

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions: 45-001-02-1-5-00735
45-001-02-1-5-00736
Petitioners: Harold Antonson & Michael Kibler
Respondent: The Department of Local Government Finance
Parcels: 001-25-42-0034-0001
001-25-42-0035-0001
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 informal hearing as described in Ind. Code § 6-1.1-4-33 was held in February 2004. The Department of Local Government Finance (the DLGF) determined that the tax assessments for the subject properties are \$573,200 and \$131,100. The DLGF notified the Petitioners on March 31, 2004.
2. The Petitioners filed Form 139L petitions on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated October 27, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on December 7, 2004.

Facts

5. The subject properties are located at 6300 W. 11th Avenue and 1000 Colfax Street in Gary. The location is in Calumet Township.
6. The subject properties consist of an industrial building on 1.295 acres of industrial land and a 4.195-acre parcel of industrial land. The building sits on both parcels. The building has a total of 83,096 square feet.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed values of the subject property as determined by the DLGF:
Parcel 001-25-42-0034-0001 Land \$48,900 Improvements \$524,300 Total \$573,200
Parcel 001-25-42-0035-0001 Land \$131,100 Improvements -0- Total \$131,100

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- building. Due to the lack of maintenance during this period, the building suffered greater physical deterioration than if it had been in use. Most notable is the roof damage sustained in over 80% of the building. The condition rating should reflect these factors. REAL PROPERTY ASSESSMENT GUIDELINE – VERSION A, app. F at 6. “Structures demonstrating lower maintenance and suffering from more inutility should be given structure condition classifications of fair, poor and very poor. Examples of these types of structures would include a structure that has a severely deteriorated roof or an industrial structure that is located away from any major form of transportation.” *Id*; *Petitioner Exhibits A, C; Kibler testimony*.
- i. Built in 1957, the building was 45 years old for the 2002 reassessment. The physical depreciation should be 80%, not 77%. *Petitioner Exhibit 8; Kibler testimony*.
 - j. The parcels are contiguous to each other and the building sits partially on both. The base land rate should be the same for both parcels. *Petitioner Exhibit K; Kibler testimony*.
 - k. The industrial land in the area is not assessed equally. Parcels of similar size are receiving discounts of up to 90% and no explanation is given. *Petitioner Exhibit B; Kibler testimony*.
12. Summary of Respondent’s contentions in support of the assessment:
- a. The building sits partially on both subject parcels. Therefore, all the land is considered to be primary acreage and no land-to-building ratio is necessary. *Respondent Exhibit 2; Barrow testimony*. The land influence code 0 represents a deduction applied to the base land value. The factor is applied to contiguous multiple parcels so that the combined total land value will be reflected as one economic unit. *Id*.
 - b. The subject’s combined assessed value is \$704,300. The overall assessed value is \$8.48 per square foot. *Respondent Exhibit 2; Barrow testimony*.
 - c. An analysis of three industrial warehouse sales demonstrates a market range from \$29.00 per square foot to \$67.50 per square foot. *Respondent Exhibit 4; Barrow testimony*. The subject is a brick building, while two of the "comparables" are pre-engineered steel buildings. These other properties have varying comparability due to age and location. *Barrow testimony*. The much lower per square foot rate of the subject demonstrates that sufficient consideration is being given for any physical, functional, and external obsolescence that exists. The market analysis supports the value of the subject properties. *Id.; Barrow testimony*.

Record

13. The official record for this matter contains the following:

- a. The Petition,
- b. The tape recording of the hearing labeled Lake County 629,
- c. Exhibits:
 - Petitioner Exhibit 1 - Summary of arguments,
 - Petitioner Exhibit A - Building grades,
 - Petitioner Exhibit B - Land types, base rates and influence factors,
 - Petitioner Exhibit C - State property depreciation guidelines,
 - Petitioner Exhibit D - Map of properties,
 - Petitioner Exhibit E - Building map,
 - Petitioner Exhibit F - Building segments and GCI base prices,
 - Petitioner Exhibit G - Truck restriction photographs for 1000 Colfax,
 - Petitioner Exhibit H - Realtor's sales information,
 - Petitioner Exhibit I - Photographs of building,
 - Petitioner Exhibit J - Truck restriction photograph for 15th and Mount,
 - Petitioner Exhibit K - Subject property record card,
 - Respondent Exhibit 1 - Form 139L petitions,
 - Respondent Exhibit 2 - Subject property record cards,
 - Respondent Exhibit 3 - Subject photograph,¹
 - Respondent Exhibit 4 - Comparable property record cards and photographs,
 - Board Exhibit A - Form 139L petitions,
 - Board Exhibit B - Notices of Hearing,
 - Board Exhibit C - Sign in Sheet,
- d. These Findings and Conclusions.

Analysis

- 14. The most applicable governing cases are:
 - a. 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).
 - b. 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”).
 - c. 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.*

¹ Respondent Exhibits 3 and 4 are for petition 45-001-02-1-5-00735

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.

