

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

Petition #: 40-013-02-1-4-00011
Petitioner: P/A Builders & Developers, LLC
Respondent: Center Township Assessor, Jennings County
Parcel: 09-28-000-041.000-12
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 Jennings County Property Tax Assessment Board of Appeals (the “PTABOA”) by written document dated May 19, 2003.
2. The notice of the decision of the PTABOA was dated October 14, 2003.
3. The Petitioner appealed to the Board by filing a Form 131 with the County Assessor on November 12, 2003. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated March 16, 2004.
5. The Board held an administrative hearing on May 20, 2004, before the duly appointed Administrative Law Judge Jennifer Bippus.
6. Persons present and sworn in at the hearing:
 - a. For Petitioner: Milo Smith, Tax Consultants, Inc.
 - b. For Respondent: Linda Kovacich, Jennings County Assessor.

Facts

7. The property is classified as a retail commercial property, as is shown on the property record card for parcel # 092800004100012.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Jennings County PTABOA:

Land: \$109,200 Improvements: \$227,400
10. Assessed Value requested by Petitioner:

Land: \$60,000 Improvements: \$140,000

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment is:
 - a. The subject property was purchased July 10, 2000 for \$132,000. The purchase included land and a 1,200 square foot residential dwelling. The property record card for the subject property reflects a true tax value of \$53,400 for the residential dwelling. (*Pet. Ex. A & G2*).
 - b. The effective age assigned to the 1,196 square foot residential dwelling was not determined following the real property assessment guidelines. The residential dwelling was constructed in 1933 and remodeled in 2001. The effective age should reflect the actual age based on a construction date of 1933. (*Pet. Ex. K; Smith testimony*).
 - c. The grade of the pre-engineered building that is on the subject property should be "C" rather than "C+2". (*Pet. Ex. L & M; Smith testimony*).
 - d. The interior finish adjustment applied to the pricing of the 4,200 square foot retail building should be \$3.35 rather than \$7.05 because the 2,400 utility storage area does not have ceiling finish, wall finish, or air conditioning. The utility storage area has concrete flooring with an area for drive-in truck delivery and 8 foot sheets of light metal covering the interior insulation. There is a small office shown on the floor plan in the 2,400 square foot utility storage area that was omitted from the valuation of the structure. (*Pet. Ex. J & N; Smith testimony*)

12. Summary of Respondent's contentions in support of the assessment is:
- a. The purchase price of \$132,000 for the property in July of 2000 was for the land and the house. The purchase price reflects the value prior to the complete remodeling of the house. After the purchase, the house was completely remodeled and a new building was built for use as a Hostess retail store. (*Resp. Ex. A; Kovacich testimony*)
 - b. Values were placed on properties uniformly throughout Jennings County and Value-in-Use is the value based on the ability of the asset to produce revenue or utility through ownership. (*Resp. Ex. B; Kovacich testimony*)
 - c. The property owner refused to comply with the request to provide lease information on the 1,196 square foot residential structure occupied by the Edward Jones Office. (*Resp. Ex. C; Kovacich testimony*)
 - d. There is air conditioning in the storage area of the 4,200 square foot building. (*Kovacich testimony*)
 - e. The construction cost for the 4,200 square foot retail building was requested at the PTABOA hearing, but the Petitioner did not believe these costs were relevant and did not provide the costs. (*Kovacich testimony*)

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. The post-hearing submissions include a Withdrawal of the issue of land valuation and a Stipulation Agreement that the utility storage area does have air conditioning.
 - b. The tape recording of the hearing labeled BTR #5866.
 - c. Exhibits:
 - Petitioner Exhibit A: Two (2) pages of excerpts from 50 IAC 2.3, Real Property Assessment Manual, the Real Property Assessment Guidelines, Version A, and Merriam Webster's Dictionary.
 - Petitioner Exhibit B: A copy of 50 IAC 2.3-1-1 providing the applicability, provisions, and procedures for the assessment of all real property under Ind. Code § 6-1.1-4.
 - Petitioner Exhibit C: A copy of Page 2 - Introduction of 2002 Real Property from the 2002 Real Property Assessment Manual.
 - Petitioner Exhibit D: A copy of Page 3 of the 2002 Real Property Assessment Manual discussing use value, approaches to cost, and true tax value.
 - Petitioner Exhibit E: A copy of Page 1, Real Property Assessment Guideline, Version A – Introduction for Assessment.
 - Petitioner Exhibit F: A copy of Page 2, Real Property Assessment, Version A – Introduction for Assessment.

Petitioner Exhibit G: A copy of Appendix F, Real Property Assessment Guideline, Version A – Commercial and Industrial Depreciation.

Petitioner Exhibit G2: A copy of the property record card for the subject property prior to the remodel of the residential dwelling.

Petitioner Exhibit H: A copy of the Form 115, Final Assessment Determination, issued by the PTABOA as a result of the underlying Form 130 petition.

Petitioner Exhibit I: A copy of the property record card sketch for the 4,200 square foot retail building with notations regarding the extent of interior finish and air conditioning.

Petitioner Exhibit J: A copy of an architect sketch of the floor plan for the 4,200 square foot retail building used as the Hostess Bakery Outlet.

Petitioner Exhibit K: A copy of Pages 7 and 5 from Appendix of the Real Property Assessment Guideline, Version A – Commercial and Industrial Depreciation discussing determining normal depreciation and determining the actual age of a structure.

Petitioner Exhibit L: A copy of Page 5 from Appendix E of the Real Property Assessment Guideline, Version A – Commercial and Industrial Grade.

