

REPRESENTATIVE FOR PETITIONER:
Randall Cole, Petitioner's Son¹

RESPONDENT:
Mendy Ward, Perry County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | | |
|------------------------|---|------------------|---------------------|
| Irene Cole, |) | Petition Nos.: | 62-009-06-1-4-00117 |
| |) | | 62-009-06-1-4-00118 |
| Petitioner, |) | | |
| |) | Parcels: | 009-00443-00 |
| v. |) | | 009-00447-03 |
| |) | | |
| Perry County Assessor, |) | County: | Perry |
| |) | Township: | Troy |
| Respondent. |) | | |
| |) | Assessment Year: | 2006 |

Appeal from the Final Determination of
Perry Property Tax Assessment Board of Appeals

JUNE 15, 2009

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

¹ Although the Petitioner filed a power of attorney with the Board, he did not show that he was a certified tax representative pursuant to 52 IAC 1-2-1. Nor did he file any documentation of incapacitation that would allow him to represent the Petitioner before the Board. 52 IAC 1-2-1.1. The Respondent however did not object to Mr. Cole's representation of the Petitioner. The Board therefore will consider the Petitioner's case despite her absence at hearing.

ISSUE

1. The issue presented for consideration by the Board is whether the assessed values of the properties exceeds their market value-in-use because the assessor did not apply appropriate adjustments for functional and economic obsolescence.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-1, Randall Cole, son of property owner Irene Cole, filed Form 130 Petitions for Review of Assessment on June 19, 2007, petitioning the Perry County Property Tax Assessment Board of Appeals (the PTABOA) to conduct an administrative review of the properties' 2006 assessment. The PTABOA issued its determinations on December 14, 2007. Pursuant to Ind. Code § 6-1.1-15-1, Mr. Cole filed Form 131 Petitions for Review of Assessment on January 22, 2008, petitioning the Board to conduct an administrative review of the properties' 2006 assessment. Mr. Cole filed amended Petitions to cure the defects in the Petitions on March 13, 2008.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Rick Barter, held a hearing on March 19, 2009, in Tell City, Indiana.
4. The following persons were sworn and presented testimony at the hearing:
 For the Petitioner:
 Randall Cole, Petitioner's son,

 For the Respondent:
 Mendy Ward, Perry County Assessor
5. The Petitioners presented the following evidence:
 Petitioner Exhibit 1 – Petitioner's summary of issues,

- Petitioner Exhibit 2 – Copies of Form 130 petitions,
- Petitioner Exhibit 3 – Copies of Form 115 determinations,
- Petitioner Exhibit 4 – Property record cards (PRC),
- Petitioner Exhibit 5 – Schedule E Form 1040 for 2005 for mobile home park,
- Petitioner Exhibit 6 – Schedule E Form 1040 for 2006 for mobile home park.

6. The Respondent presented the following evidence:

Respondent Exhibit 1 – Data on rents and capitalization rates for mobile home parks.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 131 Petitions with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet.

8. The appealed property consists of two improved commercial parcels that include a multiple-site mobile home park, along with a house, an attached carport, a pole barn and a utility shed located at 1800 Ninth and Tenth streets in Troy Township, Perry County, Tell City, Indiana.

9. The ALJ did not conduct an on-site inspection of the subject properties.

10. For 2006, the PTABOA determined the assessed value of the property to be \$173,400 for the land and \$89,200 for the improvements, for a total assessed value of \$262,600 for Parcel No. 009-00443-00; and \$55,000 for the land and \$30,600 for the improvements, for a total assessed value of \$85,600 for Parcel No. 009-00447-03.

11. For 2006 the Petitioner requested the assessed value of the property to be \$78,726 for the land and \$23,676 for the improvements, for a total assessed value of \$102,402 for Parcel No. 009-00443-00; and \$25,213 for the land and \$6,946 for the improvements, for a total assessed value of \$32,159 for Parcel No. 009-00447-03.

JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

13. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v., Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. Of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. In making its case, the taxpayers must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct., 2004). (“[I]t is the taxpayer’s duty to walk the Indiana Board...through every element of the analysis”).
15. 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.

PETITIONER'S CONTENTIONS

16. The Petitioner contends that the subject property suffers from functional obsolescence that the county did not sufficiently account for in the properties’ 2006 assessment.

Petitioner Exhibit 1, Cole testimony. The Petitioner's witness, Mr. Cole testified that the subject property, the Beach Grove Mobile Home Park, was constructed between 1965 and 1970 in multiple phases, and was developed to accommodate 74 mobile homes with 10-foot and 12-foot widths, and lengths of 50 feet to 60 feet, which were the industry standards at the time.² *Petitioner Exhibit 1, Cole testimony.* In 1970 several of the home sites were reconfigured to accommodate mobile homes up to 14 feet wide with slightly longer than 60-foot lengths because the mobile home market was changing. *Id.* The Petitioner argues that the size of mobile homes grew considerably after the park was built and therefore the park cannot accommodate the modern housing. *Id.* In addition, the Petitioner contends functional obsolescence exists in the mobile home park because of state regulations which dictate the physical requirements parks must meet to pass inspections in order to operate. *Petitioner Exhibit 1, Cole testimony.* According to Mr. Cole, the inspections are difficult to pass because the park has not been updated to provide suitable access, space and utility amenities for modern manufactured housing. *Id.*

17. The Petitioner further contends that the subject property suffers from economic obsolescence for which the county did not sufficiently account for in the properties' 2006 assessment. *Petitioner Exhibit 1, Cole testimony.* Mr. Cole argues that because the size of mobile homes grew considerably after the park was built, the pool of possible tenants to lease sites in the park has dwindled resulting in economic obsolescence. *Id.* Moreover, standard financing methods such as Fannie Mae, FHA and Freddie Mac were not available for mobile homes built prior to June 15, 1976, which are the homes the park was built to accommodate. *Id.* Thus, tenants that might have otherwise purchased an older mobile home that could be parked at Beach Grove were more likely to purchase a later model to obtain financing. *Id.* The Petitioner also argues that federally subsidized housing offered to income-qualified persons who might have previously lived in mobile

² Petitioner's Exhibit 1 states there are 74 lots in the park, 23 of which are abandoned. The county assessor testified the 2006 assessment was based on a total of 43 lots on both parcels. The property record cards submitted as Petitioner's Exhibit 5 show 43 home sites on Parcel No. 009-00443-00 and 20 home sites on Parcel No. 009-00447-03 for a total of 63 lots. Neither the Petitioner's representative nor the Respondent addressed these discrepancies at the hearing.

homes, also eroded the tenant pool for older mobile home parks, contributing to the economic obsolescence. *Petitioner Exhibit 1, Cole testimony*

18. The Petitioner contends that 23 of the spaces in the park are not used at all and should receive total economic and functional obsolescence of 100 percent; 16 should receive economic obsolescence of 35 percent and functional obsolescence of 60 percent for a total obsolescence of 95 percent; 20 spaces should receive 30 percent economic obsolescence and 35 percent functional obsolescence for a total obsolescence of 65 percent; and 15 sites should receive 20 percent economic obsolescence and 20 percent functional obsolescence for total obsolescence of 40 percent. *Petitioner Exhibit 1.*
19. The Petitioner's representative contends the only appropriate way to value the property is by its use value as evidenced by the property's income. *Petitioner Exhibit 1, Cole testimony.* In support of this contention, the Petitioner presented copies of the mobile home park's 2005 and 2006 tax papers submitted to the Internal Revenue Service. *Petitioner Exhibits 6 and 7.* The Schedule Es, titled "Supplemental Income and Loss," show rents received in 2005 of \$42,132 and a net loss of \$98, and rents received in 2006 of \$43,455 with an income total of \$2,384, after expenses were deducted. *Id.*
20. Finally, in response to the Respondent's case, Mr. Cole contends that Perry County assessing officials based the 2006 assessed value of the park on the sale of a Boonville mobile home park. *Petitioner Exhibit 1, Cole testimony.* Mr. Cole argues, however, that the county failed to establish comparability between the two parks. *Id.*

