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**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

WARREN W. SPURLING, as owner of)	Pet. No.:	82-026-99-1-4-00004R
SSS DEVELOPMENT, LLC,	)		82-026-99-1-4-00005R
	)		82-027-99-1-4-00014R
Petitioner,	)		82-027-99-1-4-00015R
	)		82-027-99-1-4-00016R
v.	)		82-027-99-1-4-00017R
	)		82-027-99-1-4-00018R
VANDEBURGH COUNTY PROPERTY	)		82-027-99-1-4-00019R
TAX ASSESSMENT BOARD OF APPEALS,	)		82-027-99-1-4-00020R
	)		82-027-99-1-4-00021R
Respondent.)		
)		
	)		Vanderburgh County, Knight Township

On Remand from the Indiana Tax Court
Cause No. 82T10-0205-TA-44

FINAL DETERMINATION ON REMAND

The Board having reviewed the Order on Petitioners' Petition for Rehearing of the Tax Court in the above matter dated April 30, 2004 (attached and incorporated by reference), and pursuant to Ind. Code § 6-1.1-15-8, issues the following final determination in accordance with the Tax Court's instructions.

Facts and Procedural History

Petitioners own and operate more than 10 commercial properties in Vanderburgh County, Indiana. Each of these properties contains numerous improvements that are used as offices and retail centers. For the 1999 tax year, the Petitioners' improvements were assessed pursuant to the General Commercial Mercantile (GCM) office model and were each assigned a grade of "C."

The Petitioners challenged the assessment of the improvements, first with the local assessing authorities and then with the State Board of Tax Commissioners (State Board). Throughout the appeal process, the Petitioners argued, among other things, that the improvements were erroneously assessed because they were assigned a base price of approximately \$36.00 per square foot, despite evidence indicating that they were constructed at a cost of approximately \$24.00 per square foot. *See Spurling v. Vanderburgh County Property Tax Assessment Bd. of Appeals*, No. 82T10-0205-TA-44, slip op. at 6 (Ind. Tax Ct. 2003). Consequently, the Petitioners requested that the GCM retail model, which carried a base price of approximately \$23.00 per square foot, be used to assess its improvements. *See id.*

The local assessing officials and the Indiana Board of Tax Review (Indiana Board) denied the Petitioners' request for relief. Consequently, the Petitioners filed an original tax appeal with the Tax Court on May 1, 2002. After hearing the parties' oral arguments, the Tax Court issued an opinion in which it affirmed the Indiana Board's final determination. *Id.* at 9.

On December 11, 2003, the Petitioners filed a Petition for Rehearing. The Tax Court found that the Indiana Board erred in failing to address the Petitioners' cost data in light of 50 IAC 17-7-3(d), and granted the Petition for Rehearing only with respect to issue two (proper application of the use models). *Spurling v. Vanderburgh County Property Tax Assessment Bd. of Appeals*, No. 82T10-0205-TA-44, Order on Rehearing slip op. at 4, n.2 (Ind. Tax Ct. 2004). The Indiana Board now makes the following findings and conclusions regarding petitioners' cost data.

Discussion of Remanded Issues

The Board interprets the Tax Court's remand instructions to consider the Petitioners cost evidence in light of 50 IAC 17-7-3 as follows:

1. By finding that the Petitioners' cost evidence was irrelevant in deciding the proper use model, under the *Inland Steel* decision, the Board ignored the application of 50 IAC 17-7-3 that expressly authorizes the use of actual construction costs in an appeal to demonstrate that the tax assessment system was improperly applied.
2. The Board did consider the cost evidence in the context of evaluating the appropriate grade assignment. See Conclusions of Law, ¶¶ 76-78, 90-92, 100-102 (R. at 376, 379, 380-381.). However, the Court makes clear that the Board's final determination with respect to grade was affirmed and the Petitioner's request for rehearing was granted only with respect to "the proper application of the use models." See *Spurling v. Vanderburgh County Property Tax Assessment Bd. of Appeals*, No. 82T10-0205-TA-44, Order on Rehearing slip op. at 4, n.2 (Ind. Tax Ct. 2004).
3. Therefore, the Board is instructed to consider the cost evidence as it may apply to the evaluation of the determining the appropriate use models.
4. In order to consider evidence "in light of 50 IAC 17-7-3," it seems that the Board's interpretation of the contexts in which the rule applies is of some significance. Although the Board realizes that actual use of the property is not a determinative factor, the Board feels that actual use is more relevant in considering the proper application of the use models than actual construction costs. It is the Board's opinion that the rule, authorizing the submission of actual construction costs, more appropriately applies in other contexts, such as the determination of grade. This opinion is why the Board chose to rely on the *Inland Steel* case and not further consider or discuss the cost evidence in the context of the application of the use models.
5. Again, the Board does not believe that the cost of construction should be a determinative factor in considering the application of the correct "use" model to be applied in valuing a specific structure. 50 IAC 2.2-10-6.1 discusses how base prices are applied to various 'use' and 'finish' types, using models as conceptual tools to which adjustments may be made.

