

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-4-00046
Petitioner: Meijer Stores LTD
Respondent: Department of Local Government Finance
Parcel #: 008-08-15-0705-0003
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 February 4, 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 \$18,832,600 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L petition 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 611 W. 81st Avenue, Merrillville, in Ross Township, Lake County.
6. The subject property is a 35.054 acre improved commercial parcel with a 235,225 square foot discount store and supermarket.
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 \$5,728,200 for the land and \$13,104,400 for the improvements, for a total assessed value of \$18,832,600.

9. The Petitioner requested an assessment of \$1,780,300 for the land and \$7,766,600 for the improvements, for a total assessed value of \$9,546,900.
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.
11. At the hearing, the parties stipulated to applying a negative \$1.45 to the ceiling finish and to assess the subject structure as having a 22 foot wall height.

Issues

12. Summary of Petitioner's contentions in support of an error in the assessment:
 - a) The Petitioner contends that the assessed value of the subject property is over-stated. *Norman argument.* In support of this contention, the Petitioner raised issues with the valuation of the land and the grade factor, wall type, wall height, ceiling finish and use type classification of the improvement.¹ *Norman argument; Haza testimony.* In addition, the Petitioner sought to have an obsolescence deduction applied to the improvement. *Id.*

Land Value

- b) The Petitioner contends that the land assessment does not include the proper oversize parcel adjustment. *Norman argument.* According to the Petitioner, a negative influence factor should be applied to both the primary land and the usable undeveloped land for the size of the property. *Id.*
- c) In support of this contention, the Petitioner submitted the Lake County Commercial and Industrial Neighborhood Valuation Form and a Cole-Layer Trumble (CLT) land valuation memo dated February 9, 2004. *Petitioner Exhibits 4 and 5.* The Petitioner argues that, according to the CLT memo, "incremental/decremental percentages have been placed on every commercial property in the County in order to adjust the rate based on parcel size." *Norman argument; Petitioner Exhibit 5* (emphasis in original). The Petitioner contends that, according to the "Oversize Parcel Adjustment Chart," a parcel in excess of 30 acres would have a negative 75% adjustment in a 70% neighborhood like the Petitioner's neighborhood (Neighborhood 00893). *Petitioner Exhibit 5.* Thus, according to the Petitioner, the appropriate land valuation for the 35.054 acres is \$1,780,300. *Haza testimony; Norman argument.*

¹ Due to the stipulation relating to wall height and ceiling finish adjustment, there was no further evidence on these two issues.

Improvement Value

Exterior Wall Type

- d) The Petitioner further contends that the wall type for the main store improvement should be type 1 rather than type 2. *Norman argument.* According to the Petitioner, the exterior walls are of pre-cast construction which, the Petitioner argues, are more closely related to the type 1 category in the 2002 REAL PROPERTY ASSESSMENT GUIDELINES (GUIDELINES). *Id.*
- e) In support of this contention, the Petitioner submitted its “Property Owner’s Affidavit” by Robert M. Vujea, the property tax manager for Meijer, dated November 8, 2005. *Petitioner Exhibit 6.* In his affidavit, Mr. Vujea testifies that the subject building was constructed of pre-cast concrete panels that were delivered to the property, tilted-up and then secured to a steel frame. *Id.* The Petitioner also contends that the installation of the pre-cast concrete walls is more economical than conventional concrete block wall because it does not require the handling of the blocks and mortar or additional wall support as would be required for the subject structure’s 22 foot walls. *Norman argument.*
- f) The Petitioner admits that the 2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) and GUIDELINES do not specifically address the pre-cast panel construction, but, the Petitioner alleges, counties across the State have consistently recognized the economics of this type of construction and have assessed similar type properties with type 1 exterior walls. *Id.* Further, according to the Petitioner, Marshall Valuation Service, which was the service used to promulgate the GUIDELINES with regards to the 2002 reassessment, acknowledges that pre-cast construction is comparable to concrete block construction. *Id.* The Petitioner argues that Marshall Valuation Service makes no distinction in the pricing for open steel, wood frame, block or tilt-up in describing exterior walls for a Class C structure. *Haza testimony; Petitioner Exhibit 7.* In response to questioning, Ms. Haza testified that the pre-cast concrete panels used in the exterior construction of the subject improvement have coloration and have a brick imprinting in some areas. *Id.*
- g) The Petitioner further argues that with a type 1 designation, there must also be a change in the wall height adjustment. *Norman argument.* According to the Petitioner, the current wall height adjustment shown on the subject property’s property record card (PRC) is \$7.50. *Id.* The Petitioner contends that the appropriate wall height adjustment for a type 1 wall with a 22 foot wall height (as was stipulated to by the DLGF) would be \$5.60. *Id.; Haza testimony; Petitioner Exhibit 8.*

