

REPRESENTATIVES FOR PETITIONER: No one appeared on behalf of the Petitioner at the current Board remand hearing.¹

REPRESENTATIVES FOR RESPONDENT: Larry May, Steuben County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

BCD INVESTMENTS,)	Petition for Review of Assessment, Form 131
)	Petition No.: 76-004-92-1-4-00002R
)	
Petitioner)	
)	
v.)	
)	County: Steuben
DEPARTMENT OF LOCAL)	
GOVERNMENT FINANCE,)	Township: Fremont
)	
Respondent)	Parcel No.: 02-28-240-111.000-34
)	
)	Assessment Year: 1992

On Remand from the Indiana Tax Court
Cause No. 49T10-9701-TA-82

October 16, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

¹ David L. Pippen, served as Attorney for the Petitioner before the IN Tax Court and M. Drew Miller, Petitioner's Representative, was present at the prior Board hearings and provided oral argument in Tax Court.

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issues

The issues presented for consideration by the Board on remand were:

ISSUE 1 – *Whether the Board erred in calculating the perimeter to area ratio of the subject improvement.*

ISSUE 2 – *Whether the Board erred in grading the subject improvements.*

ISSUE 3 – *Whether the Board erred in determining the amount of obsolescence to which the subject improvements are entitled.*

Statement of the Case

This case initially came before the Board on a Petition for Review of Assessment, Form 131, filed by Landmark Appraisals, Inc. (Landmark) on behalf of BCD Investments (BCD) in March 1993 for parcel number 02-28-240-111.000-34 for the March 1, 1992 assessment year. BCD challenged the issues of the grade factor, obsolescence depreciation and the perimeter-to-area ratio (PAR) calculations. The Board issued its decision on the subject Form 131 appeal on November 22, 1996, recalculating the improvement's PAR and grade, as well as allowing a 5% obsolescence depreciation adjustment.

Prior to the filing of the Form 131, BCD had filed three (3) Form 133 petitions in December 1992 for the March 1, 1989, March 1, 1990 and March 1, 1991 assessment dates on the same parcel. The Board conducted one (1) hearing on all four (4) of BCD's petitions on December 6, 1995.

Following the Board's Final Determination, BCD filed an initial tax appeal petition with the Indiana Tax Court (Tax Court) on January 6, 1997. The appeal challenged the four (4) separate final determinations made by the Board regarding the subject property. The Board's final

determinations addressed the one (1) Form 131 petition and the (3) Form 133 petitions. The findings and conclusions found herein pertain *only* to the Form 131 petition filed for the March 1, 1992 assessment year for parcel number 02-28-240-111.000-34. The Board under separate findings and conclusions will review the Form 133 petitions.

The Tax Court, on the Board's motion, remanded the case on September 8, 1998, for further action. On November 18, 1998, the Board conducted a remand hearing. Again, the Board changed the PAR calculation on a portion of the subject improvement, but did not give BCD the total relief it sought on the issues of PAR, grade and obsolescence.

BCD filed an amended original tax appeal on February 3, 1999. Both parties requested to have the matter resolved based on the evidence stipulated into the record as well as on their briefs. The Tax Court did not conduct a trial, but heard oral argument on July 17, 1999. On April 28, 2003, the Tax Court affirmed the Board's determinations regarding grade and obsolescence, but remanded the issue of the PAR calculation with instructions to use a single PAR of 2 for BCD's 1992 assessment of the subject structure.

Background of Administrative Appeal and Litigation

1. BCD owns a small manufacturing plant in Fremont, Indiana. The building's core, approximately 19,200 square feet, was constructed in 1974 and was used for manufacturing on the assessment date. Since 1974, BCD has added several additions to its building's core. In 1984, it added a 2,380 square foot office and a 6,400 square foot warehouse. In 1989, it added 31,600 square feet of warehouse space. Finally, in 1991 it added an additional 21,600 square feet of warehouse and manufacturing space.
2. The Fremont Township Assessor assessed the BCD property for the March 1, 1989 reassessment date and assessed new additions in 1990 and 1991. The subject structure was assessed using five (5) separate PARs (one for the core portion and one each for the four additions) for the 1992 assessment. BCD argued that the improvements, which

constitute one (1) manufacturing facility, should have been assessed using a single PAR calculation.

