

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: #66-002-02-1-3-00001
Petitioners: Leslie P. & Debra K. Ezra
Respondent: Beaver Township Assessor (Pulaski County)
Parcel #: 0020057200
Assessment Year: 2002

The Indiana Board of Tax Review (the "Board") issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated an assessment appeal with the Pulaski County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 2, 2003.
2. The PTABOA issued notice of the decision on October 3, 2003.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the County Assessor on October 31, 2003. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated April 7, 2004.
5. The Board conducted an administrative hearing on June 16, 2004, before the duly appointed Administrative Law Judge Dalene McMillen.
6. The following persons were present at the hearing:

For the Petitioners: Leslie P. Ezra, Taxpayer
Michael L. White, Taxpayer Representative

For the Respondent: Lorena H. VanDerAa, Pulaski County Assessor
Barbara J. Clark, Deputy County Assessor
Martha Krohn, Deputy County Assessor
Edward J. Bisch, Jr., County Representative
Jennifer L. Becker, Township Assessor Representative
Betty L. Stinemetz, Township Assessor Representative

7. The following persons were sworn in at the hearing:

For the Petitioners: Leslie P. Ezra
Michael L. White

For the Respondent: Jennifer L. Becker
Betty L. Stinemetz

8. At the hearing, the parties stipulated to the following:

- a) The 7218 square foot area will be priced from the GCK (kit building) light utility storage schedule.
- b) The air conditioning will be removed from the 12,060 square foot area.
- c) The effective age of the building will be changed to 1992.

The agreement between the Petitioners and the Respondents is a decision between these parties and, without dispute, the Board will accept the agreement. The Board's acceptance of the agreement should not be construed as a determination regarding the propriety of the above-stipulated items on the structure under appeal. A change in the assessment is made.

Facts

9. The property is classified as GCK industrial office, light warehouse, light utility storage and light manufacturing, as is shown on the property record card for parcel #0020057200.

10. The Administrative Law Judge (ALJ) did not conduct an on-site inspection of the property.

11. Assessed value of the subject property as determined by the Pulaski County PTABOA:

Land \$ 12,500 Improvements \$ 752,700 Total \$ 765,200.

12. Assessed value requested by the Petitioners:

Land \$ 12,500 Improvements \$ 204,580 Total \$ 217,080.

Issues

13. Summary of Petitioners' contentions in support of alleged errors in the assessment:

- a) Petitioner contends the subject property should be assessed as follows: land \$12,500, manufacturing facility (35,848 square feet) \$235,128, and the commercial canopy, truck well wall and paving \$23,300. *White testimony*. The only issue in this hearing is the value of the manufacturing facility.

- b) Petitioner contends receipts from the 2000-year addition reflect it was constructed at a cost of \$9.61 per square foot; that cost was applied to the entire facility then a deduction was made for depreciation for a building value of \$235,128. *White testimony.*
- c) Petitioner testified that the following changes should be made to the structure: the interior finish should be changed from semi-finished (\$7.05 minus \$0.60 flooring = \$6.45 per sq. ft.) to unfinished (\$3.35 plus \$0.50 ceiling finish = \$3.85 per sq. ft.); the deduction for lack of partitioning should be changed to \$0.80 per sq. ft; the grade factor of the facility should be reduced to better reflect the actual construction cost. *White testimony.*
- d) Petitioner contends there are only a few unit heaters throughout the facility; therefore a deduction should be made to the facility for lack of heat. *White testimony.*
- e) Petitioner contends that after the above corrections are made to the facility that a 48% obsolescence or market adjustment is needed to bring the building closer to the \$235,128 estimated cost of construction. *White testimony.* This adjustment should be applied to account for the difference in pricing this facility as GCK industrial structures vs. residential pole buildings. The subject buildings are essentially the same type buildings normally seen on a farm for storing farm equipment.

