

REPRESENTATIVES FOR PETITIONERS:

Debra A. Hague
James A. Hague III

REPRESENTATIVE FOR RESPONDENT:

Mark Alexander

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

James Jr. and Betty Hague,	)	Petition No.:	41-020-03-1-4-00365
	)	Parcel:	8000190101400
Petitioners,)		
)		
v.)		
	)	County:	Johnson
Nineveh Township Assessor,	)	Township:	Nineveh
	)	Assessment Year:	2003
Respondent.)		

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

June 29, 2005

FINAL DETERMINATION

The Indiana Board of Tax Review (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

ISSUE

1. The Petitioners presented the following issues as restated by the Board:
 1. *Whether the Respondent failed to tax golf courses in a uniform and equal manner when it assessed and taxed the subject property but did not tax municipal courses with which the Petitioners are in competition;*
 2. *Whether the Petitioners are entitled to an adjustment for obsolescence; and*
 3. *Whether the overall assessment of the subject property is excessive.*

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, the Petitioners filed a Form 131 Petition for Review of Assessment (“Form 131 Petition”), petitioning the Board to conduct an administrative review of the assessment of the subject property. The Petitioners filed their Form 131 Petition on January 12, 2004. The Johnson County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on December 12, 2003.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on March 30, 2005, in Franklin, Indiana before Ken Daly and Ronald Gudgel, the duly designated Administrative Law Judges authorized by the Board under Ind. Code § 6-1.5-3-3.¹
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioners:

Debra A. Hague, Secretary – Treasurer of Indian Springs Golf, Inc.
James A. Hague III, son of the Petitioners.

¹ At the request of both parties, this appeal and the appeal of a second golf course owned by a related entity (Tameka Woods Family LTD, petition #41-015-03-1-4-00364) were consolidated for hearing. For purposes of clarity and ease of administration, the Board has issued a separate Final Determination in each case.

For the Respondent:

Mark Alexander, Representative of the PTABOA.

5. The following exhibits were presented for the Petitioners:
 - Petitioners Exhibit 1: Escalating taxes, declining revenues.
 - Petitioners Exhibit 2: Equal & Uniform.
 - Petitioners Exhibit 3: An Income Approach.
 - Petitioners Exhibit 4: Functional Obsolescence.
 - Petitioners Exhibit 5: The Golf Industry.
 - Petitioners Exhibit 6: What our business is currently worth.
 - Petitioners Exhibit 7: Five pages of photographs.

6. The following exhibits were presented for the Respondent:
 - Respondent Exhibit 1: Property record card for the subject property.
 - Respondent Exhibit 2: Notice of authorization from the Township Assessor.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A: The Form 131 Petition
 - Board Exhibit B: Notice of Hearing dated January 19, 2005.
 - Board Exhibit C: Sign-in sheet.
 - Board Exhibit D: Request for consolidation of hearings.

8. The subject property is a golf course, operating as Indian Springs Golf, Inc. (Indian Springs), located in Nineveh Township in Johnson County.

9. The Administrative Law Judges did not conduct an on-site inspection of the subject property.

10. For 2003, the PTABOA determined the assessed value of the property to be:

Land: \$68,500	Improvements: \$333,000	Total: \$401,500.
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11. The Petitioners contend on their Form 131 Petition that the assessed value of the property should be:

Land: \$31,500	Improvements: \$145,000	Total: \$176,500.
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JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONERS' BURDEN

13. 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).
14. 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”).
15. 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.

