

REPRESENTATIVES FOR PETITIONER:  
Marilyn Meighen, MEIGHEN & ASSOCIATES, PC.

REPRESENTATIVES FOR RESPONDENT:  
Gregory Dodds, Wayne Township Deputy Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

WESTSIDE RACEWAY, INC.	)	Petition No.: 49-901-01-1-4-00279
	)	
Petitioner	)	County: Marion
	)	
v.	)	Township: Wayne
	)	
	)	Parcel No.: 9-054565
	)	
WAYNE TOWNSHIP ASSESSOR	)	Assessment Year: 2001
	)	
	)	
Respondents.	)	

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

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**[January 6, 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:

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Issues

1. The issues presented for consideration by the Board were:  
ISSUE 1 – *Whether the land was classified correctly.*  
ISSUE 2 – *Whether obsolescence depreciation should be applied to the subject improvements.*

### Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3 Jeff Wuensch with Nexus Group filed a Form 131 on behalf of Westside Raceway, Inc. (Petitioner) petitioning the Board to conduct an administrative review of the above petition. The Form 131 petition was filed on February 25, 2002. The Marion County Property Tax Assessment Board of Appeals (PTABOA) Notification of Final Assessment Determination on the underlying Form 130 is dated January 26, 2002.

### Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on October 17, 2002 at the Indiana Government Center North Building, Room N-1058, Indianapolis, Indiana before Brian McKinney, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-5-2.
4. The following persons were present at the hearing:  
For the Petitioner:  
Marilyn Meighen, MEIGHEN & ASSOCIATES, PC  
Jeff Wuensch, Nexus Group  
Dr. Frank Kelly, Nexus Group<sup>1</sup>  
Robert Murphy, Murphy CPA Group, PC & Westside Raceway, Inc

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<sup>1</sup> Dr. Kelly received a PhD in Economics from Indiana University.

For the Respondent:  
Gregory Dodds, Wayne Township Deputy Assessor  
Earl Salisbury, Wayne Township Assessor's Office  
Brian McHenry, Marion County

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

For the Petitioner:  
Jeff Wuensch  
Dr. Frank Kelly  
Robert Murphy

For the Respondent:  
Gregory Dodds  
Brian McHenry

6. The following exhibits were presented:

For the Petitioner:  
Petitioner's Exhibit 1 – Binder with Tabs A through J

For the Respondent:  
Respondent's Exhibit A – Property record card (PRC) for the subject  
property  
Respondent's Exhibit B – PRC for Post Road Recreation Center  
Respondent's Exhibit C – PRC for Putt-Putt

7. The following additional items are officially recognized as part of the record of proceedings:

Board's Exhibit A – Subject Form 131 petition  
Board's Exhibit B – Notice of Hearing on Petition  
Board's Exhibit C – Withdrawal of Issue Agreement

8. The subject property is a recreational facility with six (6) batting cages, three (3) go-kart tracks, and an arcade. The subject property is located at 6430 West 37<sup>th</sup> Street, Indianapolis, Wayne Township, Marion County.
9. The Assessed Values of the subject property, as determined by the local assessing officials, are: Land: \$144,200, Improvements: \$377,300.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. At the hearing, Mr. McHenry objected to the fact that Ms. Meighen was representing the Petitioner due to her past employment with the Board's predecessor, the State Board of Tax Commissioners. Ms. Meighen testified that the subject petition was filed after her employment with the State had ended, and that she had no contact with this petition while employed by the State.
12. Mr. McHenry also questioned the training the ALJ had received from Ms. Meighen during Ms. Meighen's tenure with the Board. It should be noted that regardless of the type of training the ALJ might have received from Ms. Meighen during her employ with the Board, the ALJ only submits recommendations to the Board.<sup>2</sup> The Board reviews the recommendations made by the ALJ, the testimony given and the evidence submitted at the hearing and may make any changes the Board deems appropriate and consistent in the context of the rules and regulations promulgated by the Board. This would also include the Board's review of any Tax Court decisions as they may pertain to the issue under review.
13. In addition, Mr. McHenry queried whether the ALJ had attended any baseball games or social functions with Ms. Meighen. Both the ALJ and Ms. Meighen responded that they had not attended any baseball games or social functions together.