3. Pursuant to Ind. Code § 6-1.1-15-3, BCD filed a Form 131 for the 1992 assessment year on March 22, 1993, petitioning the Board to conduct an administrative review of the above petition.
4. After proper notice, the Board conducted an administrative hearing. On November 22, 1996, the Board issued its final determinations on the subject Form 131 petition, offering partial relief by calculating some of the improvement's PARs, amending the grade, as well as allowing a five percent (5%) obsolescence depreciation adjustment.
5. On January 6, 1997, BCD initiated an original tax appeal petition with the Tax Court. On September 8, 1998, at the request of the Board, the Tax Court remanded the case back to the Board for further consideration.
6. A Board remand hearing was held on November 18, 1998. The Board issued a new final determination, making a change in the PAR calculation for one (1) of the additions, but denying changes to the Petitioner's request for the subject structure to be assessed using a single PAR. The Board did not make any changes regarding issues of grade and obsolescence.
7. As a result, BCD filed an amended original tax appeal on February 3, 1999. Because both parties requested to have the matter resolved based on the evidence stipulated into the record as well as on their briefs, the Tax Court did not conduct a trial, but heard oral argument on July 17, 1999.
8. Accordingly, on April 28, 2003, the Tax Court remanded the PAR issue to the Board with instructions to use a single PAR of 2 for BCD's 1992 assessment. The Tax Court denied relief to BCD on the issues of grade and obsolescence.

Remand Hearing Facts and Other Matters of Record

9. Pursuant to Ind. Code § 6-1.1-15-8, a second remand hearing was scheduled for June 26, 2003 in Fremont, Indiana before Patti Kindler, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-5-2.

10. At the second remand hearing no one appeared on behalf of BCD. A review of the Proof of Mailing (Board's Exhibit D) indicated that Notice of Hearing on Petition was sent to the addresses of record to all of the parties to this remand hearing. The Petitioner's Notice of Hearing on Petition was not returned to the Board as undeliverable nor did the ALJ receive a phone call from any representative for BCD requesting a continuance of the hearing. Larry May, Steuben County Assessor, appeared on behalf of the County.

11. The following persons were sworn in as witnesses and presented testimony:
 For the Respondent: Larry May, Steuben County Assessor

12. The following exhibits were presented:
 For the Petitioner: No exhibits were presented

 For the Respondent:
 Respondent's Exhibit 1 – Subject property record card (PRC)
 Respondent's Exhibit 2 – Interior and exterior photographs of the subject property

13. The following additional items are officially recognized as part of the record of proceedings:
 Board's Exhibit A – Remand Order
 Board's Exhibit B – Form 131 petition
 Board's Exhibit C – Notice of Hearing on Petition
 Board's Exhibit D – Proof of Mailing of Notices of Hearing on Petition

14. The subject property is assessed as a manufacturing plant located at 3420 East 550 North, Fremont, Fremont Township, Steuben County.
15. The assessed values under appeal as of the March 1, 1992 assessment date were:
Land - \$16,170
Improvements - \$428,770
16. The ALJ did not conduct an on-site inspection of the subject property.

Discussion of Issue Remanded by Tax Court

ISSUE: Whether a single PAR should be used to determine the subject structures base rate for the 1992 assessment year.

17. BCD contended that the Board acted arbitrarily and capriciously when it assessed the subject improvement with five (5) separate PARs for the 1992 assessment. BCD argued that a single PAR should have been used.
18. The Board assessed the subject structure with five (5) separate PARs: the building's core was assessed with a PAR of six (6), the office with a PAR of two (2), the 6,400 square foot warehouse section with a PAR of four (4), the 31,600 square foot warehouse space with a PAR of two (2), and the final 21,600 square feet with a PAR of two (2).
19. The Tax Court determined that BCD's building is one (1) improvement with multi-uses. The Board's rules provide for one course of action: one improvement, despite its multi-uses, receives a single PAR. The Tax Court calculated the PAR of two (2) by determining the exterior perimeter of the subject structure as 1,298 linear feet and the total square footage of the structure as 81,180. The Board will use the PAR determined by the Tax Court in its calculation of the base rate for the 1992 assessment.

