

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

Petition #: 82-029-02-1-5-00419
Petitioner: Patrick Pittman
Respondent: Pigeon Township Assessor
Parcel 1103020073003
Assessment Year: 2002

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 3, 2003.
2. The Petitioner received notice of the decision of the PTABOA on April 22, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on May 24, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated August 25, 2004.
5. The Board held an administrative hearing on September 30, 2004, before the duly appointed Administrative Law Judge, Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Patrick Pittman, Taxpayer
 - b) For Respondent: Candy Wells, Vanderburgh County Hearing Officer
Judy Stricker, Chief Deputy – Pigeon Township

Facts

7. The subject property consists of two buildings located on a single lot. The building on the first property record card is a two-story frame building with an address of 12 Cherry Street. The building on the second card is a two-story brick building with an address of 320 SE Riverside Drive. The parcel number is 11-030-20-073-003 and Tax I.D. #82-06-30-020-073.003-029.

8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Vanderburgh County PTABOA on the Form 115:
Land \$30,000 Improvements \$222,200 Total \$252,200
10. Assessed Value requested by Petitioner:
Land \$30,000 Improvements: \$3,654 Total \$33,654

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The Petitioner requested a grade of E-1 for the subject property due to the deteriorating exterior and the fact that the subject property could not be restored to its original splendor. *Pittman testimony.*
 - b) The Petitioner presented photographs of the subject property from 1973, showing the columns, caps and bases that were 90% intact. *Petitioner Exhibit 1.* The Petitioner also presented photographs of the subject property from 2003 showing deterioration of the building exterior. *Id.*
 - c) The Petitioner stated the building has been converted into apartments. *Pittman testimony.* An architect told him the building could not be restored to its original state. *Id.* The ballroom, library, fireplaces, and grand wood are all gone. *Id.*
 - d) A copy of the Evansville Courier & Press shows that the Samuel Gilbert House (320 S.E. Riverside building) is on the endangered list of historic homes in Vanderburgh County. *Petitioner Exhibit; Pittman testimony.*
 - e) The property has not been improved, other than paint, in 30 years. *Pittman testimony.*
 - f) There is no obsolescence applied to the building. *Pittman testimony.*
 - g) The building should be valued as commercial, rather than residential. The assessor has compared the subject property to single family homes. *Pittman testimony.* The property is in a CO-2 zoning area, which is considered commercial. *Petitioner Exhibit 4.*
 - h) Using the Indiana Real Property Guidelines, the Petitioner arrived at a value of \$33,654 for the subject property. *Board Exhibit A, Form 131 at 3.* The Petitioner stated a clerk in the assessor's office helped him prepare his calculations. *Pittman testimony.* The difference is the grade. The Petitioner

contends the grade should be E-1 and used E-1 in his computation. *Id.* The subject property is graded as a B+1. *Id.*

- i) The Petitioner submitted photographs of a home located within another township, which was purchased for \$800,000 and assessed for \$445,000. *Pittman testimony; Petitioner Exhibit 3.* The Petitioner contends that his evidence shows the disparity in assessments throughout the county. *Pittman argument.*

12. Summary of Respondent's contentions in support of the assessment:

- a) There are two buildings on the property. 12 Cherry Street is on the 1st property record card. *Stricker testimony.* 320 SE Riverside Drive is on the last card. *Id.*
- b) The building at 12 Cherry Street was built and designed as an apartment building. *Id.* The Petitioner does not address the 12 Cherry Street building. *Id.*
- c) The building at 320 SE Riverside Drive has been converted into apartments. The building is listed as being in average condition with a grade of B+1. *Id.*
- d) Exhibit 10 shows how converted homes are assessed. *Id.* All of the properties of this nature within the county have been assessed as residential conversion apartments, not commercial sites. *Id.*
- e) The Petitioner wants a grade of E-1. The REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (hereinafter “Assessment Guidelines) do not show any photographs of homes with an E-1 grade. Exhibits 11 and 12 are photographs of E grade homes. *Stricker testimony; Respondent Exhibits 11-12.* Exhibits 13 through 16 are photographs of A and B grade homes. *Stricker testimony; Respondent Exhibits 13-16.* The A and B grade photographs are more representative of the 320 SE Riverside Drive property. *Stricker argument.* The grade also consists of design factors. *Stricker testimony.*
- f) The Respondent applied sixty-seven percent (67%) depreciation to both buildings based on their age and condition. *Stricker testimony.* The Respondent used the Effective Age/Total Economic Life Method of Depreciation. *Respondent Exhibit 1; Stricker testimony.*
- g) Photographs of 320 SE Riverside Drive show that the exterior deterioration is deferred maintenance. The inside shows nothing wrong. *Respondent Exhibits 22 – 26; Stricker testimony.*
- h) The Petitioner requests obsolescence but does not explain why. The subject property does not qualify for economic or functional obsolescence. In May