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<sup>2</sup> The only training regarding the Real Property Assessment Manual the ALJ had received from Ms. Meighen was in the context of training open to the public.

### **Jurisdictional Framework**

14. 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.
15. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

### **Indiana's Property Tax System**

16. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
17. 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.
18. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
19. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property's market value. See *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998) (*Town of St. John V*).
20. 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 at 1039 – 40.

21. 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.
22. 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**

23. 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).
24. 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.]
25. 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.]
26. 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.]

27. 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).
28. 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**

#### ISSUE 1 – *Whether the land was classified correctly*

29. At the hearing, the Petitioner withdrew this issue from review by the Board. A Withdrawal of Issue Agreement signed by Ms. Meighen is labeled as Board's Exhibit C. There is no change in the assessment as a result of this issue.

#### ISSUE 2 – *Whether obsolescence depreciation should be applied to the subject improvements.*

30. The Petitioner contends the subject property warrants an obsolescence adjustment of 95% because the improvements do not add any value to the land.

31. The Respondent contends the subject property is correctly assessed without the application of obsolescence depreciation and does not deserve an obsolescence adjustment.

32. The applicable rules governing Issue 2 are:

**50 IAC 2.2-1-24 “Economic Obsolescence”**

Means obsolescence caused by factors extraneous to the property.

**50 IAC 2.2-1-29 “Functional Obsolescence”**

Means obsolescence caused by factors inherent in the property itself.

**50 IAC 2.2-10-7 Commercial and industrial building depreciation**

**50 IAC 2.2-10-7(e)(1)**

Functional obsolescence is caused by internal factors. 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 is caused by external factors. 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 fro floods, toxic waste, or other special hazards.

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

- a. The subject property is a recreational facility (seasonal business), operating from late March through the end of October or November depending on the weather.
- b. Mr. Murphy, part owner of the subject property is also the part owner of two (2) other recreational facilities, Applewood Raceway, and Kokomo Raceway.
- c. National City Bank had an appraisal done of the subject property with an effective date of September 24, 2001. Within the appraisal it states, “Per agreement with the client, we are appraising the subject site under the extraordinary assumption that the subject improvements add no contributory value.”<sup>3</sup> *Petitioner Exhibit 1, Tab D.*
- d. The Petitioner provided a copy of a document purported to be used by Marion County for certain properties when applying obsolescence. *Petitioner’s Exhibit 1, Tab F.*
- e. The Petitioner also provided income and expense statement for the subject property, Applewood Raceway, and Kokomo Raceway. *Petitioner’s Exhibit 1, Tabs E and J.*

#### Analysis of ISSUE 2

34. Depreciation is an essential element in the cost approach to valuing property. Depreciation is the loss in value from any cause except depletion, and includes physical depreciation and functional and external (economic) obsolescence. International Association of Assessing Officers (IAAO) Property Assessment Valuation, 153 & 154 (2<sup>nd</sup> ed. 1996); *Canal Square Limited Partnership v. State Board of Tax Commissioners*,

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<sup>3</sup> The appraisal does value land at a market value of \$325,000 (\$25,000 was removed in the appraisal for cost to demolish improvements. The Assessed Value of the land determined by the local officials is \$144,200.

694 N.E. 2d 801, 806 (Ind. Tax 1998)(citing *Am. Inst. of Real Estate Appraisers, The Appraisal Of Real Estate*, 321 (10<sup>th</sup> ed. 1992)).