Building Classification

- h) The Petitioner contends that the Meijer store falls within the description of the discount store model in the GUIDELINES. *Petitioner Exhibit 13* (GUIDELINES, Appendix B, page 17 – GCM Discount Store Model). The Petitioner testified that the

subject improvement is currently classified as 70% discount and 30% supermarket, but argues that the structure should be classified as 100% discount. *Norman argument*. In support of this argument, the Petitioner submitted a comparison between the subject building and the discount store model. *Petitioner Exhibit 1 at 5; Haza testimony*.

- i) The Petitioner further contends that comparable properties are assessed as 100% discount. *Norman argument*. In support of this contention, the Petitioner submitted a “Comparable Building Comparison Spreadsheet” for Meijer and for Wal-Mart, Sam’s Club and Costco stores in the same township as the subject property. *Petitioner Exhibit 12*. The Petitioner also submitted photographs of the interiors of the subject structure and the purported comparable properties. *Petitioner Exhibit 25*. According to the Petitioner, both Wal-Mart and Sam’s Club have grocery areas in their store, but Wal-Mart is classified as 100% discount and Sam’s Club is classified as 97% discount and 3% auto service. *Id.* In addition, the Petitioner claimed that each of the comparables and the subject property were constructed as a single tenant discount store and should be classified accordingly. *Norman argument*. Petitioner argues that, due to the similarities with Wal-Mart and Sam’s Club, Article 10, Section 1 of the Indiana Constitution requires a “uniform and equal rate of property assessment.” *Id.*
- j) In response to questioning, Ms. Haza admitted she had not compared the replacement cost new (RCN) of the comparables on a per square foot value to that of the subject property. *Haza testimony*. Ms. Haza testified that variations in the improvements impact the per square foot amounts and make an analysis of the square foot amounts meaningless. *Id.* Ms. Haza did admit that a square foot price would be a valid comparison for replacement cost.

Grade Factor

- k) The Petitioner contends that the grade factor currently applied to the subject structure (“C+2”) is excessive and is requesting that a grade factor of “C” be applied. *Norman argument*. According to the Petitioner, the construction specifications and quality of materials and workmanship support a grade of no greater than “C” for the subject building. *Id.* The Petitioner argues that the grade factor of “C+2” assigned to the subject property signifies that the subject property has all the characteristics of a “C” grade building and some of the characteristics of a “B” grade building. *Id.* The Petitioner asserts that the subject structure has all the characteristics of a “C” grade building. *Id.; Petitioner Exhibit 15*.
- l) In support of this contention, the Petitioner submitted photographs of the subject building along with a comparison of the subject structure to the “C” grade designation to show that the subject structure does not have the physical characteristics of a “B” grade building. *Norman argument; Petitioner Exhibits 10 and 16*. The Petitioner does admit that the front of the subject building has ornamentation, but argues that the treatment spread over the 235,225 square feet of the subject building would have minimal impact. *Haza testimony*.

Improvement Assessment Summary

- m) The Petitioner also submitted a revised improvement assessment that included a wall type 1, a wall height of 22 feet (stipulated to by the parties), a \$5.60 wall height adjustment, a negative ceiling adjustment of \$1.45 (stipulated to by the parties), a building classification of 100% discount store and a “C” grade. *See Petitioner Exhibit 17*. According to the Petitioner’s revision, the improvement assessment should be \$9,718,900 before yard improvements are added in. *Norman argument*.

