

REPRESENTATIVE FOR PETITIONER:

Scott M. Carlson, Valu Tec, Inc.

REPRESENTATIVES FOR RESPONDENT:

Brian Thomas, Ad Valorem Solutions

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Viskase Corporation,)	Petition No.: 56-011-07-1-3-00001
)	
Petitioner,)	
)	Parcel No.: 013-08300-00
v.)	
)	
Newton County Assessor,)	County: Newton
)	Township: Jefferson
Respondent.)	
)	Assessment Year: 2007

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

July 15, 2009

FINAL DETERMINATION

The Indiana Board of Tax Review (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

ISSUE

1. The issue presented for consideration by the Board is whether external obsolescence should be applied due to the property's vacancy and the limited demand for industrial space.

PROCEDURAL HISTORY

2. The Newton County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determination for the subject property on September 2, 2008.
3. Pursuant to Ind. Code § 6-1.1-15-1, the Petitioner, Viskase Corporation (Viskase) filed a Form 131 Petition for Review of Assessment on October 7, 2008, petitioning the Board to conduct an administrative review of the subject property's 2007 assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on April 16, 2009, in Kentland, Indiana.
5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Scott M. Carlson, Taxpayer representative

For the Respondent:

Brian Thomas, Ad Valorem Solutions
Lester T. Moore, Newton County Assessor
Terry Pasierb, PTABOA

David L. Brown, PTABOA

6. The Petitioner presented the following exhibits:
 - Petitioner Exhibit A – Analysis of Property Tax Assessment,
 - Petitioner Exhibit B – Current listing agreement,
 - Petitioner Exhibit C – Original listing agreement,
 - Petitioner Exhibit D – Letter from John Fisher, property accountant,
 - Petitioner Exhibit E – Property record cards for the subject property,
 - Petitioner Exhibit F – Cover letter and page 1 from the 2007 assessment ratio study.

7. The Respondent presented the following exhibits:
 - Respondent Exhibit A – Respondent’s Witness and Exhibit List,
 - Respondent Exhibit A-1 – Witness Testimony and Exhibits,
 - Respondent Exhibit B – Testimony Brief with Exhibit List,
 - Respondent Exhibit C – Time line of company shut-down,
 - Respondent Exhibit D – Letter to Mr. Moore from ValuTec,
 - Respondent Exhibit E – Property record card for Allied Waste with two partial sales disclosure forms,
 - Respondent Exhibit F – Property record card for Ice River Springs with two sales disclosure forms.

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,
 - Board Exhibit B – Notice of Hearing dated March 9, 2009,
 - Board Exhibit C – Hearing sign-in sheet.

9. The subject property is an 111,657 square foot industrial facility located at 102 East Bailie Street, in Kentland, Indiana.

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

11. The PTABOA determined the assessed value of the subject property to be \$214,800 for the land and \$1,864,600 for the improvements, for a total assessed value of \$2,079,400.

12. The Petitioner contends the assessed value of the property should be \$1,000,000.

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.

PARTIES' CONTENTIONS

17. The Petitioner contends that external obsolescence should be applied to its assessment because the subject property is vacant and there is limited demand for large industrial facilities like the property at issue here. The Petitioner presented the following evidence in support of its contentions:
 - A. The Petitioner's representative contends Viskase ceased operations in Kentland in February 2007 and the subject property was listed for sale about that time. *Carlson testimony*. Mr. Carlson argues that the property has been aggressively marketed as functional industrial space but has not generated any interest. *Carlson testimony; Petitioner Exhibit D*. According to Mr. Carlson, the property was originally offered for \$1.75 million in 2007, but after nineteen months only one offer for \$350,000 was received. *Carlson testimony; Petitioner Exhibit A at 5 and Exhibit C*. In November of 2008, a new listing agreement was signed and the asking price was lowered to \$1.5 million. *Carlson testimony; Petitioner Exhibit B*.
 - B. The Petitioner's representative argues that abnormal obsolescence should be applied to the property because there is an over-supply of industrial space. *Carlson testimony; Petitioner Exhibit A at 14*. Similarly, there is relatively low demand for such properties because of the current economic conditions. *Id.* According to Mr. Carlson, the sales prices for industrial properties of a similar size and quality to the subject property are well below the physically depreciated replacement cost of the property. *Id.* In support of the Petitioner's contention, Mr. Carlson presented a chart showing the sales or listing prices of twelve properties he deemed comparable to the subject property. *Petitioner Exhibit A at 6, 7*.