35. Depreciation is a concept in which an estimate must be predicated upon a comprehensive understanding of the nature, components, and theory of depreciation, as well as practical concepts for estimating the extent of it in improvements being valued. 50 IAC 2.2-10-7.
36. Depreciation is a market value concept and the true measure of depreciation is the effect on marketability and sales price. IAAO Property Assessment Valuation at 153. The definition of obsolescence in the Regulation, 50 IAC 2.2-10-7, is tied to the one applied by professional appraisers under the cost approach. *Canal Square*, 694 N.E. 2d at 806. Accordingly, depreciation can be documented by using recognized techniques. *Id.*
37. Economic obsolescence depreciation is defined as “obsolescence caused by factors extraneous to the property.” 50 IAC 2.2-1-24.
38. Functional obsolescence depreciation is defined as “obsolescence caused by factors inherent to the property itself.” 50 IAC 2.2-1-29.
39. The elements of functional and economic obsolescence can be documented using recognized appraisal techniques. These standardized techniques enable a knowledgeable person to associate cause and effect to value pertaining to a specific property. *Canal Square*, 694 N.E. 2d 801 (Ind. Tax 1998).
40. There are five recognized methods used to measure depreciation, including obsolescence; namely: (1) the sales comparison method, (2) the capitalization of income method, (3) the economic age-life method, (4) the modified age-life method, and (5) the observed condition (breakdown) method. IAAO Property Assessment Valuation at 156; IAAO Property Appraisal and Assessment Administration at 223.
41. It is incumbent on the taxpayer to establish a link between the evidence and the loss in value due to obsolescence. After all, the taxpayer is the one who best knows his business

and it is the taxpayer who seeks to have the assessed value of his property reduced.

*Rotation Products Corp. v. Department of State Revenue*, 690 N.E. 2d 795, 798 (Ind. Tax 1998).

42. Regarding obsolescence, the taxpayer has a two-prong burden. The taxpayer must present evidence sufficient to prove: (1) the factors that cause obsolescence, and (2) then quantify the amount of obsolescence that exists. *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1233 (Ind. Tax 1998)(*Clark I*).
43. In support of its position the Petitioner presented an appraisal of the subject property, a copy of a document entitled: “Standards for the Application of Obsolescence”, income and expense statements for the subject property as well as income and expense statements for two (2) other properties that the owner of the subject property has an ownership interest in, and PRCs, Form 115s and a Board Final Determination pertaining to other parcels.
44. Before applying the evidence to reduce the contested assessment, the Board must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.

#### The Property Appraisal

45. Anthony G. Demos, Associate with the Don R. Scheidt & Co., Inc. did the appraisal of the subject property (Petitioner’s Exhibit 1, Tab D)(Appraisal). Mr. Demos is an Indiana Certified General Appraiser. Mr. Don R. Scheidt, President of Don R. Scheidt & Co., Inc. reviewed the Appraisal. Mr. Scheidt is a Member Appraisal Institute (MAI), Certified Commercial Investment Member (CCIM), and an Indiana Certified General Appraiser. Mr. Scheidt also holds other titles and his resume is included in the appraisal. See page 34-37 of the appraisal. Mr. Demos inspected the subject property on September 24, 2001. Mr. Scheidt did not inspect the subject property.

46. On page 2 of the Appraisal it states that the objective of the Appraisal is: “To provide an opinion of the Market Value of the Fee Simple Estate of the subject site as of the effective date of valuation.” The effective date of value for the Appraisal is September 24, 2001.
47. The Appraisal contains several contingencies, one of which states: “Per agreement with the client, we are appraising the subject site under the extraordinary assumption that the subject improvements add no contributory value. We believe that the subject improvement may have limited contributory value for an alternative use but it is beyond the scope of this assignment to determine their value.” Appraisal, page 4.
48. The Board assumes this to mean that the Petitioner requested the appraiser to value the land only, and to make no determination of the value of the improvements. In fact, the Appraisal does indicate the improvements may have limited contributory value. The appraiser did not determine this potential limited value, because it was not in the scope of this assignment.
49. In the Highest and Best Use analysis within the Appraisal (page 21), the appraiser lists the following special destination retail concerns or special use properties as financially feasible: daycare, mini storage warehouses, church, Hospice center, or *recreational facility*. The subject property’s current use is a recreational facility with an arcade, batting cages, and go-cart tracks.
50. The Appraisal mentions obsolescence in its analysis (page 20), defines both functional and external (economic) obsolescence and then states the following: that “Functional obsolescence is thought to be applicable to the subject property in developing an opinion of Market Value.” And for economic obsolescence it states, “Therefore, significant external obsolescence is thought to be applicable to the subject property.” The appraiser provided no analysis other than the bare statement that obsolescence is “thought” to be applicable.

