

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

Petition #: 63-012-02-1-5-00026, 63-012-02-1-5-00027, 63-012-02-1-5-00028
Petitioner(s): Sam Polen
Respondent: Washington Township Assessor (Pike County)
Parcel #: 012-00210-01, 012-00230-00, 012-00210-00
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 three Form 130 Petitions for Review of Assessment on three contiguous parcels with the Pike County Property Tax Assessment Board of Appeals (PTABOA) by written documents dated October 7, 2003.
2. The Petitioner received notice of the decision of the PTABOA on all three appeals on December 23, 2003.
3. The Petitioner filed appeals to the Board by filing three Form 131s with the county assessor on January 20, 2004. Petitioner elected to have this case heard on the small claims docket.
4. The Indiana Board of Tax Review issued Notices of Defect in Completion of Assessment Form to the Petitioner on each of the three appeals on February 26, 2004.
5. The Petitioner complied with the defect notice, filing with the Board on March 12, 2004 on all three petitions.
6. The Board issued notices of hearing to the parties dated March 15, 2004.
7. The Board held administrative hearings on April 28, 2004, before the duly appointed Administrative Law Judge Rick Barter. With the agreement of the Petitioner and the Respondent all three appeals were heard and considered in a single hearing.
8. Persons present and sworn in at hearing:

- a) For Petitioner: Sam Polen, Petitioner
- b) For Respondent: Wilma Jones, Pike County Assessor
Paul A. Lake, Pike County PTABOA
David A. Tisdale, Pike County PTABOA

Facts

- 9. The property is classified as residential, as is shown on the property record cards for parcels #012-00210-01, 012-00230-00, and 012-00210-00.
- 10. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
- 11. Assessed Value of subject property as determined by the Pike County PTABOA:

012-00210-01 Land	\$2,500	Improvements	\$2,800	Total	\$5,300
012-00230-00 Land	\$2,500	Improvements	\$ 300	Total	\$2,800
012-00210-00 Land	\$3,500	Improvements	\$ 0	Total	\$3,500
- 12. Assessed Value requested by Petitioner:

012-00210-01 Land	\$1,000	Improvements	\$ 0	Total	\$1,000
012-00230-00 Land	\$1,000	Improvements	\$ 0	Total	\$1,000
012-00210-00 Land	\$1,000	Improvements	\$ 0	Total	\$1,000

Issue

- 13. Summary of Petitioner’s contentions in support of alleged error in assessment:
 - a) Assessed value of each of the three lots is too high because it takes three such lots to build an improvement. At the current assessed value that would result in a total land assessment for the three of \$8,500.
 - b) Land should be granted 85% obsolescence as a result of changes to city ordinances that now prohibit mobile home rentals, the purpose for which the land was purchased.
 - c) Land now generates \$10,200 less per month income than it did when fully occupied and used for mobile home rentals prior to 1990.
 - d) A mobile home located on parcel 012-00210-01 is no longer owned by the Petitioner and should not be assessed to him.
- 14. Summary of Respondent’s contentions in support of the assessment:
 - a) Based on the Petitioner’s contention that the land is not used, the PTABOA granted a 30% negative influence factor on the parcels in question as a result of the Form 130 petitions.
 - b) The Petitioner is listed as the owner of a mobile home located on parcel 012-00210-01 and is appropriately assessed on this parcel.

- c) Two comparable lots of 50'x120' (012-00820-01) and 25'x120' (012-00820-00), in the same neighborhood with assessed values of \$3,600 and \$1,400 respectively (total \$5,000), sold in March of 2004 for \$5,000. The latter's assessed value includes a negative 25% influence factor with no explanation on the property record card. There is no influence factor on the former.

Record

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

- a) The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
- b) The tape recording of the hearing labeled BTR #5826.
- c) Exhibits:

Petitioner Exhibit 1: A copy of a page from a publication carrying a title at the top of "Commercial/Industrial Depreciation/Common Causes of Obsolescence" with an apparent page number of DP-01 (at the bottom of the page) with the word "obsolescence" circled and five "Common Causes of Economic Obsolescence" circled as well.

Respondent Exhibit 1: Property record card for parcel 012-00210-01

Respondent Exhibit 2: Property record card for parcel 012-00230-00

Respondent Exhibit 3: Property record card for parcel 012-00210-00

Respondent Exhibit 4: Form 115 Notification of Final Assessment Determination 012-00210-01.

Respondent Exhibit 5: Form 115 Notification of Final Assessment Determination 012-00230-00.