ANALYSIS

Parties' Contentions

16. The Petitioners presented the following evidence and argument in support of their claims:
- A. The Petitioners' property taxes have increased in recent years while revenues have declined. *D. Hague testimony; Petitioners Exhibit 1.*
 - B. The Petitioners' golf courses are in direct competition with municipal courses that are tax exempt. *D. Hague testimony; Petitioners Exhibit 2.* Accordingly, the Petitioners argue that the subject property has not been taxed in a uniform and equal manner compared to municipal courses. *D. Hague argument.*
 - C. There is a surplus of golf courses both nationally and locally, which has had a negative impact on the Petitioners' business. *D. Hague testimony; J. Hague testimony; Petitioners Exhibit 5.* The Petitioners have attempted to cut costs in recent years, resulting in deferred maintenance. *Id.* The Petitioners also have practiced economies of scale by purchasing chemicals in bulk and using one truck for both the subject property and the Tameka Woods golf course, which the Petitioners also operate. *Id.* The Petitioners recently leased a third course to further reduce expenses. *D. Hague testimony; J. Hague testimony; Petitioner Exhibit 5.*
 - D. The subject golf course has experienced functional obsolescence as a result of sub-standard construction of its greens, an inadequate irrigation system, and deficiencies in the buildings located on the course. *D. Hague testimony; Petitioners Exhibits 4, 6.* The Petitioners submitted five pages of photographs purporting to show those deficiencies. *Petitioners Exhibit 7.*
 - E. The subject land should be valued at \$1,050 per acre; the same rate as farmland. *D. Hague testimony; J. Hague; Petitioners Exhibit 6.* The subject buildings should be

- valued at \$135,000. *Id.* The Petitioners based their valuation of the buildings on replacement cost estimates they obtained for insurance purposes in 2002 or 2003. *Id.*
- F. The Petitioners also presented a calculation purporting to value the subject property by using the income approach to value. *D. Hague testimony; Petitioners Exhibit 3.* The Petitioners based their calculation on income and expense statements for 1999-2001 and applied a 10% capitalization rate to the net income for each year to arrive at an average negative value of \$428,196.40. *Id.* The Petitioners contend that the capitalization rate of 10% is conservative, and that investors generally would require a 15% rate of return given the risk inherent in the golf industry. *D. Hague testimony.*
17. The Respondent presented the following evidence and argument in support of the current assessment:
- A. The Respondent only assesses the value of property – it has no control over the amount of taxes paid by the Petitioners. *Alexander argument.*
- B. The Petitioners did not file an exemption request for the subject property. *Alexander testimony.* Therefore, the golf course is a taxable entity. *Id.*
- C. The Petitioners did not quantify the amount of obsolescence sought. *Alexander argument.* The calculations presented by the Petitioners may establish a value for the Petitioners' business, but they do not show the value of the real property. *Id.*
- D. The Respondent presented the current property record card for the subject property. *Respondent Exhibit 1.*

Discussion

1. Whether the Respondent failed to tax golf courses in a uniform and equal manner when it assessed and taxed the subject property but did not tax municipal courses with which the Petitioners are in competition

18. The Petitioners contend that county and municipal golf courses pay no property taxes and are funded by tax revenues, creating unfair competition and leading to taxation that is not uniform and equal. *Petitioners Exhibit 1.*

19. Article X section 1 of the Indiana Constitution provides that “[t]he General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation” Ind. Const. art. X, § 1(a). That section, however, further provides that the General Assembly may exempt from property taxation certain classes of property, including property being used for “municipal purposes.” Ind. Const. art. X, § 1(a)(1). The General Assembly exercised its constitutional power to exempt such property by enacting Indiana Code § 6-1.1-10-4, which provides that “[e]xcept as otherwise provided by law, the property owned by a political subdivision of this state is exempt from property taxation[.]” and Indiana Code § 6-1.1-10-5(2), which specifically exempts from taxation “a municipally owned park [or] golf course. . . .”

20. Thus, the very constitutional provision that gives rise to the right to uniform and equal taxation specifically recognizes that the General Assembly may elect to treat certain classes of property, including municipal golf courses, differently than other property by exempting those classes of property from taxation entirely. The fact that the General Assembly acted upon its explicitly delineated authority and exempted municipal golf courses cannot provide the basis for a challenge to the uniformity or equality of taxation.

21. As the Indiana Supreme Court long ago recognized “[w]hat property shall be taxed, and how it shall be taxed, are legislative questions, so long as there is uniformity and equality of rate as to those of the same class; and the subjects and methods of taxation are

legislative matters, and cannot be disturbed so long as the method prescribed is applicable alike to all within the prescribed class.” *Davis v. Sexton*, 210 Ind. 138, 200 N.E. 233, 241 (1936).

