

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-4-00045
Petitioner: Meijer Stores LTD
Respondent: Department of Local Government Finance
Parcel #: 007-16-27-0632-0001
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 January 21, 2004, 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 \$13,278,900 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated October 13, 2005.
4. Special Master Debra Eads held the hearing on November 17, 2005, in Indianapolis, Indiana.

Facts

5. The subject property is located at 6240 U S 41 Indianapolis Blvd., Highland, in North Township.
6. The subject property is a 32.548 acre improved commercial property with a 237,174 square foot discount and grocery store and a 2,067 square foot convenience store.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$2,263,900 for the land and \$11,015,000 for the improvements, for a total assessed value of \$13,278,900.
9. The Petitioner requested an assessment of \$2,263,900 for the land and \$8,046,200 for the improvements, for a total assessed value of \$10,310,100.

10. Marta Haza, tax representative for the Petitioner, and Lori Harmon, representing the DLGF, appeared at the hearing and were sworn as witnesses. Also in attendance were Attorneys Vickie Norman and Jon Laramore of Baker & Daniels, who appeared on behalf of the Petitioner.

Issue

11. Summary of Petitioner's contentions in support of an error in the assessment:
- a) The Petitioner contends that the application of obsolescence is warranted for the subject structure to account for the economies of mega warehouse construction. *Norman argument; Petitioner Exhibit 1.* The Petitioner argues that the cost schedules included in the 2002 Real Property Assessment Manual (MANUAL) and the 2002 Real Property Assessment Guidelines (GUIDELINES) were developed by using publications of Marshall & Swift, L.P. *Norman argument; Petitioner Exhibit 3.* The Petitioner also argues that Marshall Valuation Service recognizes the mega warehouse store as a classification of retail stores that are very large discount and food outlets, typically over 200,000 square feet with tilt up exterior walls, painted interior walls, some partitioning, offices, some vinyl composition flooring, and acoustic ceiling. *Norman argument; Petitioner Exhibit 4.*¹ The Petitioner contends that the subject improvement is consistent with the mega warehouse store model in Marshall Valuation Service. *Norman argument; Petitioner Exhibits 2 and 4.*
 - b) The Petitioner argues that a negative obsolescence factor should be applied to the store to account for the difference in costs between constructing an average discount store and a mega warehouse store like the subject structure. In support of this argument, the Petitioner submitted a calculation that determined the amount of obsolescence that it alleges should be applied to the subject structure. *See Petitioner Exhibit 5.* According to the Petitioner, the Marshall Valuation adjusted base rate for a mega warehouse is \$32.02. *Norman argument; Petitioner Exhibit 5.* The Petitioner then made other adjustments to this base rate to account for sprinklers, wall height and perimeter area according to the Marshall Valuation cost information. *Id.* Further, the Petitioner argues, the resulting square foot cost must then be adjusted for time from the May 2004 cost schedules to the valuation date of January 1, 1999. *Norman argument.* To do this, the Petitioner testified it used the "District Comparative Cost Multipliers." *Petitioner Exhibit 7.* In addition, the square foot price was adjusted by the 1.11 location cost multiplier for Lake County as listed in the GUIDELINES. *Petitioner Exhibit 8.* Finally, physical depreciation was applied to the subject structure, resulting in an improvement assessment of \$6,938,300. *Haza testimony; Petitioner Exhibit 9.*

¹ The Respondent objected that the Petitioner's representatives had failed to supply all parts of the Marshall Valuation manual that may be relevant to the pricing change they sought. Mr. Laramore replied that if the Respondent believed any relevant data to be missing from the record, it would be the Respondent's responsibility to supply whatever it determined to be necessary to complete the record. The Petitioner's representative is correct that the Respondent may submit any data necessary to rebut the evidence of the Petitioner. The objection of the Respondent is denied.

- c) To determine the obsolescence that it contends should be applied to the subject structure, the Petitioner calculated the difference between the Petitioner's determined value of \$6,938,300 and the building's current assessment of \$9,895,900 and developed a percentage. *Norman argument; Haza testimony*. Thus, the Petitioner concludes, 30% obsolescence should be applied to the store building and the "correct" assessment of the subject improvements after obsolescence is applied and the yard improvements added in is \$8,046,200. *Norman argument; Petitioner Exhibit 5*.
- d) The Petitioner argues the issue of obsolescence before the Board in this appeal is similar to the "kit" building issue of the past decade. *Id.* According to the Petitioner, the "kit" issue was remedied through the State Board of Tax Commissioners² October 1991 memo (STB Instructional Bulletin 91-8³) that called for the application of 50% obsolescence to buildings that met the "kit" building criteria. *See Petitioner Exhibit 10*. Thus, the Petitioner contends, the lack of a GUIDELINES description for a "mega warehouse" building can be remedied by using Marshall Valuation to quantify the obsolescence which should be applied to the March 1, 2002, assessment of the subject discount store. *Norman argument*.
- e) In response to questioning, Ms. Haza admitted that the mega warehouse model was not addressed in the GUIDELINES for use in the 2002 general reassessment, nor was it addressed in the 1999 Marshall Valuation Service publication. *Haza testimony*. Ms. Haza argues, however, that the economies of scale evidenced in the construction of a 237,000 square foot discount store are more appropriately accounted for in the mega warehouse store pricing schedule of the Marshall Valuation Service than in the GUIDELINES discount store pricing schedule. *Id.*