Obsolescence

- n) Finally, 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 at 11*. The Petitioner argues that the cost schedules included in the MANUAL and the GUIDELINES were developed by using publications of Marshall & Swift, L.P. *Norman argument; Petitioner Exhibit 18*. 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 7*. Thus, according to the Petitioner, 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.
- o) 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 7*. In support of this contention, the Petitioner submitted a comparison of the subject improvement, the Marshall Valuation Service Class C – Average Mega Warehouse Store and the GUIDELINES model description. *Haza testimony; Norman argument; Petitioner Exhibit 1 at 12*.
- p) The Petitioner also submitted a calculation that determined the amount of obsolescence that it alleges should be applied to the subject structure. *See Petitioner Exhibits 19 - 23*. According to the Petitioner, the Marshall Valuation adjusted base rate for a mega warehouse is \$31.64. The Petitioner then adjusted this base rate to account for sprinklers, wall height and perimeter area. *Norman argument; Haza testimony*. 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 21*. In addition, the square foot price was adjusted by the 1.11 location cost multiplier for Lake County as listed in the GUIDELINES. *Petitioner Exhibits 19 and 22*. Finally, 2% physical depreciation was applied to the subject structure, resulting in an improvement assessment of \$6,864,600. *Haza testimony; Petitioner Exhibit 23*.

- q) 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 \$6,864,600 and the building's current assessment of \$9,718,900 (after correcting cost errors) and developed a percentage. *Norman argument; Haza testimony*. Thus, the Petitioner concludes, 29% 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 of \$7,766,600. *Norman argument; Petitioner Exhibit 19*.
- r) The Petitioner argues that 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 24*. 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*.
- s) 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 235,000 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.*

13. 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 and 2004 CLT memo regarding land valuation are inapplicable to the 2002 valuation. Further, the Respondent contends that the subject structure's pre-cast walls are properly assessed as type 2

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.

walls. Finally, the Respondent alleges that the Petitioner's comparables and the subject property's building permit support the assessment value and argues that the Petitioner presented no market evidence to support the value it seeks.

Marshall Valuation Service Analysis

- 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. *Harmon testimony.* According to the Respondent, the Petitioner is submitting national cost sources that are not local in nature. *Id.* The Respondent contends that the values appearing in Marshall & Swift are averages of all the buildings and all the data that was collected. *Id.* Further, the Respondent alleges that the Petitioner's cost information was not tested against the local market. *Id.*
- c) The Respondent testified that, with the exception of the two issues that were stipulated, the assessment under appeal has been determined in compliance with the Indiana GUIDELINES. *Harmon testimony.*

Wall Type

- d) The Respondent contends that the store is properly assessed as having type 2 walls. According to the Respondent, the GUIDELINES specifically state that type 2 walls are concrete, brick or equal. *Harmon testimony.* Further, the Respondent alleges that pre-cast walls have additional options available to them such as insulation and sandwiching. *Id.* The Respondent contends that as more options are added to pre-cast panels the base cost goes up. *Id.* Finally, the Respondent argues that the Petitioner did not submit any cost documentation to support its allegation that pre-cast walls are less expensive than concrete block walls. *Id.*
- e) Further, the Respondent contends that the specific calculations and classifications used by the assessor to determine an assessment should not be of concern to the individual taxpayer. *Harmon testimony.* According to the Respondent, only the final assessment value and its equity to other assessments or real world data should be of concern to the individual taxpayer. *Id.* In response to questioning the Respondent admitted that if another Meijer store had the same exterior wall type (pre-cast concrete panels) as the subject property, it would be reasonable for them to be valued using the same wall type classification. *Id.* However, the Respondent alleges, a difference would not specifically mean that the subject property is the one with the incorrect classification. *Id.*

Land

- f) The Respondent also argues that the land was priced correctly. The Respondent testified that should the assessment require any adjustment to the land value, that adjustment is most likely to be a reclassification of additional land as primary. *Harmon testimony.* The Respondent contends that a review of the subject property's

PRC shows that the subject facility would require more than ten acres of primary land.⁴ *Id.*; *Respondent Exhibit 1*.

- g) The Respondent further alleges that the CLT memorandum is not applicable to the 2002 assessment. The Respondent testified that the land valuation memorandum was issued in 2004 in order to clarify the method that had been used for land valuation in the 2002 general reassessment. *Id.*; *Petitioner Exhibit 5*. Further, according to the Respondent, the individual who wrote the CLT memorandum was not the person with the responsibility for the land pricing in Lake County. *Harmon testimony*; *Petitioner Exhibit 5*. The Respondent contends that the document's author was only responsible for re-pricing land in a certain area of the County. *Id.* The Respondent contends that the memo describes in general terms how the land valuation was completed and clearly states that the application of an oversize adjustment is not mandated on primary ground. *Id.*

