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IN THE INDIANA TAX COURT

MELVIN LONOWSKI, Petitioner, v. CHARLESTOWN TOWNSHIP ASSESSOR, Respondent.	)	Cause No. 49T10-0203-TA-37

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

NOT FOR PUBLICATION
July 14, 2005

FISHER, J.

The Petitioner, Melvin Lonowski (Lonowski), appeals a final determination of the Indiana Board of Tax Review (Indiana Board) assessing his commercial property as of the March 1, 1996 assessment date. The issues before this Court are:

I. Whether the Indiana Board erred in failing to consider actual construction costs in assessing Lonowski's property;

II. Whether the Indiana Board erred in failing to provide an adjustment for the lack of interior finish of Lonowski's improvement.

FACTS AND PROCEDURAL HISTORY

Lonowski owns a retail hardware and farm store in Clark County, Indiana. The improvement was constructed in 1983 at a cost of $183,896.

For the 1996 assessment date, Clark County assessing officials assigned Lonowski's improvement a reproduction cost of $446,220. In arriving at that value, Lonowski's improvement was priced under the General Commercial Mercantile (GCM) schedule. Believing this value to be too high, Lonowski filed a Form 131 Petition for Review of Assessment with the State Board of Tax Commissioners (State Board), alleging among other things, that the improvement should have been valued under the General Commercial Kit (GCK) schedule, and that it was entitled to an adjustment to account for the fact that the building's interior was unfinished.[1] In support of his GCK pricing claim, Lonowski offered a reproduction cost of $178,305 using a Marshall Swift calculation.

The State Board held a hearing on the petition on March 14, 2000. The Indiana Board issued a final determination on February 8, 2002.[2] In its final determination, the Indiana Board granted Lonowski's request that the subject improvement be priced from the GCK schedule, but declined to provide a negative adjustment for the improvement's

[1] Lonowski initially presented nine issues for review when he filed his Form 131 Petition for Review. He subsequently withdrew six of those issues during the State Board hearing. One other issue that of interior partitioning, was never presented to this Court on appeal.

[2] On December 31, 2001, the 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; 6-1.5-4-1 (West Supp. 2004-2005); 2001 Ind. Acts 198 § 95. Thus, when the final determination was issued on Lonowski's appeal in February 2002, the Indiana Board issued it.

interior finish. As a result, the Indiana Board adjusted the reproduction cost of the improvement to $322,460. Lonowski subsequently filed a Request for Rehearing with the Indiana Board, which was ultimately denied.

On March 18, 2002, Lonowski initiated this original tax appeal, and on January 14, 2003, this Court heard the parties' oral arguments regarding this cause. Additional facts will be supplied as necessary.

ANALYSIS AND OPINION

Standard of Review

This Court gives great deference to final determinations of the Indiana Board when it acts within its scope of authority. IND. CODE ANN. § 33-26-6-3(b) (West 2005); *Shoopman v. Clay Township Assessor*, 827 N.E.2d 662, 664 (Ind. Tax Ct. 2005). Consequently, the Court will reverse a final determination of the Indiana Board only 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;
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> (3) in excess of or short of statutory jurisdiction, authority, or limitations;
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> (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 2005).

The party seeking to overturn the Indiana Board's final determination bears the burden of proving its invalidity. A.I.C. § 33-26-6-6(b); *Shoopman*, 827 N.E.2d at 665. In order to meet that burden, the party seeking reversal must have submitted, during the

administrative hearing process, probative evidence regarding the alleged assessment error. *Osolo Township Assessor v. Elkhart Maple Lane Assocs. L.P.*, 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003) (footnote omitted). Probative evidence is evidence sufficient to establish a given fact that, if not contradicted, will remain sufficient. *Id* at 111 n.4. Once the party seeking reversal demonstrates a prima facie case, the burden shifts to the other party to rebut that evidence. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d at 1230,1233 (Ind. Tax Ct. 1998).

DISCUSSION AND ANALYSIS

I. Lonowski's Actual Construction Cost Claim

Lonowski's first contention is that the Indiana Board erred in assessing his improvement because it failed to consider the improvement's actual construction cost. Specifically, he asserts that the wide disparity between the improvement's actual cost of construction ($183,896) and its reproduction cost as determined by the Indiana Board ($322,460) "suggest[s] that the subject improvement is overassessed to a significant degree." (Oral Arg. Tr. at 5.) As a result of this discrepancy, Lonowski argues that the Indiana Board's assessment is arbitrary, capricious, and an abuse of discretion. (*See* Pet'r Br. at 2.) The Court disagrees.

Under the assessment law in effect in 1996, property was assessed based on its reproduction cost. Reproduction cost, however, did not refer to the actual cost of constructing an improvement; rather, it was the cost as calculated through the application of Indiana's assessment rules, regulations, and cost schedules. *See Dawkins v. State Bd. of Tax Comm'rs*, 659 N.E.2d 706, 709 (Ind. Tax Ct. 1995). Thus,

the fact that Lonowski's reproduction cost does not equal actual construction cost is irrelevant.[3]

In order to appeal his assessment, Lonowski was required to show that the Indiana Board either misapplied the GCK schedule or that similar properties were not assessed similarly. He did neither. Instead, he merely suggested that his property "might be overassessed." As a result, Lonowski failed to establish a prima facie case. Therefore, the Court finds that the Indiana Board's determination as to this issue is not arbitrary, capricious, or an abuse of discretion.

II. Lonowski's Unfinished Interior Claim

Lonowski claims his improvement is entitled to a negative adjustment to account for the fact that it has no finished interior. To support his second claim, Lonowski has presented a property record card from 1991.[4] Lonowski also relies on a 1994 State Board final determination which indicates that the improvement had no interior finish in 1991. Finally, Lonowski relies on the testimony of Milo Smith, his property tax consultant, at the administrative hearing:

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[3] Nevertheless, Lonowski maintains that the Indiana Supreme Court has endorsed the use of actual construction costs to verify reproduction costs. (*See* Pet'r Br. at 2 (citing *State Bd. of Tax Comm'rs v. Garcia*, 766 N.E.2d 341, 349 (Ind. 2002)).) Lonowski's reliance on *Garcia*, however, is misplaced. The issue in *Garcia* involved the use of actual construction costs where local county assessors were unable to determine the grade of an improvement because of the inexistence of comparable improvements. The State Board was forced to develop a comparable methodology for assessment based upon the improvement's adjusted construction cost. *See Garcia*, 766 N.E.2d 346-47. The issue in the present case, however, is in essence an effort to replace reproduction cost with actual construction cost.

[4] The property record card from 1991 contains unmarked boxes denoting the finish type. (*See* Cert. Admin. R. at 76.) Lonowski maintains that the unmarked boxes and notations made by hearing officer at the 1994 administrative hearing suggest that the subject improvement is unfinished.

> The subject building is unfinished, and I have a copy of a 1 18 [sic] . . . dated September 21, 1994 from the State Board of Tax Commissions [sic] on a 1991 Petition[.] . . . [O]n the back of the property record card attached to that, [the hearing officer notes] that there is basically no interior finish; there is a little bit, I think 3% of the building has interior finish. [] That is my evidence to show that it is unfinished.

(Cert. Admin. R. at 154-55.) