeds the commercial rental on this property. *Id.* Thus, the Petitioner contends, the assessment should be approximately \$50,000. *Id.*
 - b) The Petitioner also contends that the character of the neighborhood negatively impacts the value of the subject property. According to the Petitioner's witness, the neighborhood is declining. *Risberg testimony*. In support of this contention, the Petitioner submitted photographs of boarded up and vacant buildings. *Petitioner's Exhibits G-5 through G-8*.
 - c) The Petitioner further argues that the subject property's C1 zoning restricts the use of the property and negatively impacts its value. According to the Petitioner's witness, C1 is commercial/residential and you can only put certain service shops on the site; whereas C4 is more liberal. *Risberg testimony*. In support of this contention, the Petitioner submitted zoning regulations for C1 and C4 zoning and a zoning map for the area. *Petitioner's Exhibits G-2 through G-4*. Further, in C1 you cannot build on less than 80 feet. *Id.* In addition, in the area of the subject property, there are only a few blocks with little access and no parking. *Id.*
 - d) The Petitioner also testified that the market value of the properties in the area have fallen in the past twenty years. Further, the Petitioner argues, properties are selling for far less than they are appraised for. *Risberg testimony*. In support of this argument, the Petitioner submitted sales and assessment information for several area parcels. *Petitioner's Exhibits G-9 through G-14*. According to the Petitioner, a commercial office building on a 53 foot lot at 503 Conkey Street was listed for \$49,900 and sold for \$35,000 on March 17, 2004. *Petitioner's Exhibit G-9-B*. The Petitioner alleges that the property was assessed for \$64,100. *Petitioner's Exhibit G-9-A*. Similarly, a commercial business on a 25 foot lot at 518 Conkey Street was listed for \$35,000 and sold for \$20,000 in June of 2004. *Petitioner's Exhibit G-10-B*. According to the Petitioner, this property was assessed for \$32,300. *Petitioner's Exhibit G-10-A*. Further, the Petitioner alleges, a commercial building at 542 Conkey Street was assessed for \$178,900, listed for

\$134,900 and sold for \$85,000 in December of 2004. *Petitioner's Exhibit G-11-A and B.* The property at 530 Conkey Street was assessed for \$54,000 and sold for \$35,000 on March 30, 2000 and sold again for \$30,000 on September 14, 2004. *Petitioner's Exhibit G-12-A-C.* According to the Petitioner, three vacant lots together at 444-448 Conkey Street sold for \$20,000. *Petitioner's Exhibit G-13-D.* Those lots assessed for \$7,300, \$21,800 and \$37,100 respectively, for a total assessed value of \$66,200. *Petitioner's Exhibit G-13-A through C.* Finally, a commercial property that is not on Conkey Street, but is within the area at 5730 Hohman Avenue which is also zoned C1 was purchased for \$37,000 and was assessed for \$160,300 in February of 2003. *Petitioner's Exhibit G-14-A through B.*

- e) The Petitioner also contends that the subject property is not assessed like other properties in the area. According to the Petitioner, the property at 6410 Kennedy Avenue is assessed for only \$500. *Petitioner's Exhibit G-15-A.* According to the Petitioner's witness, Kennedy is zoned C4 so there is more traffic, more customers, and the property can be used for more. *Risberg testimony.* Also the property at 6412 Kennedy Avenue, 6414 Kennedy Avenue, 6346 Kennedy Avenue and 6348 Kennedy Avenue are all assessed for \$200. *Petitioner's Exhibit G-15-B, C, D and E.* Finally, the properties at 6405 Calument Avenue and 6429 Calument Avenue assessed for \$11,800 and \$9,100 respectively. *Petitioner's Exhibit G-9-B.* The Petitioner argues that Calument Avenue is a much bigger commercial area and the properties are much more valuable than the properties on Conkey Avenue. *Risberg testimony.*

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

- a) In support of the assessment, the Respondent submitted the property record card, photographs of the subject property and an incremental/decremental land summary. *Respondent Exhibits 1, 2 and 3.*
- b) The Respondent further contends that the 1984 purchase price presented by the Petitioner is too old to be considered. *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 Lake Co-1911.
- c) Exhibits:

Petitioner Exhibit 1:	Notice of Final Assessment
Petitioner Exhibit 2:	Purchase Agreement Dated June, 1984

Petitioner Exhibit 3:	Notice of Hearing Re-Schedule
Petitioner Exhibit 4:	Picture of Subject Property
Petitioner Exhibit 5:	Explanation of the Need for Lower Appraisal
Petitioner Exhibit G-1:	Newspaper Article Re: Inability to Sell Small Lots
Petitioner Exhibit G-2:	C-1 Zoning Regulations
Petitioner Exhibit G-3:	C-4 Zoning Regulations
Petitioner Exhibit G-4:	Zoning Map for Central Hammond
Petitioner Exhibit G-5:	General Neighborhood Pictures
Petitioner Exhibit G-6:	General Neighborhood Pictures
Petitioner Exhibit G-7:	General Neighborhood Pictures
Petitioner Exhibit G-8:	General Neighborhood Pictures
Petitioner Exhibit G-9A:	Appraisal [Assessment] of 503 Conkey Street
Petitioner Exhibit G-9B:	Sale of 503 Conkey Street
Petitioner Exhibit G-10A:	Appraisal [Assessment] of 518 Conkey Street
Petitioner Exhibit G-10B:	Sale of 518 Conkey Street
Petitioner Exhibit G-11A:	Appraisal [Assessment] of 542 Conkey Street
Petitioner Exhibit G-11B:	Sale of 542 Conkey Street
Petitioner Exhibit G-12A:	Appraisal [Assessment] of 530 Conkey Street
Petitioner Exhibit G-12B:	Sale of 542 Conkey Street in March, 2000
Petitioner Exhibit G-12C:	Sale of 542 Conkey Street in September, 2004
Petitioner Exhibit G-13A:	Appraisal [Assessment] of 444 Conkey Street
Petitioner Exhibit G-13B:	Appraisal [Assessment] of 446 Conkey Street
Petitioner Exhibit G-13C:	Appraisal [Assessment] of 448 Conkey Street
Petitioner Exhibit G-13D:	Sale of 444, 446, and 448 Conkey Street
Petitioner Exhibit G-14A:	Appraisal [Assessment] of 5730 Hohman Ave.
Petitioner Exhibit G-14B:	Sale of 5730 Hohman Ave.
Petitioner Exhibit G-15A:	Example of Low Appraised [Assessed] Lot
Petitioner Exhibit G-15B:	Example of Low Appraised [Assessed] Lot
Petitioner Exhibit G-15C:	Example of Low Appraised [Assessed] Lot
Petitioner Exhibit G-15D:	Example of Low Appraised [Assessed] Lot
Petitioner Exhibit G-15E:	Example of Low Appraised [Assessed] Lot
Petitioner Exhibit G-16A:	Example of Appraisal [Assessment] Calumet Ave.
Petitioner Exhibit G-16B:	Example of Appraisal [Assessment] Calumet Ave.

