REPRESENTATIVE FOR PETITIONER:
Paul Cussen, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT:
Brian Cusimano, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

PHILADELPHIA QUARTZ, CO.,	)	Pet. Nos. : 10-012-12-1-3-00001
	)	10-012-13-1-3-00001
Petitioner,	)	
	)	Parcel No.: 10-14-00-101-690.000-012
v.	)	
	)	County: Clark
CLARK COUNTY ASSESSOR,	)	
	)	Township Jeffersonville
Respondent.	)	
	)	Assessment Year: 2012, 2013

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

NOVEMBER 2, 2016

FINAL DETERMINATION

The Indiana Board of Tax Review ("Board") has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

ISSUE

1. Did the Petitioner, Philadelphia Quartz Company, prove its assessments must be lowered because its facility suffered from economic obsolescence?

PROCEDURAL HISTORY

2. The Petitioner challenged its 2012 and 2013 assessments. On July 25, 2014, the Clark County Property Tax Assessment Board of Appeals ("PTABOA") issued determinations denying the Petitioner relief. The Petitioner then timely filed Form 131 petitions with the Board.

3. On August 12, 2016, our administrative law judge, Gary W. Ricks ("ALJ"), held a hearing. Neither he nor the Board inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Paul M. Cussen, a certified tax representative, appeared for the Petitioner. Brian Cusimano appeared as counsel for the Respondent, Clark County Assessor. Ken Surface, vice president of the Nexus Group, and Mr. Cussen were sworn and testified.

5. The Petitioner offered the following exhibits:

Petitioner Exhibit 1: Letter from Paul M. Cussen to the PTABOA,
Petitioner Exhibit 2: Graph showing zeolite sales,
Petitioner Exhibit 3: Zeolite sales distribution data,
Petitioner Exhibit 4: Property record card ("PRC") for the Petitioner's property,
Petitioner Exhibit 5: Aerial photograph of the Petitioner's property,
Petitioner Exhibit 6: Comparable industrial properties.

6. The Respondent offered the following exhibits:

Respondent Exhibit A: PRC for the Petitioner's property,
Respondent Exhibit B: Aerial photograph of the Petitioner's property,
Respondent Exhibit C: Additional aerial photographs of subject property,
Respondent Exhibit D: Aerial photograph and data related to comparable property,
Respondent Exhibit E: Aerial photograph and data related to comparable property,
Respondent Exhibit F: Aerial photograph and data related to comparable property,
Respondent Exhibit G: Aerial photograph and data related to comparable property,
Respondent Exhibit H: Aerial photograph and data related to comparable property,
Respondent Exhibit I: Aerial photograph and data related to comparable property,
Respondent Exhibit J: Aerial photograph and data related to comparable property,
Respondent Exhibit K: Aerial photograph and data related to comparable property,
Respondent Exhibit L: Aerial photograph and data related to comparable property,

Respondent Exhibit M: Aerial photograph and data related to comparable property,
Respondent Exhibit N: Aerial photograph and data related to comparable property,
Respondent Exhibit O: Aerial photograph and data related to comparable property,
Respondent Exhibit P: Aerial photograph of comparable property,
Respondent Exhibit Q: Letter from Cussen to the PTABOA (Petitioner's Exhibit 1).

7. The following additional items are recognized as part of the record:

Board Exhibit A: Form 131 and attachments,
Board Exhibit B: Hearing notices,
Board Exhibit C: Notice of Appearance by Brian Cusimano,
Board Exhibit D: Hearing sign-in sheet.

8. The parcel under appeal is 1.55 acres and contains a manufacturing facility that produces zeolite. It is located in Jeffersonville.

9. The PTABOA determined the following assessment for both years:

Land: $69,800 Improvements: $2,006,700 Total: $2,076,500

10. The Petitioner contends the assessment should be reduced by 50% to account for economic obsolescence and asks for a total assessment of $1,050,000 for each year.

