

REPRESENTATIVES FOR PETITIONER:  
Duane Zishka & Todd Uzelac, Uzelac & Associates

REPRESENTATIVE FOR RESPONDENT:  
Mark Alexander, Johnson County Property Tax Assessment Board of Appeals

---

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

HALLMARK VILLAGE, INC.,	)	Petition No.:	41-041-02-1-4-00035
	)	Parcel:	1500360100509
Petitioner,	)		
	)		
v.	)		
	)		
WHITE RIVER TOWNSHIP	)	County:	Johnson
ASSESSOR,	)	Township:	White River
	)	Assessment Year:	2002
Respondent.	)		

---

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

---

**August 9, 2004**

**FINAL DETERMINATION**

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

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### ISSUE

1. The issue presented for consideration by the Board was:

*Whether the Johnson County Property Tax Assessment Board of Appeals erred by not making a corresponding change to the normal depreciation and assessed value when it changed the condition rating from “excellent” to “average.”*

### PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, Duane Zishka of Uzelac & Associates filed a Form 131 petition on behalf of Hallmark Village, Inc., petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on November 10, 2003. The determination of the Johnson County Property Tax Assessment Board of Appeals (PTABOA) was issued on October 10, 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 March 9, 2004 in Franklin, Indiana, before Alyson Kunack, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
4. The following persons were sworn and presented testimony at the hearing:  
For the Petitioner: Duane Zishka and Todd Uzelac, Uzelac & Associates.  
For the Respondent: Mark Alexander, Johnson County PTABOA.
5. Also present at the hearing was Larry Stroble of Barnes & Thornburg. Prior to the hearing, on March 1, 2004, Mr. Stroble had submitted to the Board a brief of *amicus curiae* on behalf of the Indiana Manufacturers Association.

6. The following exhibits were presented for the Petitioner:
  - Petitioner's Exhibit A – Description and photos of subject property.
  - Petitioner's Exhibit B – Notification of Final Assessment Determination (Form 115).
  - Petitioner's Exhibit C – Subject property record card dated July 10, 2003.
  - Petitioner's Exhibit D – Subject property record card dated November 5, 2003.
  - Petitioner's Exhibit E – Selected pages from Appendix F of the Version A – Real Property Assessment Guideline.
  
7. The Respondent presented no exhibits.
  
8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
  - Board Exhibit A – Form 131 petition and attachments.
  - Board Exhibit B – Notice of Hearing.
  - Board Exhibit C – Motion for leave to appear as *amicus curiae* and subsequent orders granting motion.
  - Board Exhibit D – *Amicus curiae* brief prepared by Larry Stroble of Barnes & Thornburg, on behalf of the Indiana Manufacturers Association.
  
9. The subject property is a single story office/medical office building located in Greenwood, Johnson County.
  
10. The Administrative Law Judge did not conduct an on-site inspection of the subject property.
  
11. For 2002, the PTABOA determined the assessed value of the property to be:

Land: \$45,700	Improvements:	\$225,100.
----------------	---------------	------------
  
12. For 2002, the Petitioner contended the assessed value of the property should be:

Land: \$45,700	Improvements:	\$165,300.
----------------	---------------	------------

## JURISDICTIONAL FRAMEWORK

13. 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

14. 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).
15. 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”).
16. 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 PTABOA erred by not making a corresponding change to the normal depreciation and assessed value when it changed the condition rating from “excellent” to “average.”

17. At the PTABOA hearing, the parties agreed that the condition of the structure should be changed from “excellent” to “average.” The Petitioner contended that the PTABOA erred in not making the corresponding change to the normal depreciation (and the resultant change in true tax value).
18. The Respondent contended that since no evidence concerning the market value of the subject property was submitted, no change to the assessed value was called for, despite the change in condition rating.
19. The Petitioner presented the following evidence and testimony in regard to this issue:
  - a. A short summary and attached pictures of the subject property were submitted to illustrate the property’s condition. (*Petitioner’s Exhibit A*).
  - b. The Form 115 issued by the PTABOA showed the change in condition made by the PTABOA and the lack of any change to the true tax value. (*Petitioner’s Exhibit B*).
  - c. Two property record cards were also submitted to show the condition change and lack of any change in the true tax value as a result of the PTABOA’s decision. (*Petitioner’s Exhibits C & D*).
  - d. The Petitioner presented a copy of a portion of Appendix F of the Version A – Real Property Assessment Guideline (Guideline) illustrating the recommended methodology for determining normal depreciation. (*Petitioner’s Exhibit E*).
  - e. The Petitioner argued that the change in condition rating to “average” made by the PTABOA should have led to a corresponding change in the amount of normal depreciation to 38%. (*Zishka testimony; Petitioner’s Exhibit E*).