Usage/Wall Height/Unit Heating

15. The Petitioners provided sufficient evidence to establish a prima facie case. The Respondent failed to rebut that evidence. This conclusion was arrived at because:
- a. The Petitioners testified that there are errors in the assessment regarding usage, wall height and heating. They presented photographs and calculations to support their testimony. The Respondent argued that the issue was the value of the property. Therefore, according to Respondent, even if the adjustments were made, the value should stay the same.²
 - b. The structure was designed and built in 1957 specifically as a combined packaging facility and distribution warehouse. The property record card shows the current assessment is based on a combination of industrial office, truck terminal and light manufacturing pricing that apparently relates back to the prior use of the property.³ The undisputed evidence proved that the property is not currently used for the original purposes. The Petitioners proved that currently the use is light warehousing, industrial office, and some small shop area. As stated in the 2002 REAL PROPERTY ASSESSMENT MANUAL, page 2, "True tax value, therefore, is defined 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....." *Id.* Therefore, the base rate was determined incorrectly. It should have been composed of the base rates for light warehouse, industrial office and small shop. The evidence establishes that 5,770 square feet should be considered industrial office, 4,608 square feet should be considered small shop and the balance should be considered light warehouse. *Petitioner Exhibit F*. The assessed value of the improvement must be changed accordingly.
 - c. The office area wall height is 12' and requires no adjustment. The small shop area wall height is 26' and requires an adjustment. In the light warehouse area, 7332 square feet has 26' wall height and requires adjustment. Furthermore, 1040 square feet in the light warehouse has only 12' wall height and requires adjustment. The balance of the light warehouse area has 16' wall height and requires adjustment. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, app. G at 14-15.
 - d. The heating and cooling systems assessed for the office portion of the structure are accurate. Only 3,050 square feet of unit heat exists in the remaining areas of the structure.

² Respondent's arguments on this point are addressed in the "Market Value-in-use" section of this analysis.

³ The record contains no explanation regarding how these pricing models for the current assessment were determined.

Grade

16. The Petitioners did not provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a. The building was graded D-2 prior to the 2002 reassessment, but it is currently graded C. This fact has no probative value to the current assessment. Each tax year stands alone. *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991).
 - b. The Petitioners presented a list of various types of improvements in the area showing different dates of construction and different grades. The Petitioners failed, however, to provide probative evidence to establish a basis for comparing these properties with the subject property. Furthermore, the Petitioners failed to explain how this evidence is relevant to the requested assessment.
 - c. The Petitioners must submit probative evidence that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113, 1119 (Ind. Tax Ct. 1998).
 - d. The Petitioners did not present probative evidence regarding the grade and design specifications of the subject improvements. The Petitioner's evidence was insufficient to either demonstrate that an error had been made or what the correct grade should be.

Obsolescence

17. The Petitioners did not provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a. The Petitioners cited various causes of functional and economic obsolescence including location in a crime-ridden, residential area, limited functional utilization, and a decreased need for the warehousing of steel.
 - b. Abnormal obsolescence is calculated using different methodologies depending on the type of inutility it represents. Common appraisal concepts and methods may be used to determine obsolescence under true tax value. *See Canal Square Limited Partners v. State Bd. of Tax Comm'rs*, 694 N.E.2d, 806, 807 (Ind. Tax 1998).
 - c. A taxpayer has a two-prong burden of proof to get relief on this issue. (1) A taxpayer must prove that obsolescence exists. (2) Then a taxpayer must quantify that obsolescence. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230, 1233 (Ind. Tax 1998).

- d. The building currently has 25% obsolescence. Therefore, the existence of some obsolescence is not an issue. Nevertheless, the Petitioners did not present any probative evidence quantifying an additional loss in value as obsolescence. Accordingly, they failed to make a prima facie case regarding obsolescence. *Id.*

Condition

18. The Petitioners did not provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
 - a. The property is assessed as being in fair condition. The Petitioners contend that the subject property exhibits both long-term maintenance problems and a location situation that seriously lowers its market value in use. Between 1976 and 1982, the building was not in use and suffered extreme vandalism. The electrical systems were ripped out and general damage was done to the rest of the building. Due to the lack of maintenance during this period, the building suffered greater physical deterioration than if it had been in use. Most notable is the roof damage sustained in over 80% of the building. The property is also located in a residential area with truck restrictions.
 - b. Long-term maintenance issues and an industrial structure that is located in an area where transportation is limited are specific examples noted in the GUIDELINES, app. F at 6, “Structures demonstrating lower maintenance and suffering from more inutility should be given structure condition classifications of fair, poor and very poor. Examples of these types of structures would include a structure that has a severely deteriorated roof or an industrial structure that is located away from any major form of transportation.”
 - c. Fair condition is described as “Evidence of deferred maintenance; need for replacement or major overhaul of some physical components. Building has inadequate utility and services for structures of like age and design. Fair location for the type of structure.” GUIDELINES, App. F at 23.
 - d. Poor condition is described as “Many repairs needed; the structure suffers from extensive deferred maintenance. It suffers from major inutilities in that it lacks several amenities that the majority of structures of its age and design offer. Undesirable location for the type of structure.” *Id.*
 - e. Not all of the descriptions must be met for a particular condition level to apply. The intent is to classify a structure considering all physical, functional, and external factors and weighing them accordingly. *Id.*
 - f. While the Petitioners testified to the vandalism suffered in the past, it is clear from the photographs and from the fact that the business continues to operate that much of that damage was repaired. The need for roof repair could put the condition as fair, poor,

