

REPRESENTATIVE FOR PETITIONER:
Duane R. Zishka, Uzelac & Associates, Inc.

REPRESENTATIVE FOR RESPONDENT:
Mark Alexander, representing White River Township Assessor.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

FAIRVIEW CORNERS, LLC,	)	Petition No.:	41-041-02-1-4-00242
	)	Parcel:	1500-26-02-016/04
Petitioner,)		
)		
v.)		
	)	County:	Johnson
WHITE RIVER TOWNSHIP	)	Township:	White River
ASSESSOR,)		
	)	Assessment Year:	2002
Respondent.)		

Appeal from the Final Determination of
Johnson County Property Tax Assessment Board of Appeals

[DATE OF ISSUANCE]

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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUES

1. The issues presented for consideration by the Board were:
ISSUE – Whether the subject property is entitled to an obsolescence adjustment due to a decline in market value.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, Duane R. Zishka of Uzelac & Associates, Inc., filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment on behalf of Fairview Corners, LLC, petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on December 22, 2003. The determination of the Johnson County Property Tax Assessment Board of Appeals (the “PTABOA”) was issued on November 21, 2003.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on April 24, 2004, in Franklin, Indiana before Paul Stultz, the duly designated Administrative Law Judge (the “ALJ”) authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were sworn and presented testimony at the hearing:
For the Petitioner:
Duane R. Zishka
For the Respondent:
Mark Alexander
5. The following exhibits were presented for the Petitioner:
Petitioner Exhibit 1 – Map of neighborhood;
Petitioner Exhibit 2 – Photo of subject property;
Petitioner Exhibit 3 – Four (4) photos of the subject property;
Petitioner Exhibit 4 – Investor Survey, 3rd Quarter, 2002, from RealtyRates.com (This Exhibit contains confidential information);
Petitioner Exhibit 5 – Pages one (1) and eight (8) from The Communicator, Winter 2004; and
Petitioner Exhibit 6 – Document calculating the amount of obsolescence and income statements for 1999, 2000, 2001, and 2002. (This Exhibit contains confidential information).

6. The following exhibits were presented for the Respondent:
 - Respondent Exhibit 1 – Sales Disclosure for subject property;
 - Respondent Exhibit 2 – Property Record Card for subject property; and
 - Respondent Exhibit 3 – Letter from White River Township Assessor authorizing Mark Alexander to represent the Respondent

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – The Form 131 Petition
 - Board Exhibit B – Notice of Hearing dated February 24, 2004.

8. The subject property is a strip mall located at 520 N State Road 135 in Greenwood, Indiana.

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

10. For 2002, the PTABOA determined the assessed value of the property to be:

Land: \$235,200	Improvements:	\$753,300.
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11. For, the Petitioner contends the assessed value of the property should be:

Land: \$235,200	Improvements:	\$568,130.
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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 the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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 taxpayer 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.

ANALYSIS

Issue: *Whether the subject property is entitled to an obsolescence adjustment due to a decline in market value.*

16. Petitioner contends the subject property has suffered economic obsolescence and has declined in market value by 23% to \$765,200 as of March 1, 2002. *Zishka testimony; Petitioner Exhibit 6.*
17. Petitioner claims the property experienced a loss in market value due to tenant movement. *Zishka testimony.* The decrease in occupancy caused a drop in net operating income over the years 1999 – 2002. *Zishka testimony; Petitioner Exhibit 6.*

18. The Respondent contends that the assessed value of the subject property is best determined by the sale of the subject that occurred on February 26, 1999, for \$1,100,000.
19. The Petitioner presented the following evidence and testimony in regard to this issue:
 - A. A one-page printout showing cap rates for Retail Un-Anchored Centers from RealtyRates.com Investor Survey – 3rd quarter 2002. *Petitioner's Exhibit 4.*
 - B. An income and expense report showing the Net Operating Income for the subject property from 1999 through 2002. *Petitioner Exhibit 6.*
 - C. Various photographs and a map showing the location and exterior features of the property. *Zishka testimony; Petitioner Exhibits 1-3.*
 - D. The Petitioner claimed a decrease in occupancy was caused by economic obsolescence and led to a loss of value in the subject property. *Zishka testimony.*
20. The Respondent presented the following evidence and testimony in regard to this issue:
 - A. A copy of a sales disclosure dated February 26, 1999, showing the subject property was sold for \$1,100,000. *Respondent's Exhibit 1.*
 - B. The Respondent contends that the sale from February of 1999 is the best indication of the value of the subject property because according to the 2002 Real Property Assessment Manual all property should be assessed using a January 1, 1999, valuation date. *Alexander testimony.*
21. While the methodology used by the Petitioner was not perfect, the Respondent did not question the methodology used in any way. Therefore, the Board finds the evidence submitted by the Petitioner to be probative.
22. The Petitioner presented sufficient evidence to establish a prima facie case quantifying its requested obsolescence adjustment as required by *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1238 (Ind. Tax Ct. 1998). The Petitioners evidence using the income approach indicated that external circumstances might have lowered the value of the subject property. *Zishka testimony; Petitioner Exhibit 6.*

23. However the analysis does not end there. The evidence presented by the Petitioner shifted the burden to the Respondent. The Respondent presented evidence of a sale of the subject property. *Respondent Exhibit 1; Alexander testimony.* The sale of the subject property took place on February 26, 1999, less than two months from the January 1, 1999, valuation date set by the Real Property Assessment Manual for 2002.
24. While Petitioner's evidence shows that the net operating income for the property has declined for the years 2000 through 2002, this purported drop in value was rebutted by clear evidence that the value was higher as of the valuation date – indeed, the sale value is higher than the assessment. *C.f., Board Exhibit A, Respondent Exhibit 1.*
25. A sale of the subject property at or near the valuation date is usually the best evidence of a properties fair market value. The Board finds that the sale rebuts the income evidence presented by the Petitioner in that it establishes a value in close proximity to the assessment, and significantly higher than the income evidence.

SUMMARY OF FINAL DETERMINATION

Issue : *Whether the subject property is entitled to an obsolescence adjustment due to a decline in market value.*

26. The Petitioner presented a prima facie case shifting the burden to the Respondent. The Respondent rebutted the Petitioner's evidence. There is no change in the assessment.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

Betsy J. Brand, 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.