

REPRESENTATIVES FOR PETITIONER:
Syed Tajuddin, President Illinois Indiana Enterprises, Inc.

REPRESENTATIVES FOR RESPONDENT:
Mary Shaw, Commercial Supervisor, Calumet Township

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

ILLINOIS INDIANA ENTERPRISES, INC.,)	
)	Petition for Correction of Error,
)	Form 133
Petitioner)	Petition No.: 45-011-01-3-4-00001
)	County: Lake
v.)	Township: Calumet
)	Parcel No. 25-43-0010-0007
CALUMET TOWNSHIP ASSESSOR,)	Assessment Year: 2001
)	
Respondent.)	

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

May 19, 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".

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 1 – *Whether the effective year of the building should be 1974.*

ISSUE 2 – *Whether the effective year of the paving should be 1974.*

ISSUE 3 – *Whether the area and value of the asphalt paving shown on the property record card is correct.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-12, Syed Tajuddin filed a Form 133 (Correction of Error) petition on behalf of Illinois Indiana Enterprises, Inc. (Petitioner). The Form 133 was filed May 28, 2002. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued an amended Form 115 on July 18, 2002. The Form 133 petition was subsequently forwarded to the Board on July 31, 2002.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on March 5, 2003 in Crown Point, Indiana before Ellen Yuhan, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-5-2.

4. The following persons were present at the hearing:

For the Petitioner:

Syed Tajuddin, President Illinois Indiana Enterprises, Inc.

For the Respondent:

Mary Shaw, Commercial Supervisor, Calumet Township

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner: Syed Tajuddin

For the Respondent: Mary Shaw

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 - 2001 pay 2002 Real Property Maintenance Report for
the subject property

Petitioner's Exhibit 2 - 2000 pay 2001 Real Property Maintenance Report for
the subject property

Petitioner's Exhibit 3 - 1999 pay 2000 Real Property Maintenance Report for
the subject property

Petitioner's Exhibit 4 - 2001 pay 2002 Real Property Maintenance Report for
the Citgo Gas Station at 15th & Clark

Petitioner's Exhibit 5 - 2001 pay 2002 Real Property Maintenance Report for
the Marathon Gas Station at 15th & Broadway

For the Respondent:

No exhibits were submitted

7. At the hearing, the ALJ inquired if Ms. Shaw had any objection to the Petitioner's evidence being presented since it had not been submitted prior to the hearing. Ms. Shaw stated that she had no objection to the submission of the Petitioner's exhibits.

8. The Petitioner also presented a third issue for consideration at the hearing – *Whether the area and value of the asphalt paving shown on the property record card is correct.* The ALJ inquired of Ms. Shaw if she had any objections to this issue being added for review

by the Board. Ms. Shaw stated that she had no objections. This issue will be reviewed in these proceedings.

9. The following additional items are officially recognized as part of the record of proceedings:

Board Item A - Form 133 petition

Board Item B - Notice of Hearing on Petition

10. The subject property is a convenience store/gas station located at 2993-2995 W. 11th Avenue, Gary, Calumet Township, Lake County.

11. The assessment year under appeal is 2001 and the assessed values of the subject property as determined by the PTABOA are:

Land: \$17,000

Improvements: \$93,500.

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

Jurisdictional Framework

13. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
14. The Board is authorized to issue this final determination of corrected assessment pursuant to Indiana Code § 6-1.1-15-12.

Indiana's Property Tax System

15. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.

16. Indiana has established a mass assessment system through statutes and regulations designed to assess property according to what is termed “True Tax Value.” See Ind. Code § 6-1.1-31 and 50 Ind. Admin Code 2.2.
17. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
18. An appeal cannot succeed based on the fact that the assessed value does not equal the property’s market value. See *State Board of Tax Commissioners v. Town of St. John V*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).
19. The Indiana Supreme Court has said that the Indiana Constitution “does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each individual assessment,” nor does it “mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant,” but that the proper inquiry in tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” See *Town of St. John V*, 702 N.E. 2d at 1039-40.
20. Although the Supreme Court in the *St. John* case did declare the cost tables and certain subjective elements of the State’s regulations constitutionally infirm, it went on to make clear that assessment and appeals must continue to be determined under the existing rules until new regulations are in affect.
21. New assessment regulations have been promulgated, but are not in affect for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

State Review and Petitioner’s Burden

22. The Board does not undertake to reassess property, or to make the case for the petitioner. The Board’s decision is based upon the evidence presented and issues raised during the

hearing. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).

