

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-3-00161
Petitioner: 1st American Management
Respondent: Department of Local Government Finance
Parcel #: 001-15-26-0387-0005
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 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$777,000. The DLGF's Notice of Final Assessment was sent to the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated August 31, 2004.
4. A hearing was held on October 6, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at: 1951 Woodlawn Avenue in Griffith, Calumet Township, Lake County, Indiana.
6. The subject property is a 15,500 square foot (sf) industrial facility on 1.516 acres of primary land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed values of the subject property as determined by the DLGF:
Land \$84,100 Improvements \$692,900 Total \$777,000

9. The Petitioner did not dispute the assessed land value or the assessed values of improvements other than the subject building. The Petitioner requested a value of \$592,400 for the subject building as opposed to its current assessed value of \$681,000.
10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
11. Persons sworn in at hearing:
 - For Petitioners: Michael White, Tax Representative for the Petitioner
 - For Respondent: Jim Hemming, representing the DLGF

Issues

12. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) An adjustment should be applied to the assessment of the subject building to account for obsolescence. Approximately ten percent (10%) of the building was constructed as an office with twelve (12) foot high exterior walls. The remainder of the building was constructed to be a warehouse with 18 foot high walls. *White testimony; Petitioner Exhibit A.* The Petitioner expanded its office into the warehouse portion of the building and installed a "drop" tile ceiling. With the ceiling in place, the expanded office only utilizes approximately twelve (12) feet of exterior wall height. *White testimony; Petitioner Exhibit B.* The Petitioner does not use the area above the ceiling as a mezzanine or for any other purpose. *White testimony.*
 - b) The current assessment is based upon an exterior wall height of eighteen (18) feet throughout the building. *White testimony; Petitioner Exhibit A.* Sixty-seven percent (67%) of the building is assessed based upon the General Commercial Office (GCI) schedule, which calls for an exterior wall height of twelve (12) feet. *Id.* The Respondent applied an exterior wall height adjustment to the office portion of the building to account for the extra six (6) feet of wall height. *Id.*
 - c) The Petitioner submitted a "corrected" property record card (PRC) that removes the wall height adjustment applied by the Respondent. The value for the building is \$590,700 if the wall height adjustment applied by the Respondent is removed. The Petitioner contends that this amount is equal to almost eighty-seven percent (87%) of the current assessment of the subject building. Thus, the Petitioner seeks a thirteen percent (13%) obsolescence adjustment to the assessment of the subject building. This would result in a value of \$592,400. *White testimony; Petitioner Exhibit C.*
13. Summary of Respondent's contentions in support of the assessment:
 - a) The subject building was constructed with an exterior wall height of eighteen (18) feet. It was more economical for the Petitioner to obtain the subject building and

expand the office area into the warehouse portion of the building than it was to build or purchase a structure with the dimensions for which the Petitioner seeks to be assessed. *Hemming testimony*.

- b) The expansion of the office area into the warehouse does not affect the market value-in-use of the subject property. The Petitioner did not present any evidence regarding the property's market value-in-use. *Id.*

Record

14. 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 #276.
- c) Exhibits:

- Petitioner Exhibit A: Form 139L Petition
 - Petitioner Exhibit B: Specific Objections
 - Petitioner Exhibit C: Corrected PRC
 - Petitioner Exhibit D: Photographs of Subject Property

- Respondent Exhibit 1: Form 139L Petition
 - Respondent Exhibit 2: Subject PRC
 - Respondent Exhibit 3: Subject Photographs

- Board Exhibit A: Form 139 L
 - Board Exhibit B: Notice of Hearing
 - Board Exhibit C: Sign in Sheet

- d) These Findings and Conclusions.

