

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

Petition: 73-002-03-1-3-00001
Petitioners: Omer & Janet Brewer
Respondent: Addison Township Assessor (Shelby County)
Parcel: 11-05.28-001.00
Assessment Year: 2003

The Indiana Board of Tax Review (Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The Petitioners initiated an assessment appeal with the Shelby County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 dated December 2, 2004.
2. The PTABOA mailed notice of its decision to the Petitioners on November 7, 2005.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on December 2, 2005. Petitioners elected to have this case heard according to small claim procedures.
4. The Board issued a notice of hearing to the parties dated March 3, 2006.
5. The Board held an administrative hearing on May 10, 2006, before the duly appointed Administrative Law Judge Paul Stultz.
6. Persons present and sworn as witnesses at the hearing were:
Omer Brewer, property owner,
Janet Brewer, property owner,
Steven Schultz, Respondent representative.

Facts

7. The property is a commercial property in Shelbyville that since 1995 has been used only for storage.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.

9. The assessed value as determined by the PTABOA:
- | | | |
|---------------|-----------------------|----------------|
| Land \$11,800 | Improvements \$47,800 | Total \$59,600 |
|---------------|-----------------------|----------------|
10. The assessed value requested by Petitioners:
- | | | |
|---------------|-----------------------|----------------|
| Land \$11,800 | Improvements \$13,800 | Total \$25,600 |
|---------------|-----------------------|----------------|
11. During the hearing, both parties agreed to the following facts regarding the subject property:
- The perimeter to area ratio (PAR) is five;
 - There are 3,772 square feet of utility storage;
 - There are 2,914 square feet of other utility storage;
 - There are 1,025 square feet of office area;
 - The subject property has a total of 7,711 square feet.

Issues

12. Summary of Petitioners' contentions in support of alleged error in assessment:
- The year under appeal should be 2002. The Petitioners received the 2002 pay 2003 tax bill in late April 2004. *J. Brewer testimony.*
 - The property should receive twenty percent obsolescence depreciation. It had twenty percent obsolescence depreciation in previous assessments because of the configuration of the land and the hazard caused by an adjacent railroad. The city paved over the railroad property and made it a thoroughfare. Now it is unsafe to use a forklift to load or unload trucks because of the traffic situation. *Id.; Board Ex. A, attachment 1 at 2; O. Brewer testimony.*
 - The property previously was graded D-2, but it was increased to a D for the current assessment even though the property has deteriorated. Now it should be E grade. The condition should be very poor. A contractor built the subject property in 1930 with used components. The subject property is do-it-yourself construction with no design. It is devoid of any architectural detail. It is constructed with below standard materials, usually seconds. The workmanship is poor. There are no built-in features. The heating system was installed in 1965, but is inoperable. The subject property has minimal lighting. The interior is unfinished. *O. Brewer testimony; Board Ex. A, attachment 1 at 1.*
 - The buildings across the street are graded between C and D-2. Those buildings were constructed in the 1990s. *O. Brewer testimony.* The property across the

street has mini-warehouses, office area, retail area, and manufacturing areas. *J. Brewer testimony.*

- e. The perimeter is listed as 688 feet, but it should be 422 feet. The square footage of the interior is incorrect. The PAR should be five. *O. Brewer testimony.*
13. Summary of Respondent's contentions in support of the assessment:
- a. The Respondent does not dispute that the PAR is five, the square footage calculations, or usages presented by the Petitioners. *Schultz testimony.*
 - b. The grade and condition were determined by using the guidelines provided by the state.¹ The physical depreciation of 80% is correct. *Id.*
 - c. The property across the street is not comparable. The largest usage of space in that property is for mini-warehouses. Mini-warehouses are not comparable to the subject property. *Id.*
 - d. The PTABOA changed the assessment. The current true tax value is conservative because of those changes, but it is fair. *Id.*
 - e. The Petitioners' request of \$12,000 for this improvement would result in a value of less than \$1.50 per square foot, which would be irresponsible for a building that at least offers general utility storage. *Id.*

Record

14. The official record for this matter is made up of the following:
- a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Nine photographs of interior of subject property,
Petitioner Exhibit 2 – Four photographs of comparable property,
Petitioner Exhibit 3 – Final assessment determination for 1989 reassessment,
Petitioner Exhibit 4 – Statement explaining changes made by the PTABOA,
Petitioner Exhibit 5 – Drake Electric Inc. property record cards (PRC) including
cards 1 – 5 and 7 – 10 of thirteen cards,
Respondent Exhibit 1 – Statement authorizing Steven Schultz to represent the
township,

¹ The Respondent is referring to the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference in 50 IAC 2.3-1-2) (GUIDELINES).

Board Exhibit A – Form 131 Petition for Review of Assessment with attachments, including the following items:

1. Five page statement,
2. Seven photographs of interior of subject property,
3. Four photographs of comparable property,
4. PRCs for 1989, 1995, 1998, 2001, and 2002, with schedule of corrections attached,
5. PRC for current assessment,
6. PRC for other properties,

Board Exhibit B – Notice of Hearing on Petition,

- d. These Findings and Conclusions.

