

REPRESENTATIVES FOR PETITIONER: Jerry Ziemer, President, Ziemer Funeral Home.

REPRESENTATIVES FOR RESPONDENT: J.F. Rick Barter, Hearing Officer, Vanderburgh County Assessor’s Office

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

TED ZIEMER FOUNTAIN)	
TERRACE CHAPELS, INC.,)	
)	
Petitioner)	
)	
v.)	Petition No.: 82-020-96-1-4-00010
)	County: Vanderburgh
)	Township: Center
VANDERBURGH COUNTY)	Parcel No.: 12-200-34-235-003
BOARD OF REVIEW and)	Assessment Year : 1996
CENTER TOWNSHIP ASSESSOR)	
)	
Respondents)	
)	

Appeal from the Final Determination of
Vanderburgh County Board of Review

[DATE OF ISSUANCE]

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:

Findings of Fact and Conclusions of Law

1. Pursuant to Ind. Code § 6-1.1-15-3 James L. Angermeier filed a Form 131 on behalf of Ted Ziemer Fountain Terrace Chapels, Inc. (the Petitioner), petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on December 12, 1997. The determination of the BOR was issued on November 12, 1997.

Hearing Facts and Other Matters of Record

2. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on May 21, 2002 in Evansville, Indiana before Joan L. Rennick, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

3. The following persons were present at the hearing:

For the Petitioner:

Mr. Jerry Ziemer, President of Ziemer Funeral Home

For the Respondent:

Mr. J.F. Rick Barter, Hearing Officer, Vanderburgh County Assessor's office.

4. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Mr. Jerry Ziemer

For the Respondent:

Mr. J.F. Rick Barter.

5. The following exhibits were presented:

For the Petitioner:

Ted Ziemer Fountain Terrace Chapels, Inc.
Findings & Conclusions
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Petitioner's Exhibits A-D – Property record cards for funeral homes in the area for Issue #1.

Petitioner's Exhibit E – Graph showing the 1997 funeral home statistics for the area.

Petitioner's Exhibit F – Comparison of services for Ziemer and Alexander funeral homes (1997).

Petitioner's Exhibit G – Page 39 of an appraisal

Petitioner's Exhibit H – Detailed sales reports for 1996, 1997, and 1998.

Petitioner's Exhibit I (7A) – Highlighted paragraph from Article X § 1 of the Indiana Constitution.

Petitioner's Exhibit J (7B) – Highlighted paragraph describing obsolescence depreciation .

Petitioner's Exhibit K (7C) – Highlighted paragraph showing uniformity requirements of the State Constitution.

For the Respondent:

Respondent's Exhibit A – Brief including:

- (1) Response to the taxpayer's issues
- (2) Photographs of the subject property
- (3) Copy of the BOR Final Determination
- (4) Plat map of the subject area
- (5) Copy of *Canal Square Limited Partners v. SBTC*
- (6) Minutes from the BOR hearing of October 17, 1997

6. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

[A] Copy of the Form 131

[B] Notice of Hearing.

7. The subject property is a funeral home located at 6316 First Avenue, Evansville, Center Township, Vanderburgh County. The Administrative Law Judge did not view the property.
8. The issues presented for consideration by the Board were:
 - ISSUE 1 – *Whether the grade factor is excessive.*
 - ISSUE 2 – *Whether functional and economic obsolescence is warranted.*
 - ISSUE 3 – *Whether the use classification of the basement is correct.*

Jurisdictional Framework

9. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
10. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

Indiana's Property Tax System

11. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
12. Indiana has established a mass assessment system through statutes and regulations designed to assess property according to what is termed "True Tax Value." See Ind. Code § 6-1.1-31, and 50 Ind. Admin. Code 2.2.
13. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).

14. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property's market value. See *Town of St. John V*, 702 N.E. 2d.
15. The Indiana Supreme Court has said that the Indiana Constitution “does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each individual assessment”, nor does it “mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant”, but that the proper inquiry in tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” See *Town of St. John V*, 702 N.E. 2d.
16. Although the Supreme Court in the *St. John* case did declare the cost tables and certain subjective elements of the State's regulations constitutionally infirm, it went on to make clear that assessment and appeals must continue to be determined under the existing rules until new regulations are in effect.
17. New assessment regulations have been promulgated, but are not effective for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

State Review and Petitioner's Burden

18. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
19. The petitioner must submit ‘probative evidence’ that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *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). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]

20. The petitioner has a burden to present more than just ‘de minimis’ evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm 'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]
21. 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. ‘Conclusory statements’ are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm 'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
22. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm 'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).
23. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a ‘prima facie case’ and, by a ‘preponderance of the evidence’ proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm 'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm 'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A ‘prima facie case’ is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner’s position is correct. The petitioner has proven his position by a ‘preponderance of the evidence’ when the petitioner’s evidence is

sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of Issues

Discussion of Issue 1: Whether the grade factor is excessive.

