

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-4-01090
Petitioner(s): Joanne Turner
Respondent: Department of Local Government Finance
Parcel #: 001-25-46-0349-0001¹
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 Department of Local Government Finance (DLGF) determined that the Petitioner’s property tax assessment for the subject property was \$56,300 and notified the Petitioner.
2. The Petitioner filed a Form 139L petition on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated March 7, 2005.
4. A hearing was held on April 7, 2005, in Crown Point, Indiana before Special Master Ken Daly.

Facts

5. The subject property is located at: 2000 Grant Street, Gary, in Calumet Township, Lake County, Indiana.
6. The subject property is a beauty salon situated on .205 acres of land.
7. The Special Master did not conduct an on-site visit of the property.

a) Assessed values of subject property as determined by the DLGF are:

¹ The Form 139 L petition refers to parcel #41-49-519-1, which appears to be a scrivener’s error. *Board Exhibit A.* That number matches the parcel number for a property owned by CFJ Properties and located at 3490 Grant Street. *Id.* The Petitioner attached a property record card for the CFJ Properties parcel to her Form 139 L petition. *Id.* The parcel number listed in the caption to the Board’s Final Determination, Findings and Conclusions matches the parcel number set forth on the property record card for the property owned by Joanne Turner and located at the address listed on the Form 139L petition. *See Board Exhibit A; Respondent Exhibit 2.*

Land: \$38,700 Improvements: \$17,600

b) Assessed values requested by Petitioner per the Form 139L petition are:

Land: Less than \$14,000 Improvements: \$17,600

8. The persons indicated on the attached sign-in sheet (Board Exhibit C) were present at the hearing.

9. Persons sworn in at hearing:

For Petitioner: Jacqui Hamilton, Owner/operator²

For Respondent: Everett Davis, representing the DLGF

Issues

10. Summary of Petitioner's contentions in support of alleged error in assessment:

a) The Petitioner bought the subject property at a tax sale. The property was formerly Clark gas station and still has underground tanks. It would cost a minimum of \$40,000 to remove the tanks. The structure is now a beauty shop. *Hamilton testimony*.

b) The area surrounding the subject property consists of a strip center that was vacant until a year and a half ago; a cemetery directly across the street on the northeast corner of the intersection where the subject property is located; a vacant lot on the southeast corner of the intersection; and a vacant wooded area directly behind the subject property. *Id.; Petitioner Exhibits 6, 8*. The subject property is entitled to an adjustment for external obsolescence due to the surrounding conditions. *Hamilton argument*. Ms. Hamilton also testified regarding a commercial property in another neighborhood that has been vacant for years and was listed for sale at \$40,000.

c) The quality grade and condition rating applied to the subject building and paving are too high. *Id.; Petitioner Exhibits 2 and 3*. The materials incorporated into the subject building were not supposed to be used for those purposes. Family members supplied the labor. *Hamilton testimony*.

² On the Form 139L petition, Ms. Hamilton identified herself as an "Authorized Officer" of Ms. Turner. *Board Exhibit A*. At the hearing, Ms. Hamilton simply referred to herself as "owner operator." *Hamilton testimony*. There is no indication that the taxpayer, Ms. Turner, is a corporation or other fictional entity having employees or officers. Ms. Hamilton does not appear on the list of certified tax representatives maintained by the Department of Local Government Finance. Thus, it is not apparent that Ms. Hamilton was authorized to represent Ms. Turner in proceedings before the Board. *See 52 IAC 1-2*. Nonetheless, the Respondent did not object to Ms. Hamilton's representation of Ms. Turner. The Board therefore will address the evidence and arguments proffered by Ms. Hamilton on their merits.

