

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-4-00997
Petitioner: NBD Bank TR # 6143
Respondent: Department of Local Government Finance
Parcel #: 001-25-40-0009-0001
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 informal hearing as described in Ind. Code § 6-1.1-4-33 was held on February 19, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$460,100 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated June 22, 2005.
4. Special Master Peter Salveson held a hearing on September 9, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 7301 E. Melton Road, Gary, in Calumet Township.
6. The subject property consists of a commercial auto dealership located on 6.00 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$164,400 for the land and \$295,700 for the improvements for a total assessed value of \$460,100.
9. On the Form 139L, the Petitioner requested an assessed value of \$65,800 for the land and \$119,000 for the improvements for a total assessed value of \$184,800.

10. Robert L. Kumpfer, a certified tax representative for the Petitioner, and James S. Hemming, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. The Petitioner contends that the subject property suffers from economic obsolescence due to the location of the subject property. The Petitioner argued that declining employment levels, declining income and increased crime and drugs in the neighborhood of the subject property cause a loss of income for the property. *Kumpfer testimony*. Thus, to the extent that Gary residents can afford a new car due to declining employment and income in the area, these potential customers are more likely to purchase a vehicle at a dealership that is not located in such a crime-ridden neighborhood. *Id.* According to the Petitioner, there are four other dealerships in Gary and six dealerships in Northwest Indiana. *Id.* In support of this contention, the Petitioner submitted employment and economic data for the Gary, Indiana area. *Petitioner Exhibits 4-5*. The Petitioner also submitted local crime statistics and a 2002 Federal Bureau of Investigation crime report. *Petitioner Exhibits 6-7*.
 - b. The Petitioner contends that the economic obsolescence can be quantified by comparing the sales of the subject property to other dealerships in the same region as the subject property. The Petitioner quantified an economic obsolescence by comparing the subject's gross receipts for 2000-2002 with the average gross receipts of 23 dealerships in the area. *Kumpfer testimony; Petitioner Exhibits 9-11*. According to Petitioner's Exhibit 9, the Petitioner's gross receipts for 2000 totaled \$25,418,026 and Petitioner's gross receipts for 2001 totaled \$18,525,752 and Petitioner's gross receipts for 2002 totaled \$16,466,682. *Petitioner Exhibit 11*. Whereas, the gross sales for the average dealer in 2000 totaled \$26,399,332 and the gross sales for the average dealer in 2001 totaled \$26,724,495 and the gross sales for the average dealer in 2002 totaled \$20,089,428. *Id.* The Petitioner concluded that its sales were 4% less than average in 2000, 31% less in 2001 and 18% less than average in 2002. *Id.* Based on this, the Petitioner requested a negative adjustment for economic obsolescence in the amount of 25% for the subject buildings. *Kumpfer testimony; Petitioner Exhibit 3*.
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent presented the subject property record card and contends that the characteristics of the subject property are properly reflected on the subject property. *Id.*
 - b. The Respondent also argued that an obsolescence factor of 10% had been applied to most of the subject property's structures. The Respondent contends that this adjustment accounts for the external obsolescence factors. However, the Respondent

concedes that the 10% obsolescence should also be applied to all of the structures on the subject property. *Hemming testimony; Respondent Exhibit 1.*

Record

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

- a. The Petition,
- b. The tape recording of the hearing labeled Lake County 1657,
- c. Exhibits:

Petitioner Exhibit 1: Form 139L Petition,
Petitioner Exhibit 2: Power of Attorney,
Petitioner Exhibit 3: Summary of Arguments,
Petitioner Exhibit 4: Published Article, "Gary Outlook 2003",
Petitioner Exhibit 5: Median Household Income,
Petitioner Exhibit 6: Gary Crime Statistics, 2002 FBI Crime Reports,
Petitioner Exhibit 7: Office of National Drug Control Policy; Gary, Indiana
Profile of Drug Indicators,
Petitioner Exhibit 8: Competing Jeep Dealership Summary,
Petitioner Exhibit 9: 2000 through 2004 Federal Income Tax Returns,
Petitioner Exhibit 10: NADA 20 Group Composite Listing, 2000, 2001, 2002,
Petitioner Exhibit 11: Subject sales vs. region sales analysis,

Respondent Exhibit 1: Subject property record card,
Respondent Exhibit 2: Subject property photo,
Respondent Exhibit 3: Incremental/Decremental Land Summary,
Respondent Exhibit 4: Plats/Aerial Maps,

Board Exhibit A: Form 139L Petition,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Sign-In Sheet,

