

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-028-02-1-4-00597
45-028-02-1-4-00598
45-028-02-1-4-00599

Petitioner: Scherwood Golf Concessions, Inc.

Respondent: The Department of Local Government Finance

Parcel #s: 009-20-13-0005-0015
009-20-13-0005-0011
009-20-13-0005-0091

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 hearings as described in Ind. Code § 6-1.1-4-33 were held January 13, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessments for the subject properties are \$466,400, \$860,500, and \$574,100 respectively and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L for each parcel on April 23, 2004.
3. The Board issued a notice of hearing for each parcel to the parties. The notices were dated June 2, 2005.
4. Special Master Kathy J. Clark held a joint hearing for all three parcels on July 5, 2005, in Crown Point, Indiana.

Facts

5. The subject properties are located at 600 Joliet Street, Schererville, in St. John Township.

6. The subject properties under appeal are three parcels out of a total of six that comprise Scherwood Golf Course. Parcel # 0015 is 16.35 acres identified as golf course land that contains a nine-hole executive or short play course. Parcel # 0011 is 40 acres of golf course land upon which an eighteen-hole regulation golf course is assessed. Parcel # 0091 is 5.85 acres of prime commercial land and contains the clubhouse and parking lot for the golf course.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed values of subject properties as determined by the DLGF:

Parcel No. 0015: Land \$17,200	Improvements \$449,200	Total \$466,400,
Parcel No. 0011: Land \$42,000	Improvements \$818,500	Total \$860,500,
Parcel No. 0091: Land \$197,400	Improvements \$376,700	Total \$574,100.
9. Assessed values requested by Petitioner are:

Parcel No. 0015: Land \$17,200	Improvements \$229,200	Total \$246,400,
Parcel No. 0011: Land \$42,000	Improvements \$410,000	Total \$452,000,
Parcel No. 0091: Land \$117,000	Improvements \$229,326	Total \$346,326.
10. David K. Ranich, an attorney representing the Petitioner, and Lori Harmon, assistant director of the assessment division representing the DLGF, appeared at the hearing. Ms. Harmon was sworn as a witness.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessments:

Parcel 009-20-13-0005-0015

- a. According to the Petitioner, the nine-hole executive or short play course assessed on Parcel No. 15 is graded as a B style course. *Petitioner Exhibit 5, pg 1*. However, the Petitioner alleges, the Briar Ridge executive course is only graded as a C style course. *Petitioner Exhibit 6, pg 5*. The Petitioner argued that the subject property's executive course should be graded the same or less than Briar Ridge. *Ranich argument*.
- b. In addition, the Petitioner alleged, the Briar Ridge executive course is receiving a 50% obsolescence factor. According to the Petitioner, this also demonstrates an unfair or unequal assessment was applied. *Petitioner Exhibit 6, pg 5; Ranich argument*.
- c. According to the Petitioner, Briar Ridge is a nicer course. The Petitioner testified that the subject property's executive course contains approximately 2,200 yards. It is located away from the eighteen-hole regulation course and costs the public only \$10

to play. Briar Ridge's executive course is situated so that its nine holes can be played in combination with either of the other two nine-hole sections of the regulation play course; this further enhances its desirability. *Ranich argument*. Further, the property owner, Mr. Hanson, designed and constructed the course on the subject property in 1990-1991. No architectural fees were paid and the work was largely done by staff. Briar Ridge had an architect design its course, which increases the cost substantially as golf course architects are paid a percentage of the cost to build. *Ranich argument*.