- d) The concrete paving is over fifty (50) years old. The quality grade applied to the subject building and paving should be “D” and the condition rating applied to those improvements should be “poor.” *Id.*
 - e) The subject land is valued at \$4.34 per square foot, while a parcel on the same street (Grant Street) occupied by Burger King, is valued at \$1.84 per square foot. *Id.*
11. Summary of Respondent’s contentions in support of assessment:
- a) The grade of the structure is presently a “C-1” and is correct. *Davis testimony & Respondent Exhibit 2.* The structure is receiving an 80% physical depreciation factor. *Id.*
 - b) The Respondent cannot tell by the pictures whether any changes to the quality grade or condition rating assigned to the pavement are warranted. *Davis testimony.*
 - c) The Petitioner did not submit any evidence to support the application of external obsolescence depreciation, nor did she quantify amount of obsolescence depreciation to which she is entitled. *Id.* In addition, it is difficult to determine the effect that the area surrounding the subject property has on the market value-in-use of the subject property. *Id.*
 - d) With regard to the Petitioner’s claims concerning the valuation of the subject land, the cost per square foot is more for smaller lots than it would be for larger lots. *Id.*

Record

12. The official record for this matter is made up of the following:
- a) The Petition.
 - b) The tape recording of the hearing labeled BTR #1490.
 - c) Exhibits:

- Petitioner Exhibit 1: Subject’s property record card (PRC)
- Petitioner Exhibit 2: Appendix E, page 45, Real Property Assessment Guidelines
- Petitioner Exhibit 3: Commercial/Industrial Grade Specification Table, page 8
- Petitioner Exhibit 4: Photograph of subject structure
- Petitioner Exhibit 5: Photograph of subject paving
- Petitioner Exhibit 6: Photographs of property behind the subject
- Petitioner Exhibit 7: Photographs of subject
- Petitioner Exhibit 8: Photographs of properties on adjacent corners

- Respondent Exhibit 1: Form 139L Petition
- Respondent Exhibit 2: Subject PRC

Respondent Exhibit 3: Photographs of subject

Board Exhibit A: Form 139L Petition

Board Exhibit B: Notice of Hearing on Petition

Board Exhibit C: Sign-in Sheet

d) These Findings and Conclusions.

Analysis

13. The most applicable laws 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 276 (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.

14. The Petitioner did provide sufficient evidence to support a change in assessment. This conclusion was arrived at because:

- a) The Petitioner attacks the current assessment on the following grounds: (1) the area surrounding the subject property detracts from its value and entitles the Petitioner to an adjustment for external obsolescence; (2) the land portion of the assessment is excessive when compared to the assessment of a neighboring parcel; and (3) the quality grades and condition ratings assigned to the subject improvements are incorrect.

Surrounding area/external obsolescence

- b) The Petitioner submitted photographs of the area immediately surrounding the subject property. *Hamilton testimony; Petitioner Exhibits 6, 8*. The Petitioner contends that make-up of that area, which includes vacant lots and a cemetery, detracts from the market value of the subject property and entitles the subject property to an adjustment for external obsolescence. *See Harrison testimony*.

- c) The Petitioner, however, did not provide any evidence from which to quantify the effect of the surrounding area on the market value-in-use of the subject property. The Petitioner did attempt to compare the subject property to another commercial property that had been vacant for years and was listed for sale at \$40,000. *Harrison testimony*. Ms. Hamilton described that property as similar to the subject property, but situated on a corner in a commercial/retail area having a steady traffic flow. *Id.*
- d) Ms. Hamilton's testimony is largely conclusory. She did not present any evidence to compare the features of the two properties or to otherwise establish their comparability beyond her bald assertion that the two properties are similar. Conclusory statements that a property is "similar" or "comparable" to another property, however, do not constitute probative evidence of the comparability of the two properties. *See Long v. Wayne Township Assessor*, 821 N.E.2d 470 (Ind. Tax Ct. 2005).
- e) The Petitioner's failure to quantify the effect of the surrounding area on the market value-in-use of the subject property is equally problematic with regard to her claim for an adjustment to reflect external obsolescence depreciation.
- f) A taxpayer alleging that he or she is entitled to an adjustment for abnormal obsolescence has a two-prong burden of proof: (1) the taxpayer must identify the causes of obsolescence, and (2) the taxpayer must quantify the amount of obsolescence. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax 1998).
- f) Assuming, *arguendo*, that the concerns voiced by Ms. Hamilton actually caused the property to suffer from external obsolescence, the Petitioner failed to quantify the amount of obsolescence she sought. At the hearing, Ms. Hamilton was asked by the Special Master as to the amount of obsolescence the Petitioner was seeking. Ms. Hamilton stated that she did not know how much obsolescence should be applied. *Hamilton testimony*. Ms. Hamilton only indicated that she wanted the assessment to be what it was prior to the reassessment. *Id.*