23. The petitioner must submit ‘probative evidence’ that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax. 1998), and *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 1230 (Ind. Tax 1998). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]
24. The petitioner has a burden to present more than just ‘de minimis’ evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Board of Tax Commissioners*, 715 N.E. 2d 1018 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]
25. The petitioner must sufficiently explain the connection between the evidence and petitioner’s assertions in order for it to be considered material to the facts. ‘Conclusory statements’ are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329 (Ind. Tax 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
26. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.* 743 N.E. 2d 247, 253 (Ind. Tax 2001), and *Blackbird Farms Apartments, LP v. Department of Local Government Finance* 765 N.E. 2d 711 (Ind. Tax, 2002).
27. The Board will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a ‘prima facie case’ and, by a

‘preponderance of the evidence’ proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765 (Ind. Tax 1997). [A ‘prima facie case’ is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the Board (as the fact-finder) to conclude that the petitioner’s position is correct. The petitioner has proven his position by a ‘preponderance of the evidence’ when the petitioner’s evidence is sufficiently persuasive to convince the Board that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]

Discussion of the Issues

ISSUE 1 – *Whether the effective year of the building should be 1974.*

ISSUE 2 – *Whether the effective year of the paving should be 1974.*

28. The Petitioner contends that the effective year for the subject building and the asphalt paving should be 1974 as opposed to 1995 and 2000 respectively.
29. The Respondent agrees that the effective year for both the subject building and the asphalt paving had been incorrectly entered and that 1974 is the correct effective year.
30. Based on the undisputed testimony of record, the parties agreed to the effective year for both of the improvements under review. A change in the assessment is made to correct the effective year to 1974 for the subject structure and the asphalt paving for the 2001 assessment year under review in this appeal.
31. Because the parties agree that the effective year is 1974 for the subject structure and asphalt paving a change in the value is warranted. This change requires a review of the amount of physical depreciation applicable to those improvements. Physical depreciation

is determined by a combination of age and condition and the application of the correct life expectancy table. See 50 IAC 2.2-10-7(d).

32. In the case at bar, for a structure of wood joist construction the 30-Year Life Expectancy table would be used to determine the physical depreciation. 50 IAC 2.2-11-7. For the asphalt paving, the 20-Year Life Expectancy table would be used. 50 IAC 2.2-12-6.1. A change in the assessment is made as a result.

ISSUE 3 – *Whether the area and value of the asphalt paving shown on the property record card is correct.*

33. The Petitioner contends the amount of asphalt paving is incorrect. The Petitioner contends that the amount of paving has incorrectly increased since the time he purchased the subject property.
34. The Respondent contends that prior to 2001, the asphalt paving had been omitted from the property record card. Because the error of omission was corrected in 2001, it appears there was an increase in the amount of paving.
35. Evidence and testimony considered particularly relevant to this determination included the following:
 - (a) There appears to be an increase in the amount of paving because the paving was not entered on the property record card until the township received a copy of a building permit issued to the Petitioner. *Shaw testimony.*
 - (b) The Petitioner paid approximately \$5,000 to resurface the paving. *Tajuddin testimony.*
 - (c) The Petitioner did not measure the unpaved area of the parcel located behind the building. *Tajuddin testimony.*
 - (d) A calculation regarding the area covered by the improvements indicates that there is an unpaved area of 676 square feet.

Analysis of ISSUE 3

36. The Petitioner must submit evidence that adequately demonstrates all alleged errors in the assessment. Allegations, unsupported by factual evidence, will not be sufficient to establish an alleged error. The Petitioner has a burden to present more than a minimal amount of evidence in its effort to prove its position. The Petitioner must sufficiently explain the connection between the evidence submitted and the assertions made. Conclusory statements do not constitute probative evidence. The Petitioner's burden consists of proving the assessment is incorrect and proving that the assessment it seeks is correct.
37. The Petitioner failed to submit any evidence that would prove the amount of paving shown on the subject's property record card was incorrect. As a result there is no change in the assessment.

Summary of Final Determinations

Determination of ISSUE 1: *Whether the effective year of the building should be 1974.*

Determination of ISSUE 2: *Whether the effective year of the paving should be 1974.*

38. At the hearing, the parties agreed that the effective year for both the subject building and the asphalt paving is 1974. A change is made in the assessment.
39. As a result of this agreement to change the effective year, a change in the physical depreciation would also be applicable for these improvements. A change is made in the assessment.

DETERMINATION of ISSUE 3: *Whether the area and value of the asphalt paving shown on the property record card is incorrect.*

40. The Petitioner failed to meet its burden to show that the amount of paving indicated on the property record card was incorrect. No change is made.

The above stated findings of fact and conclusions of law are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this _____ day of _____, 2003.

Chairman, 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.