Additional adjustments to the base rate based on a single PAR

20. The subject structure consists of the following sections:

<u>square footage</u>	<u>use</u>	<u>wall height</u>	<u>year built</u>
19,200	Light Manufacturing	22 feet	1974
2,380	Industrial Office	12 feet	1984
6,400	Light Warehousing	22 feet	1984
31,600	Light Warehousing	20 feet	1989
21,600	Light Manufacturing (50%) and Light Warehousing (50%)	20 feet	1991

21. Since the Tax Court determined that the subject structure is to be viewed as one (1) building and valued using a single PAR instead of multiple PARs, other adjustments must also be made to the base rate to account for variations within this structure. Those adjustments consist of the following:

- a. Determination of the average wall height;
- b. Determination of the percentages of usages into a single base rate;
- c. Determination of an effective construction year;
- d. Sprinkler adjustment;
- e. An average grade adjustment; and
- f. Determination of physical depreciation based on the effective year of construction and condition rating.

22. 50 IAC 2.1-4-1 (Concepts) the regulation in effect at the time relevant to this matter, instructs assessors that when pricing a building with mixed use, mixed farming, or mixed wall heights, the computation of PAR for the entire building should be performed. Thereafter, adjustments to the pricing schedule should be made to reflect those variations.

Additional adjustments

Average wall height

23. Since the subject structure contains varying wall heights, an average wall height must be calculated. An average wall height is determined by calculating the percentage in square feet that each wall height represents to the entire structure. According to the PRC the subject structure has the following wall heights:

12 feet	2,380 square feet	3%
20 feet	31,600 + 21,600 square feet	65.5%
22 feet	19,200 + 6,400 square feet	31.5%

24. The average wall height for the subject building would then be calculated as follows:

$$\begin{aligned} 12 \text{ feet} \times 3\% &= .36 \\ 20 \text{ feet} \times 65.5\% &= 13.10 \\ 22 \text{ feet} \times 31.5\% &= \underline{6.93} \\ 20.39 &= 20 \text{ feet} \end{aligned}$$

Percentage of use

25. The subject structure consists of the following usages:

Industrial Office	2,380 square feet	3%
Light Manufacturing	19,200 + 10,800 square feet	37%
Light Warehousing	6,400 + 31,600 + 10,800 square feet	60%

26. In addition, the subject structure consists of the following wall or framing types:

$$\begin{aligned} 141 \text{ linear feet of Wall Type 2} &= 11\% \\ 1,157 \text{ linear feet of Wall Type 1} &= 89\% \end{aligned}$$

27. Based on the percentages of use and the percentage of wall types, a base rate is calculated in the following manner using 50 IAC 2.1-4-5, Schedule A.2 – GCI Base Prices:

Indus. Off.		Lt. Mfg.		Lt. Whse.		
WT1	WT2	WT1	WT2	WT1	WT2	
\$34.40	\$35.30	\$19.50	\$20.60	\$14.90	\$15.30	
<u>x .89</u>	<u>x .11</u>	<u>x .89</u>	<u>x .11</u>	<u>x .89</u>	<u>x .11</u>	(% of framing)
30.62	3.88	17.36	2.27	13.26	1.68	
\$34.50		\$19.63		\$14.94		
<u>x .03</u>		<u>x .37</u>		<u>x .60</u>		(% of use)
\$1.04		\$7.26		\$8.96		
\$.75	\$.85	\$.40	\$.45	\$.35	\$.40	(wall ht. adj.)
<u>x .89</u>	<u>x .11</u>	<u>x .89</u>	<u>x .11</u>	<u>x .89</u>	<u>x .11</u>	(% of framing)
.67	.09	.36	.05	.31	.04	
.75		.41		.35		
<u>x(+)</u> 8 feet		<u>x(+)</u> 6 feet		<u>x(+)</u> 2 feet		(*wall ht. differential)
6.00		2.46		.70		
<u>x .03</u>		<u>x .37</u>		<u>x .60</u>		(% of use)
.18		.91		.42		
\$1.04		\$7.26		\$8.96		
<u>+ .18</u>		<u>+ .91</u>		<u>+ .42</u>		
\$1.22		\$8.17		\$9.38		

\$18.77 Base Rate

*Wall height adjustment was based on the difference between the model for each use and the average wall height (20 feet) determined for the subject structure.

Effective year of construction

28. The building's core, approximately 19,200 square feet, was constructed in 1974. Since 1974, BCD has added several additions to its building's core. In 1984, it added a 2,380

square foot office and a 6,400 square foot warehouse. In 1989, it added 31,600 square feet of warehouse space. Finally, in 1991 it added an additional 21,600 square feet of warehouse and manufacturing space.