22. The Petitioners failed to demonstrate that the subject property is assessed any differently than other properties within the same class. Absent such a showing of disparate treatment, the Petitioners have failed to make a prima facie case their property is not assessed in a uniform and equal manner.

2. Whether the Petitioners are entitled to an adjustment for obsolescence

23. The Petitioners next claim that the subject property is entitled to an adjustment for functional obsolescence. A brief explanation of the concepts of depreciation and obsolescence under the applicable administrative rules and case law will help illustrate the Petitioner’s burden of proof on this issue.
24. The Respondent assessed the subject property by applying the Real Property Assessment Guidelines for 2002 -Version A (hereinafter “Assessment Guidelines”). The Assessment Guidelines represent an acceptable method of mass appraisal based upon the cost approach to value. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 13, 17 (incorporated by reference at 50 IAC 2.3-1-2).
25. The Assessment Guidelines generally provide for the determination of the replacement cost new of improvements through reference to cost tables. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 -VERSION A, 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.* The calculation of cost, however, only sets the upper limit of value for improvements. *Id.* The Assessment Guidelines also require that accrued depreciation be accounted for in valuing an improvement. *Id.*, app. F at 4. Under the Assessment Guidelines, depreciation consists of three separate things: physical deterioration, functional obsolescence and external obsolescence. *Id.* Physical deterioration 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.*

26. The Assessment Guidelines account for normal depreciation through the assignment of typical life expectancies and 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 must be estimated separately from normal depreciation. *Id.*
27. Consequently, a taxpayer alleging that it is entitled to an adjustment for abnormal obsolescence has a two-prong burden of proof: (1) the taxpayer must identify the causes of the claimed obsolescence, and (2) the taxpayer must quantify the amount of such obsolescence. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax 1998).
28. The Petitioners claim that the subject property has experienced functional obsolescence as a result of the following: (1) the irrigation system is inadequate and must be upgraded; (2) the golf course is in direct competition with a government owned course; and (3) the greens are of sub-standard construction. *Petitioners Exhibit 4*. The Petitioners also contend that the property has experienced economic obsolescence as a result of an overabundance of golf courses in the area. *Petitioners Exhibit 5*.²
29. Even if the Board were to assume that the above listed factors resulted in a loss in value not accounted for through the application of normal depreciation estimates, the Petitioners failed to quantify the amount of abnormal obsolescence from which the property suffered. Indeed, the Petitioners never even identified the amount of abnormal obsolescence being sought.

² While not explicitly framed as such, the Board will construe the Petitioners' argument asserting an overabundance of local golf courses as including a request for an adjustment based upon economic obsolescence.

30. Accordingly, the Petitioners failed to make a prima facie case regarding their claim for an obsolescence adjustment.

3. Whether the overall assessment of the subject property is excessive

31. While the Petitioners did not attempt to quantify the amount of obsolescence suffered by the subject property, they did present two calculations purporting to establish the property's overall market value.

32. First, the Petitioners presented a calculation quantifying the total value of the subject land, pro shop, maintenance shed and house as \$166,500. *Petitioners Exhibit 6.*³ The Petitioners arrived at that number by valuing the land and structures separately and adding those two values together. *Id.*

33. The Petitioners valued the land at the rate of \$1,050 per acre – the base rate for agricultural land under the Assessment Guidelines. *Id.*; *Board Exhibit A* at 2. In doing so, the Petitioners ignored the fact that land shall be assessed as agricultural only when it is devoted to agricultural use. I.C. 6-1.1-4-13.

34. It is true that Assessment Guidelines direct assessing officials to value golf course land at the rate of \$1050 per acre, the same as agricultural land. GUIDELINES, app. G at 37. Unlike agricultural land, however, the Assessment Guidelines provide for the valuation of improvements to golf course land such as tees, greens, bunkers, lakes, sprinkler systems, site preparation and landscaping. *Id.* The Assessment Guidelines account for such improvements by assigning a base cost per hole. *Id.* For executive courses, such as the subject property, the Assessment Guidelines assign a base cost per hole of \$44,400. *Id.*; *Respondent Exhibit 1.* The Petitioners did not include any cost for the development of the subject land in their calculation. Thus, the Petitioners' valuation of the subject land does not comply with the Assessment Guidelines.