RESPONDENT'S CONTENTIONS

21. The Respondent admits that there is obsolescence inherent in the mobile home park, but argues that the Assessor has accounted for it in the assessment. *Ward testimony.* According to Ms. Ward, the land on the two parcels received a negative 50 percent influence factor for obsolescence in 2006. *Petitioner Exhibit 5.* In light of the

obsolescence applied by the county, the 2006 assessed value is just \$348,200. *Ward testimony.*

22. The Respondent further contends the property is correctly assessed based on its market value. *Respondent Exhibit 1, Ward testimony.* In support of this contention the Respondent offered a worksheet showing various mobile home lot rents in nearby communities, ranging from \$180 in Evansville for a double, to \$115 for a smaller site at the Traphagen Park in Tell City. *Id.* The Assessor determined that market rent was \$115 for the Tell City area and then purported to calculate an income approach value using a 10 percent cap rate, an 8 percent cap and a 13 percent cap. *Id.* The 10 percent cap, identified by Respondent as the appropriate cap for use in Perry County, produced a value of \$553,320, while the 8 percent cap yielded a value of \$696,650 and the 13 percent cap a value of \$428,700. *Id.*

ANALYSIS

23. The REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A, intro at 1, (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES) provide 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.* 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 depreciation, 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 deterioration and typical obsolescence. *Id.* at 8. Any additional loss in value from

atypical forms of obsolescence is referred to as abnormal obsolescence and is estimated separately from normal depreciation. *Id.*

24. For a Petitioner to show it is entitled to receive an adjustment for abnormal obsolescence, the Petitioner must both identify the causes of obsolescence it believes is present in its improvement and also quantify the amount of obsolescence it believes should be applied to its property. *Clark v. State Bd. of Tax Comm'rs*, 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 causing an actual loss in value to its property. *See Miller Structures, Inc. v. State Bd. of Tax Comm'rs*, 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 Bd. of Tax Comm'rs*, 745 N.E.2d 928, 936 (Ind. Tax Ct. 2001), *review denied*.
25. Here, the Petitioner contends the properties suffer from obsolescence because the mobile home park has not been updated to provide suitable access, space and utility amenities for modern manufactured housing. *Cole testimony*. Further, the park suffers from a decreasing pool of possible tenants because of federally subsidized housing and a lack of financing options. *Id.* Mr. Cole argues that the properties' assessments should total \$134,561 rather than the \$358,200 the properties were assessed for in 2006. *Cole argument*. In support of this contention, Mr. Cole assigned obsolescence adjustments ranging from 40% to 100% to each of the properties' mobile home lots. *Id.* The Petitioner's representative, however, merely identifies a situation purportedly causing obsolescence, such as a lot "built to accommodate 10 [foot] wide mobile homes" and assigns an adjustment factor to those lots. He failed to explain how he calculated the obsolescence factor. *See Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230

(Ind. Tax Ct. 1998) (requiring taxpayers to quantify obsolescence at the administrative level with generally accepted appraisal techniques). Mr. Cole's purported obsolescence factors are unsupported by any probative evidence. Thus, they 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, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). Thus, the Petitioner failed to raise a prima facie case that the subject properties were entitled to greater obsolescence adjustments than they were receiving in 2006.

21. Further, even if the Petitioner had shown that the Assessor erred in not applying a different obsolescence factor to the properties, the Petitioner failed to show that the assessment did not accurately reflect the market value of the property. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*"). While the Petitioner's representative presented excerpts from the Petitioner's federal tax returns, he failed to develop an income approach valuation to disprove the 2006 assessment. *Petitioner Exhibits 5 and 6*.

23. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus., Ltd. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

26. The Board concludes that the Petitioner has failed to raise a prima facie case to prove the 2006 assessment is over-stated and finds in favor of the Respondent.

FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines the assessment should not be changed.

ISSUED: _____

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.