or very poor. The Petitioners failed to prove that the current condition of the subject property is incorrect.

Physical Depreciation

19. The Petitioners did not provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a. The Petitioners contend that the physical depreciation should be 80% because the building was built in 1957, 45 years before the assessment year of 2002.
 - b. The Petitioners are incorrect because depreciation is calculated from construction date to 1999. "Depreciation is based on the number of years that have lapsed from the date of construction and the effective date of valuation. Therefore, in this manual the age of a structure is the difference between its date of construction and January 1, 1999." GUIDELINES, app. F at 5.
 - c. The Board notes, however, that when the usage of the building changes, the depreciation factor may also change due to the differences in economic life expectancies. To determine the depreciation, the building must be considered 42 years old.

Land

20. The Petitioners did not provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a. The Petitioners contend that the two parcels have different base rates, but they are contiguous and should be valued the same.
 - b. The Petitioners also contend that the property has one of the highest base rates in the area and should be reduced by 40% to 60% because of the functional and economic obsolescence. Also, other properties in the area have large influence factors with no explanation as to the reason for said reduction.
 - c. The Respondent testified that the subject properties received an influence factor to adjust the value down in consideration of the fact that they are one economic unit. All of the land is valued as primary land because the improvements are on both parcels.
 - d. There are four categories of commercial and industrial land. Primary land is the primary building or plant site. Examples of primary land are land located under buildings, regularly used parking areas, roadways, regularly used yard storage, and necessary support land. Secondary land is used for purposes that are secondary to the primary use of the land, such as parking areas and yard storage areas that are not used regularly. Usable Undeveloped land is the amount of acreage that is vacant and held

for future development. Unusable Undeveloped land is the amount of vacant acreage that is unusable for commercial or industrial purposes and not used for agricultural purposes. GUIDELINES, ch. 2 at 89.

- e. Although the Petitioners proved differences between the value of their land and the land values of several other properties and they even established that the base rate for land value on their two parcels was different, the Petitioners failed to offer probative evidence that the base rate applied to either parcel was wrong. In addition, the Petitioners failed to prove what their correct land value should be. Therefore, no change should be made to the current land assessment on either parcel.

Market Value-in-use

21. Neither party made a prima facie case to establish what the assessment should be based on market value-in-use. This conclusion was arrived at because:
 - a. The Petitioners contend that the total assessed value of the subject properties should be between \$200,000 and \$250,000. The sales presented by the Petitioners, while they may be industrial properties, have not been shown to be comparable to the subject.⁴
 - b. Similarly, the Respondent attempted to support the current assessment by proving that the value per square foot is substantially lower than three other industrial properties that it identified as similar. The comparables are not the same type of construction and by the Respondent's own admission they vary in age and location. The Petitioner correctly noted that all of the Respondents comparables are from Griffith, while the subject is in Gary. The Respondent failed to prove comparability. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (stating that it is not the Board's responsibility to review all the documentation to determine whether properties are indeed comparable — the parties must explain the characteristics of the subject property, how those characteristics compare to the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties).
 - c. Although market value-in-use can be proved with evidence of comparable assessments or comparable sales, both the Petitioners and the Respondents both failed to do so in this case. MANUAL at 5.

⁴ Furthermore, the sales took place in 1995 and 1996, several years before the valuation date of January 1, 1999. A property's assessment for March 1, 2002, is to reflect value as of January 1, 1999. If documentation is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how these values demonstrate, or are relevant to, the subject value as of January 1, 1999, is required if those documents are to have probative value. *Long*, 821 N.E.2d at 471.

Conclusion

22. The Petitioners provided sufficient evidence to establish a prima facie case regarding some of the issues. The Board finds in favor of the Petitioners on the following issues only:
- a. The building should be assessed as part light warehouse, part industrial office, and part small shop so that the assessment reflects the structures value-in-use as of the assessment date of March 1, 2002, not the uses as originally designed and built in 1957.
 - b. Wall height adjustments should be made to reflect the current use of each section of the structure.
 - c. The heating and cooling systems assessed for the office portion of the structure are accurate. Only 3,050 square feet of unit heat exists in the remaining structure.

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. 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>.