SUMMARY OF PETITIONER'S CASE

11. The assessment does not account for the significant economic obsolescence from which the property suffers. The Petitioner manufactures zeolite, a chemical used in producing some powdered dishwashing detergents. The Petitioner previously sold 90% of the facility's zeolite to Colgate, which had a plant adjacent to the Petitioner's facility. In 2005, Colgate moved its operation to Nashville, Tennessee, and production at the Petitioner's facility dropped. *Cussen testimony; Pet'r Exs. 1-3.*

12. Following that setback, the Petitioner's biggest client was Proctor & Gamble, which makes Tide detergent. In 2011, Proctor & Gamble changed Tide's formula to be more environmentally friendly. It moved to liquid detergents and "pods" that do not require

zeolite. That change, combined with a few other things, meant Tide no longer needed as much zeolite, and production at the Petitioner's facility dropped another 26%. In addition, the dishwasher industry has moved toward high-efficiency washers that do not use detergent containing zeolite. *Cussen testimony; Pet'r Exs. 1-3.*

13. The Petitioner built its facility for a specific use. Colgate's relocation, Tide's formula change, and the industry move to high-efficiency washers have combined to limit the marketability of the Petitioner's product, creating significant economic obsolescence at the facility. Although the Petitioner closed plants in Georgia and Kansas City and consolidated those operations at its Indiana facility, the facility has been running at 50% of its capacity since 2011. The assessment should therefore be cut in half. *Cussen testimony and argument; Pet'r Exs. 1-3.*

14. The Petitioner also offered information related to the sales of 13 industrial properties. Mr. Cussen acknowledged that the properties were not directly comparable to the Petitioner's property. But they sold for prices ranging from $10.33/sq. ft. to $24.90/sq. ft., which were all well below the $39.71/sq. ft. for which the Petitioner's property was assessed. *Cussen argument, Pet'r Ex 6.*

SUMMARY OF RESPONDENT'S CASE

15. The property's assessment has been relatively consistent over the last few years, hovering around $2,100,000. Property values in Clark County have been pretty flat since the "great recession," but they have trended upwards over the last few years. *Surface testimony.*

16. The Petitioner failed to meet its burden to show the assessments were wrong. The purportedly comparable properties the Petitioner identified differ significantly from the Petitioner's property. Some were on the market considerably longer than others. None were from Clark County, even though there were sales of industrial properties in Clark County during the years at issue. Some were from industrial areas while others were

from more rural, agricultural areas. Most had significantly larger sites than the Petitioner's parcel, with the largest being 31 acres. Also, some of the properties were used for purposes other than manufacturing. Converting the Petitioner's facility to another use would require a major investment. Mr. Cussen did not adjust the sale prices to account for the significant differences, and he conceded that the properties were not directly comparable to the Petitioner's property. *Cusimano argument; Surface testimony; Pet'r Ex. 1*.

17. As for the Petitioner's obsolescence claim, there is nothing to show what the property's value was before accounting for any decrease in production. Regardless, the Petitioner did not use generally accepted appraisal practices to quantify obsolescence. It did not offer an appraisal or any other objectively verifiable data to show a 50% loss in value. Also, when assessors value a property, they value the real estate rather than the business that operates at the property. Although the Petitioner offered evidence about the decline of its business, it did not tie that decline to the real estate's market value. *Surface testimony; Cusimano argument.*

BURDEN OF PROOF

18. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving its assessment is wrong and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2 ("burden-shifting statute") creates an exception to that general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. *See* I.C. § 6-1.1-15- 17.2(a), (b) and (d). If the assessor has the burden and fails to meet it, the assessment reverts to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).

19. The parties agreed the Petitioner had the burden of proof. Presumably, they were referring only to the 2012 appeal, because under subsection (d) of the burden-shifting statute, the question of who has the burden for 2013 likely cannot be decided until after we determine the value for 2012.[1]

ANALYSIS

20. Real property is assessed based on its true tax value. I. C. § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost, sales-comparison, and income approaches are three generally accepted techniques used to calculate true tax value. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs or sales information for the property under appeal, sales or assessment information for comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also*, I.C. § 6-1.1-15-18.

21. The Petitioner mainly claims that the assessment should be reduced by 50% to account for economic obsolescence. Under the cost approach, a property is valued by the calculating the reproduction or replacement cost new of the improvements, subtracting accrued depreciation to arrive at an estimate of the improvement's value, and then adding the value of the land as if vacant. 2011 MANUAL at 9. Depreciation comes in three forms: physical deterioration, functional obsolescence, and external obsolescence, sometimes also called economic obsolescence. The last of those involves a loss in value resulting from factors external to the property, such as decreased demand, governmental restrictions, or social changes. *See Thorntown Telephone Co., Inc. v. State Bd. of Tax Comm'rs*, 629 N.E.2d 962, 965 (Ind. Tax Ct. 1995).

[1]The burden-shifting statute does not apply if the assessment under appeal was based on structural improvements, zoning, or uses that were not considered in the prior year's assessment. I.C. § 6-1.1-15-17.2(c). Because the Respondent assigned the same value to the property for 2012 and 2013, it does not appear there were any intervening changes to the property.