Parcel 009-20-13-0005-0011

- d. The Petitioner similarly argued that the regulation eighteen-hole course assessed on this parcel is over-assessed compared to Briar Ridge. According to the Petitioner, the golf course is graded as a C style course similar to Briar Ridge's regulation course but the Briar Ridge course is receiving an added 50% obsolescence factor when their course is, in fact, far superior to the subject property's course in the areas of design and other features. Briar Ridge's course was built in 1982 and was designed by golf professional Dick Nugent. *Petitioner Exhibit 6, pg 4; Ranich argument*. Scherwood Golf Course is a public course surrounded by an oil tanker field to the north, raw woods to the east, and a road to the west. Briar Ridge Golf Course is located in a gated community that contains million dollar homes. It is a private course open to members only, except for an occasional charity fundraising event. Cost to play at Scherwood is \$30 for eighteen holes with an extra \$5 charge for weekend play. The cost to play for members at Briar Ridge is \$60 for any combination of eighteen holes. *Ranich argument*. Finally, Scherwood's course was built in 1963 and is only receiving a 15% physical depreciation. Briar Ridge, on the other hand, was built in 1982 and is receiving 10% physical depreciation along with the 50% obsolescence factor. *Petitioner Exhibit 5, pgs 1, 2; Petitioner Exhibit 6, pgs 4, 5; Ranich argument*.

Parcel 009-20-13-0005-0091

- e. Finally, the Petitioner argued that the commercial rate applied to the property on this parcel exceeds the rate applied to Briar Ridge. According to the Petitioner, this parcel contains 5.85 acres of land that is assessed at a prime commercial rate of \$33,738 per acre. While the clubhouse sits on this parcel, the remaining land is used as parking lot and has asphalt that is in a worn condition. *Petitioner Exhibit 5, pg 3; Ranich testimony*. However, Briar Ridge has 5 acres of prime commercial land assessed at only \$21,060 per acre. According to the Petitioner, Briar Ridge is located less than two miles away from the subject properties in a highly desirable gated community that contains high-end homes. The Petitioner contended that the subject parcel's prime land should be valued no more than Briar Ridge's prime land. *Petitioner Exhibit 6, pg 1; Ranich argument*.

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

Parcel 009-20-13-0005-0015

- a. The Respondent testified that from the Petitioner's description of the executive course, the course on the subject parcel sounds more like a pitch and putt than an executive course. Therefore, according to the Respondent, the current grade of B may be over stated. However, the Respondent did not agree to a reduction. *Harmon testimony.*

Parcel 009-20-13-0005-0011

- b. The Respondent testified that the golf course on this parcel was correctly graded "C" pursuant to the guidelines. According to the Respondent, the course sits on 120 to 140 acres which is in the middle of a grade B course. The course is approximately 6,200 yards, which is between a B and C grade. Further, the course is a par 71, which is better than a B grade. Finally, there are two tee location, an automatic sprinkler system, and mixture of asphalt and crushed stone pathways. The Respondent testified that there is flexibility in grading golf courses due to a mix of unit cost considerations that may not fall uniformly within a specific grade. *Respondent Exhibit 5; Ranich testimony; Harmon testimony.* However the Respondent argued that the Petitioner did not provide any information on the cost to construct the course.
- c. The Respondent further argued that the 50% obsolescence factor applied to Briar Ridge's golf courses is likely a mistake. According to the Respondent, had Petitioner presented five or six golf courses with such an obsolescence factor, the Petitioner could raise a uniform and equal argument. However, an error on a single unrelated property does not constitute an error on the subject property. The Respondent argued that the proper response would be to remove the obsolescence factor from the Briar Ridge's assessment, not add it to Scherwood. *Petitioner Exhibit 6; Harmon testimony.*

Parcel 009-20-13-0005-0091

- d. The Respondent testified that Scherwood Golf Course is located in Schererville in neighborhood #02097, taxing district #20. The base prime rate for this neighborhood is \$100,188 for one acre. *Respondent Exhibit 3, pg 3.* The Incremental/Decremental pricing system used in Lake County adjusts the base rate higher for parcels smaller than one acre and lower for parcels larger than one acre. The \$33,738 price per acre for Scherwood's prime land is a result of this pricing system when applied to a five acre parcel. According to the Respondent, the Petitioner has not provided any evidence that the subject parcel of 5.85 acres is not worth \$197,400. *Respondent Exhibit 1, pg 3; Respondent Exhibit 3, pgs 1-3; Harmon testimony.*