24. The Petitioner contends that the correct grade for the subject structure is C+1.
25. The Respondent contends the correct grade of the subject structure is B.
26. The applicable rule(s) governing this issue are:
- 50 IAC 2.2-1-30**
“Grade” means the classification of an improvement based on certain construction specifications and quality of materials and workmanship.
- 50 IAC 2.2-10-3(a)**
Grade is used in the cost approach to account for variations from the norm or “C” grade. The quality and design of a building are the most significant variables in establishing grade.
- 50 IAC 2.2-10-3(b)**
The pricing schedules contained in 50 IAC 2.2-11-6 reflect the “C” grade standards of quality and design unless otherwise stated. The following schedule illustrates the multiplier applied to each listed grade classification:
- (1) “A” grade indicates a multiplier of one hundred sixty percent (160%).
 - (2) “B” grade indicates a multiplier of one hundred twenty percent (120%).
 - (3) “C” grade indicates a multiplier of one hundred percent (100%).
 - (4) “D” grade indicates a multiplier of eighty percent (80%).
 - (5) “E” grade indicates a multiplier of forty percent (40%).

50 IAC 2.2-10-3(c)

Because structures sometimes fall between major grade classifications, or at intermediate grade levels a method of interpolation is built into the system. Intermediate grade levels are indicated by suffixing the letter symbol “A” through “E” of the major classification with one (1) of the following:

[Subdivisions 1-4 describe intermediate grades ranging from A+10 through E-4.]

27. Evidence and testimony considered particularly relevant to this determination include the following:
- A. The subject property is a funeral home currently assessed with a grade factor of “B”, or 120%.
 - B. The Petitioner submitted six property records and a comparison of their assessed values. The other funeral homes are graded in a range of “C” to “B+2”.
 - C. The Respondent submitted a photograph of the subject property and contends that it is of a unique design.

Analysis of Issue 1: Grade

28. The Petitioner submitted property record cards for other funeral homes, but did not show how these other properties, with such a wide range of grade factors, were comparable to the subject. In fact, none of the other properties submitted had a grade of “C+1”, the grade requested by the Petitioner.
29. The Petitioner has not sufficiently explained the connection between the evidence and his assertion that the subject should be graded “C+1”. The Petitioner has not proved that his assessment is wrong, nor has he proved what the correct assessment should be.

30. The Petitioner has a burden to present more than just ‘de minimus’ evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm’rs*, 715 N.E. 2d 1018 (Ind. Tax 1999).
31. The State will not change the determination of the County Board of Review unless the petitioner has established a ‘prima facie case’ and, by a ‘preponderance of the evidence’ prove, both the alleged error in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm’rs*, 689 N.E. 2d 765 (Ind. Tax 1997).
32. In this case, the Petitioner did not, by a preponderance of the evidence, meet the burden to prove that the current assessment is incorrect or that the proposed grade of “C+1” is correct. Accordingly, there is no change in the assessment as a result of this appeal.

Discussion of Issue 2- Whether functional and economic obsolescence warranted.

33. The Petitioner contends that 25% obsolescence should be applied.
34. The applicable rules governing Issue 2 are:
 - 50 IAC 2.2-10-7(e)(1)**

Functional obsolescence may be caused by, but is not limited to, the following:

 - (A) Limited use or excessive material and product handling costs caused by an irregular or inefficient floor plan.
 - (B) Inadequate or unsuited utility space.
 - (C) Excessive or deficient load capacity.
 - 50 IAC 2.2-10-7(e)(2)**

Economic obsolescence may be caused by, but is not limited to, the following:

 - (A) Location of the building is inappropriate for the neighborhood.
 - (B) Inoperative or inadequate zoning ordinances or deed restrictions.
 - (C) Noncompliance with current building code requirements.

- (D) Decreased market acceptability of the product for which the property was constructed or is currently used.
- (E) Termination of the need of the property due to actual or probable changes in economic or social conditions.
- (F) Hazards, such as the danger from floods, toxic waste, or other special hazards.

The Applicable Case Law Governing Issue 2 is:

***Ronald Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1233 (Ind. Tax 1998)**

Regarding obsolescence, the taxpayer has a two-prong burden of proof: (1) the taxpayer has to prove that obsolescence exists, and (2) the taxpayer must quantify it.

***Canal Square Limited Partners v. State Board of Tax Commissioners*, 694 N.E. 2d 806, 807 (Ind. Tax 1998)**

Obsolescence may be quantified using generally recognized appraisal principles.