2003 all of the apartments were rented and in September 2004 all but one of the apartments were rented. *Stricker testimony; Respondent Exhibits 18 - 21.*

- i) According to the Petitioner, the market adjustment should be one hundred percent (100%). One-hundred-and-nine percent (109%) is the correct market adjustment according to the ratio study conducted for the township by Frank Kelly. *Stricker testimony.*
- j) The Respondent submitted photographs, property record cards and sales disclosure statements for several comparable properties. *Respondent Exhibits 27 - 71.* The exhibits include conversions and single-family homes. *Id.; Stricker testimony.* The Respondent contends that this evidence demonstrates that the subject property has not been treated any differently than other properties in the township. *Id.*
- k) The Township stands by the assessments in Pigeon Township. The Township cannot explain assessments from other townships. *Stricker testimony.*

Record

13. The official record for this matter is made up of the following:

- a) The Petition and all subsequent pre-hearing or post-hearing submissions by either party.
- b) The tape recording of the hearing labeled BTR # 5883.
- c) The evidence submitted by the Petitioner, labeled Petitioner Exhibit Numbers 1 through 4 and identified on the attached Petitioner Exhibit List.
- d) The evidence submitted by the Respondent, labeled Respondent Exhibit Numbers 1 through 71 and identified on the attached Respondent Exhibit List.
- e) Board Exhibit A – A copy of the Form 131 with attachments.
Board Exhibit B – Notice of Hearing on Petition
- f) These Findings and Conclusions.

Analysis

14. 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. Wash. 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.
15. The Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) The Petitioner makes several arguments, which can be grouped into three categories: (1) the Respondent incorrectly applied the Assessment Guidelines in valuing the subject property; (2) the Respondent assessed the property based upon a use different from its current use; and (3) there is a disparity in assessments throughout the county.

Application of the Assessment Guidelines

i. Assessment Guidelines

- b) The Petitioner provided a comparison of his computation of the assessment and the Township Assessor's assessment computation. The assessments differed in the application of quality grade, physical depreciation, obsolescence depreciation, and market adjustment. *Board Exhibit A, Form 131 at 3*.
- c) The concepts of quality grade, depreciation, obsolescence and market adjustment (neighborhood factor)¹ are closely related under the Assessment Guidelines. The Assessment Guidelines provide for the determination of the replacement cost new of structures through reference to cost tables. GUIDELINES, 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*. However, the calculation of cost only sets the upper limit of value for improvements. *Id*. The Assessment Guidelines also require that

¹ The parties refer to a “market adjustment” applied to the subject property. Neither party specifically defined the term, however, it appears from the context of the parties presentations that they are referring to what is defined in the Assessment Guidelines as a “neighborhood factor.”

accrued depreciation be accounted for in valuing an improvement.
GUIDELINES, app. B at 4, app. F at 4.

- d) With regard to residential improvements, depreciation is determined through consideration of the following: (1) the chronological and effective age of the structure; (2) the quality of the materials, workmanship and design used in its construction; (3) the condition rating of the structure; and (4) the neighborhood factor for the neighborhood in which the structure is located. GUIDELINES, app. B at 4 – 5. Mechanically, the Assessment Guidelines provide tables that assign differing percentages of depreciation depending upon the effective age, quality grade and condition rating assigned to a property. *See* GUIDELINES app. B at 4 – 13. The neighborhood is a tool used to adjust the depreciation tables to meet market conditions within a neighborhood. *Id.* at 4.
- e) With regard to commercial structures, accrued depreciation is accounted for through the assignment of typical life expectancies and individual structure condition classifications. GUIDELINES, app. F at 4 – 5. Additional depreciation, or “abnormal obsolescence,” must be accounted for separately. *Id.*

ii. Quality grade

- f) The Petitioner argues that the grades of B+ 2 and C+2 applied to the subject buildings were overstated and that a grade of E-1 is more appropriate for the buildings.
- g) Under Indiana’s true tax value system, improvements are assigned various grades based upon their design and the quality of their materials and workmanship. *Sollers Pointe Co v. Dep’t of Local Gov’t Finance*, 790 N.E.2d 185, 190 (Ind. Tax Ct. 2003). “Construction quality and the resultant quality grade assigned is a composite characteristic.” GUIDELINES, app. at 3. The Assessment Guidelines provide quality grade specification tables to assist in the determination of appropriate quality grades. *Id.* at 9. In order to meet his burden of establishing a prima facie case for a change in grade, a taxpayer must do more than merely offer conclusory statements. *Sollers Pointe*, 790 N.E.2d at 191, n.7 *citing Whitley Products, Inc. v. State Bd. Of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Instead, the taxpayer can “offer specific evidence tied to the descriptions of the various grade classifications.” *Id.*
- h) Here, the Petitioner relied upon photographs and testimony concerning the deterioration of the exterior columns, caps and bases on the subject building located at 320 S.E. Riverside Drive. The Petitioner also relied upon that building’s listing in the Evansville Courier Press as one of the Preservation Alliance of Evansville’s ten most endangered historical places for 2003.