Land

- h) The Petitioner compared the base rate of \$4.34 per square foot used to assess the subject land to rate used to assess land owned by a Burger King restaurant on the same street as the subject property. The restaurant's land is assessed at the rate of \$1.84 per square foot. *Hamilton testimony*.
- i) The Petitioner, however, did not provide a property record card for the Burger King restaurant, nor did she compare things such as the sizes, shapes or topography of the lots. *See Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that taxpayer failed to establish comparability of parcels of land where, among other things, taxpayer did not compare the sizes, shapes

or topography of parcels). Consequently, the Petitioner failed to establish a prima facie case of error with regard to the land portion of the subject property's assessment.

Quality grade/condition rating

- j) Finally, the Petitioner contends that the Respondent erred in assigning quality grades and condition ratings to the subject improvements. Specifically, the Petitioner contends that the subject paving should be assigned a quality grade of "D" and a condition rating of "poor" as opposed to grade of "C" and condition rating of "fair" that it currently receives. *Hamilton testimony; see also, Resp't Ex. 2*. The Petitioner similarly contends that the quality grade assigned to the subject building should be changed from "C-1" to "D." *Id.*
- f) The Petitioner submitted two (2) photographs to support her claims concerning the subject paving. *Hamilton testimony; Petitioner Exhibit 5*. Those photographs both depict a small area of the subject paving. *See, Id.* Although the photographed section of the paving shows cracks and indentations, those defects do not allow for an evaluation of the overall condition of the 7,200 square feet of paving located on the subject property. *See Petitioner Exhibit 1; Respondent Exhibit 2*.
- g) The Petitioner similarly failed to present any evidence concerning the quality of the design, materials and workmanship used in constructing the subject paving. Those are precisely the factors that assessor measure through the assignment of a quality grade. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app E at 3 (incorporated by reference at 50 IAC 2.3-1-2)*.
- h) Thus, the Petitioner failed to establish a prima facie case of error with regard to the assessment of the subject paving.
- p) The Petitioner, however, did provide evidence regarding the quality of the design, materials and workmanship used in the construction of the subject building. Ms. Hamilton testified that inappropriate materials were incorporated into the subject building and that family members provided the labor. *Harrison testimony*. In addition, the Petitioner submitted a copy of photographs of the subject property and compared those photographs to pictures from the Real Property Assessment Guidelines for 2002 – Version A ("Guidelines") depicting "D" grade commercial structures. *Petitioner's Exhibits 2, 7*. The Petitioner also submitted highlighted copies of portions of the grade specification tables from Appendix E of the Guidelines, identifying features of the subject building that are consistent with a quality grade of "D." *Petitioner Exhibit 3*.
- q) As demonstrated by the Petitioner, the subject structure is a rectangular, one story, wood-joint and concrete block building completely devoid of architectural detail and architectural treatment. *See Petitioner Exhibits 1, 7*. The quality of design, construction and workmanship used in the construction of the subject building is

consistent with the Guidelines' description of a "D" grade property. The Petitioner therefore established a prima facie case of error with regard to the quality grade assigned to the subject building.

- r) The Respondent did not present any probative evidence to rebut the Petitioner's prima facie case. At most, the Respondent's representative simply made the conclusory assertion that the Respondent assigned the correct quality grade to the subject building. *See Davis testimony.*

Conclusion

- 15. The Petitioner established a prima facie case that the quality grade assigned to the subject building should be changed from "C-1" to "D." The Respondent failed to impeach or rebut the Petitioner's evidence in that regard. The Petitioner failed to establish a prima facie case of error with regard to her remaining claims.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be changed to reflect a quality grade of "D" for the subject building. The assessed value of the subject property should be changed accordingly.

ISSUED: **March 3, 2006**

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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.