51. The appraiser values the land only at the request of the Petitioner, but then makes a negative \$25,000 adjustment to the Market Value of the land for the cost to demolish the subject improvements.
52. For all the reasons set forth above, the Board does not find the Appraisal sufficient in detail to substantiate the obsolescence adjustment sought.

#### County Standards for the Application of Obsolescence

53. The Petitioner also presented a copy of a document entitled: “Standards for the Application of Obsolescence” (Petitioner’s Exhibit 1, Tab F)(“Standards”). This chart establishes “considerations” for and the “application” of obsolescence as it relates to “uncommitted vacant space” for an apartment or office complex. The Respondent stated that this chart is sometimes used to determine an obsolescence adjustment for apartments and office complexes in Marion County.
54. As it relates to this chart, the Petitioner asked Dr. Kelly to define vacancy. Dr. Kelly defined vacancy as “not in use”. Dr. Kelly then gave an analogy of a building with 40-foot wall height, but the occupant is only using the first 10-feet; hence, the remaining 30-feet could be considered vacant.
55. While the Petitioner is correct that vacancy may be evidence of obsolescence, the vacancy must be closely analyzed and its reasons determined. Vacancy, by itself, is not absolute proof of obsolescence.
56. The “Standards” contain the following statement: “If the amount of space available for the production of income which is uncommitted vacant space not producing income for an apartment or office complex falls within the following ranges, then a parcel for that property may be considered to receive the listed obsolescence reduction.” The Petitioner attempts to apply a document on obsolescence created by Marion County assessing officials that is clearly to be used for apartments and office complexes only. The subject

property is a recreational facility, not an apartment nor an office complex, to which the “Standards” are intended to apply.

57. Assuming *arguendo* that the Board determined this document to be acceptable and applicable to the subject property, we also find the following statement in the “Standards”: “Management decisions regarding what should remain vacant do not merit consideration in determining obsolescence.” The owners of the subject property have made a business decision, inherent in a seasonal type of business, to close the facility during certain months of the year. While it may not be financially feasible to operate during these months, it is still a decision made by the owners. Accordingly, the “Standards” would not be applicable when a business decision is made to make a seasonal business “vacant” for a period of time during its annual operation.
58. Regardless the applicability of the Marion County “Standard” the Petitioner presented no evidence of factors extraneous to property that cause economic obsolescence, nor factors inherent to the property that cause functional obsolescence. The Board does not conclude that obsolescence exists based only on the fact that the property is used for seasonal business.

#### Income and Expense Statements

59. The Petitioner also submitted a copy of the financial statements for the subject facility for 1999, 2000, and 2001. These financial statements are used in preparing the federal tax filings of the subject property. The expenses and income used for Federal Income Tax purposes are not the same as those used in computing an estimate of value for property tax purposes.
60. For example, property taxes may be considered an expense item in the income approach. However, in appraising for assessment purposes, the preferred way to handle property taxes is to use an effective tax rate as part of the capitalization rate. IAAO Property Assessment Valuation, 217 (2<sup>nd</sup> ed. 1996).

