

REPRESENTATIVE FOR PETITIONER:

Sandra K. Bickel, Attorney at law.

REPRESENTATIVES FOR RESPONDENT:

Jeffrey S. Dible, Attorney at law.

Nancy J. Van Dyke, Pike Township Assessor's Office.

Joseph O'Connor, Pike Township Assessor's Office.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

AUGUSTA PLAZA ASSOCIATES, L.P.,)	On Appeal from the Marion County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petition for Review of Assessment, Form 131
)	Petition No. 49-600-99-1-4-00824
MARION COUNTY PROPERTY TAX)	Parcel No. 6005864
ASSESSMENT BOARD OF APPEALS)	
And PIKE TOWNSHIP ASSESSOR,)	
)	
Respondents.)	

Appeal from the Final Determination of
Marion County Property Tax Assessment Board of Appeals

July 23, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax

Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the “Board”.

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Supplemental Findings of Fact and Conclusions of Law¹

1. On February 6, 2001, a hearing was held in this matter before Hearing Officer Debra Eads. On September 21, 2001, the State Board of Tax Commissioners issued a Final Determination in this matter (Board Exhibit J).
2. On October 9, 2001, Augusta Plaza Associates, L.P. (Augusta Plaza) requested the State Board of Tax Commissioners to conduct a rehearing in this matter. On October 24, 2001, the State Board of Tax Commissioners granted the Petitioner’s request to conduct a rehearing concerning the sole issue of obsolescence.
3. On February 4, 2003, the Indiana Board of Tax Review held the rehearing in this matter.
4. At this rehearing, the parties did not present any new evidence. The parties agreed that all evidence from the original hearing and a related hearing for the 1995 appeal would be made a part of the record. Admitted as part of the record as additional Board Items were the following:
 - Board Item C – Final Determination issued in this matter on September 24, 2001.
 - Board Item D – Request for rehearing.
 - Board Item E – Grant of rehearing.
 - Board Item F – Letter regarding rehearing.
 - Board Item G – Township Waiver of deadlines regarding rehearing.
 - Board Item H – Taxpayer Waiver of deadlines regarding rehearing.
 - Board Item I – Notice of rehearing.

¹ As indicated, these Findings and Conclusions supplement, but do not supersede, those contained in the original Final Determination issued September 21, 2001.

5. Administrative Law Judge Brian McKinney presided at the rehearing. Betsy Brand, Commissioner; William Waltz, Commissioner; and Ronald Gudgel, Senior Administrative Law Judge, also represented the Board. The following persons also were present:

For the Petitioner -- Sandra K. Bickel, Attorney.

Andrew L. Cisna, Accountant for Augusta Plaza.

Dan Higgins, Property Manager for Grubb & Ellis-Harding Dahm & Co.

Douglas E. Rogers, Certified General Real Estate Appraiser for D.S. Rogers & Associates, Inc.

For the Respondent -- Jeffrey S. Dible, Attorney.

Joseph O'Connor, Pike Township Assessor's Office.

Nancy J. Van Dyke, Pike Township Assessor's Office.

6. All persons representing the Petitioner and Respondent, except the two attorneys, were sworn in. All testimony and exhibits submitted at the original hearing were considered in this rehearing.
7. The Board's representatives at the rehearing did not view the property.

Issue

8. Whether the subject improvements should receive 55% external (economic) obsolescence.

Analysis of the Issue

9. In the request for rehearing, the Petitioner observed that "the Board determined that the Appraisal [submitted at the original hearing] was flawed for the following three reasons: (1) Use of actual rents and expenses to determine the income value of the property; (2) Determination of capitalization rate; and (3) Determination of the effective age." (Board

Item D). The rehearing request was granted to permit the Petitioner the opportunity to address these concerns regarding the obsolescence calculation.

10. In its original Final Determination, the Board concluded that the Petitioner's obsolescence calculation did not conform to generally recognized appraisal standards established by the International Association of Assessing Officers (IAAO). The Petitioner, however, asserted that its calculation complied with generally recognized standards established by the Appraisal Institute (Rogers Testimony). The Board will therefore evaluate the Petitioner's calculation in light of material contained in The Appraisal of Real Estate (12th ed.), published by the Appraisal Institute in 2001.