- C. Mr. Carlson testified that, because there were a limited number of industrial sales in Newton County, he expanded his search to adjacent counties to find comparable properties – three of which are current listings and not sales. *Carlson testimony; Petitioner Exhibit A.* According to Mr. Carlson, the properties he identified as the second, sixth and ninth comparable sales are the most similar to the subject property in terms of location and physical characteristics, although they are larger than the subject property. *Id.* Property No. 2 located at 1207 Sixth Street in Morocco sold for \$8.98 per square foot in February of 2005 and Comparable No. 6 located at 9876 Old Hwy 30 in Etna Green sold for \$15.21 per square foot in August of 2005. *Id.* Property No. 9 located at 572 W. Indiana in Winamac is currently listed for \$10.01 per square foot. *Id.* Mr. Carlson argues that, given the lack of interest in the subject property, the low end of the range, or \$9 per square foot, is a more appropriate value for the subject property. *Id.* At a minimum, Mr. Carlson contends, the three sales support the listing price of \$13.43 per square foot for the subject property. *Id.*
- D. Mr. Carlson also contends that, because of the lack of industrial sales in Newton County, the 2007 assessment ratio study grouped industrial sales with commercial sales. *Carlson testimony.* In support of this contention, Mr. Carlson submitted the cover letter and the first page of the workbook for the 2007 assessment ratio study. *Petitioner Exhibit F.* Mr. Carlson argues that this grouping is an inappropriate application of the ratio study and does not adequately consider the intricacies of the industrial market. *Carlson testimony.* According to Mr. Carlson, this may account for the Assessor's failure to recognize external obsolescence in the property. *Id.*
- E. Finally, in response to the Respondent's case, Mr. Carlson contends the 2006 sale of the Allied Waste facility in Morocco, Indiana, was not an arm's-length transaction because the purchaser of the property was a sub-entity of the seller. *Carlson testimony.* Furthermore, Mr. Carlson argues, the Allied Waste

property lacks comparability because it is much newer, the facility is considerably smaller, and the building has a greater percentage of office space than the subject property. *Id.*; *Petitioner Exhibit A*; *Respondent Exhibit E*.

18. The Respondent contends the property should be returned to the original assessment and presented the following evidence:
 - A. The Respondent contends that Viskase was a good business that produced a quality product until 2007 when it ceased its operations in Kentland and moved to Mexico. *Moore testimony*. According to the Respondent, Viskase moved to Mexico because of the lower wage scale, not because its property in Kentland was obsolete. *Id.*
 - B. The Respondent argues that, because the Petitioner is requesting obsolescence, it is required to identify the cause of the obsolescence and to quantify the amount of the obsolescence. *Respondent Exhibit B*. According to the Respondent's representative, the Petitioner is citing an oversupply of industrial properties and lack of demand as the cause of the obsolescence. *Id.* Mr. Thomas, however, argues that if there was an over abundance of manufacturing facilities, Ice River Springs would not have built in the front yard of the Viskase facility. *Id.*
 - C. Similarly, the Respondent's representative contends that the date to establish market value-in-use for the March 1, 2007, assessment is January 1, 2006. *Thomas testimony*. Mr. Thomas testified that this would include market information from 2005 and 2006 and admits that the Petitioner's representative used sales from that time period. *Id.* Mr. Thomas contends, however, that Viskase was an operating facility until February 2007 and therefore did not compete in the market until that time. *Id.* According to Mr. Thomas, if the property had been on the market at the same time as the

