

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

Petition #: 41-041-02-1-4-00020
Petitioner: KOOSHTARD PROPERTY VIII, LLC
Respondent: WHITE RIVER TOWNSHIP ASSESSOR
Parcel 1500350400400
Assessment Year: 2002

The Indiana Board of Tax Review (IBTR) 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 10, 2003.
2. Notice of the decision of the PTABOA was mailed on October 10, 2003.
3. The Petitioner filed an appeal to the Indiana Board of Tax Review (IBTR) by filing a Form 131 with the county assessor on November 7, 2003. The Petitioner elected to have this case heard in small claims.
4. The IBTR issued a notice of hearing to the parties dated July 15, 2004.
5. The IBTR held an administrative hearing on August 19, 2004, before the duly appointed Administrative Law Judge Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - A. For Petitioner: Milo E. Smith, Petitioner's Representative.
 - B. For Respondent: Mark Alexander, Township Representative.

Facts

7. The property is classified as a commercial property as is shown on the property record card #1500350400400.
8. The Administrative Law Judge did not conduct an inspection of the property.

9. Assessed Value of subject property as determined by the Johnson County PTABOA:
Land \$26,100 Improvements \$187,600
10. Assessed Value requested by Petitioner:
Land \$26,100 Improvements: \$150,000

Contentions

11. Summary of Petitioner's contentions in support of alleged error in assessment is:
- A. At the PTABOA hearing, the Petitioner requested that the 30' x 115' canopy and the 384 sq. ft. canopy both be priced as special features from Appendix G (at \$16.40 per sq. ft.) and depreciated using Table F-8 in Appendix F of the Version A – Real Property Assessment Guideline. *Smith Testimony.*
 - B. The PTABOA changed the value of the canopies to the \$16.40 per sq. ft. price as requested, but in the process also changed the effective year of construction of the 384 sq. ft. canopy from 1988 to 1994. *Smith Testimony; Petitioner Exhibit 2.*
 - C. Further, the Notification of Final Assessment Determination (Form 115) indicates that no changes were made at all, yet the improvement values listed on the Form 115 are different from those on the property record card prepared prior to the PTABOA hearing. *Smith Testimony; Petitioner Exhibit 3.*
 - D. The 384 sq. ft. canopy had not changed and the effective year of construction should remain at 1988. There is nothing in the record to support a change in the effective year of the canopy to 1994. *Smith Testimony; Petitioner Exhibits 1 & 2.*
 - E. Both canopies currently have the incorrect depreciation applied. The correct depreciation applied from the special features Depreciation Table is forty-five percent (45%) for the 384 sq. ft. canopy and twenty-five percent (25%) for the 30' x 115' canopy. *Smith Testimony; Petitioner Exhibits 5, 6, 7, 8 & 9.*
12. Summary of Respondent's contentions in support of alleged error in assessment:
- A. In Johnson County, local officials did a door-to-door inspection and may have picked up the year of construction on site. *Alexander Testimony.*
 - B. The Petitioner's interpretation of the effective year is erroneous. *Alexander Testimony.*

Record

13. The official record for this matter is made up of the following:
- A. The Petition, and all subsequent pre-hearing or post-hearing submissions by either party.

B. The tape recording of the hearing labeled BTR #5876.

C. Exhibits:

- Petitioner Exhibit 1: Copy of the March 1, 2002 property record card for the property under appeal.
 - Petitioner Exhibit 2: Copy of the current PTABOA property record card.
 - Petitioner Exhibit 3: Copy of the Form 115 dated October 10, 2003.
 - Petitioner Exhibit 4: Version A – Real Property Assessment Guideline, Appendix F, page 5.
 - Petitioner Exhibit 5: Version A – Real Property Assessment Guideline, Appendix F, page 7.
 - Petitioner Exhibit 6: Version A – Real Property Assessment Guideline, Appendix F, pages 36 - 37.
 - Petitioner Exhibit 7: Version A – Real Property Assessment Guideline, Appendix F, Table F-2, page 24.
 - Petitioner Exhibit 8: Version A – Real Property Assessment Guideline, Appendix F, Table F-8, page 38.
 - Petitioner Exhibit 9: Proposed revised property record card.
 - Petitioner Exhibit 10: Request to the Johnson County Assessor for copies of documentary evidence and a list of witnesses.
 - Petitioner Exhibit 11: Request to the White River Township Assessor for copies of documentary evidence and a list of witnesses.
- Respondent Exhibit 1: Authorization for Mr. Alexander to represent the White River Township Assessor.