³ As previously indicated, the Petitioners requested a total assessed value of \$176,500 on the Form 131 petition. *Board Exhibit A* at 2. The Petitioners offered no explanation for these conflicting values.

35. The Petitioners therefore were required to present market based evidence, such as sales of comparable properties, to support their contention regarding the value of the subject land. The Petitioners simply asserted that a potential investor would pay no more than \$1,050 per acre for the land in light of the business losses experienced by the Petitioners. The Petitioners' unsubstantiated assertions in that regard lack probative value. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
36. The Petitioners' valuation of the subject improvements suffers from similar flaws. The Petitioners testified regarding what they believed to be the replacement costs of the pro shop, maintenance shed, and house located on the subject property. *D. Hague testimony*. The Petitioners further testified that they derived those values from replacement costs obtained for insurance purposes in 2002 or 2003. *Id.*
37. As an initial matter, the Petitioners' calculation is incomplete, because it does not include values for a lean-to and paving that are identified and valued on the property record card. *Respondent Exhibit 1*. Moreover, the Petitioners did not explain how their asserted replacement costs were calculated. Thus, the Petitioners' assertions regarding those costs amount to little more than conclusory statements. As explained above, such statements lack probative value. *Whitley Products*, 704 N.E.2d at 1119.
38. Even if the Board were to give weight to the Petitioners' claims regarding the values of the structures in question, it would do little to help their cause. In each case, the value requested by the Petitioners exceeds the value of the structure as currently assessed. For example, the Petitioners contended that the pro shop should be valued at \$72,500, while it is currently assessed at only \$40,200. *Petitioners Exhibit 6; Respondent Exhibit 1*. The same is true for the maintenance shed (Petitioners' request - \$12,500; current assessment - \$9,000) and the dwelling (Petitioners' request - \$50,000; current assessment - \$42,300) located on the subject property. *Id.*

39. The Petitioners also presented a calculation of value based upon a capitalization of net income. *Petitioners Exhibit 3.*
40. “The income approach to value is based on the assumption that potential buyers will pay no more for the subject property . . . than it would cost them to purchase an equally desirable substitute investment that offers the same return and risk as the subject property.” 2002 REAL PROPERTY ASSESSMENT MANUAL 14 (incorporated by reference at 50 IAC 2.3-1-2).
41. The Petitioners based their calculation on the income and expenses of the subject golf course for the years 1999 through 2001. *Petitioners Exhibit 3.* The Petitioners concluded that the average value of the golf course for those three years was a negative \$428,196.40. *Id.*
42. The income approach to value focuses on the intrinsic value of the property, not upon a given petitioner’s relative lack of success in operating that property. Thus, it is important to know not just what the petitioner’s income and expenses are, but also the amount of income and expenses attributable to the operation of similar properties. The Petitioners presented financial data solely from their operation of the subject property, without offering any evidence to demonstrate whether that data was typical for the operation of comparable executive golf courses.
43. Moreover, the value the Petitioners derive from their application of the income approach makes it almost useless in valuing the subject property. If the Board were to credit the Petitioners’ calculation, the subject property would be absolutely valueless. This not only defies logic, but conflicts with the Petitioners’ own estimate that the property is worth \$166,500. *D. Hague testimony; Petitioners Exhibit 6.*
44. At most, the Petitioners might rely on their calculation as some evidence that, given their operating losses, the current assessment is excessive. The Petitioners’ calculation, however, does little to demonstrate what the market value-in-use of the property actually

is. As explained above, it is not enough simply to show that the assessment is incorrect. Instead, the Petitioners bear the burden of demonstrating what the correct assessment should be. *Meridian Towers*, 805 N.E.2d at 478.

45. Based on the foregoing, the Petitioners failed to establish a prima facie case for a change in assessment.

SUMMARY OF FINAL DETERMINATION

46. The Petitioners failed to make a prima facie case of error. The Board finds in favor of the Respondent. There is no change in the assessment.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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>.