Analysis

15. The most applicable governing cases are:
 - a. 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).
 - b. 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”).
 - c. 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.
16. The Petitioners failed to make a case that this appeal is timely for the 2002 assessment.
 - a. Ind. Code § 6-1.1-15-1 states in part:
 - (a) A taxpayer may obtain a review by the county property tax assessment board of appeals of a county or township official's action with respect to the assessment of the taxpayer's tangible property if the official's action requires the giving of notice to the taxpayer. At the time that notice is given to the taxpayer, the taxpayer shall also be informed in writing of:

(1) the opportunity for review under this section, including an informal preliminary conference with the county or township official referred to in this subsection; and

(2) the procedures the taxpayer must follow in order to obtain review under this section.

(b) In order to appeal a current assessment and have a change in the assessment effective for the most recent assessment date, the taxpayer must request in writing a preliminary conference with the county or township official referred to in subsection (a):

(1) not later than forty-five (45) days after notice of a change in the assessment is given to the taxpayer; or

(2) on or before May 10 of that year;

whichever is later. The preliminary conference required under this subsection is a prerequisite to a review by the county property tax assessment board of appeals under subsection (i).

- b. The Petitioners testified that they did not receive the tax statement for 2002 until 2004. *O. Brewer testimony*. They also submitted a five-page statement with the Form 131. *See Board Exhibit A, attachments*. In that statement, they allege they received the tax bill for the 2002 assessment in late April 2004. The Petitioners filed their Form 130 Petition on or about December 2, 2004. A taxpayer must file an appeal within 45 days of receiving notice of change in assessment. Assuming, *arguendo*, that the Petitioners' first notice of the 2002 assessment was the tax bill received in late April 2004, filing the appeal on or about December 2, 2004, is not timely because the 45 days would have expired sometime in May or June 2004. Ind. Code § 6-1.1-15-1. The Petitioners failed to make a prima facie case that their petition is a valid appeal for the 2002 assessment.
- c. The Form 115 shows that the PTABOA considered this matter as a timely appeal for the 2003 assessment.² The Board will do the same.

17. The Petitioners failed to make a case regarding obsolescence.

- a. Normal depreciation includes typical physical deterioration and typical obsolescence. GUIDELINES, app. F at 8. Any additional loss in value can be considered separately as abnormal obsolescence. *Id.*
- b. For the Petitioners to show that they are entitled to abnormal obsolescence, they must identify the causes and quantify the amount of obsolescence. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). The Petitioners must present probative evidence that the causes of obsolescence result in an actual loss in value to their property. *See Miller Structures, Inc. v. State Bd. of Tax Comm'rs*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001).

² The Form 115 is included among the attachments to Board Exhibit A. It shows that the PTABOA mailed notice of the assessment determination for 2003 on November 7, 2005. Consequently, the Petitioners' filing of a Form 131 Petition on or about December 2, 2005, is timely for the 2003 assessment.

- c. Past assessments that granted obsolescence are not relevant and do not help to make the Petitioners' case. Each tax year stands on its own. *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998).
 - d. The Petitioners argued that the configuration of the land and the adjacent thoroughfare are causes of obsolescence. It is not sufficient, however, to merely identify factors that might cause obsolescence. The Petitioners must establish how those facts cause the property to suffer an actual loss in value. *See Champlin Realty Co. v. State Bd. of Tax Comm'rs*, 745 N.E.2d 928, 936 (Ind. Tax Ct. 2001). The Petitioners offered no such probative evidence or explanation. Furthermore, they failed to quantify any obsolescence that might exist.
 - e. Therefore, the Petitioners did not make a prima facie case. The burden never shifted to the Respondent to rebut the obsolescence claim.
18. The Petitioners failed to make a case regarding grade or condition.
- a. The Petitioners testified that the grade had always been a D-2 until the most recent assessment. Again, each tax year stands on its own. *Barth*, 699 N.E.2d at 805 n. 14. Consequently, what the grade was in prior years has no relevance or probative value in determining the 2003 assessment.
 - b. The conclusory statement that the building has had further deterioration since it was graded D-2 is not probative evidence. The statement does not support the Petitioners' claim. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - c. The Petitioners offered some of the PRCs and photographs of a purportedly comparable property and photographs of subject property in an attempt to establish the current grade and condition are incorrect. *O. Brewer testimony; Pet'r Exs.1, 2, 5; Board Ex. A, attachments 3, 5, 6.*
 - d. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of comparability. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). A party seeking to establish the comparability must explain the characteristics of the subject property and how those characteristics compare to the comparable. *Id.* at 470-71.
 - e. The Petitioners failed to establish a meaningful basis for comparison of their property with the buildings across the street. The subject improvement was built in approximately 1930 and the comparables were built in the 1990's. Furthermore, the only evidence offered to show the grade of the comparable property was some PRC pages and four exterior photographs. The Petitioners did not present any interior photographs of the buildings across the street. The Petitioners did not offer any exterior photographs of their property. The evidence

fails to establish any meaningful basis for comparison. Consequently, the evidence relating to the property across the street lacks relevance and probative value. The burden never shifted to the Respondent to rebut the Petitioners' case.

Conclusion

19. The parties agreed to several changes that are listed in paragraph 11. The Board accepts the parties' agreement with respect to these items. These agreed corrections will result in a change in the assessment.
20. The Petitioners failed to make a prima facie case regarding the remaining issues. The burden never shifted to the Respondent. 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 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. 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>.