

REPRESENTATIVE FOR PETITIONER:

Randall A. Bulleit, Pro Se

REPRESENTATIVES FOR RESPONDENT:

Hilda Gibson, Greenville Township Trustee/Assessor

Brenda Egge, Floyd County Assessor

Harry Anson, President, Floyd County Property Tax Assessment Board of Appeals

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Randall A. Bulleit,	)	Petition No.:	22-003-02-1-4-00001
	)	Parcel:	003-1590-038
Petitioner,)		
)		
v.)		
	)	County:	Floyd
Hilda Gibson, Township	)	Township:	Greenville
Trustee/Assessor	)	Assessment Year:	2002 ¹
)		
Respondent.)		

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

June 16, 2005

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) has reviewed the facts and the evidence in this matter. The Board now enters the following findings and conclusions on the issues that were presented.

¹ Petitioner filed a Form 131 Petition for Review of Assessment for tax year 2002. At the hearing Petitioner requested to amend his petition to include three tax years, 2002, 2003 and 2004. The Board denies this request. 52 IAC 2-5-2. Accordingly, this appeal is only for tax year 2002.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Issue: Should the property receive 95 percent obsolescence?²

PROCEDURAL HISTORY

1. Pursuant to Ind. Code § 6-1.1-15-3, Randall A. Bulleit (Petitioner) filed a Form 131 Petition for Review of Assessment, petitioning the Indiana Board of Tax Review to conduct an administrative review of the above petition. The Form 131 was filed on February 4, 2004. The determination of the Floyd County Property Tax Assessment Board of Appeals (PTABOA) was issued on November 20, 2003.

HEARING FACTS AND OTHER MATTERS OF RECORD

2. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on October 29, 2004, in New Albany, Indiana before Rick Barter, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3.
3. The following persons were sworn and presented testimony at the hearing:

For the Petitioner—

Randall A. Bulleit, Petitioner,

For the Respondent—

Hilda A. Gibson, Greenville Twp Trustee/Assessor,
Brenda Egge, Floyd County Assessor,
Harry Anson, PTABOA President,
Charles P. Simons, Tax Representative.³

² Petitioner's Form 131 sought tax amnesty ("full pardon" and the removal of all real property tax obligations from the subject property for the years 2002-2004). At the hearing, Petitioner asked to amend his petition to request ninety-five-percent obsolescence. Initially Respondent objected, but subsequently agreed to the amendment after being assured additional time would be provided for a response. Thus, the Board considers the objection withdrawn.

³ Charles Simons is a Technical Advisor to the PTABOA. Petitioner objected to Mr. Simons being a witness because he was not included on the list of witnesses exchanged by the parties. A document dated October 14, 2004, to the Board from Brenda Egge and Harry Anson stated, in pertinent part, "This is also to inform you of the addition of Chuck Simons, Level II C-A as Technical Advisor to the PTABOA Board." *Respondent's Exhibits 1, 2*. Witness lists must be exchanged at least fifteen business days prior to the hearing. 52 IAC 2-7-1(b). Because this requirement was not satisfied, the objection is sustained. The Board gives no weight to Mr. Simons' testimony. 52 IAC 2-7-1(f).

4. The following exhibits were presented for the Petitioner:⁴

- Petitioner's Exhibit 1 – Letter from tax preparer dated October 8, 2004, and two pages from 2002 and 2003 Federal income tax returns,
- Petitioner's Exhibit 2 – Letter from PNC Bank dated October 1, 2004,
- Petitioner's Exhibit 3 – Letter from the Indiana Department of Environmental Management (IDEM) dated June 16, 2004,
- Petitioner's Exhibit 4 – Final Notice from IDEM to Richard Prather dated September 11, 1998,
- Petitioner's Exhibit 5 – Letter from IDEM to Petrol Mart, Inc. dated March 12, 2003,
- Petitioner's Exhibit 6 – Notice of Violation from IDEM to Petrol Mart dated July 26, 2001,
- Petitioner's Exhibit 7 – Agreed Order from IDEM dated November 6, 2002,
- Petitioner's Exhibit 8 – Second Notice from IDEM to Richard Prather dated April 22, 1998,
- Petitioner's Exhibit 9 – Second Notice from IDEM to Bradford Vassey dated January 13, 1999,
- Petitioner's Exhibit 10 – Proof of claim in the United States Bankruptcy Court in Florida dated December 23, 2003,
- Petitioner's Exhibit 11 – Bulleit Development Co. expense sheet dated August 26, 2004,
- Petitioner's Exhibit 12 – Letter from the Floyd County Treasurer to United States Bankruptcy Court dated January 5, 2004,
- Petitioner's Exhibit 13 – Copies of five photographs of the subject property,