61. The Petitioner also testified that the subject is depreciated over ten (10) years under federal income tax rules. The income and expense statement for the Petitioner does not identify any reserves for replacement. The Petitioner instead uses the amount of depreciation from the income and expense statements in their income approach. The recognized IAAO standard states: “Because depreciation will be considered in the income approach as recapture and handled as part of the capitalization rate, this is an improper charge. Depreciation is usually included in operating statements for income tax purposes and will not necessarily be the same as the recapture provision in the capitalization rate.” *Id.* at 219.
62. Reserves for Replacement, is a proper expense. These items have an amount set aside annually for the eventual replacement of the item. According to *IAAO Property Assessment Valuation*, (2<sup>nd</sup> ed. 1996), page 218, “the amount to be set aside for any specific item is calculated in the following manner:
1. Estimate the economic life of the item.
  2. Estimate the replacement cost new.
  3. Calculate the percentage of reserve per year by dividing 100 percent by the economic life of the item.
  4. Multiply the replacement cost new by the percentage per year to arrive at the annual charge.
63. The Petitioner did not identify what items were being replaced. The Petitioner did not identify any replacement cost for the items being replaced. Instead, the Petitioner merely concludes the amount for federal tax depreciation purposes is the same amount that the reserves should be. The Petitioner added the depreciation used for 2001 and 2000 together, then divided by two (2) to arrive at the amount used for “Reserves for short-lived assets”. This method is incorrect, and should not be used in determining the amount of obsolescence the subject property may be entitled to.
64. A further review of the income and expense statements for both the Applewood and Kokomo facilities, do not include charges of depreciation, interest, or amortization to arrive at Net Income. The subject property’s income statements do include these charges.

For the subject property these charges equal \$180,797. There was no explanation why these charges are included in the subject property and not in the other two (2) properties. If these charges were removed from the subject property's income and expense statements, an income of \$73,680 would be determined. This amount is more than the combined Net Income of both the Applewood and Kokomo (\$43,910 + \$26,283 = \$70,193) facilities. See Petitioner's Exhibit 1, Tabs E and J.

65. The Income and Expense Statements submitted were completed by either Mr. Murphy (part owner in these facilities) or Mr. Murphy's CPA Group.
66. "[I]n advocating for an obsolescence adjustment, a taxpayer must first provide the State with probative evidence sufficient to establish a prima facie case as to the causes of obsolescence." *Champlin Realty Company v. State Board of Tax Commissioners*, 745 N.E. 2d 928, 932 (Ind. Tax 2001).
67. "Where there is no cause of obsolescence, there is not obsolescence to quantify." *Id.*, citing *Lake County Trust v. State Board of Tax Commissioners*, 694 N.E. 2d 1253, 1257 (Ind. Tax 1998).
68. The identification of causes of obsolescence requires more than randomly naming factors. "Rather, the taxpayer must explain how the purported causes of obsolescence cause the subject improvements to suffer losses in value." *Champlin*, 745 N.E. 2d at 936.

#### Location

69. The Petitioner also claims that location is the cause of obsolescence. Mr. Murphy was questioned about the difference between the subject property and two (2) other properties Mr. Murphy is involved in that are making a profit. Mr. Murphy responded that location was the difference.
70. Though Mr. Murphy claimed that the difference between the properties was the locations, there was no analysis submitted by the Petitioner for review comparing the subject



property and the other two (2) recreational facilities that Mr. Murphy has a part ownership in. “The greatest comparability is obtained when the properties being compared are influenced by the same economic trends and environmental (physical), economic, governmental, and social factors.” IAAO Property Assessment Valuation at 103. There was no comparison of neighborhoods, economic conditions, or even a comparison of amenities offered at each facility to establish that the properties are truly comparable.

71. The Petitioner did not establish the comparability of the subject property with the Applewood or Kokomo facilities in a manner that demonstrates obsolescence. Petitioner stated only that Mr. Murphy is involved in the ownership of all three (3), and that all three (3) have go-cart tracks as the main source of income.
72. A review of the financial statements provided for the other two (2) properties reveals that the Applewood facility does not have batting cages and includes income for “Slam-A-Shot”. The Kokomo facility contains income for “Slam-A-Shot” and Golf Sales. The subject property does not contain income for “Slam-A-Shot” and the subject property does not include any income for Golf Sales. Petitioner’s Exhibit 1, Tab E and J.
73. Both the Applewood and Kokomo locations are not within the same county (Marion) as that of the subject. On the other hand, the Respondent did submit PRCs for two (2) other recreational facilities within Marion County (Respondent’s Exhibits B and C). A review of these cards shows that neither property is receiving any adjustment for obsolescence.
74. In support of the Petitioner’s location the Appraisal states on page 14 under Summary the following: “The subject neighborhood is expected to continue to be a commercial hub for the west side of Indianapolis. Growth has continued to occur in neighborhood in recent years and this pattern is expected to continue into the foreseeable future.”
75. The Petitioner did not provide substantial probative evidence indicating that location was the cause of any obsolescence to the subject property. For this reason, the Board determines that the Petitioner did not present a prima facie case regarding the cause of

