

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-4-01108  
**Petitioner:** Vinshar Properties  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007263700130042  
**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 December 22, 2003 in Lake County, Indiana. The Department of Local Government Finance (the "DLGF") determined that the Petitioner's property tax assessment for the subject property was \$1,861,900 and notified 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 May 26, 2005.
4. Special Master Joan Rennick held a hearing in Crown Point on June 28, 2005.

### Facts

5. The subject property is located at 1745 165<sup>th</sup> Street in Hammond.
6. The subject property is an industrial property.
7. The Special Master did not conduct an on-site visit of the property
8. The assessed value of subject property as determined by the DLGF:  
Land \$308,000                      Improvements \$1,553,900                      Total \$1,861,900.
9. The assessed value requested by Petitioner:  
Land \$54,700                      Improvements \$442,400                      Total \$497,100.
10. Persons present and sworn in at hearing:  
For Petitioner – Sharyn Rankin, manager,

For Respondent – Steve McKinney, assessor/auditor.

### Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
  - a) The subject property is designed for business related to the steel industry. *Rankin testimony*. Before splitting the subject property in 2001, the subject building had 80 percent obsolescence depreciation. Following the split in 2001, the 80 percent obsolescence depreciation was reduced from 80 percent to 30 percent. *Rankin testimony; Petitioner Exhibit 3*.
  - b) Due to the building vacancy and the status of the economy, the subject property should have the 80 percent obsolescence depreciation factor reinstated. *Rankin testimony*.
  - c) The subject property was listed with a real estate firm to locate a tenant or to locate a new owner. However, during the listing period, no inquiries were made on the subject property. *Rankin testimony*.
  - d) The subject building is an older building that, due to structural issues, cannot be brought up to today's standards for the industry. For instance, 30 ton cranes are required for today's steel operations and the largest crane in the subject building is a 15 ton crane. An engineering company was brought in to make the building more structurally sound enabling the installation of 2 - 15 ton cranes and possibly making the subject building more attractive to bigger business. *Rankin testimony*.
  - e) In March 1999, 49 percent of the subject building was sold to Vincent Allegra of Midwestern Steel Fabricators, Inc. for \$1,000,000. *Rankin testimony; Petitioner Exhibit 1, p. 9*. Mr. Allegra also leases 90,584 square feet of warehouse space and 1,340 square feet of office in the subject. The lease term is June 1, 2002, to May 31, 2004 with a monthly rent of \$12,399.34. *Petitioner Exhibit 2*.
  
12. Summary of Respondent's contentions in support of the assessment:
  - a) While the Petitioner seeks to have the assessment reduced to \$497,100, the Petitioner sold 49 percent of the subject property for \$1,000,000. *McKinney testimony*. The sale price indicates that 49 percent of the subject property is worth \$1,000,000; therefore, the remaining 51 percent retained by the Petitioner is also worth at least \$1,000,000. Comparing the value established by the sale of 49 percent of the subject building, the current assessment of \$1,861,900 is not excessive. *McKinney testimony*.
  - b) The Petitioner indicated on the Form 139L that the asking price of the subject property would be \$1,500,000. While this figure is not twice as much as the value

of the 49 percent interest sold to Mr. Allegra, it is greater than the requested value of \$497,100. McKinney testimony.

- c) The Petitioner has not presented any evidence to establish a reduction in value. McKinney 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 County 1794,
- c) Exhibits:
  - Petitioner Exhibit 1 – A copy of the Form 139L Petition,
  - Petitioner Exhibit 2 – A copy of the lease with Midwest Steel,
  - Petitioner Exhibit 3 – The subject property record card reflecting the 2001 assessment,
  - Petitioner Exhibit 4 – The subject property record card reflecting the 2002 assessment,
  - Petitioner Exhibit 5 – The subject property record card reflecting the 2003 assessment,
  - Petitioner Exhibit 6 – A sketch of the area leased within the subject building,
  - Petitioner Exhibit 7 – A copy of the 1999 Plat of Survey,
  - Petitioner Exhibit 8 – A comparison of tax bills for properties located in Hammond, East Chicago, Merrillville, and Munster,
  - Respondent Exhibit 1 – The subject property record card,
  - Respondent Exhibit 2 – A photograph of the subject property,
  - Respondent Exhibit 3 – The Incremental/Decremental Land Summary,
  - Board Exhibit A – Form 139L,
  - 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 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 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) Obsolescence is defined as “a diminishing of a property’s desirability and usefulness brought about by either functional inadequacies or superadequacies inherent in the property itself, or adverse economic factors external to the property. 2002 REAL PROPERTY ASSESSMENT GUIDELINE – VERSION A, Glossary at 14. Economic or external obsolescence is defined as, “obsolescence caused by factors extraneous to the property. GUIDELINE at 6. A taxpayer alleging that he is entitled to an adjustment for 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 he seeks. *Clark v. State Board of Tax Commissioners*, 694N.E.2d 1230, 1241 (Ind. Tax 1998). In fulfilling the requirements of each of these prongs there has to be an actual loss in the value of the property. Probative evidence must show that the factors identified as causing the obsolescence are causing an actual loss in the property value. *See Miller Structures, Inc. v. State Bd. of Tax Comm’rs*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001).
  - b) The evidence indicates that the parties are not in dispute regarding the existence of obsolescence depreciation. Because the current assessment reflects the application of 30 percent obsolescence depreciation, the DLGF acknowledges that the obsolescence exists. *Petitioner Exhibit 4; Respondent Exhibit 1*. Thus, the first prong of the 2 prong burden is met. The Petitioner is only required to meet the second prong of establishing that the subject property should have 80 percent rather than 30 percent obsolescence depreciation to prevail in this matter.
  - c) The Petitioner merely relied on the fact that the subject property received 80 percent obsolescence depreciation in a prior assessment year as a means to quantify the amount of obsolescence requested. *Rankin testimony; Petitioner Exhibit 3, 4, 5*. However, relying on a previous assessment as support to obtain a change to a current assessment is misplaced because each tax year stands on its

own. *Barth, Inc. v. State Bd. of Tax Comm'rs.*, 699 N.E. 2d 800,805 n. 14 (Ind. Tax Ct. 1998).

- d) The sales disclosure form and lease agreement presented by the Petitioner gives some insight as to the subject property's worth. Petitioner Exhibit 1, p. 9, 2. However, the Petitioner did not explain how or why this evidence quantifies the request for 80 percent obsolescence depreciation. It is the Petitioner's responsibility to provide a thorough explanation of the evidence showing its relevance to the requested assessment and to walk the Board through each step of the analysis. *Indianapolis Racquet Club*, 802 N.E.2d 1018, 1022. The Petitioner has not done so.

### **Conclusions**

16. The Petitioner failed to make a prima facie case. The Board finds in favor of 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: \_\_\_\_\_

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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](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>>.