⁴ The Petitioner pre-numbered his exhibits prior to the hearing and labeled several sub-exhibits (for example, Exhibits 4, 4-1, 4-2). These sub-exhibit numbers appear on the exhibits highlighted in yellow. To avoid the use of sub-exhibits, the Board has renumbered the Petitioner's exhibits as indicated.

Petitioner's Exhibit 14 – Copies of five pages from REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (GUIDELINES), app. F at 13, 17, 18, 19, 20 (incorporated by reference at 50 IAC 2.3-1-2),

Petitioner's Exhibit 15 – Letter from Charles R. Mills to the Petitioner dated October 13, 2004,

Petitioner's Exhibit 16 – "Petitioner's Response to Assertions by Respondent" with attached Exhibits and Appendixes, received December 9, 2004.

5. The following exhibits were presented for the Respondent:

Respondent's Exhibit 1 – Letter dated October 14, 2004, from Assessor Egge, IDEM letter to Petitioner detailing removal of leaking Underground Storage Tanks (UST), copy of an undated letter from Assessor Egge to the Petitioner notifying him the PTABOA cannot grant tax amnesty, and that Chuck Simons has been added as a Technical Advisor to the PTABOA,

Respondent's Exhibit 2 – Letter from Assessor Egge dated October 29, 2004, stating the subject has been assessed in accordance with statewide practices, the PTABOA cannot grant tax amnesty and that Chuck Simons has been added as a Technical Advisor to the PTABOA,

Respondent's Exhibit 3 – Letters dated November 12 and November 18, 2004, addressing three issues raised at the hearing and a letter from C.L. McBride Co. outlining an estimate to remove the UST system and clean up area, received November 22, 2004,

Respondent's Exhibit 4 – The subject property record card.

6. The following additional items are officially recognized as part of the record of proceedings:
 - Board Exhibit A – The defect-cured Petition and all subsequent evidence sent to the Board in the matter,
 - Board Exhibit B – Notice of Hearing dated September 29, 2004,
 - Board Exhibit C – Log of telephone conversations, record and letters concerning Petitioner’s document entitled “Case Synopsis.”
7. The Administrative Law Judge granted a 21-day period for Respondent to submit additional evidence based on the clarification of the Form 131 issue. The additional evidence was ordered filed with the Board and a copy sent to Petitioner as well as the Board. Petitioner was granted a 21-day period to present written evidence in response to Respondent’s post-hearing filing. That evidence was ordered filed with the Board and a copy sent to Respondent.
8. The subject property is classified as commercial. It is located at 6993 U.S. Highway 150 in Floyds Knobs, Greenville Township, Floyd County. The assessed value of the improvement has a negative 50 percent obsolescence depreciation granted by the PTABOA.
9. The Administrative Law Judge did not conduct an on-site inspection of the property.
10. For 2002, the PTABOA determined the assessed value of the property is:

Land \$18,300	Improvement \$50,700	Total \$69,000.
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11. Petitioner contends the assessed value of the property should be reduced by allowing 95 percent obsolescence.

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 an assessing official has the burden to establish a prima facie case proving 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. Washington 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.
16. Petitioner presented the following evidence and argument in support of his claim:
- A. Petitioner leased the subject property to Petrol Mart for a period of time that began in 1998. The lease was scheduled to run through March 31, 2005. The lease was in effect on March 1, 2002. Petitioner collected monthly rent in the

amount of \$2,039 from Petrol Mart from the inception of the lease through January 2002. No additional rent was received for the remaining months of 2002. *Bulleit testimony.*