29. Because each section was added on at different times, an effective year of construction is determined in the following manner:

1974	19,200 square feet	23.65% of the total structure
1984	8,780 square feet	10.82% of the total structure
1989	31,600 square feet	38.93% of the total structure
1991	21,600 square feet	26.60% of the total structure

$$1974 \times 23.65\% = 466.85$$

$$1984 \times 10.82\% = 214.67$$

$$1989 \times 38.93\% = 774.32$$

$$1991 \times 26.60\% = \underline{529.61}$$

$$1985.45 = 1985$$

30. The use of the effective year will be reflected in the amount of physical depreciation that will be applied to the subject structure in conjunction with a condition rating of average (from PRC).

Sprinkler adjustment

31. A review of the County's PRC shows that several sections of the subject structure had a sprinkler adjustment applied to it. Due to the fact that the building is being valued as a single structure the sprinkler adjustment must also be determined as an adjustment to the entire structure.

32. Those sections showing a sprinkler adjustment were:

Industrial office 2,380 square feet 3% of total structure

Light Manufacturing 10,800 square feet 13% of the total structure

Light Warehousing 6,400 + 31,600 + 10,800 square feet 60% of the total structure

33. Using the sprinkler adjustment table found in 50 IAC 2.1-4-5, Schedule C, for a structure with a total gross coverage of 61,980 square feet, the sprinkler adjustment would be as follows:

Industrial Office $$.95 \times 3\% = \$.029$

Light Manufacturing $$.95 \times 13\% = \$.124$

Light Warehousing $$.85 \times 60\% = \underline{\$.510}$

$$.663 = \$.66$ sprinkler adjustment

Grade adjustment

34. Though the Tax Court denied BCD relief on their issue of grade, grade must be reviewed again because the subject structure is now being valued as a single building. Prior to the Tax Court's decision, the subject structure was valued in sections with each section being valued independently of the other parts. Thus, each section had its own grade factor.

35. Per the County's PRC the structure was graded accordingly:

Industrial Office 2,380 square feet "C" (100%)

Light Manufacturing 19,200 square feet "C-1" (95%)

Light Warehousing 6,400 + 31,600 square feet "D+1" (85%)

Light Manufacturing/Light Warehousing 21,600 square feet "D+1" (85%)

36. The grade factor for the subject structure is calculated in the following manner:

"C" grade = 3% of the total structure

"C-1" grade = 22.80% of the total structure

"D+1" grade = 62.04% of the total structure

$100 \times 3\% = 3.00\%$

$95 \times 24\% = 22.80\%$

$85 \times 73\% = \underline{62.05\%}$

$87.85 = 90\% = \text{"C-2"}$

Physical depreciation

37. Physical depreciation is determined by the combination of age and condition. 50 IAC 2.1-5-1.
38. Based on the County's PRC, the subject structure was valued under five (5) separate PARs for the 1992 assessment with each section receiving different amounts of physical depreciation based on the year of construction and the condition rating of each section. A review of the PRC showed that the physical depreciation was determined from 50 IAC 2.1-5-1, Depreciation – 40 Year Life Expectancy Table.
39. Since the subject structure is to be valued as a single building, the physical depreciation will be determined based on the effective year of construction of the various sections and a condition rating of average. There is no change in the condition rating since the condition rating remained consistent from one (1) section to the next.
40. Using the same 40 Year Life Expectancy Table, the subject structure with an effective year of construction of 1985 and a condition rating of average, the physical depreciation would be 10%.

Summary of Final Determination

Determination of Issue on Remand

41. The Tax Court determined that BCD's building is but one (1) improvement with multi-uses. The Tax Court calculated the PAR of two (2) by determining the exterior perimeter of the subject structure as 1,298 linear feet and the total square footage of the structure as 81,180. A change in the assessment is made.

Additional adjustments to the base rate

42. Since the Tax Court determined that the subject structure is to be viewed as one (1) building and valued using a single PAR instead of multiple PARs, other adjustments must also be made to the base rate to account for variations within this structure. Those adjustments consist of the following:
- a. Determination of the average wall height of 20 feet;
 - b. Determination of a single base rate of \$18.77;
 - c. Determination of an effective construction year to be 1985;
 - d. Sprinkler adjustment of \$.66;
 - e. An average grade adjustment of “C-2”; and
 - f. Based on an effective year of construction of 1985 and a condition rating of average, the physical depreciation is determined to be 10%.

The Indiana Board of Tax Review issues this Final Determination of the above captioned matter on the date first written above.

Chairman, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS ON REMANDED CASE -

You may petition for judicial review of this final determination of corrected assessment pursuant to the provisions of Indiana Code § 6-1.1-15-9. 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.