

REPRESENTATIVES FOR PETITIONER:

Debra A. Hague
James A. Hague III

REPRESENTATIVE FOR RESPONDENT:

Mark Alexander

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Tameka Woods Family Limited	)	Petition No.:	41-015-03-1-4-00364
Partnership	)	Parcel:	7000100102700
)		
Petitioner,)		
)		
v.)		
	)	County:	Johnson
Hensley Township Assessor,	)	Township:	Hensley
	)	Assessment Year:	2003
Respondent.)		

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

June 29, 2005

FINAL DETERMINATION

The Indiana Board of Tax Review (the “Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The Petitioner presented the following issues as restated by the Board:
 1. *Whether the Respondent failed to tax golf courses in a uniform and equal manner when it assessed and taxed the subject property but did not tax municipal courses with which the subject property is in competition;*
 2. *Whether the Petitioner is entitled to an adjustment for obsolescence; and*
 3. *Whether the overall assessment of the subject property is excessive.*

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, the Petitioner filed a Form 131 Petition for Review of Assessment (“Form 131 Petition”), petitioning the Board to conduct an administrative review of the assessment of the subject property. The Petitioner filed its Form 131 Petition on January 12, 2004. The Johnson County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on December 12, 2003.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on March 30, 2005, in Franklin, Indiana before Ken Daly and Ronald Gudgel, the duly designated Administrative Law Judges (ALJs) authorized by the Board under Ind. Code § 6-1.5-3-3.¹
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Debra A. Hague, authorized representative
James A. Hague III, authorized representative

For the Respondent:

¹ At the request of both parties, this appeal and the appeal of a second golf course owned by a related entity (Indian Springs, Inc., petition #41-020-03-1-4-00365) were consolidated. For purposes of clarity and ease of administration, the Board has issued a separate Final Determination for each case.

Mark Alexander, Representative of the PTABOA

5. The following exhibits were presented for the Petitioner:
 - Petitioner Exhibit 1: Escalating taxes, declining revenues
 - Petitioner Exhibit 2: Equal & Uniform
 - Petitioner Exhibit 3: An Income Approach
 - Petitioner Exhibit 4: Functional Obsolescence
 - Petitioner Exhibit 5: The Golf Industry
 - Petitioner Exhibit 6: What our business is currently worth
 - Petitioner Exhibit 7: Five (5) pages of photographs

6. The following exhibits were presented for the Respondent:
 - Respondent Exhibit 1: Property record card (PRC) for the subject property
 - Respondent Exhibit 2: Notice of Authorization from the Township Assessor

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A: Form 131 Petition
 - Board Exhibit B: Notice of Hearing on Petition dated January 19, 2005
 - Board Exhibit C: Sign-in Sheet
 - Board Exhibit D: Request for consolidation of hearings

8. The subject property is a golf course located in Hensley Township, Johnson County.

9. The ALJs did not conduct an on-site inspection of the subject property.

10. For 2003, the PTABOA determined the assessed values of the property to be:
 - Land: \$163,400 Improvements: \$574,600 Total: \$738,000

11. For 2003, the Petitioner contends, per the Form 131 Petition, that the assessed values of the property should be:
 - Land: \$114,450 Improvements: \$156,500 Total: \$270,950

12. The subject property appears to be operated by the same entity and/or individuals that operate Indiana Springs, another golf course in area. *D Hague testimony*. Debra A.

Hague and James A. Hague, III presented the cases in support of the appeals contesting the assessments of both properties.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

14. 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).
15. 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”).
16. 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.