6. Nevertheless, the Board will assume the Court intended to direct the Board to further consider the Petitioner's cost evidence as it might apply to determination of the proper use model (in addition to its consideration in deciding the proper grade.)
7. Cost consists of all direct labor and materials and indirect expenditures required to complete the construction of an improvement. A builder or developer includes all expenses incurred in the development of an improvement, as well as overhead and a sufficient amount of profit to cover the risk associated with constructing the improvement. Thus, if cost is to represent value, it is necessary that all appropriate costs be included in the estimate.
8. Cost may be divided into three kinds: direct, indirect and entrepreneurial profit. All three kinds of cost are necessary to produce reliable cost estimates. Examples of direct costs include labor, materials, supervision, electrical and water service, other utilities, equipment rental, and installation of components. Indirect costs include (but are not limited to) architectural and engineering, building permits, title and legal expenses, insurance, real estate and other taxes during construction, construction loan fees and interest payments during construction, overhead, profit, advertising, and sales expense. Entrepreneurial profit is a market-driven number that reflects the amount developers or entrepreneurs expect to receive for their contribution to the improvement.
9. The Petitioner testified that the cost to construct the subject properties was \$24.00 per square foot. However, the record indicates that the Petitioner's costs figure does not include costs associated with finishing the interior for the tenants, the typical material costs, or entrepreneurial profit.
10. The Petitioner's evidence consisted of his own recollection and one hand-written page of notes. (R. at 576-577.) It was unclear as to the amount spent for labor, permits, materials, contractor profit, cost of blue prints, and other costs that should be associated with the construction. In addition, the Petitioner failed to present a detailed break down of the costs associated with building any of the subject properties. [These same

inadequacies in the Petitioner's cost evidence served essentially as the basis for the Board's initial conclusion that a change in grade was not supported.]

11. The fact that Spurling's \$24.00 per square foot figure is closer to the GCM retail model does not prove that the properties should be assessed as GCM retail. As the Court stated in its first opinion, "Spurling must present clear and detailed evidence establishing the differences between his improvements and the GCM office model and the similarities with the GCM retail model. Instead, Spurling presents nothing more than conclusory statements that the model used 'was this' and it 'should be that.'" *Spurling v. Vanderburgh County Property Tax Assessment Bd. of Appeals*, No. 82T10-0205-TA-44, slip op. at 7 (Ind. Tax Ct. 2003). This meager amount of cost data is no closer to being a prima facie case than the conclusory statements mentioned by the Court.
12. Having reconsidered the Petitioners' cost evidence in light of 50 IAC 17-7-3, the Board now find the Petitioners' cost evidence does not demonstrates that the GCM retail model requested by Petitioners is more appropriate than the assigned GCM office model.

Therefore, pursuant to Ind. Code § 6-1.1-15-8, the Board finds that no change should be made to the assessment, as Petitioners' cost evidence does not prove that the GCM retail model is more appropriate than the GCM office model.

So ordered, this ___ day of August, 2004.

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS ON REMANDED AND REFERRED CASE -
Petitioner's rights regarding this matter are governed by the provisions of Indiana Code § 6-1.1-15-8 and § 6-1.1-15-9. An appeal of the corrected assessment made by the local assessing official must be initiated in accordance with Indiana Code § 6-1.1-15-3 or § 6-1.5-5. To initiate a proceeding for judicial review to the Indiana Tax Court under Indiana Code § 4-21.5-5 you must take the action required within forty-five (45) days of the date of this notice.