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

- a) The Respondent contends that the assessment of the subject property is correct and argues that the Petitioner failed to submit probative evidence to establish a prima facie case. *Harmon testimony*. In support of this claim, the Respondent argues that the Marshall Valuation Services cost information is inapplicable to the 2002 valuation. Further, the Respondent contends that a comparable property's building

² The State Board of Tax Commissioners was abolished by the legislature as of December 21, 2001. Ind. Acts 198 § 119(b)(2). In its stead, the Indiana Board of Tax Review and DLGF were created. Ind. Code § 6-1.5-1-3 (West Supp. 2003) (eff. 1-1-02); 2001 Ind. Acts 198 § 95.

³ State Tax Board Instructional Bulletin 91-8 issued October 1, 1991, effective for March 1 1991, clarified a memorandum that was issued to all assessing officials on February 22, 1991, addressing amendments to the cost schedules in 50 IAC 2.1. It called for a 50% reduction in the base rate for structures qualifying to be "kit" buildings. This instructional bulletin was to help assessing officials identify which improvements qualified for the 50% reduction in base rate. On August 28, 1992, a second instructional bulletin (State Tax Board Instructional Bulletin 92-1) was issued which gave additional instructions for determining the base rate for pre-engineered/pre-designed buildings.

- permit supports the assessment value and argues that the Petitioner presented no market evidence to support the value it seeks.
- b) The Respondent argues that the use of cost schedules outside of those promulgated by the State of Indiana for use in the 2002 general reassessment is inappropriate.⁴ *Harmon testimony.* The Respondent, therefore, objects to the Petitioner’s use of the mega warehouse store pricing data because it was not included in the Marshall Valuation pricing manual in 1999. *Id.* The Respondent also alleges that the use of some values and factors from the GUIDELINES and some values and factors from the mega warehouse store model is inconsistent. *Id.* The Respondent contends the Petitioner has used a misapplication of the Marshall Valuation Service pricing guidelines in an effort to support the value it sought for the subject improvement. *Id.*
- c) Further, the Respondent asserts that the Petitioner failed to address the loss of utility relative to cubic area which is the stated issue and reason for the appeal in Attachment C of the Form 139L petition. *Harmon testimony.* In addition, the Respondent argues that the Petitioner’s “kit” analogy does not support its argument for the application of obsolescence. *Id.* According to the Respondent, the remedy determined by the State Board of Tax Commissioners relative to the “kit” structures that was introduced by the Petitioner was made as a result of reported actual cost of lightweight pre-engineered buildings. *Id.* The Respondent noted that no actual costs have been submitted relative to the subject building. *Id.*
- d) The Respondent contends that the MANUAL calls for the subject property to be valued at market value. *Harmon testimony.* According to the Respondent, the structure was built in 1998 and actual cost information could have been submitted. *Id.* According to the Respondent, such information may have served to refute the assessment, but the Petitioner chose not to present that information. *Id.* The Respondent contends that the Petitioner’s failure to submit such evidence undermines its contention that the assessment is erroneous. *Id.*
- e) Finally, the Respondent argues that the building permit of a comparable Meijer store is a “real world value” that also supports the assessment. *Harmon testimony; Respondent Exhibit 6.* According to the Respondent, a building permit was issued in 1997 for the comparable property and shows an estimated construction cost of \$10,000,000. *Id.* The Respondent argues that after adjusting the property’s PRC for the two stipulated issues, the replacement cost new of the subject property would be \$12,178,800. *Id.* The Respondent contends that if the \$12,178,800 is time adjusted, the time adjusted replacement cost new would be \$11,676,730. *Id.* The Respondent argues that, in consideration of items that are generally not included in a permit amount, the \$11,676,730 is a reasonable value for the comparable building in comparison to the value represented on its building permit. *Id.* Thus, the Respondent concludes, the subject property is, likewise, correctly assessed. *Id.*