ANALYSIS

Parties' Contentions

17. The Petitioner presented the following evidence and argument in support of their claims:
- A. The Petitioner's property taxes have increased in recent years while revenues have declined. *D. Hague testimony; Petitioner Exhibit 1.*
 - B. The subject property is in direct competition with municipal courses that are tax exempt. *D. Hague testimony; Petitioner Exhibit 2.* Accordingly, the Petitioner argues that the subject property has not been taxed in a uniform and equal manner compared to municipal courses. *D. Hague argument.*
 - C. There is a surplus of golf courses both nationally and locally, which has had a negative impact on the operation of the subject property. *D. Hague testimony; J. Hague testimony; Petitioner Exhibit 5.* The Petitioner has attempted to cut costs in recent years, resulting in deferred maintenance. *Id.* The Petitioner's operator has practiced economies of scale by purchasing chemicals in bulk and using one truck for both the subject property and Indiana Springs. *Id.* That operator recently leased a third course to further reduce expenses. *D. Hague testimony; J. Hague testimony; Petitioner Exhibit 5.*
 - D. The subject golf property has experienced functional obsolescence as a result of sub-standard construction of its greens, an inadequate irrigation system, and deficiencies in the buildings located on the property. *D. Hague testimony; Petitioner Exhibits 4, 6.* In addition, the buildings on the subject property are in a state of disrepair. *Id.* A wall to the pump house is crumbling. *Id.; Petitioner Exhibit 7.* The Petitioner submitted five pages of photographs purporting to show those deficiencies. *Petitioner Exhibit 7.* Moreover, the house contained on the subject property cannot

- be sold as a residence, because it is located in the middle of the golf course. *D. Hague testimony.*
- E. The subject land should be valued at \$1,050 per acre - the same rate as farmland. *D. Hague testimony; J. Hagu testimony; Petitioner Exhibit 6.* The subject buildings should be valued at \$115,000. *Id.* The Petitioner's asserted valuation is based upon replacement cost estimates Debra Hague obtained for insurance purposes in 2002 or 2003. *Id.*
- F. The Petitioner also presented a calculation purporting to value the subject property by using the income approach to value. *D. Hague testimony; Petitioner Exhibit 3.* The calculation is base on income and expense statements for 1999-2001 and applies a 10% capitalization rate to the net income for each year to arrive at an average negative value of \$176,331.47. *Id.* The Petitioner contends that the capitalization rate of 10% is conservative, and that investors generally would require a 15% rate of return given the risk inherent in the golf industry. *D. Hague testimony.*
18. The Respondent presented the following evidence and argument in support of the current assessment:
- A. The Respondent only assesses the value of property – it has no control over the amount of taxes paid by the Petitioner. *Alexander argument.*
- B. The Petitioner did not file an exemption request for the subject property. *Alexander testimony.* Therefore, the golf course is a taxable entity. *Id.*
- C. The Petitioner did not quantify the amount of obsolescence sought. *Alexander argument.* The calculations presented by the Petitioner may establish a value for the operator's business, but they do not show the value of the real property. *Id.* Moreover, the Petitioner's calculation includes an expense for renting the subject property. That is an inappropriate expense. *Id.*

D. The Respondent presented the current property record card for the subject property.
Respondent Exhibit 1.

Discussion

1. Whether the Respondent failed to tax golf courses in a uniform and equal manner when it assessed and taxed the subject property but did not tax municipal courses with which the subject property is in competition

19. The Petitioner contends that county and municipal golf courses pay no property taxes and are funded by tax revenues, creating unfair competition and leading to taxation that is not uniform and equal. *Petitioner Exhibit 1.*
20. Article X section 1 of the Indiana Constitution provides that “[t]he General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation” Ind. Const. art. X, § 1(a). That section, however, further provides that the General Assembly may exempt from property taxation certain classes of property, including property being used for “municipal purposes.” Ind. Const. art. X, § 1(a)(1). The General Assembly exercised its constitutional power to exempt such property by enacting Indiana Code § 6-1.1-10-4, which provides that “[e]xcept as otherwise provided by law, the property owned by a political subdivision of this state is exempt from property taxation[,]” and Indiana Code § 6-1.1-10-5(2), which specifically exempts from taxation “a municipally owned park [or] golf course. . . .”
21. Thus, the very constitutional provision that gives rise to the right to uniform and equal taxation specifically recognizes that the General Assembly may elect to treat certain classes of property, including municipal golf courses, differently than other property by exempting those classes of property from taxation entirely. The fact that the General Assembly acted upon its explicitly delineated authority and exempted municipal golf courses cannot provide the basis for a challenge to the uniformity or equality of taxation.

