

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

**Petition #:** 41-025-02-1-4-00024  
**Petitioner:** McDonald's Corporation  
**Respondent:** Pleasant Township Assessor (Johnson County)  
**Parcel #:** 2500340500801  
**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 Johnson County Property Tax Assessment Board of Appeals (PTABOA) by written document dated July 10, 2003.
2. The PTABOA issued the notice of its final assessment determination on October 10, 2003.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on November 7, 2003. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated May 11, 2004.
5. The Board held an administrative hearing on July 21, 2004, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
  - a) For Petitioner: Milo Smith, tax representative.
  - b) For Respondent: Mark Alexander, Johnson County PTABOA.

**Facts**

7. The property is classified as commercial (fast food restaurant), as is shown on the property record card for parcel #2500340500801.

8. The Administrative Law Judge did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Johnson County PTABOA:  
Land: \$164,300      Improvements: \$473,900.
10. Assessed Value requested by Petitioner:  
Land: \$164,300      Improvements: \$380,000.

### **Issues**

11. Summary of Petitioner's contentions in support of alleged error in assessment:
  - a) The grade for this type of property should be "B", as shown in the Version A - Real Property Assessment Guideline (Guideline), Appendix E, page 55.
  - b) The property is currently a "B+2" grade; however, according to Appendix E, page 5 of the Guideline, "[t]he assessor should steer away from using intermediate quality grades if at all possible." Furthermore, Appendix E, page 55 of the Guideline shows a photograph of a McDonald's Restaurant that is graded "B."
  - c) The physical depreciation should be changed from 35% to 40%.
12. Summary of Respondent's contentions in support of the assessment:  
The Petitioner made no mention of the value-in-use for the property.

### **Record**

13. The official record for this matter is made up of the following:
    - a) The Petition, and all subsequent pre-hearing and post-hearing submissions by either party.
    - b) The tape recording of the hearing labeled BTR #5548.
    - c) Exhibits:
      - Petitioner Exhibit 1: Current property record card for the subject property.
      - Petitioner Exhibit 2: Version A - Real Property Assessment Guideline, Appendix E, page 5.
      - Petitioner Exhibit 3: Version A - Real Property Assessment Guideline, Appendix E, page 55.
      - Petitioner Exhibit 4: Version A - Real Property Assessment Guideline, Appendix F, page 38.
      - Petitioner Exhibit 5: Version A - Real Property Assessment Guideline, Appendix G, page 42.
      - Petitioner Exhibit 6: Subject property record card showing pricing requested by Petitioner.
    - d) These Findings and Conclusions.
- The Respondent presented no exhibits.

## Analysis

14. The most applicable governing cases and regulations are:
- a) The Petitioner must sufficiently explain the connection between the evidence and Petitioner's assertions in order for it to be considered material to the facts. *See generally, Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
  - b) The Board will not change the determination of the PTABOA unless the Petitioner has established a prima facie case and, by a preponderance of the evidence, proven both the alleged errors in the assessment and specifically what assessment is correct. *See Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E.2d 765 (Ind. Tax Ct. 1997).
  - c) *Version A - Real Property Assessment Guideline, Glossary, page 9*: Grade is defined as the "classification of an improvement based on certain construction specifications, design and quality of materials and workmanship."
  - d) *Version A - Real Property Assessment Guideline, Appendix E, page 5*: "The assessor should emphasize the quality of materials and workmanship used in the construction of the structure when conducting this analysis [to determine grade] and place less reliance on the pictures of graded structures."
15. The Petitioner did not provide sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
- a) The Petitioner contended the grade of the fast food restaurant should be changed from "B+2" to "B."
  - b) The Petitioner presented evidence and testimony regarding the subject property's grade and construction by submitting the current property record card. *Smith Testimony; Petitioner Exhibit 1*. The Petitioner also presented evidence reflecting the current Guideline's approach to grade and the preference of avoiding intermediate grades. *Petitioner Exhibits 2-5*.
  - c) However, the Guideline does not prohibit intermediate grades; it merely discourages the application of such. *Version A - Real Property Assessment Guideline, Appendix E, page 5*.
  - d) The Courts have recognized several methods to establish error in grade. However, the Petitioner presented no "specific evidence tied to the descriptions of the various grade classifications." *Sollers Pointe Co. v. Department of Local Government Finance*, 790 N.E.2d 185 (Ind. Tax 2003). Further, no evidence was presented of comparable properties that were assessed differently than the Petitioner's property. *Deer Creek Developers, Ltd. v. Department of Local Government Finance*, 769 N.E.2d 259 (Ind. Tax 2002). Also, no records to establish constructions costs were offered into evidence. *State Board of Tax Commissioners v. Garcia*, 766 N.E.2d 341 (Ind. 2002).
  - e) Instead, the Petitioner presented only one page from the Guideline, indicating a McDonald's Restaurant that had received a grade of "B."

- f) However, the Petitioner made no comparison of construction characteristics between the McDonald's Restaurant in the Guideline photograph and the property under appeal.
- g) Furthermore, the Petitioner's reliance on the graded picture from the Guideline is misplaced. The Guideline itself instructs assessors to place less reliance on the pictures and more on the materials and workmanship. *Version A - Real Property Assessment Guideline, Appendix E, page 5.*
- h) Given those instructions, the Petitioner's minimal evidence and testimony concerning the subject property's materials and workmanship is hardly enough to support a change in the grade of the structure.
- i) The Petitioner further contended the structure should receive 40% depreciation. It is currently receiving 35% depreciation.
- j) Fast food restaurants are considered special use commercial properties. *Version A - Real Property Assessment Guideline, Appendix F, page 36.*
- k) Instructions for calculating total depreciation for special use commercial properties are as follows (*Version A - Real Property Assessment Guideline, Appendix F, page 37*):
- Step 1:* Assign a structure condition classification to the structure relative to structures of similar age.
  - Step 2:* Determine the effective age of the structure by correlating the actual age (weighted age) with the structure condition classification in Table F-2, Actual Age to Effective Age Conversion Table.
  - Step 3:* In the "Effective Age" column of the Special Use Commercial Property Depreciation Table, locate the row corresponding to the effective age of the building.
  - Step 4:* Find the intersection of the selected row (effective age) and the "Depreciation" column. This number is the total depreciation percentage for the building.
- l) A review of the property record card (*Petitioner Exhibit 1*) indicates the Respondent performed the following steps to determine the percentage of depreciation:
- Step 1:* The condition was determined to be Average. The Petitioner did not challenge this condition classification. *Petitioner Exhibit 6, Proposed revised property record card (indicating Average condition).*
  - Step 2:* Depreciation of commercial structures is based on the number of years that have elapsed from the date of construction to the valuation date, January 1, 1999. *Version A - Real Property Assessment Guideline, Appendix F, page 5.* The property record card indicates the structure was built in 1990; the Petitioner did not challenge this year of construction. *Petitioner Exhibit 6, Proposed revised property record card (indicating a year of construction of 1990).* A nine-year old structure in Average condition has an effective age of eight years. *Version A - Real Property Assessment Guideline, Appendix F, page 24.*

*Step 3 and Step 4:* The intersection of the “Effective Age” column for a structure with an effective age of eight years and the “Depreciation” column indicates a total depreciation percentage of 35%, as currently assessed. *Version A - Real Property Assessment Guideline, Appendix F, page 38.*

- m) The Petitioner has therefore failed to show error in the amount of the total percentage of depreciation applied to the structure.

### **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.**