Market Value

- h) The Respondent contends that the MANUAL calls for the subject property to be valued at market value. *Id.* The Respondent argues that because the property was developed in 1997, market evidence could have been brought. *Harmon testimony*. According to the Respondent, actual cost 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.*
- i) The Respondent also contends that the Petitioner is requesting a replacement cost new of \$41.32 per square foot. *See Petitioner Exhibit 17*. The Respondent argues that this value is considerably less than the per square foot amounts determined for the comparables. *Harmon testimony*; *Petitioner Exhibit 12*. Further, according to the Respondent, if the Petitioner's requested obsolescence based on its mega warehouse store calculation is applied, it would result in a per square foot price of \$28.92. *Harmon testimony*. The Respondent contends that the Petitioner presented no market evidence to support its requested value. *Harmon testimony*.
- j) The Respondent argues that the Petitioner's "comparable" properties support the assessment and refute the Petitioner's requested value. According to the Respondent, the replacement cost new per square foot value for Petitioner's purported comparable properties is \$47.47 for Wal-mart (\$9,261,940 divided by 195,094 square feet); \$51.71 for Sam's Club (\$7,064,260 divided by 136,602 square feet); and \$45.00 for Costco (\$6,876,000 divided by 152,768 square feet). *Harmon testimony*; *Petitioner*

⁴ A review of the subject's current PRC shows that the subject structure is 235,225 square feet with an additional 537,856 square feet of asphalt paving. According to the GUIDELINES, primary land consists of the land located under buildings, regularly used parking areas, roadways, regularly used yard storage, and necessary support land. GUIDELINES, ch. 2 at 85. Secondary land consists of parking areas that are not used regularly and yard storage that is not used regularly. Based on the square footages for the main structure and the asphalt paving there would be 773,081 square feet or 17.75 acres of primary and secondary lands. The current subject PRC only shows 10 acres of primary land and no secondary land.

Exhibit 12. The Respondent argues that the replacement cost new for the subject property currently is \$54.19 (\$12,748,070 divided by 235,225) and will be approximately \$52.00 per square foot after the pricing is corrected for the two issues stipulated to by the parties (ceiling finish adjustment and wall height). Thus, the Respondent concludes, the assessed value of the subject property is fair and is “in line” with the Petitioner’s comparables. *Harmon testimony; Petitioner Exhibit 12.*

- k) Finally, the Respondent argues that the building permit is a “real world value” that also supports the assessment. *Id.; Respondent Exhibit 5.* According to the Respondent, a building permit was issued in 1997 for the subject property and shows an estimated construction cost of \$10,000,000. *Id.* The Respondent argues that after adjusting the subject property’s PRC for the two stipulated issues and using the cost multipliers in Petitioner Exhibit 21, 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 subject building compared to the value represented on its building permit. *Harmon testimony.*

Obsolescence

- l) The Respondent contends that the Petitioner’s attempt to quantify the requested obsolescence does not conform to the method detailed on the Form 139L petition, thereby putting the Respondent at a disadvantage in preparation for rebuttal. *Harmon testimony.*⁵
- m) The Respondent further argues that the Petitioner continues to build Meijer stores and if the buildings were obsolete then Meijer would be building smaller stores and this is not being done. *Harmon testimony.* In response to questioning, the Respondent testified that if new Meijer stores were being built with a wall height less than the subject building’s 22 feet that may serve to demonstrate a cause for obsolescence in the subject property. *Id.* According to the Respondent, however, that fact alone would not quantify the original 15% obsolescence sought by the Petitioner. *Id.*

⁵ On the Form 139L petition, the Petitioner states that “[t]he assessment of this building fails to consider and reflect the loss of utility and therefore value of the cubic area of the building in excess of fourteen feet standard height for discount stores and this building. *Id.; Board Exhibit A.* The Petitioner contends that the loss of utility and value represents 15% of the current building assessment and requests that 15% be applied to the assessment of this building.” *See Board Exhibit A.* In addition, the Petitioner alleges that the 2002 Real Property Assessment Manual states that real property is to be assessed based on its true tax value. *Id.* True tax value is defined as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user from the property.” *Id.* The Petitioner further states that, although there is a presumption that the value determined by the MANUAL or GUIDELINES is the true tax value of the subject property, the taxpayer is permitted to offer evidence relevant to the market value-in-use of the property to rebut this presumption and establish the actual true tax value of the property. This evidence can include any information compiled in accordance with generally accepted appraisal principles. *Id.*