obsolescence. Without a cause of obsolescence, there is no obsolescence to quantify. See ¶67. Had the Petitioner provided sufficient evidence regarding a cause(s) of obsolescence, the Petitioner would still be required to quantify the amount requested using recognized appraisal techniques. The Petitioner failed to provide any evidence as to how the 95% obsolescence factor was determined.

#### PRCs and Form 115s submitted

76. Under Petitioner's Exhibit 1, Tab G, the Petitioner submits PRCs and Form 115s pertaining to other properties purported to be receiving obsolescence.
77. Upon review, the PRCs and Form 115s indicated the following:
  - a. One (1) PRC showed no obsolescence was being applied;
  - b. One (1) Form 115 showed that obsolescence was granted to a bank due to long term vacancy and the fact that a not-for-profit tenant occupied the upper floors;
  - c. One (1) Form 115 showed that obsolescence was granted for vacancy and excessive wall height to a department store converted to a landscaping business;
  - d. Another Form 115 showed that obsolescence was granted due to vacancy for an office and warehouse facility;
  - e. A Form 130 indicated that obsolescence was requested for a retail strip shopping center due to vacancy (No disposition of this appeal was attached);
  - f. A PRC showed that obsolescence was applied to the structure, paving and fencing but no reason or reasons was given;
  - g. Another Form 115 showed that obsolescence was granted but the type of property and the reason for the obsolescence was not given; and
  - h. Another Form 115 granted obsolescence to an industrial warehouse due to blight, depreciation, inaccessibility, outdated construction, and pending demolition.
78. Though the PRCs and the Form 115s may have indicated that obsolescence was granted to these properties, the fact that it was granted does not mean that the subject property is also entitled to receive obsolescence. It is not enough for the Petitioner to say that since these properties are receiving obsolescence the subject property deserves it too.

79. The Petitioner makes no effort to show that these properties and the subject are affected by the same conditions or are the same type of property thus attempting to establish some form of comparability between the properties. Again, the subject is a recreational facility whereas these structures are shopping centers, warehouses, a bank and a converted department store.
80. Under Petitioner's Exhibit 1, Tab H, the Petitioner submitted PRCs and a Form 115 for Indianapolis Racquet Club that granted a 70% negative influence factor to the land for "restrictions" (weather related conditions), along with PRCs and a Board Final Determination for Devon Country Club, Inc. The Indianapolis Racquet Club determination was based in part on the Board's Final Determinations in Devon Country Club, Inc. (Petition. Nos. 49-800-95-1-4-00137 & 49-800-95-1-4-00357). See the Form 115, Petitioner's Exhibit 1, Tab H. However, the Devon Country Club, Inc. determinations were the result of a stipulation agreement between the Petitioner in those appeals and Washington Township.
81. The issues for review in the two (2) Devon Country Club, Inc. appeals were: (1) whether the land was correctly assessed, (2) whether the condition of the paving was correct, and (3) whether obsolescence depreciation should be applied to the property.
82. In these appeals the Petitioner and the Township stipulated to the following:  
On Parcel #8043300 (Petition No. 49-800-95-1-4-00137):
- a. To reclassify 30,160 square feet (SF) of primary land to secondary and apply a 75% negative influence factor.
  - b. To apply a 75% negative influence factor to 90,196 SF of usable/undeveloped.
  - c. To change the condition rating of the paving to "poor".
  - d. To apply a grade factor of "D" to the paving.
- On Parcel #8043301 (Petition No. 49-800-95-1-4-00357):
- a. Of the original 18,426 SF of primary land, 12,582 would be reclassified as secondary with a 75% negative influence factor applied.