20. The Respondent presented the following testimony in regard to this issue:
  - a. There was no evidence presented at the PTABOA hearing concerning the market value of the property.
  - b. There was therefore no basis for a change in the assessed value of the property, despite the change in condition rating.
  
21. There are three generally accepted methods of determining value: the cost approach, the sales comparison approach, and the income approach. (*2002 Real Property Assessment Manual, page 13*).
  
22. The Guideline is based primarily on the cost approach to value. “When properly implemented,” the Guideline produces accurate and uniform true tax values for all classes of property. (*Guideline, Introduction, page 1*).
  
23. Both parties agree the Guideline was used to assess the subject property. Neither party presented evidence of any approach to value other than the approach described in the Guideline.
  
24. The Guideline explains the relationship between a condition classification and depreciation in commercial properties (*Guideline, Appendix F, page 7*):
  - a. The assessor must first determine the actual age of the building.
  - b. A condition classification is then assigned to the structure by comparing it to structures of similar age.
  - c. Using a table in the Guideline, the actual age and the condition classification are correlated to determine the effective age of the structure.
  - d. The typical life expectancy of the structure is determined by referring to a table of Typical Structure Lives in the Guideline.
  - e. Using the Depreciation table in the Guideline, the assessor finds the intersection of the effective age row and typical life expectancy column. This number is the

percentage of normal depreciation the structure should receive. Structures with greater effective age receive more depreciation.

25. The instructions in the Guideline therefore clearly contemplate that a structure in “average” condition should receive a greater percentage of depreciation than a structure in “excellent” condition, all other factors (e.g., effective age and typical life expectancy) being the same.
26. The Petitioner has therefore made a prima facie case in support of its argument that the depreciation factor should be recomputed based upon the instructions and schedules contained in Appendix F of the Guideline.
27. The Respondent defended its decision to make no adjustment to the depreciation amount by contending the Petitioner presented no independent market evidence the true tax value was incorrect.
28. The Respondent’s position suggests that even though a significant error was made in applying the cost approach used to arrive at the true tax value, that bottom-line true tax value, nevertheless, reflects the market value. It is, however, the Board’s view that if the Respondent believes the true tax value can be supported by evidence other than the misapplied cost data from the guideline, it becomes the burden of the Respondent (not the Petitioner) to present such independent market evidence to support the miscomputed true tax value.
29. The cost approach to value contained in the Guideline is not the only acceptable means of determining a property’s true tax value for the 2002 reassessment. (*Guideline, Introduction, page 2*) (Stating that both the comparable sales approach and the capitalized income approach may be used if applicable).

30. However, permitting the true tax value to be determined from sources outside the Guideline does not imply that the Petitioner (or Respondent) is ever required to introduce market data from sources outside the Guideline.
31. In the absence of more credible market value data, the Guideline is the best indication of true tax value in this appeal. As noted, however, the Guideline must be “properly implemented” to arrive at an accurate assessment.
32. In this appeal, the instructions contained in the Guideline obviously were not properly implemented.
33. The Respondent has therefore failed to rebut the Petitioner’s prima facie case that the procedures contained in the Guideline were incorrectly implemented when assessing the property under appeal.
34. At the PTABOA hearing, the parties agreed that the condition of the structure should be changed from “excellent” to “average.” Accordingly, the Board determines that the depreciation percentage should also be changed in accordance with the instructions and tables contained in Appendix F of the Guideline.

#### **SUMMARY OF FINAL DETERMINATION**

Issue: *Whether the PTABOA erred by not making a corresponding change to the normal depreciation and assessed value when it changed the condition rating from “excellent” to “average.”*

35. The Petitioner established a prima facie case that the Respondent did not rebut. A change is made to the assessment as a result of this issue.



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

---

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.