Petitioner's allegedly comparable properties were, Ice River Springs might have purchased the subject property. *Id.*

- D. The Respondent's representative also argues that the assessment is correct based on the sale of another industrial facility. *Thomas testimony*. According to Mr. Thomas, an Allied Waste facility sold in 2006 for \$2,200,000, or \$36.47 per square foot. *Id.*; *Respondent Exhibit B*. In support of this contention, the Respondent submitted the property record card and sales disclosure form for the Allied Waste facility. *Respondent Exhibit E*. Mr. Thomas testified that, although he was aware of a relationship between the buyer and the seller, he considered the sale amount to be valid. *Thomas testimony*.
- E. Finally, the Respondent claims that they made every effort to reach an amicable settlement with the Petitioner. *Thomas testimony*; *Moore testimony*. According to the Respondent's representative, neither the change in the assessment by the PTABOA nor the subsequent proposal of stipulation have probative value. *Thomas testimony*. The Respondent argues that, because the Petitioner failed to provide evidence showing a change in the assessment is warranted, the property's value should revert to its original \$2,543,000 assessment. *Id.*; *Respondent Exhibit B*.

ANALYSIS

19. Indiana assesses real property based on its "true tax value," which the 2002 Real Property Assessment Manual defines as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property's market value: the cost approach, the sales comparison approach, and the income approach. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass appraisal version of the

cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES).

20. A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom.*; *P/A Builders & Developers, LLC*, 842 N. E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
21. Regardless of the approach used, the taxpayer must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct.2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment). For the March 1, 2007, assessment, that date is January 1, 2006. 50 IAC 21-3-3.
22. The Petitioner argues that the property suffers from abnormal external obsolescence resulting from vacancy, the over-supply of industrial space and the relatively low demand for such space given the current economic conditions. The Real Property Assessment Guidelines provide for the determination of the replacement cost new of structures through reference to cost tables. GUIDELINES, intro. at 1. The cost tables were developed from objectively verifiable data by drawing cost information from Marshall & Swift, L.P. *Id.* The Guidelines also require that accrued depreciation be accounted for in valuing an improvement.

GUIDELINES, app. F at 4. Under the Guidelines, depreciation consists of physical depreciation, functional obsolescence, and external obsolescence. *Id.* Physical depreciation is a loss in value caused by building materials wearing out over time. *Id.* Functional obsolescence is a loss in value caused by inutility within the improvement. *Id.* External obsolescence is caused by an influence outside the property's boundaries that has a negative influence on its value. *Id.* The Guidelines account for normal obsolescence through the assignment of typical life expectancies and structure condition classifications. GUIDELINES, app. F AT 4-7. This normal depreciation includes both typical physical deterioration and typical obsolescence. *Id.* at 8. Any additional loss in value from atypical forms of obsolescence must be estimated separately from normal depreciation. *Id.*, app. F at 4.

23. For a Petitioner to show that he is entitled to receive an adjustment for obsolescence, the Petitioner must both identify the causes of obsolescence the Petitioner believes is present in his improvement and also quantify the amount of obsolescence he believes should be applied to his property. *Clark v. State Bd. of Tax Comm'rs*, 694N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Thus the Petitioner must present probative evidence that the causes of obsolescence identified are resulting in an actual loss of value to the property. *See Miller Structures, Inc. v. State Bd. of Tax Comm'rs*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001). Further, the Petitioner's quantification of the amount of obsolescence must be converted into a percentage reduction and applied against the structure's overall value. *See Clark*, 694 N.E.2d at 1238.