- e. Further, the Respondent argued, Briar Ridge Golf Course is not a comparable property. According to the Respondent, Briar Ridge is located in both Schererville and Dyer. The gated community where the course is located is actually split between the two taxing districts. Briar Ridge is in neighborhood #01297, taxing district #12. The \$21,060 price per acre for Briar Ridge's prime land is a result of the Incremental/Decremental size adjustment equations when applied to the base prime rate for that neighborhood. *Petitioner Exhibit 6; Respondent Exhibit 3, pgs 4-6; Harmon testimony.*

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 1164,
- c. Exhibits:

Petitioner Exhibit 1: Form 139L Petition,
Petitioner Exhibit 2: Form 11,
Petitioner Exhibit 3: Notice of Final Assessment,
Petitioner Exhibit 4: Power of Attorney,
Petitioner Exhibit 5: Property record cards for Scherwood Club,
Petitioner Exhibit 6: Property record cards for Briar Ridge,

Respondent Exhibit 1: Subject property record card,
Respondent Exhibit 2: Subject photographs,
Respondent Exhibit 3: Incremental/Decremental land pricing sheet,
Respondent Exhibit 4: Plat map,
Respondent Exhibit 5: Real Property Assessment Guidelines, App. G, page 37,
Respondent Exhibit 6: Real Property Assessment Guidelines, App. F, pages 34 & 35,

Board Exhibit A: Form 139L petition,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Hearing 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.

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15. The Petitioner provided sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
 - a. The Petitioner contends that the assessment of the subject nine-hole golf course is excessive when compared to Briar Ridge’s nine-hole golf course. Briar Ridge is superior to the subject but is graded C, while the subject is graded B. The Respondent testified that the golf course on this parcel is more appropriately characterized as “pitch and putt.”
 - b. According to the 2002 REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A, Appendix G, pg 37 (incorporated by reference at 50 IAC 2.3-1-2), an executive course has eighteen (18) holes on 50 to 60 acres and is 4,600 yards long. *Id.* Here, the course on the subject parcel is only approximately 2,200 acres long, has only 9 holes, and is located on 16.35 acres. It is not located next to the regulation course and so would not allow for “follow-through” play. *Petitioner Exhibit 5, pg 1; Respondent Exhibit 5; Ranich testimony.*
 - c. The Petitioner raised a prima facie case that the course on this parcel is over-assessed. The Respondent agreed the course was a “pitch and putt” golf course. Therefore, the Board holds that the golf course on Parcel 15 is a “pitch and putt” golf course and should be assessed accordingly.¹

¹ The Board will note for the record that there is no provision for grade on executive, par 3, or pitch and putt courses.

- d. The Petitioner also argued that a 50% obsolescence factor should be applied to the subject property due to the 50% obsolescence factor applied to Briar Ridge. Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. Thus to the extent that the Petitioner can prove that its property is not assessed uniformly or equal to comparable properties, Petitioner's assessment should be equalized. However, "taxpayers are required to make a detailed factual showing at the administrative level." *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, "the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence." *Id.*
- e. To introduce evidence of comparable properties, a taxpayer must explain *how* the properties are comparable. *See Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain *how* the properties were comparable). Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id.* *See also, Hoogenboom-Nofziger*, 715 N.E.2d at 1024 (holding that taxpayer failed to make prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).
- f. In the case at bar, the Petitioner did not meet this burden. While the Petitioner identifies a single golf course that is receiving a 50% obsolescence factor, the Petitioner did not make any attempt to explain why or how that property is comparable to the subject property. Petitioners merely alleged that Briar Ridge is "superior" to Scherwood because it is a private, members-only course located in gated community. This falls far short of the burden Petitioners face. The Petitioner only made a "de minimis factual showing" and has failed to "sufficiently link its evidence to the uniform and equal argument it raises." *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).
- g. Further, the Petitioner presented no evidence that the subject property is entitled to an obsolescence factor. In order to receive an adjustment for obsolescence, "a taxpayer must 1) identify the causes of obsolescence present in its improvement and 2) quantify the amount of obsolescence to which it believes it is entitled." *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Both of these require a connection to an actual loss in property value. Thus, a taxpayer must

present probative evidence that the causes of obsolescence result 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). Similarly, to quantify the amount of obsolescence, the taxpayer must convert that actual loss of value into a percentage reduction against the improvement's overall value. *See Clark*, 694 N.E.2d at 1238. *Logan Center* at 3-4. A taxpayer may not merely name random factors causing property to be entitled to an obsolescence adjustment; it must explain how the purported causes of obsolescence cause the property's improvements to suffer a 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*. In other words, the Petitioner needed to show that there are factors causing the property to suffer obsolescence and also show that those factors had caused a loss in value. In failing to provide such evidence, the Petitioner fails to raise a prima facie case that an obsolescence factor should have been applied to the subject property.

