

REPRESENTATIVES FOR PETITIONER:

Stephen E. Devoe, HENDERSON DAILY WITHROW & DEVOE
B. Keith Shake, HENDERSON DAILY WITHROW & DEVOE

REPRESENTATIVES FOR RESPONDENT:

Steve Carter, ATTORNEY GENERAL OF INDIANA
Ted J. Holaday, DEPUTY ATTORNEY GENERAL

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

INDIANAPOLIS RACQUET CLUB INC.,)	Petition Nos.: 49-800-89-1-4-00020R
)	
Petitioner,)	County: Marion
)	
v.)	Township: Washington
)	
WASHINGTON TOWNSHIP ASSESSOR,)	Parcel Nos.: 8048124
MARION COUNTY,)	
)	
Respondent.)	Assessment Year: 1989
)	

On Remand from the Indiana Tax Court
Cause No. 49T10-0206-TA-60

REFERAL TO WASHINGTON TOWNSHIP ASSESSOR

The Indiana Board of Tax Review (Board) having reviewed the decision of the Tax Court in the above matter dated February 6, 2004 (attached and incorporated by reference), and pursuant to Ind. Code § 6-1.1-15-8, refers this matter to the Washington Township Assessor to make another assessment consistent with the Tax Court decision, for the reasons contained herein.

Facts and Procedural History

1. Indianapolis Racquet Club (IRC) owns and operates a commercial tennis club in Washington Township, Marion County, Indiana. IRC's facility consists of 24 tennis courts (both indoor and outdoor), a lobby, pro-shop, locker rooms, and various office and retail areas.
2. IRC originally appealed its 1989 assessment in the early 1990's. An administrative hearing was conducted; an appeal to the Tax Court and Supreme Court of Indiana ensued, followed by another round of administrative hearings before the Board. (For complete history, see *Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, Cause No. 49T10-0206-TA-60, slip op. at 2-4 (Ind. Tax Ct. 2004).
3. In this case, the issues were: (1) certain base rate adjustments; (2) grade; and (3) the amount of physical depreciation. The Tax Court affirmed the Board's determinations on issues (1) and (3), and remanded the issue of grade to be referred back to the township assessor.

Discussion of Remanded Issue

4. IRC claimed the grade factor of its improvement should have been reduced from 70% (C-1) to 50% (E+1). The Board held that IRC failed to present evidence or discussion concerning the grade of the tennis facility. *Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, Cause No. 49T10-0206-TA-60, slip op. at 15 (Ind. Tax Ct. 2004).
5. The Tax Court held that IRC established a prima facie case by presenting evidence establishing: 1) its improvement is a low-cost, pre-engineered metal building; 2) starting in 1991, the base rates of these type buildings were reduced by 50% to account for their low-cost and economical quality of materials used in their construction ("kit building adjustment"); 3) in 1995, the "kit building adjustment" was incorporated into the

assessment regulations under General Commercial Kit (GCK) Schedule pricing; and 4) starting in 1995, IRC's improvements were priced under the GCK schedule.

6. The Tax Court found that "the Board¹ failed to rebut IRC's evidence on grade and support its findings with substantial evidence." *Indianapolis Racquet Club, Inc.*, No. 49T10-0206-TA-60, slip op. at 16.
7. Accordingly, the Tax Court reversed the Board's final determination on this issue. On remand, the Board was ordered to instruct the local assessing officials to adjust IRC's grade factor consistent with the Tax Court's opinion.

Therefore, pursuant to Ind. Code § 6-1.1-15-8, the Board refers this matter to the Washington Township Assessor and instructs the Assessor to make another assessment consistent with the Tax Court decision, this 6th day of May, 2004.

Commissioner, 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.

¹ The remand hearing in this case was held on August 21, 2001 – before the legislature abolished the State Board of Tax Commissioners and created the Indiana Board of Tax Review. *See* 2001 Ind. Acts 198 § 119(b)(2). It is important to note that at State Board of Tax Commissioner hearings, the State Board served as an advocate and would have had responsibility to rebut a taxpayer's evidence. This is not the case before the Indiana Board. The Indiana Board conducts an impartial review of assessment appeals – it is not the Board's responsibility to rebut evidence presented by the parties. *See* Ind. Code § 6-1.5-4-1(a). It is the assessor's duty to rebut a taxpayer's evidence in hearings before the Indiana Board. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 480 (Ind. Tax Ct. 2003) (stating "[t]he burden was on the Assessor, not the Indiana Board, to rebut [the taxpayer]'s prima facie case.").