22. When a taxpayer seeks an obsolescence adjustment, it must offer probative evidence to show the factors causing its property to lose value and then quantify that loss using professional appraisal techniques. *See Clark v. State Bd. of Tax Comm'rs,* 694 N.E.2d 1230, 1238 (Ind. Tax Ct. 1998); *Miller Structures, Inc. v. State Bd. of Tax Comm'rs*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001).

23. The Respondent first claims that even if the Petitioner property identified and quantified obsolescence, it did not offer anything to establish the property's value under the cost approach prior to applying an obsolescence adjustment. Presumably, the Petitioner was simply using the assessment, which was determined under the mass-appraisal cost approach laid out in the Guidelines, as a starting point. Assuming, without deciding, that such a methodology is allowable in an assessment appeal,[2] we nonetheless find that the Petitioner failed to make a prima facie case for an obsolescence adjustment.

24. According to Mr. Cussen, three factors caused obsolescence at the Petitioner's facility: the loss of Colgate as a customer, the change to Tide's formula, and the industry move away from powdered detergents and toward products that do not require zeolite. The Respondent, however, argues that the Petitioner failed to tie those factors to the real estate itself as opposed to the business the Petitioner operated at the property.

25. We agree with the Respondent, albeit with some reservation. In isolation, simply pointing to the loss of a customer, such as Colgate, or to the reduction in demand from another customer, such as Proctor & Gamble, risks valuing the Petitioner's business rather than its real property. But the decreased demand from Proctor & Gamble appears to be related to an industry-wide shift away from zeolite. Changes in demand for a product manufactured at a special purpose property may affect the value of the real estate. *See Guardian Energy, LLC v. County of Waseca*, 868 N.W.2d 253, 263, 266-67 (Minn. 2015). The witnesses agreed the Petitioner's facility was specifically designed to

[2] Generally, a party cannot simply use the Guidelines to make its case but must instead offer probative market-based evidence. *See Eckerling* 841 N.E.2d at 678 (explaining that strict application of assessment regulations does rebut the presumption that an assessment is correct).

make zeolite. And Mr. Surface testified that converting it to another use would require major investment. Thus, the facility arguably meets the definition of a special-purpose property. *See* 2011 GUIDELINES, Glossary at 21 ("Any building designed in such a way that it cannot easily be converted to another use can be considered a special-purpose *structure.…*[C]onversion of special-purpose structures involves the expenditure of large sums of money and requires design expertise."). But that is mostly conjecture. Beyond the largely conclusory testimony from Mr. Cussen and Mr. Surface, the parties offered little evidence about the facility's design. And neither party expressly argued that the facility was special purpose.

26. In any case, we are not convinced that a taxpayer may look solely at its own operations to show the necessary decrease in demand to support an obsolescence adjustment, particularly when the taxpayer focuses on the loss of specific customers. The Petitioner offered nothing to prove the levels by which demand for zeolite dropped industry-wide. Absent something to establish that the Petitioner's approach complies with generally accepted appraisal principles, we believe it risks valuing things other than the real estate itself. The same is true for how the Petitioner quantified the external obsolescence. Based on Mr. Cussen's testimony that the facility was operating at 50% of capacity, the Petitioner simply asks us to reduce the total assessment by 50%. It is not self-evident that such a simplistic approach conforms to generally accepted appraisal principles.

27. Mr. Cussen also pointed to sales of 13 industrial properties from throughout the state. But he did little to explain how those properties compared to the Petitioner's property. To the contrary, he admitted they were not directly comparable. And he did not explain how any relevant differences affected values. The Petitioner's sales evidence therefore lacks probative value. *See Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that taxpayers' sales data did not make a prima face case where they failed to explain how the characteristics of their property compared those of the sold properties or how relevant differences affected value).

28. In sum, while the Petitioner offered some evidence tending to show its property suffered from external obsolescence, its presentation was far too superficial to show the extent of that obsolescence or to otherwise show a particular value or range of values for the property. We therefore find that the 2012 assessment should not be changed.

29. Based on our determination for 2012, the Petitioner again had the burden of proof for 2013. It offered the same evidence for that year as it offered for 2012, and we reach the same conclusion.

FINAL DETERMINATION

30. The Petitioner failed to make a prima facie case for changing its assessments for 2012 and 2013. We find for the Respondent.

This Final Determination of the above captioned matter is issued on the date first written above.

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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 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 Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.