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IN THE
INDIANA TAX COURT

BETA STEEL CORPORATION,	)	
Petitioner,	)	
v.	)	Cause No. 71T10-0211-TA-127
JOHN R. SCOTT, PORTAGE TOWNSHIP ASSESSOR, PORTER COUNTY, INDIANA,	)	
Respondent.	)	

ON APPEAL FROM A FINAL DETERMINATION OF
THE INDIANA BOARD OF TAX REVIEW

NOT FOR PUBLICATION
March 16, 2007

FISHER, J.

Beta Steel Corporation (Beta) appeals the final determination of the Indiana Board of Tax Review (Indiana Board) valuing its real property for the 1999 assessment year (year at issue). The sole question before this Court is whether the Indiana Board erred in denying an obsolescence adjustment to Beta.

FACTS AND PROCEDURAL HISTORY

Beta, an Indiana corporation, owns and operates a steel manufacturing plant located in Porter County, Indiana.[1] The plant's primary manufacturing facility (primary facility), constructed in the early 1990s, contained a hot rolling mill. In 1995, Beta expanded its primary facility and its manufacturing operations by adding an electric arc furnace and various satellite buildings.

For the year at issue, the Portage Township Assessor (Assessor) valued Beta's plant at $5,474,270. In arriving at that value, the Assessor did not assign an obsolescence adjustment to Beta's primary facility. Believing that its primary facility was entitled to an obsolescence adjustment, Beta filed a Petition for Review of Assessment (Form 130) with the Porter County Property Tax Assessment Board of Appeals (PTABOA). On January 7, 2000, the PTABOA denied Beta's Form 130 request.

On February 7, 2000, Beta filed a Petition for Review of Assessment (Form 131RP) with the State Board of Tax Commissioners. In its Form 131RP, Beta asserted that its primary facility was entitled to a 75% obsolescence adjustment to account for the functional and economic obsolescence present therein. On September 17, 2002, after conducting a hearing on Beta's Form 131RP, the Indiana Board issued a final determination denying Beta's request for an obsolescence adjustment.[2]

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[1] Beta does not own the land upon which its manufacturing plant is located; rather, it leases the land from the Indiana Port Commission.

[2] On December 31, 2001, the Indiana legislature abolished the State Board of Tax Commissioners (State Board). 2001 Ind. Acts 198 § 119(b)(2). Effective January 1, 2002, the legislature created the Indiana Board of Tax Review (Indiana Board) as "successor" to the State Board. IND. CODE ANN §§ 6-1.5-1-3, -4-1 (West 2007); 2001 Ind. Acts 198 § 95. Consequently, the Indiana Board conducted the administrative hearing and issued the final determination on Beta's appeal.

Beta filed an original tax appeal on November 1, 2002. The Court heard the parties' oral arguments on November 6, 2003. Additional facts will be supplied as necessary.

STANDARD OF REVIEW

This Court gives great deference to final determinations of the Indiana Board when it acts within the scope of its authority. *Wittenberg Lutheran Vill. Endowment Corp. v. Lake County Prop. Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 486 (Ind. Tax Ct. 2003), *review denied*. Consequently, the Court will reverse a final determination of the Indiana Board if it is:

> (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
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> (2) contrary to constitutional right, power, privilege, or immunity;
>
> (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations;
>
> (4) without observance of procedure required by law; or
>
> (5) unsupported by substantial or reliable evidence.

IND. CODE ANN. § 33-26-6-6(e)(1)-(5) (West 2007).

The party seeking to overturn the Indiana Board's final determination bears the burden of proving its invalidity. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998). To meet that burden, the party seeking reversal must have submitted probative evidence, during the administrative hearing process, regarding the alleged assessment error. *Id.* If that party meets its burden of proof and prima facie establishes that the Indiana Board's final determination is erroneous, the burden then

shifts to the opposing party to rebut the challenging party's evidence. *See Meridian Towers E. & W. v. Washington Twp. Assessor*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003).

DISCUSSION

Real property in Indiana is assessed on the basis of its "true tax value." IND. CODE ANN. § 6-1.1-31-6(c) (West 2007). In 1999, a property's true tax value was not its fair market value, but rather the value as determined under Indiana's assessment regulations. *See* IND. CODE ANN. § 6-1.1-31-6(c) (West 1999).