- B. Petrol Mart operated the property as a convenience store with gas pumps. An environmental violation by the lessee in late 1998 resulted in an order to remove the leaking underground storage tank (UST) system. The UST was not removed until July 23, 2003. The site was closed for almost the entire time. Petitioner received no income after lessee filed bankruptcy in 2002. *Bulleit testimony; Petitioner's Exhibits 1, 3-9, 13.*
- C. Petrol Mart was responsible for paying the property taxes, but did not make the payments. Petitioner filed a claim in bankruptcy court for the taxes in the amount of \$19,277.66. *Bulleit testimony; Petitioner's Exhibits 10-12.*
- D. Petitioner did not own the tanks, and therefore, had no standing to have them removed. Any intervention by Petitioner to remove the tanks or anything else would have been a violation of the Agreed Order between IDEM and Petrol Mart. *Petitioner's Exhibit 16 at 8.*
- E. Petitioner was advised in 2001 by Greenville Trustee/Assessor Hilda Gibson to seek economic obsolescence because the building was empty. Ms. Gibson was not aware at that time that the property was the subject of pending action by the Enforcement Division of IDEM, or she would have recommended that Petitioner seek both functional and external obsolescence. *Bulleit testimony; Gibson testimony.*
- F. The subject suffers from permanent external obsolescence as a result of its location near an environmental hazard. The subject also suffers from functional obsolescence. *Bulleit testimony; Petitioner's Exhibit 14.*
- G. According to Charles R. Mills, an MAI appraiser, "[t]here will be no income in the time required to become compliant, and the property would have no value since financing is nearly impossible using the property as collateral." *Bulleit testimony; Petitioner's Exhibit 15.*

- H. The C.L. McBride Company estimate to remove underground tanks is from a company that is owned by a business partner of Mr. Simons. Accordingly, it should be given no weight. *Petitioner's Exhibit 16 at 5 - 6.*
 - I. After the tank removal, Petitioner received a number of inquiries before the property was listed with a professional real estate company. The location has been aggressively marketed for \$2,100 a month. *Petitioner's Exhibit 16 at 7.*
17. Respondent presented the following evidence and argument in regard to this issue:
- A. The parcel has been assessed in accordance with statewide practices. Petitioner has not questioned the assessed value. The PTABOA does not have the authority to determine if tax amnesty is authorized. Petitioner was informed on numerous occasions that it is not within the power of the Township Trustee/Assessor, the County Assessor or the PTABOA to grant tax amnesty. *Egge testimony; Respondent's Exhibits 2, 3.*
 - B. The appeal is for tax year 2002 and no other years. *Respondent's Exhibit 3.*
 - C. Based on an estimate from C.L. McBride Co., Inc. dated June 15, 2004, the cost to perform a removal and cleanup of a similar site would be \$16,668. *Respondent's Exhibit 3.*
 - D. The PTABOA opined that its grant of 50 percent obsolescence should be reduced to 20 percent because the leaking UST system could have been removed for less than \$20,000. That action would have cured the obsolescence. *Respondent's Exhibit 3.*
 - E. There is no documentation that the property was quarantined or that Petitioner could not sell or lease the subject property during 2002. *Respondent's Exhibit 3.*

ANALYSIS

18. Obsolescence is defined as “[a] diminishing of a property’s desirability and usefulness brought about by either functional inadequacies or super-adequacies inherent in the property itself, or adverse economic factors external to the property.” GUIDELINES, glossary at 14.

19. Economic obsolescence is defined as “[o]bsolescence caused by factors extraneous to the property. Also referred to as external obsolescence.” *Id.* at 6.
20. Functional obsolescence is defined as “[o]bsolescence caused by factors inherent in the property itself.” *Id.* at 8.
21. To receive an adjustment for obsolescence, the Petitioner must identify the causes of obsolescence and quantify the amount of obsolescence to be applied. *Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230, 1241 (Ind. Tax 1998). The PTABOA determined the property should receive a 50 percent reduction for obsolescence. The parties are therefore in agreement that causes of obsolescence are present in the property, satisfying the first prong of the *Clark* test.⁵ Petitioner attempted to quantify the amount of loss experienced by the property based on (1) loss of rental income, (2) an opinion of market value, and (3) remediation costs.