D. These Findings and Conclusions.

Analysis

14. The most applicable governing law is:
- A. The Petitioner must sufficiently explain the connection between the evidence and Petitioner's assertions in order for it to be considered material to the facts. *See generally, Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
 - B. The Board will not change the determination of the County Property Tax Assessment Board of Appeals (PTABOA) unless the Petitioner has established a prima facie case and, by a preponderance of the evidence, proven both the alleged errors in the assessment and specifically what assessment is correct. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E.2d 765 (Ind. Tax Ct. 1997).

- C. In the event the Petitioner sustains his burden, the burden then shifts to the Respondent to rebut Petitioner's evidence with substantial evidence. Should the respondent fail to rebut Petitioner's evidence, the Board will find for the Petitioner. *Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475 (Ind. Tax 2003).
 - D. Actual age is defined as the number of years elapsed since the original construction up to the effective valuation date. Effective age is defined as the age of the structure as compared to other structures performing like functions. *Version A – Real Property Assessment Guideline, Glossary, pages 1 and 6.*
15. The Petitioner provided sufficient evidence to support Petitioner's contentions. This conclusion was arrived at because:
- A. The Petitioner provided the 2002 property record card (before the PTABOA hearing), indicating the effective year of construction of the 384 sq. ft. canopy, as determined by the local officials, was 1988. The Petitioner also submitted the 2002 property record card prepared after the PTABOA hearing, reflecting a change in the effective year of construction to 1994. *Petitioner Exhibits 1 & 2*.¹
 - B. The Petitioner testified that there had been no changes to the canopy, such as remodeling or renovation. *Smith Testimony*. This testimony was not disputed.
 - C. The Petitioner's testimony and documentary evidence are sufficient to make a prima facie case of error. The burden therefore shifts to the Respondent to rebut the taxpayer's evidence and justify its decision with substantial evidence.
 - D. At the hearing, the Respondent was unable to offer any explanation for the change in the effective year of construction, only surmising that additional information may have been obtained during an inspection of the property.
 - E. Additionally, the Form 115 issued by the PTABOA offers no explanation for the change in the effective year of construction. *Petitioner Exhibit 3*.
 - F. There was no evidence presented by the Respondent that warrants a change in the effective year of construction. Accordingly, the effective year of construction for the 384 sq. ft. canopy should be changed from 1994 to 1988.
 - G. The 384 sq. ft. canopy therefore has an actual age of eleven years (1999 minus 1988). Based upon its Average condition rating assigned by the PTABOA, it also has an effective age of eleven years. This results in a correct depreciation percentage of forty-five percent (45%) rather than the current twenty-five percent (25%). *Version A – Real Property Assessment Guideline, Appendix F, pages 36-38.*

¹ Evidence of a prior year's assessment is not probative. *Glass Wholesalers, Inc. v. State Bd. of Tax Commissioners*, 568 N.E.2d 1116 (Ind. Tax Ct. 1991). In this appeal, however, the property record cards are introduced to show discrepancies between assessments within the same year (2002), rather than between years.

H. Similarly, the 30' x 115' canopy has an actual age of four years (1999 minus 1995). Based upon its Average condition rating assigned by the PTABOA, it has an effective age of five years (rather than four years). This results in a correct depreciation percentage of twenty-five percent (25%) rather than the current twenty percent (20%). *Id.*

Conclusions

16. The Petitioner has made a prima facie case. The Respondent did not rebut the Petitioner's evidence. The Board finds in favor of the Petitioner. The effective year of construction of the 384 sq. ft. canopy should be 1988 with forty-five percent (45%) depreciation applied. The 30' x 115' canopy should have twenty-five percent (25%) depreciation applied.

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

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.