Under these assessment regulations, an industrial improvement's true tax value was equal to its reproduction cost[3] less any physical and/or obsolescence depreciation present therein. *See* 50 IND. ADMIN. CODE 2.2-10-7(f) (1996) (repealed 2002). Obsolescence depreciation was defined as either the functional or economic loss of value to property. 50 I.A.C. 2.2-10-7(e). For instance, functional obsolescence (or a loss of value resulting from factors internal to the property) could be caused by an improvement's irregular or inefficient floor plan, inadequate or unsuited utility space, or an excessive or deficient load capacity. *See id.* In contrast, economic obsolescence (or a loss of value resulting from factors external to the property) could be caused by an improvement's location in an inappropriate area, its being subject to inoperative or inadequate zoning ordinances or deed restrictions, or the manufactured product for which the improvement was originally constructed has suffered from decreased market

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[3] Reproduction cost was defined as the "whole-dollar cost of reproducing the item[.]" 50 IND. ADMIN. CODE 2.2-10-5(d)(13) (1996) (repealed 2002). Nevertheless, the reproduction cost of an improvement was not the *actual* cost of reproducing the item but rather the cost as specified in the assessment regulations. *See* 50 IND. ADMIN. CODE 2.2-10-6.1 (1996) (repealed 2002); 50 IND. ADMIN. CODE 2.2-11-5.1, -6 (1996) (repealed 2002).

acceptability. *Id.*

When a taxpayer seeks an obsolescence adjustment, it must make a two-pronged showing: first, it must identify the causes of the obsolescence, and second, it must quantify the amount of obsolescence to be applied. *See Lacy Diversified Indus., Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1223 (Ind. Tax Ct. 2003) (citation omitted). Each of these prongs, however, requires a connection to an *actual* loss in property value. In other words, the taxpayer *must show* how these factors are causing an *actual* loss of value to its property. *See id.* Likewise, in order to quantify its obsolescence, the taxpayer must convert the actual loss of value (shown in the first prong) into a percentage reduction and apply it against the improvement's overall true tax value. *See id.*

While the assessment regulations explained that obsolescence depreciation was to be applied as a percentage reduction (ranging from 0% to 95%) against an improvement's reproduction cost, they provided no explanation as to how to calculate how much obsolescence was actually present in an improvement. *See* I.A.C. 2.2-10-7(f). This Court, however, has accepted the use of generally recognized appraisal methods, quantifying obsolescence in a market value system, as a means of quantifying obsolescence under the true tax value system. *See Clark*, 694 N.E.2d at 1242 n.18. *See also Canal Square Ltd. P'ship v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 806-07 (Ind. Tax Ct. 1998) (explaining that obsolescence under the true tax value system incorporated market value concepts because Indiana's assessment regulations tied the "definition of obsolescence directly to that applied by professional appraisers under the cost approach[]").

During the administrative hearing, Beta claimed that its improvement suffered from both functional and economic forms of obsolescence. Specifically, Beta claimed that its primary facility was functionally obsolete because it was designed to accommodate "obsolete" production equipment[4] and it was overbuilt.[5] (*See* Cert. Admin. R. at 606, 608, 616-18 (footnotes added).) Beta also asserted that its primary facility was economically obsolete because "the U.S. [steel] market" has been negatively affected by foreign steel imports, technological advances, the Clean Air Act, and the fact that "newer [steel] mills are built with shorter life spans[.]" (*See* Cert. Admin. R. at 331, 662-65.)

To convert its loss of value into an obsolescence adjustment, Beta presented an Obsolescence Analysis (Analysis) prepared by Mr. Richard E. McCloskey, a certified Member of the Appraisal Institute (MAI). (*See* Cert. Admin. R. at 311-87.) The Analysis indicated that Beta's primary facility was entitled to a 75% obsolescence adjustment.

In arriving at this percentage, McCloskey identified six other steel manufacturing plants that were located outside of Indiana and sold within the last eight years. (*See* Cert. Admin. R. at 316, 334-53, 641-42.) McCloskey compared the sales prices of these facilities with their replacement costs (as he calculated using the Marshall

[4] Beta's production equipment was obsolete when purchased in the 1990s, because it was already ten to thirty years old. (*See* Cert. Admin. R. at 616-17, 753-54, 756.) As a result, it was not automated or integrated and it required modifications to fulfill Beta's manufacturing goals. (*See* Cert. Admin. R. at 616-18, 689-90.) Consequently, Beta's primary facility has an excessively high wall at 98 feet. (*See* Cert. Admin. R. at 321, 688-90.)

[5] Beta's primary facility was overbuilt because it "was designed to house two separate production lines, but [it] has only one production line." (*See* Cert. Admin. R. at 606, 608.) As a result, its primary facility is wider than most integrated steel mills. (*See* Cert. Admin. R. at 701.)

Valuation Service) and attributed the differences to the amount of obsolescence present in each of the facilities. (*See* Cert. Admin. R. at 316-20, 334-53, 642, 647-54.) Given his calculations, McCloskey claimed that because the obsolescence in these facilities ranged from 62.03% to 87.8% (or an overall average of 77.46%), Beta's "property suffers 75% total obsolescence."[6] (*See* Cert. Admin. R. at 314, 355, 653-54 (footnote added).)