- b. The 313,994 SF of usable/undeveloped land would be reclassified as follows:
- (1) 4.9097 acres of woodland valued at \$495 per acre and subject to an 80% negative influence factor.
  - (2) 100,127 SF to remain classified as usable/undeveloped but subject to a 75% negative influence factor.
  - (3) The remaining .68168 acres will be valued as land under water at \$500 per acre and subject to a 75% negative influence factor.
83. In the Devon Country Club, Inc. appeals the issues were mainly reclassification of the land and applying a negative influence factor to the land. In addition, though obsolescence was initially listed as an issue for review, the Petitioner in those appeals withdrew the obsolescence issue from review by the Board.
84. Even though the Board accepted the stipulation agreements between the Petitioner and the Washington Township in the Devon Country Club, Inc. appeals, the Board's acceptance of this agreement should not be construed as a determination regarding the propriety of the reclassification of the land or the application of influence factors to the land agreed to by those parties.
85. The submission of the Devon Country Club, Inc. Final Determination is not probative in establishing disparate treatment of the subject property.
86. In the final analysis, the Petitioner presented an appraisal of the subject property. However, for the reasons cited above (¶45 – 51), the appraisal is not considered probative in determining the presence of, or the quantification of obsolescence. The appraisal values only the Market Value of the subject site. The analysis of obsolescence was abbreviated and the actual value of the improvements was never determined by the appraisal.
87. The Petitioner also attempted to use the Marion County Standards for the Application of Obsolescence. The "Standards" apply to vacancy of apartment or office complexes. Because the subject site is neither, the property would not qualify for obsolescence under

the “Standards.” Furthermore, even if the property were an apartment or office complex, the “Standards” are not part of the property tax Regulation and would not be binding on this Board as a method for quantifying obsolescence. See ¶¶53 – 58.

88. The Petitioner presented the income and expense statements of the subject property and two (2) other recreational facilities. Neither of the other two (2) facilities is located in the same county as the subject facility. The Petitioner used property taxes as expenses, which is not preferred, and the Petitioner included a charge for depreciation as the amount for reserves for replacement, which is incorrect. See ¶¶59 – 65.
89. The Petitioner also pointed to the location of the subject property as a cause of obsolescence but failed to explain how the subject property was affected by its location or how the location equated to a loss in value. The Petitioner’s own appraisal stated, “The subject neighborhood is expected to continue to be a commercial hub for the west side of Indianapolis. Growth has continued to occur in neighborhood in recent years and this pattern is expected to continue into the foreseeable future.” See ¶¶69 – 75.
90. The Petitioner also submitted PRCs and Form 115s where obsolescence was applied (See Petitioner’s Exhibit 1, Tab G). The Petitioner did not establish any comparability of these properties with the subject property. None of the submitted properties were recreational facilities like the subject. Some of the information presented gave vacancy as a reason for the granting of obsolescence, another gave several reasons (blight, inaccessibility, out-dated construction, etc.) and yet others gave no reasons. The Petitioner never provided evidence of vacancy in the subject property. The subject property is closed for several months during the year, however, there is no attempt made to lease the space, and the Petitioner does not remove any equipment from the property. The Petitioner operates a seasonal business. This does not equate to vacancy. See ¶¶76 – 85.
91. For all the reasons set forth above, the Petitioner failed to prove that the assessment was incorrect and failed to prove that the assessment it seeks is correct. The Petitioner failed to use recognized appraisal techniques in quantifying the amount of obsolescence it

requested. The Petitioner failed to present any substantial probative evidence that supported its request for 95% obsolescence depreciation. The Petitioner did not identify any similarly situated properties that were receiving obsolescence, in order to show disparate treatment of the subject property.

### **Summary of Final Determination**

#### ISSUE 1 – *Whether the land was classified correctly*

92. At the hearing, the Petitioner withdrew this issue from review by the Board. No change in the assessment as a result of this issue.

#### ISSUE 2 – *Whether the subject improvements warrant an obsolescence adjustment.*

93. The Petitioner did not meet their burden in this appeal. The Petitioner failed to identify causes of obsolescence and quantify the amount requested with probative evidence. Accordingly, there is no change in the assessment as a result of this issue.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

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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.**