Use of actual rents and expenses to determine the income value of the property

11. The request for rehearing summarized the Petitioner's argument concerning this point: "In the Appraisal, Mr. Rogers stated that there are two comparable properties, Westlane Plaza and Target Northwest Shopping Center, both of which are located in close proximity to Augusta Plaza. Because the two comparable properties have not been sold, there is no way to obtain their financial data. At the Hearing on the Petition for Review of Assessment conducted by the Appeals Division, and in the January 16, 2001 letter to Sandra K. Bickel [Citation omitted], Mr. Rogers stated that he searched both the Indianapolis Market Data Bank (IMDB) and the Indiana Real Estate Data, Inc. (IRED) databases for the incomes and expenses of comparable properties. Finding none, he concluded, in accordance with generally recognized appraisal principles, that the actual reported rents for Augusta Plaza were the best evidence of economic rents for Augusta Plaza." (Board Item D).
12. Although the Petitioner repeatedly asserted at both administrative hearings that the obsolescence calculation using only data from the Petitioner's business conformed to generally accepted appraisal principles, professional authority indicates otherwise. Indeed, the Appraisal Institute consistently emphasizes the necessity of the use of comparable properties throughout its explanation of the income capitalization approach.

13. “The income capitalization approach supports two basic methodologies: direct capitalization, which uses the relationship of one year’s income to conclude a value, and yield capitalization, which considers a series of cash flows over time together with any reversion value or resale proceeds.

As an initial step, both methods require a comprehensive study of historical income and expenses for the subject property. **This study is combined with an analysis of typical income and expense levels for comparable properties.**” Appraisal Institute, *The Appraisal of Real Estate* 493 (12th ed. 2001) (Emphasis added).

14. “Yield capitalization will require a consideration of probable income and expenses over the designated holding period, anywhere from five to ten years. When this method is used, the appraiser must forecast income and expenses over time together with the eventual reversion or resale value of the property. Direct capitalization, on the other hand, requires a one-year cash flow estimate (date of valuation plus next 12 months) to use for application of an overall rate to estimate value. **This method inherently relies upon sales of properties with similar income characteristics including future expectations.**” *Id* (Emphasis added).

15. “Direct capitalization makes use of a single year’s income and a market-derived factor or overall capitalization rate. Initially, the process appears rather simple. The practitioner need only estimate the income and the factor or overall capitalization rate. **In this analysis, the most important consideration is choosing sales with similar income and expense expectations over time.** In contrast, the application of yield capitalization requires the practitioner to set forth explicit forecasts of income, expenses, and changes in vacancy levels and expenditures over the holding period. The net sale price of the property at the end of the holding period must also be estimated. The concluded yield rate is then applied to convert anticipated economic benefits into present value. **Yield rates must be derived from properties with similar characteristics.**” *Id* at 494 (Emphasis added).

16. “Although there are various income capitalization techniques available to the appraiser, **certain steps are essential** in applying the income capitalization approach. Before applying any capitalization techniques, an appraiser must work down from potential gross income to net operating income. To do this, the appraiser will
 1. Research the income and expense data for the subject property **and comparables...**” *Id* at 493 (Emphasis added).
17. “To derive pertinent income and expense data, an appraiser investigates comparable sales and rentals of competitive income-producing properties of the same type in the same market...Appraisers try to obtain all income and expense data from the income-producing properties used as comparables.” *Id* at 501.
18. The Appraisal Institute further discussed the correct procedures when only minimal data from comparable properties is available.
19. “The amount of data needed to support a market rent estimate for a subject property depends on the complexity of the appraisal problem, the availability of directly comparable rentals, and the extent to which the pattern of adjusted rent indications derived from the comparables differs from the income pattern of the subject property. When sufficient, closely comparable rental data is not available, the appraiser should include other data, preferably data that can be adjusted. If an appraiser uses proper judgment in making adjustments, a reasonably clear pattern of market rents should emerge.” *Id*.
20. Clearly, there would be no need to make adjustments if the income capitalization approach required the use of only data from the property under appeal. Indeed, the Appraisal Institute recognizes the need for “a reasonably clear pattern of market rents.” *Id*. The Petitioner failed to explain the manner in which rental data from only one property (its own) constitutes a “pattern.”
21. In describing the databases in fact used to prepare the obsolescence calculation (MDB and IRED), the Petitioner testified: “The local databases are all not for profit, things that

are, just contributions from people who have the time to haphazardly upload information they've run across." Further, the Petitioner asserted data from comparable properties was not available.

22. Testimony from the Petitioner's accountant indicated that additional income data for other properties was, in fact, available. Discussing the purchase of demographic software used by the Petitioner, Mr. Cisna testified: "Anything above 250,000 square feet, the information, the data they [the vendor] give you is free...The next group was 100,000 plus square feet, ...we had to pay a little bit to get that, that demographic information, and then the last group is not rare, but...pay quite a bit more for the database for anything less than or equal to 100,00 square feet [the property under appeal is approximately 70,000 square feet]... unless you want to really pay for that information - it's out there - but you have to pay for a separate database to even get that information."
23. As discussed, the Petitioner's obsolescence calculation does not conform in several critical respects to the generally recognized standards of either the IAAO or the Appraisal Institute. The Appraisal Institute considers the use of comparable properties to be "inherent", "essential," and "the most important consideration" in the income approach. However, the Petitioner's conclusion that income and expense data of comparable properties was not available was based on a review of only two local databases described by the Petitioner as containing data furnished on a "haphazard" basis. The Petitioner cited to no professional authority for its position that the use of data derived only from the property being appealed is acceptable in the income capitalization approach. Indeed, both the IAAO and the Appraisal Institute contradict this claim.
24. The Board cannot find the Petitioner's flawed obsolescence calculation probative, especially when the Petitioner made a business decision to forego obtaining available market data that conceivably would have enabled it to produce a credible calculation in accordance with professional standards. *Whitley Prods. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1121, n. 16 (Ind. Tax 1998) ("The Court will ordinarily expect that a taxpayer will come forward with a large amount of evidence relating to the issue raised by the taxpayer.").