⁴The Respondent also contends that the Petitioner’s witness was not qualified to effectively use the Marshall Valuation pricing guideline due to her lack of experience in its use. *Harmon 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 BTR # 6194,
- c) Exhibits:⁵

- Petitioner Exhibit 1: Petitioner's brief
- Petitioner Exhibit 2: Subject property's property record card (PRC)
- Petitioner Exhibit 3: GUIDELINES, Introduction, pages 1 and 2
- Petitioner Exhibit 4: Marshall Valuation Descriptions
- Petitioner Exhibit 5: Marshall Valuation Analysis
- Petitioner Exhibit 6: Marshall Valuation Pricing
- Petitioner Exhibit 7: Marshall Valuation Cost Multipliers
- Petitioner Exhibit 8: GUIDELINES, Appendix G, page 45
- Petitioner Exhibit 9: Marshall Valuation Depreciation Data
- Petitioner Exhibit 10: Miscellaneous exhibits including: Notice of Hearing; Notice of Final Assessment; State Board of Tax Commissioners memo dated October 1, 1991; Marshall Calculator Method Notes; Indiana Tax Court cause no. 49T10-0410-TA-48

- Respondent Exhibit 1: Subject property's PRC
- Respondent Exhibit 2: Subject property photographs
- Respondent Exhibit 3: Plat map
- Respondent Exhibit 4: Land calculations for Neighborhood 20893
- Respondent Exhibit 5: PRC – Merrillville, IN 008-08-15-0705-0003
- Respondent Exhibit 6: Building Permit from Town of Merrillville
- Respondent Exhibit 7: PRC – Noblesville, IN 11-11-05-00-04-002.000

- 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.

⁵ Mr. Laramore objected to the rule that governs Lake County hearings that provides for a different procedure for Lake County appeals than the rule governing exchange of evidence for the other 91 counties. Mr. Laramore objected that the rule provides less time to review the assessor's exhibits and it does not require the assessor to provide a summary of testimony. Further, according to Mr. Laramore, it does not give the taxpayer any notice of the issues to be raised at the hearing by the assessor.

Analysis

14. The most applicable governing cases are:
- a) The Petitioner seeking a review of the 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 Board of Tax Commissioners*, 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 failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this conclusion for the following reasons:
- a) The Petitioner contends that the application of a 30% obsolescence factor is warranted for the subject structure to account for the economies of the mega warehouse construction. *Norman argument; Petitioner Exhibit 1*. The Petitioner bases the requested amount on a comparison of the value that the Petitioner alleges the subject improvement would have using the mega warehouse store pricing schedule from Marshall Valuation Service and the current assessed value. *See Petitioner Exhibit 4*. According to the Petitioner, the difference between the two assessments equates to the obsolescence factor to be applied. *Norman argument*.
 - b) The calculation of True Tax Value under 50 IAC 2.3 uses the cost tables included in the guidelines to calculate “replacement cost new” for the improvements on all classes of property. The GUIDELINES provides for the determination of the replacement cost new of structures through reference to cost tables. GUIDELINES, intro. at 1. The cost tables have been developed from objectively verifiable data by

- drawing cost information from publications of Marshall & Swift, L.P. *Id.* These publications include the Indiana version of the *Residential Cost Handbook* © 1999, the *Exceptional Homes* guide© 1998, and Indiana version of the *Marshall Valuation Service* © 1999. *Id.*
- c) The calculation of cost only sets the upper limit of value for improvements. *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 physical, functional obsolescence and external obsolescence. *Id.* Physical depreciation 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.* The GUIDELINES account for normal obsolescence through the assignment of typical life expectancies and structure condition classifications. GUIDELINES, app. F at 4 – 7. This normal depreciation includes both typical physical depreciation and typical obsolescence. *Id.* at 8. Any additional loss in value from atypical forms of obsolescence will be referred to as abnormal obsolescence and is estimated separately from normal depreciation. *Id.*
- d) For a Petitioner to show that he is entitled to receive an adjustment for obsolescence, the Petitioner must both identify the causes of obsolescence it believes is present in the improvement and also quantify the amount of obsolescence that it believes should be applied to the property. *Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Thus, the Petitioner must present probative evidence that the causes of obsolescence identified by the Petitioner are resulting in an actual loss in value to its property. *See Miller Structures, Inc. v. State Board of Tax Commissioners*, 748 N.E.2d 943,954 (Ind. Tax Ct. 2001). Further, the Petitioner's quantification of the amount of obsolescence must be converted into a percentage reduction and applied against the structure's overall value. *See Clark*, 694 N.E.2d at 1238. It is not sufficient for a Petitioner to merely identify random factors that may cause the property to be entitled to an obsolescence adjustment. The Petitioner must explain how those purported causes of obsolescence cause the property's improvements to suffer an actual loss in value. *See Champlin Realty Co. v. State Board of Tax Commissioners*, 745 N.E.2d 928, 936 (Ind. Tax Ct. 2001), *review denied*.
- e) The Petitioner contends that the structure should be assessed pursuant to the mega warehouse store model by Marshall & Swift and, therefore, the application of a 30% obsolescence factor is warranted for the subject structure to account for the economies of the mega warehouse construction. *Norman argument; Petitioner Exhibit 1*. The mega warehouse store schedule in Marshall & Swift referred to by the