Respondent Exhibit 1:	Subject Property Record Card
Respondent Exhibit 2:	Subject Photograph
Respondent Exhibit 3:	Incremental/Decremental Land Summary

Board Exhibit A:	Form 139L 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 support the Petitioner’s contentions. This conclusion was arrived at because:
 - a. The 2002 Real Property Assessment Manual (“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% obsolescence depreciation adjustment based on an appraisal quantifying the improvements’ obsolescence through cost and income capitalization approaches).
 - b. 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.*

Purchase of Subject Property

- c. The Petitioner contends that he purchased the property for \$40,000 in 1984. According to the Petitioner, the sale price is evidence that the property is over-valued. The sale of a property is often the most compelling evidence of its market value. In this case, however, the Petitioner purchased the subject property in 1984. The Petitioner presented no evidence to relate this value to the January 1, 1999, valuation date as required by *Long*. Petitioner's testimony that values have generally fallen in the past decade is unsupported by any evidence.¹ Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax 1998).

Sales Comparison

- d. The Petitioner also contends that the assessed value of the property is overstated based on the sales of neighboring properties. *Risberg testimony*. In support of this contention, the Petitioner provided sales information for six properties between 2000 and 2004. *Petitioner Exhibits G-9 through G-14*. In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value in use of the subject property. See MANUAL at 3 (stating that 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."); See also, *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
- e. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. 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. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- f. Here, the Petitioner made no attempt to compare the sale properties to his own property. The Petitioner only alleged that the sales "proved" the assessed value of his property is over-stated. This falls short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. See *Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972). Further, none of the Petitioner's "comparable" sales

¹ We reject Petitioner's argument that his purchase of various properties for lower prices over time is probative evidence that the market has declined during that period. Without evidence of the properties' comparability, the Board holds that Petitioner's evidence merely shows that he bought different properties for different prices.

occurred sufficiently close in time to the January 1, 1999, valuation date to meet the requirements of *Long*.

- g. Finally, to the extent that the Petitioner is arguing that these properties were assessed far in excess of their sales prices, we hold that these properties are not before the Board on appeal. Further, even if the evidence of the six sales that Petitioner presented could be construed as raising a prima facie case that the sales prices of the neighboring properties are uniformly lower than the assessed values of those properties, the Petitioner is not entitled to any “equalization” adjustment on an individual basis. *See Dept. of Local Gov’t Finance v. Commonwealth Edison Co. of Ind., Inc.*, 820 N.E.2d 1222, 1226 (2005) (the state has the authority to provide class-wide relief to remedy unequal assessments either in a locality or within a class of property, but this does not authorize a Petitioner to seek an “individual ‘equalization’ adjustment.”). The Petitioner may only seek to establish that “its property taxes were higher than they would have been had other property been properly assessed.” *Id.* This the Petitioner did not do. The Petitioner has failed to raise a prima facie case on the basis of any discrepancy in value between the sales of neighboring properties and the assessments of those properties.

Assessment Comparison

- h. The Petitioner also argues that the land on the subject property is not being valued in an equitable manner with similar properties. *Risberg testimony*. In support of this contention, the Petitioner submitted property record cards of purportedly comparable properties on Kennedy Street that were assessed for \$500 and \$200. *Petitioner Exhibits G-15-A through E*.
- i. Indiana Code section 6-1.1-2-2 requires uniform and equal assessments. 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.* Thus, the Petitioner must introduce evidence of comparable properties and 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).

- j. In the case at bar, the Petitioner has not met this burden. While the Petitioner identifies properties that are assessed lower than the subject property, the Petitioner made no attempt to explain why or how the properties are 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).

External Obsolescence

- k. Finally, the Petitioner contends that his property is restricted by C1 zoning and is located in a declining neighborhood.
- l. The REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A, intro at 1, (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. 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 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 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 will be referred to as abnormal obsolescence and is estimated separately from normal depreciation. *Id.*
- m. 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*.

- n. Here, the Petitioner needed to show how the property's location or zoning caused a loss in value. We do not accept Petitioner's argument that his purchase of various properties for lower values over time is evidence that the market has declined during that period. Further, even if we were to accept this argument, the Petitioner presented no quantification of the decline in value. Nor did the Petitioner sufficiently show that any decline in value was related to the location or zoning of the subject 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.
- o. 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 Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioner failed to make a prima facie case. The Board finds in favor of 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: _____

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>.