

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition #:** 41-026-02-1-4-00245  
**Petitioner:** Sudanmark Investment Company  
**Respondent:** Pleasant Township Assessor (Johnson County)  
**Parcel #:** 2100330800100  
**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 Petitioner initiated an assessment appeal with the Johnson County Property Tax Assessment Board of Appeals (PTABOA) by written document dated July 15, 2003.
2. The Notification of Final Assessment Determination of the PTABOA was mailed to the Petitioner on November 21, 2003.
3. The Petitioner initiated an appeal to the Board by filing a Form 131 with the county assessor on December 22, 2003. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated May 11, 2004.
5. The Board held an administrative hearing on July 21, 2004, before the duly appointed Administrative Law Judge (ALJ) Alyson Kunack.
6. Persons present and sworn in at the hearing:
  - a) For Petitioner: Duane Zishka, Uzelac & Associates
  - b) For Respondent: Mark Alexander, Johnson County PTABOA

**Facts**

7. The property is classified as commercial, as is shown on the property record card for parcel #2100330800100.

8. The ALJ did not conduct an inspection of the property.
9. Assessed Values of subject property as determined by the Johnson County PTABOA are:  
Land \$542,600    Improvements \$1,927,100
10. Assessed Values requested by Petitioner per the Form 131 are:  
Land \$542,600    Improvements \$1,457,800

### **Issues**

11. Summary of Petitioner's contentions in support of alleged error in assessment:
  - a) The Petitioner contends that capitalization of the net operating income of this property over four (4) years shows a need for the application of economic obsolescence. *Zishka testimony.*
  - b) The Petitioner contends that the subject property is an "un-anchored" shopping center in Greenwood, which the Petitioner has had some difficulty leasing. *Zishka testimony.*
  - c) According to the Petitioner, the capitalization rate used in its calculations to demonstrate economic obsolescence was taken from a national survey. *Zishka testimony & Petitioner Exhibits 1 and 2.*
12. Summary of Respondent's contentions in support of the assessment:
  - a) The Respondent contends that some expenses identified by the Petitioner in arriving at its net operating income vary from year to year, such as management fees and insurance expenses. *Alexander testimony.* According to the Respondent, those expenses typically should be consistent from year-to-year. *Id.*
  - b) The Respondent also questioned the Petitioner's use of national data, as opposed to more localized information, in choosing the capitalization rate used in its calculation. *Id.*

### **Record**

13. The official record for this matter is made up of the following:
  - a) The Petition, and all subsequent pre-hearing and post-hearing submissions by either party.
  - b) The tape recording of the hearing labeled BTR # 5550.
  - c) Exhibits:
    - Petitioner Exhibit 1: Details of capitalization and trending of profit & loss statements.
    - Petitioner Exhibit 2: Information detailing the capitalization rate used in calculations
    - Petitioner Exhibit 3: Letter regarding profit and loss statement for 1999
    - Petitioner Exhibit 4: Letter regarding profit and loss statement for 2000
  
    - Board Exhibit 1: Form 131 petition

## Board Exhibit 2: Notice of Hearing on Petition

The Respondent presented no exhibits.

- d) These Findings and Conclusions.

### Analysis

14. The most applicable governing law is:

- a) Generally, 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. 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”).
- 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. 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.
- d) Here, the Petitioner claims that it is entitled to an adjustment for abnormal obsolescence. A brief explanation of the concept of depreciation under the applicable administrative rules and case law will help illustrate the Petitioner’s burden of proof in this case.
- e) The assessment in this case was determined in accordance with the Real Property Assessment Guidelines for 2002 -Version A (“Guidelines”). The Guidelines represent an acceptable method of mass appraisal based upon the cost approach to value. *See, 2002 REAL PROPERTY ASSESSMENT MANUAL at 13, 17.*
- f) The Guidelines provide for the determination of the replacement cost new of various types of commercial and industrial through reference to cost tables. The Guidelines also require that accrued depreciation be accounted for in valuing an improvement. *Guidelines, p. 4.* Under the Guidelines, depreciation consists of three separate things: physical deterioration, functional obsolescence and external obsolescence. *Id.* Physical deterioration 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 represents a loss in value caused by an influence outside of the property’s boundaries. *Id.*
- g) The Guidelines account for normal depreciation through the assignment of typical life expectancies and structure condition classifications. *Guidelines, Appendix F, p. 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.*

- h) Consequently, a taxpayer alleging that it is entitled to an adjustment for abnormal obsolescence has a two-prong burden of proof: (1) the taxpayer has to identify the causes of obsolescence, and (2) the taxpayer must quantify the amount of obsolescence. *Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230, 1233 (Ind. Tax 1998).
15. The Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:
- a) The Petitioner failed both to adequately identify the causes of its claimed abnormal obsolescence and to quantify the amount of that obsolescence.
  - b) First, the Petitioner made almost no effort to establish the cause of the claimed obsolescence. In fact, the only evidence offered by the Petitioner that even approached identifying a cause of the purported obsolescence was a vague statement that the Petitioner was having trouble leasing the subject property. *Zishka testimony*. Even then, the Petitioner's representative testified that he did not know whether the drop in income generated by the subject property from 1999 to 2002 was due to an increase in its vacancy rate. *Id.*
  - c) The Petitioner did not identify the vacancy rate of the subject property or compare that rate to the vacancy rates of similarly situated properties. Likewise, the Petitioner made no effort to identify the reasons behind its purported difficulties in leasing the subject property. *See, Damon Corp. v. State Board of Tax Commissioners*, 738 N.E.2d 1102 (Ind. Tax 2000)(petitioner failed to demonstrate that vacancy was a cause of obsolescence where the petitioner did not provide the reason for the vacancy).
  - d) The Petitioner also failed to quantify the obsolescence from which it claimed the subject property suffered. Instead, the Petitioner presented only what purported to be a valuation of the subject property based upon capitalization of its net operating income stream. The Petitioner made no attempt to tie that valuation to the vacancy rate of the property or to any other cause of obsolescence.
  - e) Consequently, the Petitioner failed to present a prima facie case that the subject property qualified for an adjustment based upon abnormal obsolescence.

### **Conclusion**

16. The Petitioner failed to make a prima facie case. The Board finds in favor of Respondent.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: \_\_\_\_\_

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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.**