Record

14. The official record for this matter is made up of the following:

- a) The Petition,
- b) The tape recordings of the hearing labeled BTR # 6195 (two tapes),
- c) Exhibits:⁶

Petitioner Exhibit 1: Petitioner's Brief

Petitioner Exhibit 2: Subject PRC

Petitioner Exhibit 3: Real Property Assessment Guidelines, Chapter 2, page 94

Petitioner Exhibit 4: Lake County Commercial and Industrial Neighborhood Valuation for Neighborhood 00893

Petitioner Exhibit 5: CLT Neighborhood Valuation dated February 9, 2004

Petitioner Exhibit 6: Property owner's affidavit

Petitioner Exhibit 7: Marshall Valuation Descriptions

Petitioner Exhibit 8: Real Property Assessment Guidelines, Appendix G, 2nd Amended, page 13

Petitioner Exhibit 9: Elevation plan with 22-foot wall height

Petitioner Exhibit 10: Photographs of ceiling finish

Petitioner Exhibit 11: Real Property Assessment Guidelines, Appendix G, Schedule C, pages 17 and 19

Petitioner Exhibit 12: Comparables Summary/PRCs

Petitioner Exhibit 13: Real Property Assessment Guidelines, Appendix D, Page 17

Petitioner Exhibit 14: Marshall Valuation

Petitioner Exhibit 15: Real Property Assessment Guidelines Appendix E, pages 5, 6 and 8

Petitioner Exhibit 16: Photographs of exterior of store

Petitioner Exhibit 17: Revised March 1, 2002, improvement assessment

Petitioner Exhibit 18: Real Property Assessment Guidelines, Book 1, Introduction, page 1

Petitioner Exhibit 19: Marshall Valuation Cost Analysis

Petitioner Exhibit 20: Marshall Valuation Cost Data

Petitioner Exhibit 21: Marshall Valuation Cost Multipliers

Petitioner Exhibit 22: Real Property Assessment Guidelines, Appendix G, page 45

Petitioner Exhibit 23: Marshall Valuation Depreciation Data

Petitioner Exhibit 24: Miscellaneous exhibits including notice of hearing; notice

⁶ 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.

of final assessment; Marshall Valuation calculator method notes; Indiana Tax Court Cause No. 49T10-0410-TA-48 and State Board of Tax Commissioners memo dated October 1, 1991

Petitioner Exhibit 25: Photographs of three comparable properties

Respondent Exhibit 1: Subject property PRC

Respondent Exhibit 2: Subject property photographs

Respondent Exhibit 3: Plat map

Respondent Exhibit 4: Land calculations for Neighborhood 20893

Respondent Exhibit 5: Building Permit from the Town of Merrillville

Respondent Exhibit 6: PRC – Noblesville, IN 11-11-05-00-04-002.000

Board Exhibit A: Form 139 L Petition

Board Exhibit B: Notice of Hearing on Petition

Board Exhibit C: Hearing Sign in Sheet

d) These Findings and Conclusions.

Analysis

16. The most applicable governing cases are:

- a) A Petitioner seeking a 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 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.

17. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The parties, however, stipulated to a wall height of 22 feet and a

negative adjustment of \$1.45 for ceiling finish.⁷ The Board reached this decision for the following reasons:

Land Value

- a) The Petitioner contends that the assessment of its land does not include the proper oversize parcel adjustment. *Norman argument*. The Petitioner argues that a negative influence factor should be applied to the subject property's 35.054 acre land assessment. *Id.* In support of this contention, the Petitioner submitted a Lake County Commercial and Industrial Neighborhood Valuation Form for neighborhood 00893 and a CLT memo dated February 9, 2004. *Petitioner Exhibits 4 and 5.*
- b) The subject parcel consists of 10 acres of primary land that is receiving a negative influence factor of 1% and 25.054 acres of usable undeveloped land that is receiving a negative influence factor of 28%. *See Respondent Exhibit 1.* The Petitioner contends that the primary and usable undeveloped land classifications should each receive a negative influence factor of 75%. *Norman argument; Petitioner Exhibits 4 and 5.* The only evidence that the Petitioner submits in support of a further reduction is the neighborhood valuation form and a CLT memorandum that states that "incremental/ decremental percentages have been placed on every commercial property in the County in order to adjust the rate based on parcel size." *Id.; Petitioner Exhibit 5, page 1(emphasis in original).* In addition, the CLT memorandum states that "[o]versized parcels of Commercial or Industrial land in the Primary (11), or Undeveloped Usable (13) category must be treated with an accelerated rate of reduction based on size and incremental rate of a given neighborhood." *Id., page 10.* According to the Petitioner, the neighborhood valuation form instructs that a 30+ acre property in a 70% neighborhood, like the subject neighborhood, is entitled to a 75% reduction due to its size. *Norman argument.*
- c) Land values in a given neighborhood are generally determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). Properties often possess peculiar attributes, however, that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier "that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002, VERSION A, glossary at 10 (incorporated by reference at 50 IAC 2.3-1-2). The Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).