Petitioner Exhibit M: A copy of Page 8 from Appendix E of the Real Property Assessment Guideline, Version A – Commercial and Industrial Grade containing a portion of Table E-3, Grade Classifications for Commercial and Industrial Structures.

Petitioner Exhibit N: A copy of the property record card for the subject property reflecting the valuation following the remodeling of the 1,196 square foot residential structure with an effective age of 1991.

Petitioner Exhibit O: A copy of a Power of Attorney authorizing Mr. Smith to represent the Petitioner in this matter.

Respondent Exhibit A: A Letter of Authorization from Center Township authorizing Linda Kovacich, County Assessor, to represent Center Township in this matter.

Respondent Exhibit B: A copy of the property record card for the subject property with notation regarding the July 2000 purchase of the property.

Respondent Exhibit C: A copy of Page 12 from the 2002 Real Property Assessment Manual with the definition of Value-in-Use highlighted.

Respondent Exhibit D: A copy of a Request for Information from the PTABOA to Mr. Smith requesting lease information for the subject property.

Respondent Exhibit E: A copy of the current property record card for the subject property.

- d. These Findings and Conclusions.

Analysis

14. The most applicable governing case 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. *Meridian Towers East & West v. Washington Township Assessor*, 805 N.E. 2d 475 (Ind. Tax 2003): 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.
 - d. "When contesting a grade assigned to an improvement, a taxpayer must offer probative evidence concerning the alleged assessment error. *Whitley Prods.*, 704 N.E. 2d at 1119.
 - e. "However, the Petitioner must explain how the absence of features result in a lower grade. The Petitioner must compare the features in the applicable improvement model with the features (or lack thereof) in its own improvement. The Petitioner must then attempt to calculate the value of the features in the model and translate that lack of value into a grade adjustment. A taxpayer cannot simply point to alleged deficiencies in a building and expect to make a prima facie case as to grade or any other issue. *Indian Industries v. Dep't. of Local Government Finance*, 791 N.E. 2d 286 (Ind. Tax 2003)(citing *Miller Structures v. State Board of Tax Commissioners*, 748 N.E. 2d 943, 953 (Ind. Tax 2001)).

Issue 1 – Land Value

15. This issue was withdrawn.

Issue 2 - Effective Age

16. Petitioner did not provide sufficient evidence to support Petitioner’s contentions. This conclusion was arrived at because:
- a. The Petitioner failed to demonstrate that the effective age of the building is 1933.
 - b. The Definition from the 2002 Real Property Assessment Manual for Age is the following:
“The age of a structure as compared to other structures performing like functions. Sometimes it can also be thought of as the actual age less the years that have been removed from the actual age by such things as maintenance, repair, upgrading, and change.”
Version A Guidelines, Appendix B, page 5.
 - c. The Petitioner opined the actual age and effective age should be the same.
 - d. However, undisputed testimony indicated the building was completely remodeled in 2001. The Petitioner failed to offer any evidence to support the contention that the economic life of a totally renovated building would not be extended, thereby changing the effective age.
 - e. The Petitioner’s argument failed to account for the extensive renovation of the property. The Petitioner’s unsupported conclusory statements do not constitute probative evidence.
 - f. The Petitioner did not meet his burden in establishing that the effective age of the building should remain at 1933, the year of original construction.

Issue 3 - Grade of GCK Building

17. Petitioner did not provide sufficient evidence to support Petitioner’s contentions. This conclusion was arrived at because:
- a. The Petitioner contended the grade of the pre-engineered building should be “C” rather than “C+2”. (*Pet. Ex. L & M; Smith testimony*).
 - b. The Petitioner merely opined that the building fit the “C” model listed in the 2002 Real Property Manual and that the materials used were not over and above the “C” model. (*Smith Testimony, Petitioner Ex. M*)
 - c. The Petitioner failed to introduce any comparable properties assessed using the “C” grade or provide a detailed comparison of the property under appeal and the grade classifications contained in 50 IAC 2.3.
 - d. The Petitioner did not meet his burden concerning this issue.

Issue 4 - Interior Finish and Air Conditioning of rear area of GCK structure

18. Petitioner met his burden with sufficient evidence to support Petitioner's contentions. This conclusion was arrived at because:
 - a. The Petitioner contends that there is no finish in the rear of the GCK structure and stated that there is no ceiling finish, a truck drive-in area on the concrete floor, no wall finish, and 8' sheets of light weight metal to hold in the insulation. (*Smith Testimony*).
 - b. The Petitioner presented a floor plan from the architect of the subject building and the floor plan does not show finish in the rear area of the subject building, but it does show finish in the front section of the building. (*Petitioner Ex. J*).
 - c. The Board concludes the rear portion of this structure should be assessed as unfinished.
 - d. The Air Conditioning issue was addressed and a stipulation submitted. (*Board Ex. D*). The property record card is correct and the air conditioning value stays the same.

Conclusions

19. The land issue was withdrawn.
20. The Petitioner failed to make a prima facie case by establishing that the effective age of the 1,196 square foot building is incorrect, and that the grade of the 4,200 square foot GCK building is incorrect. The Board finds in favor of Respondent for these two issues.
21. The air conditioning issue regarding the rear area of the 4,200 square foot GCK building was resolved with the parties stipulating the current air conditioning assessment is correct.
22. The Petitioner met his burden and provided sufficient evidence to warrant a change in the interior finish of rear portion of the 4,200 square foot GCK building. The Board finds in favor of the Petitioner for this issue.

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: _____
(date)

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.