14. Summary of Respondents' contentions in support of the assessment:

- a) The Respondent contends the "C" grade of the facility follows the definition for the GCK model found in the 2002 REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (the "Guidelines"), Appendix E pages 3, 5, 41 & 42.
- b) The Respondents testified that the semi-finish interior adjustment and the heating system were assessed to the facility based upon the description of the facility provided by Mr. Ezra. *Becker testimony.* The Petitioners refused to allow the Township to conduct an interior inspection of the facility and one photo on a digital camera presented at the Board hearing does not establish the Petitioner's claim that the interior is unfinished and that the hanging heating units are not assessed in accordance the Guidelines.
- c) The Respondent testified that in accordance with the 2002 Guidelines the cost of a structure is made up of all the direct labor and material costs plus the indirect expenses required in constructing an improvement. It further states "when comparing the costs in the guidelines to actual construction costs it is critical that the actual construction costs represent all costs (direct and indirect) regardless of whether or not they were realized, as in the case of do-it-yourself construction." *Becker testimony (quoting the Guidelines).* The Respondent contends the cost of construction submitted by the Petitioner does not include the indirect cost or the total cost of labor to construct the building, as some of the construction of the building was done by the Petitioner; therefore the \$9.61 per square foot is an incomplete cost per square foot. *Becker testimony.*
- d) The Respondent contends the Petitioners did not establish the cause of obsolescence or quantify the amount of obsolescence depreciation to be applied to the subject facility. The Responded testified that in *Clark v. Dep't of Local Gov't Fin.*, 779 N.E.2d 1277, 1282 n. 4 (Ind. Tax Ct. 2002) the Tax Court has established that a taxpayer has the burden of proof to establish of the type of obsolescence (functional and/or economical) the facility suffers and they must quantify the amount of the obsolescence depreciation to

be applied. The Respondent concluded that no documentation explaining the obsolescence depreciation was provided.

Record

15. The official record for this matter is made up of the following:

- a) The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
- b) The tape recording of the hearing, labeled BTR #5749.
- c) Exhibits:

For the Petitioner:

Petitioners' Exhibit 1 – A letter from Michael White, dated June 10, 2004, cost of 2000 addition to metal building, receipt from FBI Buildings, Inc., receipt from Kirby Risk Electrical Supply, ten receipts from Menards, receipt from A.D.B. Construction, two receipts from Brim Concrete Ready Mix, Inc., and seven photographs of the exterior of the subject facility.

Petitioners' Exhibit 2 – The Petitioner's specific objections, a copy of the justification for the reduction of assessment submitted by Les Ezra, dated August 26, 2003, cost of 2000 addition to metal building, a copy of the accurate cost of the structures prepared by the Petitioner and a copy of the subject 2002 property record card

Petitioners' Exhibit 3 – A photograph of the exterior of the subject facility.

For the Respondent:

Respondent Exhibit 1 – A letter from Jenny Becker, dated June 9, 2004, Beaver Township Assessor response to Form 131 Petition issues (four pages), the subject 2002 property record card, REAL PROPERTY ASSESSMENT GUIDELINE- VERSION A Appendix E pages 3, 5, 29, 41 & 42, a copy of Leslie Ezra's 1995 property record card, a copy of the 2002 REAL PROPERTY ASSESSMENT MANUAL page 3, a copy of the Form 115, dated October 3, 2003, a copy of REAL PROPERTY ASSESSMENT GUIDELINE – VERSION A ch. 6 page 9, and a copy of *Clark v. Dep't of Local Gov't Fin.*, a decisions of the Indiana Tax Court.

Respondent Exhibit 2 – A copy of REAL PROPERTY ASSESSMENT GUIDELINE – VERSION A, Introduction For Assessment, pages 1 & 2.

For the Board:

Board Exhibit A – A copy of the 131 petition.

Board Exhibit B – Notice of Hearing on Petition.

Board Exhibit C – Stipulation Agreement between Michael White, Leslie Ezra, Jenny Becker and Lorena VanDerAa, dated June 16, 2004.

- d) These Findings and Conclusions.

Analysis

16. The most applicable rules and case law governing these issue:

- a) The Board will not change the determination of the PTABOA unless the Petitioner has established a prima facie case and, by a preponderance of the evidence proven (1) that the current assessed value is incorrect, and (2) that the specific assessed value the Petitioner seeks, is correct. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax 1998); *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E.2d 765 (Ind. Tax 1997).
- b) Once the petitioner has established a prima facie case the burden is on the respondent to rebut petitioner's prima facie case. *Meridian Towers East & West v. Washington Township Assessor*, 801 N.E.2d 788 (Ind. Tax Ct. 2003).
- c) The Petitioner "must sufficiently explain the connection between the evidence and the petitioner's assertions in order for it to be considered material to the facts." *See generally, Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329 (Ind. Tax 1999)
- d) "[I]t is the taxpayer's duty to walk the Indiana Board ... through every element of the analysis." *Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (citing *Clark v. State Bd. of Tax Comm'rs*, 779 N.E.2d 1277, 1282 n. 4 (Ind. Tax Ct. 2002).
- e) 2002 REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002 – VERSION 'A' at 1, (incorporated by reference at 50 IAC 2.3-1-1) "Elements of Cost" in pertinent part:

The cost to be estimated by the assessor is made up of all the direct labor and material costs plus the indirect expenses required to construct an improvement. Examples of direct costs include labor, materials, supervision, utilities used during construction, and equipment rental. Indirect cost examples are building permits, fees, insurance, taxes, construction interest, overhead, profit, and professional fees such as those charged by architects, engineers, consultants, and attorneys. The cost tables contain both direct and indirect costs. When comparing the costs in this guideline to actual construction costs it is critical that the actual construction costs represent all costs (direct and indirect) regardless of whether or not they were realized, as in the case of do-it-yourself construction.

Id.

17. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) Petitioners discussed several issues such as grade, interior finish and lack of heating, however the main focus of this appeal was the building should be assessed based on the actual construction cost of an addition extrapolated out to apply to all the improvements. *See White testimony*. Petitioners did offer probative evidence that their actual cost of construction *for the addition* was \$ 9.61 per square foot, and this evidence was not rebutted. *Petitioners' Ex. 1 & 2*. The presentation of cost data is a valid method of challenging an assessment.
 - b) Where the Petitioners cost information falls short, however, is that it fails to disclose all the direct and indirect costs that would make up the actual construction cost for this type of building. *See 2002 REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002 – VERSION 'A' at 1, (incorporated by reference at 50 IAC 2.3-1-1) "Elements of Cost."* Further, Petitioner did not provide evidence to adequately explain why the \$9.61 cost per square foot should apply to the other areas of the improvements. *Becker testimony*. Petitioners have simply failed to provide sufficient evidence to allow the Board to conclude that the \$9.61 cost per square foot paid for the addition should be applied to the entire improvement as a reasonable measure of market value in use.
 - c) Petitioners did not provide sufficient information regarding the grade, interior finish, and lack of heating for the subject property, and the effect on value for these items could not be determined without making assumptions about matters not in the record. The necessary base facts and explanatory connections needed to give weight to the grade, interior finish, and lack of heating were not presented. *See Indianapolis Racquet Club, Inc. v. Washington Township 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")*. Without the necessary explanatory connections, the Board cannot find that the Petitioners made a prima facie case on those issues.
 - d) The Petitioner also testified that 48% obsolescence depreciation should be applied to the State Guidelines' cost schedules for this type building and that would bring the assessment down to the assessed value of \$235,128 (the value rejected in ¶ 17(b), *supra*).
 - e) The taxpayer must first provide the Board with probative evidence sufficient to establish a prima facie case as to the causes of obsolescence. The taxpayer must explain how the purported causes of obsolescence cause the subject improvement to suffer losses in value. *Clark v. State Bd. of Tax Comm'rs, 694 N.E.2d 1230, 1233 (Ind. Tax 1998)*. The Petitioners did not attempt to put forward or discuss any causes for obsolescence that affect the subject facility but centers on its belief that the subject facility was not valued in a manner that is correct or acceptable to the Petitioner. *White testimony; Becker testimony*. The Petitioners are simply requesting obsolescence as a method to back into the value extrapolated from the actual cost per square foot of the addition. In this appeal the Petitioners failed to meet either of the two-prongs of the burden articulated in *Clark*.

Conclusion

18. The Petitioners failed to make a prima facie case on grade, interior finish, lack of heating, and actual construction cost. The Board finds in favor of the Respondent. There is no change in the assessment as a result of these issues.

19. As stated supra at ¶ 8, the parties stipulated to the following at the hearing:

- a) The 7,218 square foot area be priced from the GCK (kit building) light utility storage schedule.
- b) The air conditioning be removed from the 12,060 square foot area.
- c) The effective age of the building be changed to 1992.

There is a change in the assessment as a result of this stipulation.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

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.