22. As the Indiana Supreme Court long ago recognized “[w]hat property shall be taxed, and how it shall be taxed, are legislative questions, so long as there is uniformity and equality of rate as to those of the same class; and the subjects and methods of taxation are legislative matters, and cannot be disturbed so long as the method prescribed is applicable alike to all within the prescribed class.” *Davis v. Sexton*, 210 Ind. 138, 200 N.E. 233, 241 (1936).
23. The Petitioner failed to demonstrate that the subject property is assessed any differently than other privately owned golf courses. Absent such a showing of disparate treatment, the Petitioner has failed to make a prima facie case that its property is not assessed in a uniform and equal manner.

2. Whether the Petitioner is entitled to an adjustment for obsolescence

24. The Petitioner next claims that the subject property is entitled to an adjustment for functional obsolescence. A brief explanation of the concepts of depreciation and obsolescence under the applicable administrative rules and case law will help illustrate the Petitioner’s burden of proof on this issue.
25. The Respondent assessed the subject property by applying the Real Property Assessment Guidelines for 2002 -Version A (hereinafter “Assessment Guidelines”). The Assessment Guidelines represent an acceptable method of mass appraisal based upon the cost approach to value. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 13, 17 (incorporated by reference at 50 IAC 2.3-1-2).
26. The Assessment Guidelines generally provide for the determination of the replacement cost new of improvements through reference to cost tables. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 -VERSION A, 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, however, only sets the upper limit of value for

improvements. *Id.* The Assessment Guidelines also require that accrued depreciation be accounted for in valuing an improvement. *Id.*, app. F at 4. Under the Assessment Guidelines, depreciation consists of three separate things: physical deterioration, functional obsolescence and external obsolescence. *Id.* Physical deterioration 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.*

27. The Assessment Guidelines account for normal depreciation through the assignment of typical life expectancies and 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.*

28. Consequently, a taxpayer alleging that it is entitled to an adjustment for abnormal obsolescence has a two-prong burden of proof: (1) the taxpayer must identify the causes of the claimed obsolescence, and (2) the taxpayer must quantify the amount of such obsolescence. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax 1998).

29. The Petitioner claims that the subject property has experienced functional obsolescence as a result of the following: (1) the irrigation system is inadequate and must be upgraded; (2) the golf course is in direct competition with a government owned course; (3) the greens are of sub-standard construction; and (4) the house that sits in the middle of the golf course cannot be sold as a residential dwelling due to its location. *Petitioner Exhibit 4*. The Petitioner also contends that the property has experienced economic obsolescence as a result of an overabundance of golf courses in the area. *D Hague testimony; Petitioner Exhibit 5*.²

² While not explicitly framed as such, the Board will construe the Petitioner's argument asserting an overabundance of local golf courses as including a request for an adjustment based upon economic obsolescence.

30. Even if the Board were to assume that the above listed factors resulted in a loss in value not accounted for through the application of normal depreciation estimates, the Petitioner failed to quantify the amount of abnormal obsolescence from which the property suffered. Indeed, the Petitioner never even identified the amount of abnormal obsolescence being sought.
31. Accordingly, the Petitioner failed to make a prima facie case regarding its claim for an obsolescence adjustment.

3. *Whether the overall assessment of the subject property is excessive*

32. While the Petitioner did not attempt to quantify the amount of obsolescence suffered by the subject property, it did present two calculations purporting to establish the property's overall market value.
33. First, the Petitioner presented a calculation prepared by Debra Hague quantifying the total value of the subject land, pro shop, maintenance shed and house as \$231,000.³ *Petitioner Exhibit 6*. Hague arrived at that number by valuing the land and structures separately and adding those two values together. *Id.*
34. Hague valued the land at the rate of \$1,050 per acre – the base rate for agricultural land under the Assessment Guidelines. *Id.*; *Board Exhibit A* at 2. In doing so, Hague ignored the fact that land shall be assessed as agricultural only when it is devoted to agricultural use. I.C. 6-1.1-4-13.
35. It is true that Assessment Guidelines direct assessing officials to value golf course land at the rate of \$1050 per acre, the same as agricultural land. GUIDELINES, app. G at 37. Unlike agricultural land, however, the Assessment Guidelines provide for the valuation of improvements to golf course land such as tees, greens, bunkers, lakes, sprinkler

