

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-3-01129
Petitioner: NA Logan Inc.
Respondent: Department of Local Government Finance
Parcel #: 001414900400067
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 on March 2, 2004 in Lake County, Indiana. The Department of Local Government Finance ("DLGF") determined that the Petitioner's property tax assessment for the subject property was \$201,600 and notified the Petitioner on April 1, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated May 25, 2005.
4. A hearing was held on June 27, 2005, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is an improved industrial lot with three buildings located at 3090 Burr Street in Gary, Calumet Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Value of subject property as determined by the DLGF:
Land \$60,900 Improvements \$140,700 Total \$201,600
8. Assessed Value requested by Petitioner on Form 139L petition:
Land \$60,900 Improvements \$75,800 Total \$136,700
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioner: Robert White, Tax Representative

For Respondent: Diane Spenos, DLGF

Issues

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

- a) The Petitioner requests functional obsolescence in the amount of 44% for the building built in 1940 [shown on Card 1]. The functional obsolescence is requested due to dysfunctional layout, inadequate height, inadequate openings, and the presence of posts which prevent beams from being turned or moved. In addition, a significant amount of space is occupied by equipment that was abandoned by the previous owner and which cannot feasibly be moved. *White testimony; Pet'r Exs. 1, 2, 3.*
- b) Approximately 70% of the subject building goes unused while painting is done out of doors, which is undesirable for a number of reasons. *White testimony; Pet'r Ex. 3.*
- c) The Petitioner contends that the subject building has incurable deficiencies and the best measure of obsolescence is the comparison of a functional replacement building to the replacement cost of the current building. The functional replacement is a 60' x 200' pre-engineered building with an office mezzanine and 24' wall height. The Petitioner presented a pricing worksheet estimating the cost of a functional replacement building to be \$349,320. *White Testimony; Pet'r Ex. 4.*
- d) The Petitioner's computation of the functional obsolescence is shown on Petitioner's Exhibit 4. The Petitioner shows the functional obsolescence amount as \$274,530 which is the difference between the replacement cost of the subject building and the replacement cost of a functional replacement building. The result is a functional obsolescence percentage of 44%. *White Testimony; Pet'r Ex. 4.*

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

- a) The Respondent presented the property record cards and a photograph of the subject property. *Spenos Testimony; Resp't Exs. 1, 2.*
- b) The Respondent noted that in the Petitioner's computation of obsolescence the Petitioner is comparing a new 12,000 square foot building to the existing building which has 28,892 square foot. *Spenos 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 Co #1212
- c) Exhibits:

Petitioner Exhibit 1:	Property Record Card
Petitioner Exhibit 2:	Property Owner Statement
Petitioner Exhibit 3:	Issues
Petitioner Exhibit 4:	Replacement Cost Worksheet
Petitioner Exhibit 5:	Sketch of Facility
Petitioner Exhibit 6:	Photos (10)
Petitioner Exhibit 7:	P.O.A.

Respondent Exhibit 1:	Subject Property Record Cards
Respondent Exhibit 2:	Subject Photograph
Respondent Exhibit 3:	Incremental/Decremental land Summary
Respondent Exhibit 4:	Plat Map

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

- d) These Findings and Conclusions

Analysis

- 14. 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 Township 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 Township 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.

15. The Petitioner did not provide sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
- a) The Petitioner contends the subject building should receive 44% functional obsolescence due to dysfunctional layout, inadequate height, inadequate openings, and the presence of posts which prevent beams from being turned or moved. *White testimony; Pet'r Exs. 2, 3.*
 - b) Functional obsolescence is a loss in value caused by inutility within the improvement. It may be caused by defects in design, style, size, poor room layout, a deficiency, the need for modernization, a superadequacy, and/or by changes in the tastes of potential buyer. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. F at 4 (incorporated by reference at 50 IAC 2.3-1-2).
 - c) Regarding obsolescence, the taxpayer has a two-prong burden of proof: (1) the taxpayer has to prove that obsolescence exists, and (2) the taxpayer must quantify it. *Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230, 1233 (Ind. Tax 1998).
 - d) To support the Petitioner's contention that functional obsolescence exists, the Petitioner presented the testimony of its representative, statements from the owner and Rex Hume of Uzelac & Associates, a sketch of the subject building, and photographs. *White testimony; Pet'r Exs. 2, 3, 5, 6.*
 - e) It is incumbent on the taxpayer to establish a link between the evidence and the loss of value due to obsolescence. After all, the taxpayer is the one who best knows his business and it is the taxpayer who seeks to have the assessed value of his property reduced. *Rotation Products Corp. v. Department of State Revenue*, 690 N.E.2d 795, 798 (Ind. Tax 1998).
 - f) Though the Petitioner discussed factors that may be causes for functional obsolescence, the Petitioner does not thoroughly explain or document these concerns. The basis of the Petitioner's claim is that the Petitioner needs less area with a better layout. The Petitioner does not show how the purported causes of functional obsolescence cause the subject building to suffer loss in value. The Petitioner has not shown that obsolescence exists.
 - g) Even if the Petitioner had shown that obsolescence exists, the Petitioner did not properly quantify the requested obsolescence.
 - h) Obsolescence may be quantified using generally recognized appraisal principles. *Canal Square Limited Partners v. State Board of Tax Commissioners*, 694 N.E.2d 806, 807 (Ind. Tax 1998).
 - i) The Petitioner contends the best measure of obsolescence is the comparison of the cost of a functional replacement building to the replacement cost of the current

building. The replacement cost of the functional replacement building is based on the owner's definition of his "ideal building." *White testimony; Pet'r Exs. 3, 4.*

- j) To quantify the obsolescence, the Petitioner compared the replacement cost of the existing building with 28,892 square feet to the replacement cost of a "functional replacement building" with 12,000 square feet. Any comparison of replacement costs that compares a 28,892 square foot building to a 12,000 square foot building will always result in a lower replacement cost for the building with fewer square feet. Such a comparison is not probative evidence.
- k) Furthermore, comparing the existing subject building to a hypothetical "functional replacement building" is not a generally recognized method of quantifying the loss in value due to obsolescence.
- l) The Petitioner did not submit probative evidence to support the existence or quantification of economic obsolescence. The Petitioner therefore failed to meet the burden articulated in *Clark*.

Conclusion

- 16. The Petitioner failed to make a prima facie case. 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>>.