⁷ The agreement between the Petitioner and the Respondent is a decision among these parties and the Board will accept the agreement. The Board's acceptance of this agreement should not be construed as a determination regarding the propriety of the wall height or the ceiling finish agreed to by the parties.

- d) Here, the Petitioner presented a CLT document, dated February 9, 2004, that purports to describe how property was valued in Lake County. The Petitioner, however, failed to provide any foundation for the CLT memorandum. Neither party was able to testify with any certainty as to the purpose of the memorandum. Thus, there is no evidence that the 2004 memorandum accurately described the procedures by which the 2002 assessment was undertaken. Further, the Petitioner presented no evidence to show that “every” commercial property received an incremental/decremental adjustment. Nor did Petitioner present any evidence to show that all 30+ acre sites received a 75% deduction for size. Even if the Board were to conclude that such an unexplained, post-dated memorandum accurately describes the procedures by which land in Lake County was assessed in 2002, the Petitioner failed to adequately explain how it determined from the memorandum that a 30+ acre site would receive a 75% reduction.⁸ 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”). Finally, while the property’s size may be relevant to the issue of whether a different negative influence factor should apply here, the Petitioner failed to show how this condition would impact the market value-in-use of the subject property, or show the actual market value of the property. *See Talesnick*, 756 N.E.2d at 1108. Thus, the Petitioner has failed to raise a prima facie case that the subject property is over-valued due to the size of the parcel.

Improvement Value - Wall Type, Grade, Use Classification

- e) The Petitioner further contends that the wall type for the subject structure should be changed from a wall type 2 to a wall type 1, that the grade should be a “C” as opposed to a “C+2” and that the subject structure’s use classification should be 100% discount rather than the current 70% discount and 30% supermarket. *Norman argument*. The Respondent contends that the subject structure has been correctly assessed. *Harmon testimony*.
- f) Here, the Petitioner alleges that a pre-cast concrete wall can be type 1, but it did not show that it was an error to determine the walls were type 2. A wall type 1 is a “[c]oncrete block, stucco, tile, wood, aluminum, metal siding, or an equivalent material.” GUIDELINES, Ch. 6, p. 13. Wall type 2 walls are “[b]rick, stone, concrete, or an equivalent material.” *Id.* The Petitioner contends that pre-cast concrete walls are more “economical” than concrete block, but provided no evidentiary support for this allegation. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113 (Ind. Tax 1998); and *Herb v. State Bd. of Tax Comm’rs*, 656 N.E.2d 1230 (Ind. Tax 1998). Thus, the Petitioner failed to raise a prima facie case that the assessment of the pre-cast concrete walls as type 2, “brick, stone, concrete, or an equivalent material,” was in error.

⁸ The CLT Memorandum states that the application of an oversize adjustment is not mandated on primary ground. *Petitioner Exhibit 5*.

- g) Similarly, while the Petitioner has shown that the structure has some of the characteristics of a “C” structure, it has not presented sufficient evidence to show that a grade of “C+2” is in error. Grade is the “classification of an improvement based on certain construction specifications, design and quality of materials and workmanship.” GUIDELINES, glossary at 9.⁹ Here, the Petitioner testified as to vague characteristics of its store, such as the lighting is fluorescent and its climate control is roof-mounted heating and air conditioning, or that the exterior has “little” architectural detail. In addition, the Petitioner presented a few exterior and interior photographs. The Petitioner submitted no cost information. Nor did the Petitioner present detailed information on the construction materials or quality of construction. When a taxpayer contests the grade assigned to an improvement, it must offer probative evidence concerning the alleged error. *See Whitley Prods.*, 704 N.E.2d at 1119. Conclusory statements do not constitute probative evidence concerning the grading of the subject improvement. *Id.* Further, mere references to photographs or regulations, without explanation, do not qualify as probative evidence. *See Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999). Thus, the Petitioner failed to raise a prima facie case that the store’s “C+2” grade is in error.
- h) Finally, the Petitioner identifies other stores that are classified differently than the subject store and claims that its store should be assessed as 100% discount rather than 70% discount and 30% grocery.¹⁰ Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. Thus to the extent that the Petitioner proves that its property is not assessed uniformly or equal to comparable properties, Petitioner’s assessment should be equalized. However, “taxpayers are required to make a detailed factual showing at the administrative level.” *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, “the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence.” *Id.* To introduce evidence of comparable properties, a taxpayer must explain *how* the properties are comparable. *See Blackbird Farms Apts. v. Dep’t of Local Gov’t Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain *how* the properties were comparable). Conclusory statements that a property is “similar” or