Based on this evidence, Beta contends that it prima facie established its entitlement to an obsolescence adjustment. The Court, however, disagrees. When using the comparable sales approach to quantify obsolescence, the "comparable [properties should] have the same or similar forms of functional obsolescence, which precludes the need to make significant adjustments." (*See* Cert. Admin. R. at 49 (quoting Michael D. Larson, *Identifying, Measuring, and Treating Functional Obsolescence in an Appraisal*, 10 J. PROP. TAX MGMT. 42, 43 (1999)).) Beta's evidence, however, fails to demonstrate that the facilities are affected by similar causes of obsolescence. Beta made no attempt to identify what kind(s) of obsolescence caused the six other facilities to lose value; rather, it assumed that obsolescence was the sole cause of the difference between those facilities' sale prices and replacement costs. (*See* Cert. Admin. R. at 316-20, 334-53, 641-55.) Beta has assumed too much; other factors could cause a property to lose value. *See, e.g., Lake County Trust Co., No. 1163 v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1253 (Ind. Tax Ct. 1998) (where a business decision caused a property a loss in value), *review denied*. Consequently,

[6] Indeed, McCloskey stated that "if these similar properties suffer [from] this type [and amount] of obsolescence, then it's logical to say that Beta's property suffers similar obsolescence[.]" (Cert. Admin. R. at 642.)

Beta has not shown that its facility and the other facilities experienced a loss in value for similar reasons.

Beta's evidence also fails to establish that its facility is actually comparable to the six other facilities. Indeed, Beta merely asserted that its facility was similar to the other facilities because they were used to manufacture steel and because its facility and one other facility had similar construction qualities. (*See* Cert. Admin. R. at 316, 648, 654.) Neither of these assertions, however, establishes comparability. *See Canal Realty-Indy Castor v. State Bd. of Tax Comm'rs*, 744 N.E.2d 597, 602 (Ind. Tax Ct. 2001). *See also Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (explaining that a taxpayer's statements that properties are similar, when unaccompanied by factual evidence and actual comparisons, are conclusory and do not constitute probative evidence). Therefore, Beta's comparable sales approach does not

establish that it is entitled to a 75% obsolescence adjustment.[7]

CONCLUSION

For the above stated reasons, the final determination of the Indiana Board is AFFIRMED.

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[7] The Court notes that McCloskey also provided two other calculations to substantiate Beta's request for a 75% obsolescence adjustment. (*See* Cert. Admin. R. at 321-30, 655-65.) First, McCloskey subtracted the true tax value of Beta's facility from the true tax value of a hypothetical state-of-the-art replacement facility and divided the difference by the true tax value of Beta's primary facility to arrive at an obsolescence adjustment of 55.4%. (*See* Cert. Admin. R. at 321, 356-70, 597-601, 655.)

In his second calculation, McCloskey attempted to measure the impact of Beta's excess operating costs (i.e., its excess labor costs, energy costs, inventory carrying costs, and poor product yields), which resulted from Beta's obsolete production equipment. (*See* Cert. Admin. R. at 321-30.) To measure the impact of the excess operating costs he determined the present value of each loss (using a 14.5% discount rate), allocated 20% of that loss to real property, and divided the difference by the true tax value of Beta's primary facility. (*See* Cert. Admin. R. at 322-30, 655-62.) McCloskey concluded that 15.21% of Beta's obsolescence resulted from excess labor costs, 22.32% resulted from excess energy costs, 22.91% resulted from excess inventory carrying costs, and 8.51% resulted from poor product yields. (*See* Cert. Admin. R. at 322-30, 655-62.)

As previously explained, obsolescence incorporates market values. *See Canal Square Ltd. P'ship v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 806-07. Therefore, Beta was required to determine its loss in real world dollars and then convert that loss into a percentage, which could be applied to the facility's true tax value. *Id.* There is no evidence of the market value of Beta's facility in the administrative record. (*See* Cert. Admin. R.) McCloskey's first comparison, a true tax value to true tax value comparison, has no probative value because a facility's true tax value does not necessarily bear any relationship to its market value. *See* IND. CODE ANN. § 6-1.1-31-6(c) (West 1999) (providing that true tax value is not equivalent to fair market value; rather it is the value determined under Indiana's assessment regulations). Similarly, McCloskey's second calculation, a real world dollar to true tax value comparison, lacks probative value because the two numbers are not necessarily comparable. *See Loveless Constr. Co. v. State Bd. of Tax Comm'rs*, 695 N.E.2d 1045, 1050 (Ind. Tax Ct. 1998) (explaining that a comparison of an improvement's true tax value to real world dollars is meaningless), *review denied*. Therefore, these calculations do not lend support to Beta's 75% obsolescence adjustment calculation.