Petitioner is dated May of 2004 and was not available in Marshall Valuation Service manual for 1999. In addition, Marshall & Swift created an edition of their manual for the state of Indiana for 1999. Again, the mega warehouse store pricing schedule was not included. Thus, such a schedule would not have been considered for use in the 2002 statewide general reassessment for the January 1, 1999, valuation date.⁶

- f) While the Petitioner has presented a different model under which the subject structure could have been assessed if the State had adopted such a model, the Petitioner has presented no evidence that the subject structure was improperly assessed under the models and schedules that have been adopted in Indiana. Further, the Petitioner failed to identify any “cause” of obsolescence other than to allege that the “economies” of mega warehouse construction warrant an obsolescence reduction. Again - it is not sufficient for a Petitioner to merely identify random factors that may cause the property to be entitled to an obsolescence adjustment. *See Champlin Realty Co.*, 745 N.E.2d at 936. Here, the Petitioner failed to explain how the “economies” of mega warehouse construction cause the property's improvements to suffer a loss in value. *Id.* Finally, the comparison of the current assessed value to a hypothetical assessed value based on a model that has not been adopted by Indiana and had not been published at the time of the 2002 assessment is not a proper or persuasive method to determine obsolescence. The Indiana Tax Court has held that obsolescence under the true tax value system incorporates market value concepts. *See Canal Square Ltd. Partnership v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 806, n.8 (Ind. Tax Ct. 1998). Thus, the use of generally recognized appraisal methods is acceptable for quantifying obsolescence as a permissible means of quantifying obsolescence under the true tax value system. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1242, n.18 (Ind. Tax Ct. 1998) (internal citations omitted). Here, the Petitioner presented no market evidence to quantify its obsolescence, if any such obsolescence exists.
- g) The Petitioner failed to show that the current assessment, based on the rules and regulations promulgated by the Board for the 2002 reassessment and the pricing schedules created by those rules and regulations, were incorrectly applied to the subject structure. Most importantly, the Petitioner presented no market evidence to show that the assessment is not a reasonable measure of the property’s true tax value. Thus, even if the Petitioner’s allegations of error were taken as true, a strict application of the GUIDELINES is not sufficient to rebut the presumption that the assessment is correct. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 764 (Ind. Tax Ct. 2006) (“Therefore, when a taxpayer chooses to challenge an assessment,

⁶ The Petitioner’s comparison of the mega warehouse store to the “kit” building issue is inapplicable here because, unlike the creation by the Board of an instructional bulletin for “kit” buildings, the DLGF has not determined that there is a controversy regarding mega warehouses like they faced with “kit” buildings. Further, STB Instructional Bulletin 91-8 regarding “kit” buildings (effective for March 1, 1991, for taxes due and payable in 1992) did not allow for this change to be retroactive. *Petitioner Exhibit 10*. No such Board “fix” for mega warehouse stores has occurred or is anticipated at this time. Moreover, even if such a memorandum had been developed and issued regarding mega warehouse stores, the “kit” building bulletin suggests that it would not be retroactive. Thus, the Petitioner’s case is not furthered by the Board’s resolution of the “kit” building controversy.

he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.") A Petitioner must show through the use of market-based evidence that the assessed value does not accurately reflect the property's market value-in-use. *See Eckerling*, ("In challenging their assessment, the Eckerlings have offered [no] market value-in-use evidence. Rather, they focused strictly on the Assessor's methodology. The Eckerlings have not shown, however, that the Assessor's methodology resulted in an assessment that failed to accurately reflect their property's market value-in-use. Accordingly, the Court cannot say that the Eckerlings presented a prima facie case that their assessment was in error."). The Petitioner failed to present such evidence and, therefore, failed to raise a prima facie case that any reduction for obsolescence should be applied to its store.

- h) Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Industries v. Department of Local Government Finance*, 700 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to provide sufficient evidence to establish 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 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>.