25. The Petitioner has therefore failed to establish that its calculation, using only income and expense data from its own business, conforms to generally accepted standards of recognized appraisal practice.

Determination of capitalization rate

26. The request for rehearing summarized the Petitioner's argument concerning this point: "Because there were no sales of comparable properties on which to base a determination of the capitalization rate, Mr. Rogers, in conformance with generally recognized appraisal principles, used published sources and his knowledge of the market to determine the appropriate capitalization rate." Board's Exhibit D.
27. In support of its position, the Petitioner presented evidence of the capitalization rates for several different types of properties. For example, this data included properties varying from 5,300 square feet to 89,432 square feet. It further included multifamily housing, office, and industrial facilities. (Petitioner's Exhibit 8).
28. The overall capitalization rate of 12% used by the appraiser was determined using rates from these other properties and then estimating the rate of the subject based on a comparison of the quality of the subject with other shopping centers. For example, Willow Lake was sold in September of 1997 and the capitalization rate was 10.89%. *Id.* The appraiser testified that Willow Lake is much better quality and has a better location and better tenants than Augusta Plaza, therefore the rate for the subject property would be higher.
29. However, the Petitioner presented no explanation of adjustments to indicate that the quality, location, and tenants of Augusta Plaza would equate to a capitalization rate of 12%, rather than some other amount. Without such a foundation, the Petitioner's conclusions are unreviewable. *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801, 806, n. 8 (Ind. Tax 1998).

30. The Petitioner's unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
31. The Petitioner has therefore failed to establish that the capitalization rate used in its calculation is credible.

Determination of the effective age

32. The request for rehearing summarized the Petitioner's argument concerning this point: "Mr. Rogers testified that he used Marshall Valuation Services to determine the cost value of the Augusta Plaza, less physical depreciation. He did not use the Indiana True Tax Value Assessment system to determine the effective age of the property; rather he used generally recognized appraisal principles." Board's Exhibit D.
33. As a result of this change in the effective age, the physical depreciation of the improvements was changed from 40% to 30%.
34. "In the cost approach, a property is valued based on a comparison with the cost to build a new or substitute property. The cost estimate is adjusted for **the depreciation evident in the existing property.**" Appraisal Institute, *The Appraisal of Real Estate* 349 (12th ed. 2001) (Emphasis added).
35. Further, in holding that it was appropriate to apply the same percentage of physical depreciation to a replacement structure as was applied in the determination of the remainder value, the Tax Court observed "it makes no sense to deduct different depreciation percentages, because the objective is to reflect the physical condition of the subject property... If the same percentage of physical depreciation is not assigned to both buildings, the resulting figure will not accurately reflect the subject improvement's depreciated excess construction cost." *Inland Steel Co. v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 215 (Ind. Tax 2000), *review denied*.

36. The Petitioner has failed to identify any authority for its position that the amount of physical depreciation the structure received may be changed in its cost approach calculation. The Petitioner has therefore failed to demonstrate that the change in effective age was made in accordance with generally accepted appraisal practices.

37. Summarizing, a comparison of the procedures used by the Petitioner and those mandated by both the IAAO and the Appraisal Institute indicates numerous and significant discrepancies in the quantification of obsolescence calculation presented by the Petitioner. Repeated conclusory statements that the obsolescence calculation was prepared in accordance with generally accepted standards do not constitute probative evidence, especially when contradicted by two of the foremost authorities in the industry, the IAAO and the Appraisal Institute. *Clark v. Dep't of Local Gov't Fin.*, 779 N.E.2d 1277, 1282, n. 4 (Ind. Tax 2002). (“It is the taxpayer’s duty to walk the Court through every element of the analysis. If the analysis is quantification of economic or functional obsolescence, then the taxpayer must carefully, methodically, and in detail brief this Court as to what the amount of obsolescence should be and why.”).

38. For all the reasons above, the Petitioner failed to meet its burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

39. After considering all additional testimony and explanation given at the Rehearing, the Board REAFFIRMS the original Final Determination issued on September 21, 2001.

This Supplemental Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, 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.