Analysis

15. The most applicable laws are:

- a) A petitioner seeking review of a determination of the DLGF 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 at 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 Petitioner’s evidence. *See American United Life Ins. 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 479.
16. The Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:
- a) The Petitioner contends that subject building suffers from obsolescence because a significant portion of the building is used as an office in which the Petitioner has installed a drop tile ceiling. Thus, the Petitioner uses only about twelve (12) feet of exterior wall height in that portion of the building, but is being assessed for eighteen (18) feet of exterior wall height.
 - b) A brief explanation of the concept of depreciation and obsolescence under the applicable administrative rules and case law will help illustrate the Petitioner’s burden of proof in this case.
 - c) The Respondent assessed the subject property in accordance with the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”). The 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).
 - d) The Guidelines 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 (incorporated by reference at 50 IAC 2.3-1-2). The cost tables were developed from objectively verifiable data by drawing cost information from publications of Marshall & Swift, L.P. *Id.* The calculation of construction costs, however, only sets the upper limit of value for an improvement. *Id.* The Guidelines also require that accrued depreciation be accounted for in valuing an improvement. GUIDELINES, app. F at 4. Under the 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.*
 - e) The Guidelines account for normal depreciation through the assignment of typical life expectancies and structure condition classifications. *Id.* at 4-7. This normal

- depreciation includes both typical physical deterioration and typical obsolescence. *Id.* at 8. Abnormal obsolescence - that is to say obsolescence not already accounted for through the cost tables and the calculation of normal depreciation under the Guidelines - is estimated separately and expressed as a percentage reduction to the building's remainder value. *Id.*; GUIDELINES, ch. 3 at 58.
- f) 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 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). There are numerous methodologies for calculating abnormal obsolescence, and as a general rule, commonly accepted appraisal concepts and methods may be used. GUIDELINES, app. F at 8; *Meridian Towers*, 805 N.E. 2d 479. The Guidelines themselves set forth examples of a number of commonly recognized methods for calculating various forms of obsolescence. *Id.*, at 9-16.
 - g) Though not identifying its claim in those exact terms, it is clear that the Petitioner seeks an adjustment for a specific type of functional obsolescence recognized by the GUIDELINES - *superadequacy*. Superadequacy occurs where "an item is bigger, better or larger than potential owners demand." GUIDELINES, app. F at 9-10.
 - h) The Petitioner demonstrated that the subject structure suffers from a superadequacy that is not otherwise accounted for in the current assessment. The Petitioner uses sixty-seven percent (67%) of the subject building as an office in which it has installed a ceiling at the height of twelve (12) feet. Moreover, the GCI Office model posits only twelve feet of exterior wall height for typical industrial offices. The office portion of the building, however, is assessed for an exterior wall height of eighteen (18) feet. Thus, the Petitioner has demonstrated that the building is "bigger" than either it, or similar potential owners demand.
 - i) As explained above, however, it is not enough for a taxpayer merely to identify the existence of abnormal obsolescence – the taxpayer must also quantify the amount of that obsolescence.
 - j) The Petitioner did not present any evidence to show the extent to which the market value-in-use of the subject property is affected by the extra six (6) feet of ceiling height. Instead, the Petitioner proposed simply to remove the cost assigned to the unused six (6) feet of exterior wall height. The Petitioner did not present any evidence that its chosen method of calculation conforms to commonly accepted appraisal methods or concepts or to any approach specifically outlined in the Guidelines. Moreover, the Petitioner's method of quantification assigns absolutely no value to the space between the interior ceiling of the office area and the roof of the building. While the Petitioner's representative testified that the Petitioner currently does not use that space, such an assertion does not amount to evidence that the space completely lacks value in the market.

- k) The Petitioner therefore failed to establish a prima facie case that it is entitled to an adjustment for obsolescence.

- l) The Board notes that there is some confusion on the record regarding the actual exterior wall height of the different portions of the subject building. Michael White testified that a small portion of the building – the portion that originally was constructed as an office - has exterior walls that are only twelve feet high and that the remaining walls are eighteen (18) feet high. *White testimony*. The Respondent testified that the building was assessed as having an *average* wall height of eighteen (18) feet, which would indicate that at least a portion of the building contains walls in excess of eighteen feet. *Hemming testimony*. Neither witness explained the basis for his testimony. Regardless, White testified that the difference in actual wall height for the original office was not “material” to the Petitioner’s claims, and the Petitioner did not request any specific relief on those grounds. *White testimony*. The Board therefore does not separately address that issue.

Conclusion

- 17. The Petitioner did not make a prima facie case of entitlement to an adjustment for obsolescence. The Board finds in favor of the Respondent.

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. 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>>.