Loss of Rental Income

22. The Petitioner contended he received no rental income from the property after January 2002, and he sustained losses of nearly \$12,000 from the tax years 2002 and 2003. In the commercial context, a loss of value due to obsolescence usually means a decrease in the property’s income generating ability. *See Miller Structures, Inc. v. State Bd. of Tax Comm’rs*, 748 N.E.2d 943, 953 (Ind. Tax Ct. 2001).
23. Obsolescence must be tied to an actual loss in property value. *Id.* Petitioner must show a link between the cause and the claimed reduction in the property’s value. Petitioner did not establish the link. To the contrary, the record clearly establishes the claimed losses were not due to a decrease in the property’s income generating ability.

⁵ Petitioner presented several photographs and IDEM documents to establish the property was vacant and contaminated. Because the parties agree that obsolescence exists, detailed discussion of that evidence is unnecessary.

24. Petitioner had a lease with Petrol Mart running through March 31, 2005.⁶ Under terms of this lease, Petrol Mart was required to pay monthly rent of \$2,039 to the Petitioner. During the period of February 2002 through March 2005, the property continued to generate accrued rental income exceeding \$80,000. The record does not establish there was any disruption in the Petitioner's accrued income stream.
25. Petitioner's loss of rental income appears to be the result of a business activity, the inability to collect accrued rents due and owing from the bankrupt lessee. Petitioner failed to explain how the loss of rental income is probative of the amount of obsolescence experienced by the property. Therefore, the lost income did not quantify the amount of obsolescence. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.

Market Value

26. Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on evidence from any other time to establish error in the assessment of a property must provide some explanation as to how this evidence demonstrates, or is relevant to, the property's value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
27. Petitioner presented a letter dated October 13, 2004, from Charles R. Mills, a certified general appraiser. In this letter, Mr. Mills concluded "the property would have no value since financing is nearly impossible the property as collateral." Petitioner made no link

⁶ The record is contradictory as to the termination date of the lease. The Petitioner's evidence also indicates there was a "Lease Termination and Buyout Settlement as of 9/30/04." *Petitioner's Exhibit 11*. Regardless, whether the lease was terminated on September 30, 2004, or March 31, 2005, the property was generating accrued rental income during 2002, the year under appeal. *See also Petitioner's Exhibit 3* (indicating the lease agreement was still in effect on July 23, 2003).

between the October 13, 2004, estimate of value and the valuation date of January 1, 1999. Accordingly, this estimate of value is of no probative value. *Id.*

Remediation Costs

28. Mr. Mills indicated a proposed methodology to value the contaminated property. “Therefore, the property would have a value as follows: The market value as remediated, less the cost to remediate including future IDEM monitoring costs.” The parties presented three exhibits discussing the costs of remediation.
29. An Agreed Order dated November 7, 2002, states, “The Respondent [Petrol Mart] shall perform and complete a Supplemental Environmental Project (SEP). The Respondent estimates that this SEP will cost Twelve Thousand dollars (\$12,000)...As a Supplemental Environmental Project, the Respondent shall permanently close and remove the UST system....”
30. Petitioner introduced a list of "Current and Delinquent Expenses" through March 31, 2005. Included among the expenses is the notation, “IDEM UST Closure Repairs” in the amount of \$6,393.60.
31. Respondent submitted an estimate of remediation cost dated June 15, 2004. This estimate indicated the cost of remediation would be \$16,668.
32. Neither party presented any evidence linking these values from 2002, 2004, or 2005 to the valuation date of January 1, 1999. Accordingly, none of these documents are probative in attempting to determine market value as of the valuation date.
33. The evidence fails to establish the cost to remediate the property. Alternatively, the evidence suggests an approximate remediation cost in the range of \$6,400 to \$16,700.

34. The PTABOA already recognized the deficiencies in the property and reduced the assessed value by more than \$50,000 through an obsolescence adjustment. It is apparent, therefore, that the current reduction given to the property for obsolescence far exceeds any of the estimated costs of remediation. The evidence does not prove Petitioner's claim to almost double that amount of obsolescence.
35. Accordingly the second prong of the two-prong *Clark* test has not been satisfied. Petitioner has failed to make a prima facie case for additional obsolescence.
36. There is no authority or legal basis to grant Petitioner amnesty or full pardon for the tax liability on this property.

SUMMARY OF FINAL DETERMINATION

37. Petitioner failed to establish a prima facie case of error. The assessment will not be changed.

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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.