24. Here, the Petitioner presented market information for industrial properties that were either sold in 2005 and 2006 or are currently listed for sale. The per square foot values of these properties range from \$4.22 to \$31.68. The Petitioner's representative contends that the properties he identified as comparable properties No. 2, No. 6, and No. 9, which sold for \$8.98 and \$15.21 and listed for \$10.01 per square foot respectively, are the most similar to the subject property in terms of

location and physical characteristics. *Id.* Mr. Carlson argues that the low end of the range, or \$9 per square foot, is the most appropriate value for the subject property. *Id.* The Petitioner, however, failed to show how nine sales and three listed properties support its claim that there is an over-supply of industrial space and limited demand for that space leading to the property suffering from obsolescence. Further, the Petitioner did not quantify any percentage of obsolescence. Mr. Carlson merely concluded that \$9 per square foot was appropriate. Because “the Petitioner must both identify the causes of obsolescence he believes is present in his improvement and also quantify the amount of obsolescence he believes should be applied to its property” (*Clark*, 694 N.E.2d at 1238), the Petitioner failed to raise a prima facie case that the property is entitled to an obsolescence adjustment.

25. To the extent that the Petitioner’s representative can be seen as arguing that the property is over-valued based on the sales comparison approach, the Petitioner similarly failed to raise a prima facie case. The sales comparison approach is based on the assumption that potential buyers will pay no more for a property than it would cost them to purchase an equally desirable substitute property already existing in the market place. *Long*, 821 N.E.2d at 471. In order to effectively use the sales comparison approach as evidence in property assessment appeals, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the properties being examined. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on the sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must also explain how any differences between the properties affect their relative market value-in-use. *Id.* Here the Petitioner’s representative failed to make any meaningful comparison between the subject property and the comparable properties. Similarly, Mr. Carlson made no adjustments for land size, building size, location, or age. He

merely concluded that two sales and one listing were the “most comparable” to the subject property and that, based on those sales and listing, the subject property should be valued at \$9.00 per square foot. Mr. Carlson’s opinions are far too conclusory to raise a prima facie case for a change in value.

26. The Petitioner also argues the property is over-valued based on its offer to sell the property for \$1.75 million in January of 2007 and its later offer to sell the property for \$1.5 million in November of 2008. While a taxpayer’s unsuccessful attempts to sell a property may, in fact, be some indication of a property’s value, a 2007 assessment is required to reflect the value of the property as of January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation of how it demonstrates or is relevant to, the value of the property as of that required valuation date. *See Long v. Wayne Township Assessor*, 821 at N.E.2d 466, 471 (Ind. Tax Ct. 2005). Thus, the Petitioner must provide some explanation of how the price at which it attempted to sell the property subsequent to January of 2007 is relevant to the January 1, 2006, valuation date. *Long*, 821 at N.E.2d at 471.
21. Finally, the Petitioner’s representative argues that the trending factor applied was derived by grouping commercial and industrial properties. According to Mr. Carlson, this is an inappropriate application of the ratio study and does not adequately consider the intricacies of the industrial market. Mr. Carlson, however, did not present an alternate calculation to show the current trending factor was incorrect. Moreover, regardless of whether the methodology of deriving the trending factor for commercial or industrial properties in Newton County was in complete compliance with 50 IAC 21-5-2, the DLGF approved the ratio study for the county.
22. Even if the Petitioner had shown that the trending was incorrect on its assessment – which it did not – the Petitioner failed to show that the assessment did not accurately reflect the market value of the property. A Petitioner fails to

sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that “under the old system, a property’s assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*”).

37. The Petitioner failed to show an error in its assessment. Where the Petitioner has not supported its claims with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus., LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Here, however, the Respondent argues that the assessment should be increased to the Assessor’s original assessed amount because the PTABOA determination reflected an offer of settlement to the Petitioner. The Notification of Final Assessment Determination, Form 115, issued by the PTABOA states, “Upon discussion by the Board as well as review of the evidence and testimony, the Board orders changes to the subject property based on the sale of a similar property in Newton County, making adjustments for age, time, and condition.” Thus, the PTABOA appears to have given due consideration to its review of the subject property. The Respondent presented no evidence that would cause the Board to set aside the decision of the PTABOA and the assessment determined by the PTABOA will stand.

SUMMARY OF FINAL DETERMINATION

39. The Petitioner failed to establish a prima facie case of error. The Board finds in favor of the Respondent. No change in the assessment determined by the PTABOA is warranted.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>