³ As previously indicated, the Petitioner requested a total assessed value of \$270,950 on its Form 131 Petition. *Board Exhibit A* at 2. The Petitioner offered no explanation for the difference in requested values.

systems, site preparation and landscaping. *Id.* The Assessment Guidelines account for such improvements by assigning a base cost per hole. *Id.* The base cost varies depending upon the quality grade assigned to the course. *Id.*; *Respondent Exhibit 1.* The Respondent assigned a quality grade of “D” to subject golf course, resulting in a base cost per hole of \$23,000. *Respondent Exhibit 1.* Hague did not include any cost for the improvement and development of the subject land in her calculation. Thus, Hague’s valuation of the subject land does not comply with the Assessment Guidelines.

36. The Petitioner therefore was required to present market based evidence to support its contention regarding the value of the subject land. Hague simply asserted that a potential investor would pay no more than \$1,050 per acre for the land in light of the business losses experienced by the operator of the subject course. Hague’s unsubstantiated assertions in that regard lack probative value. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
37. Hague’s valuation of the subject improvements suffers from similar flaws. Hague testified regarding what she believed to be the replacement costs of the pro shop, maintenance shed, and house located on the subject property. *D. Hague testimony.* Hague further testified that she derived those values from replacement costs obtained for insurance purposes in 2002 or 2003. *Id.*
38. As an initial matter, Hague’s calculation is incomplete, because it does not include a value for paving that is identified and valued on the property record card. *Respondent Exhibit 1.* Moreover, Hague did not explain how her purported replacement costs were calculated. Thus, Hague’ assertions regarding those costs amount to little more than conclusory statements. As explained above, such statements lack probative value. *Whitley Products*, 704 N.E.2d at 1119.
39. The Petitioner also presented a calculation of value prepared by Debra Hague based upon a capitalization of net income. *Petitioner Exhibit 3.*

40. “The income approach to value is based on the assumption that potential buyers will pay no more for the subject property . . . than it would cost them to purchase an equally desirable substitute investment that offers the same return and risk as the subject property.” 2002 REAL PROPERTY ASSESSMENT MANUAL 14 (incorporated by reference at 50 IAC 2.3-1-2).
41. Hague based her calculation on the income and expenses of the subject golf course for the years 1999 through 2001. *Petitioner Exhibit 3*. Hague concluded that the average value of the golf course for those three years was a negative \$176,331.47. *Id.*
42. The income approach to value focuses on the intrinsic value of the property, not upon a given petitioner’s relative lack of success in operating that property. Thus, it is important to know not just what the petitioner’s income and expenses are, but also the amount of income and expenses attributable to the operation of similar properties. Hague presented financial data solely from the operation of the subject property, without offering any evidence to demonstrate whether that data was typical for the operation of comparable eighteen hole golf courses.
43. Moreover, the value Hague derived from her application of the income approach makes it almost useless in valuing the subject property. If the Board were to credit Hague’s calculation, the subject property would be absolutely valueless. This not only defies logic, but conflicts with Hague’s own estimate that the property is worth \$231,000. *D. Hague testimony; Petitioner Exhibit 6.*
44. At most, the Petitioner might rely on Hague’s calculation as some evidence that, given the net operating losses of the subject property, the current assessment is excessive. Hague’s calculation, however, does little to demonstrate what the market value-in-use of the property actually is. As explained above, it is not enough simply to show that the assessment is incorrect. Instead, the Petitioner bears the burden of demonstrating what the correct assessment should be. *Meridian Towers*, 805 N.E.2d at 478.

45. Based on the foregoing, the Petitioner failed to establish a prima facie case for a change in assessment.

SUMMARY OF FINAL DETERMINATION

46. The Petitioner failed to make a prima facie case of error. The Board finds in favor of the Respondent. There is no change in the assessment.

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

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>.