- d. 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. 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.
15. The Petitioner failed to provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a. The Petitioner contends the subject buildings are entitled to 25% economic obsolescence due to the negative impact of location on revenues. The current assessment shows 10% obsolescence has been applied to the 32,029 square foot auto showroom/auto service building.
 - b. The REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A, intro at 1, (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES) provides for the determination of the replacement cost new of structures through reference to cost tables. 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 GUIDELINES also requires that accrued depreciation be accounted for in valuing an improvement. GUIDELINES, app. F at 4. Under the GUIDELINES, depreciation consists of physical depreciation, functional obsolescence and external obsolescence. *Id.* Physical depreciation is a loss in value caused by building materials wearing out over time. *Id.* Functional obsolescence is a loss in value caused by inutility within the improvement. *Id.* External obsolescence represents a loss in value caused by an influence outside of the property’s boundaries. *Id.* The GUIDELINES accounts for normal obsolescence through the assignment of typical life expectancies and structure condition classifications. GUIDELINES, app. F at 4 – 7. This normal depreciation includes both typical physical deterioration and typical obsolescence. *Id.* at 8. Any additional loss in value from atypical forms of obsolescence will be referred to as abnormal obsolescence and is estimated separately from normal depreciation. *Id.*
 - c. However, for a Petitioner to show that he is entitled to receive an adjustment for obsolescence, the Petitioner must both identify the causes of obsolescence he believes is present in his improvement and also quantify the amount of obsolescence he believes should be applied to its property. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Thus, the Petitioner must present probative evidence that the causes of obsolescence identified by the Petitioner are resulting in an actual loss in value to its property. *See Miller Structures, Inc. v. State Bd. of Tax*

Comm'rs, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001). Further, the Petitioner's quantification of the amount of obsolescence must be converted into a percentage reduction and applied against the structure's overall value. *See Clark*, 694 N.E.2d at 1238. It is not sufficient for a Petitioner to merely identify random factors that may cause the property to be entitled to an obsolescence adjustment. The Petitioner must explain how those purported causes of obsolescence cause the property's improvements 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), *review denied*.

- d. In support of Petitioner's argument that it is entitled to an obsolescence adjustment, the Petitioner presented evidence as to the external factors in the neighborhood of the subject property that it alleges affect the market value of the subject property. *Petitioner Exhibits 4-7*. Further, the Petitioner identified six competing Jeep dealerships in the area. *Petitioner Exhibit 8*. The Petitioner also presented evidence to show that the revenues for the subject property are lower than the average of 23 similar dealerships in the same region as the subject property for 2000 through 2002. *Kumpfer testimony; Petitioner Exhibits 9-10*. Finally, to calculate obsolescence, the Petitioner determined the percentage differences in the sales for 2000 (-4%), 2001 (-31%), and 2002 (-18%). From those percentages, the Petitioner calculated that the average difference in sales for 2001 and 2002 was 25%. *Petitioner Exhibit 11*. According to the Petitioner, this is the amount of economic obsolescence that should be attributable to the buildings.
- e. The Petitioner attempts to quantify obsolescence by comparing gross sales of the subject auto dealership with gross sales of 23 other auto dealerships in the region.¹ According to the Petitioner, the difference between the subject dealership's gross sales and the average gross sales represents the loss in income caused by obsolescence in the subject property's location.² However, as the Indiana Tax Court has stated, "the variances may also reflect elements other than obsolescence of the property, such as quality of management, skill of the work force, competition and the like." *Thorntown Telephone Company, Inc. v. State Bd. of Tax Comm'rs*, 588 N.E.2d 613, 619 (Ind. Tax Ct. 1992). Thus, the subject dealership's lower than average sales level could be attributed not only to the character of the location but to consumer demand for the product being sold, the management of the subject dealership, the size of the dealership, and the selection or number of vehicles present on the dealership lot.
- f. Here, the Petitioner did not address differences between the subject dealership and other dealerships in the region except to testify that the subject dealership was somewhat smaller than the average sized dealership in the region. *Kumpfer*

¹ We note that Petitioner testified that only four dealerships were located in Gary and another two in Porter County. The Petitioner presented no evidence as to the gross sales of those specific dealerships.

² We also note that the gross sales of these 23 dealerships ranged from \$11,810,225 to \$65,620,599 in 2000; from \$11,630,396 to \$60,309,557 in 2001; and from \$10,169,385 to \$73,930,742 in 2002. Thus, due to its variability, "average sales" alone appears to be a poor measure of an individual dealership's sales.

testimony. Thus, unless the Petitioner can show all other things being equal between the subject property and the properties to which it compares its income, the Petitioner cannot quantify obsolescence for the subject property with an “average sales” figure or percentage. Therefore, the Board finds that the Petitioner failed to quantify the obsolescence that the Petitioner asserts it is entitled to receive. Because “the Petitioner must both identify the causes of obsolescence he believes is present in his improvement and also quantify the amount of obsolescence he believes should be applied to its property” (*Clark*, 694 N.E.2d at 1238), the Petitioner failed to raise a prima facie case that the property is entitled to more obsolescence than the 10% presently granted in its assessment.

- g. Where the Petitioner has not supported the claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). However, the Respondent testified that the obsolescence currently applied to the 32,029 sq.ft. building (10%) should also be applied to the 1,269 sq.ft. general office building. *Hemming testimony; Respondent Exhibit 1*.

Conclusion

- 16. The Petitioner failed to make a prima facie case that the obsolescence applied to the subject property was in error. The Board, therefore, finds in favor of the Respondent. However, the Respondent testified that the 10% obsolescence should also be applied to the small general office building on the subject property. The Board accepts the recommendation of the Respondent and concludes that the current assessment should be changed to add a 10% obsolescence adjustment to the 1,269 sq.ft. general office building.

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>.