- h. Because the Petitioner did not meet its burden of presenting a prima facie case that an obsolescence factor should apply to the subject property, the Respondent's duty to rebut Petitioner's evidence was not triggered. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998) (stating that once a taxpayer presents a prima facie case, it must be rebutted with substantial evidence).

Parcel 009-20-13-0005-0011

16. The Petitioner failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
 - a. The Petitioner contends that the subject assessment is excessive when compared to Briar Ridge because Briar Ridge is far superior to the subject and receives 50% obsolescence. As discussed above, while Indiana Code § 6-1.1-2-2 requires uniform and equal assessments, the Petitioner did not raise a prima facie case that the subject property is not assessed uniformly or equal to comparable properties. Further, as detailed above, the Petitioner presented no evidence that the subject property is entitled to an obsolescence factor.
 - b. The Petitioner also argued that its course should not be a "C" grade course because Briar Ridge is a "C" grade golf course and it is far superior to the subject property.² To contest the grade assigned to an improvement, a taxpayer must offer probative evidence concerning the purported error. *See Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 894 (Ind. Tax Ct. 1995); *Whitley Prods. Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); and *Kemp v. State Board of Tax Commissioners*, 726 N.E.2d 395, 400 (Ind. Tax Ct. 2000). Conclusory statements concerning the grade of an improvement do not constitute

² The Board notes for the record that, although the property record card for Briar Ridge does show a C grade, the \$73,000 base rate per hole applied to the property is the rate for a B grade course.

probative evidence of an error. *See Whitley Prods.*, 704 N.E.2d at 1119. Furthermore, mere references to photographs or regulations, without explanation, do not qualify as probative evidence. *See Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999); *Kemp*, 726 N.E.2d at 400. Here the Petitioner presented no evidence that its course is not a “C” grade course and, therefore, the Petitioner failed to raise a prima facie case the assessment is in error.

- c. Because the Petitioner did not meet its burden of presenting a prima facie case that an obsolescence factor should apply to the subject property, the Respondent’s duty to rebut Petitioner’s evidence was not triggered. *See Clark v. State Bd. of Tax Comm'rs.*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998) (stating that once a taxpayer presents a prima facie case, it must be rebutted with substantial evidence).

Parcel 009-20-13-0005-0091

17. The Petitioner failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
 - a. The Petitioner contends that the subject land assessment should not be more per acre than the Briar Ridge land assessment. As discussed above, Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. However, the Petitioner failed to show that the Briar Ridge property is comparable to the subject property.
 - b. Further, the subject property and Briar Ridge are in different neighborhoods. A neighborhood is defined as “[a] geographical area exhibiting a high degree of homogeneity in residential amenities, land use, economic and social trends, and housing characteristics.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A (GUIDELINES), glossary at 14 (incorporated by reference at 50 IAC 2.3-1-2). Generally, land values in a given neighborhood are determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). Here, the Petitioner did not show that the neighborhood assigned to the subject property is in error or that an incorrect rate was applied to the subject property. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. Of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998). Thus, the Petitioner failed to raise a prima facie case that the assessment is in error.
 - c. 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).

Conclusion

18. The Petitioner established a prima facie case regarding the assessment of Parcel 009-20-13-0005-0015. The Board, therefore, determines that the nine-hole course on Parcel No. 0015 is a pitch and putt course and should be assessed accordingly. The Petitioner failed to establish a prima facie case regarding the assessments of Parcel 009-20-13-0005-0011 and Parcel 009-20-13-0005-0091. Thus, the Board finds in favor of the Respondent on Parcel Nos. 0011 and 0091.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment on Parcel No. 009-20-13-0005-0015 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>.