Respondent Exhibit 6: Form 115 Notification of Final Assessment Determination 012-00210-00.

Respondent Exhibit 7: Form 130 petition to the PTABOA for 012-00210-01.

Respondent Exhibit 8: Form 130 petition to the PTABOA for 012-00230-00.

Respondent Exhibit 9: Form 130 petition to the PTABOA for 012-00210-00.

Respondent Exhibit 10: Photographs (3) of the subject property.

Respondent Exhibit 11: County witness list.

Respondent Exhibit 12: Sales Disclosure Form for parcels 012-00820-00 and 012-00820-01.

Respondent Exhibit 13: Property record card for parcel 012-00820-01.

Respondent Exhibit 14: Property record card for parcel 012-00820-00.

- d) These Findings and Conclusions.

Analysis

16. The most applicable governing law is:

- a. [I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis; arguments that (1) generically claim without explanation that the taxpayer made a prima facie case and (2) cite to large portions of the record as though the evidence speaks for itself do not constitute probative evidence.

Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (citing *Clark v. State Bd. of Tax Comm'rs*, 779 N.E.2d 1277, 1282 n.4 (Ind. Tax Ct. 2002)).

- b. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. Conclusory statements are of no value to the Board in its evaluation of the evidence. *See generally, Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
- c. The Petitioner must do two things: (1) prove the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. *See Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711 (Ind. Tax Ct. 2002).

17. The Petitioner did not provide sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:

- a) Petitioner's only evidence, a copy of a page from an unidentified source, and its relevance to the issue at hand was not explained. *Petitioner's Exhibit 1*. He did not demonstrate how this page about obsolescence disproved his current assessed value, nor did it prove obsolescence on his property, quantify any obsolescence on his property or demonstrate how it supports what he contends is his correct assessed value.
- b) Petitioner's ability to prevail in this appeal depends upon the two-pronged argument: first, to prove the assessed value is incorrect, and second, to prove and support what the correct assessed value is. He did not do so on either count. *See Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
- c) The Petitioner, when questioned, testified that a single mobile home located on one of the parcels under appeal has been sold and is not rented. *Polen testimony*.

- d) However, the title to that mobile home remains in his name and he is assessed \$2,800 for it on 012-00210-001. *Jones testimony.*
- e) Petitioner acknowledged that the mobile home in remains in his name and the new owner is paying the resulting taxes to the Petitioner. *Polen testimony.*
- f) The page of evidence submitted by the Petitioner lists, among others, one cause of economic obsolescence, “[z]oning laws and other government regulations which affect the usage and operation of the property.” *Petitioner’s Exhibit 1.*
- g) Petitioner contends that his land should be granted 85% obsolescence as a result of changes to city ordinances that prohibit mobile home rentals, the purpose for which the land was purchased. *Polen testimony.*
- h) However, Petitioner did not present evidence of the city codes he cited. Respondent agreed that the codes changed after 1990 and the Petitioner was not allowed to bring additional mobile homes to the property. *Jones testimony.* The Board has difficulty providing relief based on these local ordinances when they are not presented to it. The Board cannot tell anything about the restrictive effect these regulations might have on the property, as they are not in evidence. Although the Board prefers to see such evidence, it will assume that the ordinance prohibits mobile homes from being moved onto the parcels because the testimony is uncontested. *Polen testimony; Jones testimony.*
- i) Petitioner contends that his utility of the property is impaired by the ordinances, but has not shown that the value of the property has been lessened. Additionally, all three parcels have been given a 30% negative influence factor by the PTABOA to account for any loss of value caused by the zoning. Petitioner has not shown that this adjustment is inadequate.
- j) In order to prove a property’s value has been reduced by obsolescence, a petitioner must demonstrate that obsolescence exists and must quantify the obsolescence. *See Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Petitioner has failed show a loss in value and to tie that loss to the restrictions imposed by the local ordinances.¹ Petitioner has thus failed to quantify the alleged loss in value. *See Heart City Chrysler v. State Bd. of Tax Comm’rs*, 714 N.E.2d 329, 334 (Ind. Tax Ct. 1999) (stating that attempts to quantify obsolescence must correlate to the causes of obsolescence).

¹ The quantification of obsolescence is intrinsically tied to the actual loss of value suffered by the improvements from the alleged causes of obsolescence. *See Miller Structures, Inc. v. State Bd. of Tax Comm’rs*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001).

Conclusion

18. The Petitioner failed to make a prima facie case. The Board finds in favor of Respondent and makes no change to the assessment.

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.