Pittman testimony; Petitioner Exhibit 2. The Petitioner made no attempt to relate those facts to the factors set forth in the quality grade specification tables in the Assessment Guidelines or otherwise to explain how those facts reflect the type of inferior materials, quality and workmanship associated with a grade of E-1. Moreover, the Petitioner presented absolutely no evidence bearing upon the quality grade of the subject building located at 12 Cherry Street.

iii. Physical depreciation and obsolescence

- i) The Petitioner argues that the subject buildings should have a significantly higher depreciation percentage (95%) applied to them than is currently applied (67%) and that the buildings also suffer from obsolescence.
- j) The Petitioner did not present any probative evidence to support his claims for the application of 95% depreciation or a 50% obsolescence adjustment to the subject buildings. With regard to the former request, the Petitioner did not explain how he arrived at his requested percentage. As explained above, the depreciation percentage applied under the Assessment Guidelines is a function of a structure's effective age, condition rating and quality grade. The Petitioner made only conclusory statements regarding the quality grade of 320 S.E. Riverside Drive building and did not even discuss the effective age or condition of either of the buildings. His testimony therefore amounts to nothing more than unsubstantiated conclusory statements. Such statements do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax 1998).
- k) The Petitioner likewise failed to establish a prima facie case for entitlement to a 50% adjustment for obsolescence. A taxpayer claiming entitlement to an adjustment for obsolescence has a two-prong burden of proof: (1) the taxpayer must prove that obsolescence exists, and (2) the taxpayer must quantify the obsolescence. *Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax 1998). Here, the Petitioner does not assert that obsolescence beyond that already accounted for in the depreciation assigned by the Respondent exists, much less explain the cause of such obsolescence. Similarly, the Petitioner presented no evidence to quantify any alleged obsolescence beyond his mere assertion that it amounted to 50% of the depreciated cost of the buildings.

iv. Neighborhood factor (market adjustment)

- l) The Petitioner also contends that the Respondent applied an incorrect market adjustment to the subject improvements. The Respondent applied a market adjustment of 109% in the assessment, while the Petitioner used a market adjustment of 100% in his calculations.

- m) As explained above, the neighborhood factor is a tool used to adjust the tables to meet market conditions within a neighborhood. GUIDELINES, app. B at 5. The neighborhood factor is determined through analyzing sales in each neighborhood and comparing the amount of each sale attributable to improvements to the depreciated replacement cost new of those improvements as determined under the Assessment Guidelines. *Id.* at 5, 8-9.
- n) The Petitioner did not present any evidence concerning sales from the subject neighborhood or how those sale prices related to improvement values determined under the Assessment Guidelines. In fact, the Petitioner did nothing more than simply assert that the subject property is entitled to a market adjustment of one hundred percent (100%). As explained above, such unsubstantiated conclusory statements do not constitute probative evidence. *See Whitley Products*, 704 N.E.2d at 1119.

Use of the Subject Property

- o) The Petitioner next contends that the assessment is incorrect because the subject property is assessed as residential property rather than commercial. The Petitioner contends that he uses the property for commercial purposes.
- p) The Petitioner is correct that the actual use of real property integral to determining its true tax value. True tax value for real property is defined as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2).
- q) However, the Petitioner has presented absolutely no evidence to demonstrate how the subject property’s market value-in-use differs from its assessed value. In fact, in preparing his calculations regarding what he believes to be the correct assessment for the subject property, the Petitioner used the same residential pricing method as the Respondent. Consequently, the Petitioner has failed to establish either that the use of a residential pricing method rendered the assessment incorrect, or what the correct assessment would be. *See Meridian Towers*, 805 N.E.2d at 478 (holding that a petitioner has the burden of proving both that the current assessment is incorrect and what the correct assessment would be).

Equality and Uniformity of Assessment

- r) Finally, the Petitioner contends that there is a disparity in the way properties are assessed throughout Vanderburgh County. In support of this contention, the Petitioner provided a photograph of a property from another township, which the Petitioner contends was purchased for \$800,000 in 2002, but which was assessed only for \$445,300. *Pittman testimony; Petitioner Exhibit 3.*

Even assuming that the Petitioner is correct that the house in question was assessed below its fair market value-in-use, evidence that one property within a county is under-assessed falls significantly short of establishing a lack of uniformity or equality in assessment.

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

Conclusion

17. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.