36. Evidence and law considered particularly relevant to this determination include the following:
- A. The chart showing the 1997 funeral statistics and a list itemizing the number of services per location indicates that Ziemer had 16% of the services in 1997, while a competitor, Alexander, had 43% of the services.
 - B. A page from an appraisal that indicates the value of the property is dependent on the number of services at a particular location and the operator's perceived reputation in the community.
 - C. A highlighted excerpt from *Lake County Trust v. State Board of Tax Commissioners*, 694 N.E. 2d, 1256 in which obsolescence is described as a loss in value and two causes are highlighted, inappropriate location and market acceptability of the product or services.

D. A copy of *Canal Square Limited Partners v. State Board of Tax Commissioners* and the Respondent's testimony that the best approach to value is the income-generating ability of the business.

Analysis of Issue 2: Obsolescence

37. A review of the list of services, which covers the time period from 1987 to 1997, shows that during that time Ziemer has had from 14% to 19% of the services. During that same time frame, the Alexander Funeral homes held 42% to 47% of the services. This evidence indicates that Ziemer has, in general, kept the same market share and that market acceptability has not changed.
38. The appraisal does not specify what location is being valued. Assuming that it is for the subject property, it states that the property owner said that the range of services for a typical year is 50 to 60 services per year. This is inconsistent with the list of services attributed to the property shown on Petitioner's Exhibit E. Exhibit E shows only two years, 1994 and 1995, were in that range.
39. The Petitioner did submit detailed sales reports, but did not show that there was a loss in income.
40. The Petitioner did not establish a loss in value, nor attempt to quantify a loss.
41. In this case, the Petitioner did not, by a preponderance of the evidence, meet the burden to prove that the current assessment is incorrect or that obsolescence should be 25%. Accordingly, there is no change in the assessment as a result of this appeal.

Discussion of Issue 3: Whether the use classification of the basement is correct.

42. The Petitioner contends that the general retail classification is not appropriate for the basement because that area is used for showing caskets.

43. The Respondent contends that the casket room is finished open and the general retail classification is appropriate. The office is finished divided and the reminder is utility storage.

44. The applicable rules governing Issue 3 are:

50 IAC 2.2-10-6.1(a)(1)

The model is a conceptual tool used to replicate reproduction cost of a given structure using typical construction materials. The base rates are divided into four (4) association groupings.

50 IAC 2.2-10-6.1(a)(2)

Use type represents the model that best describes the structure.

50 IAC 2.2-10-6.1(a)(5)

Finish type is a descriptive classification denoting the extent to which the interior finish is included in the base cost. The purpose of the classification is to facilitate identification and serve as a key to certain required adjustments.

45. Evidence and testimony considered particularly relevant to this determination include the following:

- E. The entire basement area was classified as utility storage in the last assessment and was reclassified to general retail and general office for the new assessment.
- F. The Indiana Real Property Assessment Manual does not address the basement area of a funeral home.
- G. The casket showroom's finish type is "finished open." The office is finished divided and the storage area is unfinished.

Analysis of Issue 3: Use Classification

46. The Petitioner testified that in the previous reassessment, the entire basement area was classified as utility storage. The Petitioner further stated the showroom for caskets and vaults and the office area are present for the convenience of the public. Petitioner does not disagree that the area is best described as finished open.
47. The Indiana assessment manual does not address the basement area of the funeral home. The Petitioner argues that no other schedule should be used in assessing the basement area of the funeral home because it is not addressed in the Indiana assessment manual. However, “the actual use of the property is not a determinative factor in selecting the appropriate model, but merely a starting point,” *Herb*, 656 N.E. 2d at 893, and the model whose physical features most closely resemble the improvements being assessed is the correct model to be used regardless of the model’s name. *See Zakutansky*, 696 N.E.2d at 497; *see also Herb*, 656 N.E.2d at 893. The fact that the subject improvements are not specifically addressed in the Manual does not demonstrate error in the assessment.
48. The local taxing officials are not bound by assessments of previous years. In Indiana, each tax year is separate and distinct. *Williams Industries v. State Board of Tax Commissioners*, 648 N. E. 2d, 713 (Ind. Tax 1995).
49. In this case, the Petitioner did not, by a preponderance of the evidence, meet the burden to prove that the current assessment is incorrect. Accordingly, there is no change in the assessment as a result of this appeal.

Summary of Final Determination

Determination of ISSUE 1: *Whether the grade factor is excessive*

50. The Petitioner did not prevail by a preponderance of the evidence on Issue 1. There is no change in the assessment with regard to this issue.

Determination of ISSUE 2: *Whether functional and economic obsolescence is warranted.*

51. The Petitioner did not prevail by a preponderance of the evidence on Issue 2. There is no change in the assessment with regard to this issue.

Determination of ISSUE 3: *Whether the use classification of the basement is correct.*

52. The Petitioner did not prevail by a preponderance of the evidence on Issue 3. There is no change in the assessment with regard to this issue.

This Final Determination of the above captioned matter is issued this 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.