⁹ The GUIDELINES identify six components commonly considered when assigning grade for commercial and industrial structures: 1) general; 2) interior finish; 3) built-in features; 4) lighting and plumbing; 5) climate control system; and 6) design. *Id.*, Appendix E, Table E-3, p. 8. Some improvements, however “may have construction characteristics that deviate from the base quality grade specifications.” *Id.*, Appendix E at 5. To assign a grade to these structures, an assessor “must weigh the components that deviate from the base quality grade selected for the subject to determine whether an intermediate quality grade . . . is appropriate.” *Id.* Thus, a quality grade of “+2” indicates a quality that falls halfway between two full grades. *Id.* Whereas, a quality grade of “-1” indicates a quality grade slightly lower than the full quality grade immediately above it. *Id.* at 6.

¹⁰ The Petitioner does not dispute that its store has a discrete grocery section. It only contends that other stores were assessed differently. Thus, despite the Petitioner’s reference to the discount store model, it is not an error to assess the store as 30% grocery.

“comparable” to another property do not constitute probative evidence of the comparability of the two properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id.* *See also, Hoogenboom-Nofziger*, 715 N.E.2d at 1024 (holding that taxpayer failed to make prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation). Here the Petitioner presented little evidence of the “comparable” stores’ features or characteristics. In fact, the Petitioner itself testified that the structures are not “comparable” when the Respondent asked about the per square foot price of those stores. Thus, the Petitioner failed to raise a prima facie case that its property was not assessed like comparable properties were assessed.

- i) 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, 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 its property was assessed incorrectly.

Obsolescence

- j) The Petitioner contends that the application of a 29% obsolescence factor is warranted for the subject structure to account for the economies of the mega warehouse construction. *Norman argument; Petitioner Exhibit 1 at 11*. The Petitioner bases the requested amount on a comparison of the value that the Petitioner

- alleges that the subject improvement would have using the mega warehouse store pricing schedule from Marshall Valuation Service and the current assessed value. *See Petitioner Exhibit 19*. According to the Petitioner, the difference between the two assessments equates to the obsolescence factor to be applied. *Norman argument*.
- k) 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, intro. at 1, provides for the determination of the replacement cost new of structures through reference to cost tables. 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. GUIDELINES, intro. at 1.
- l) 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.*
- m) For a Petitioner to show that it 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*.

- n) 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 29% obsolescence factor is warranted for the subject structure to account for the economies of the mega warehouse construction. *Norman argument; Petitioner Exhibit 1 at 11*. 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.¹¹
- o) 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.
- p) Even if the Petitioner were able to show that the Respondent’s failure to use the mega warehouse store schedule was in error, the Petitioner chose not to present its cost evidence to show that its assessment is not a reasonable measure of the property’s

¹¹ 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.

true tax value. A Petitioner's argument regarding a strict application of the GUIDELINES is not sufficient to rebut the presumption that the assessment is correct. *See Eckerling*, 841 N.E.2d 764 (Ind. Tax Ct. 2006) ("Therefore, when a taxpayer chooses to challenge an assessment, 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"). The Board finds that the Petitioner has failed to raise a prima facie case that any reduction for obsolescence should be applied to its store.

- q) 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).

Conclusions

- 18. The Petitioner failed to provide sufficient evidence to establish a prima facie case. The parties, however, stipulated to wall height and to a ceiling finish adjustment. The Board accepts the parties' agreement on these issues and finds in favor of the Respondent with regard to all other matters.

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 negative \$1.45 ceiling adjustment and a 22 foot wall height as stipulated to by the Petitioner and the Respondent.

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>.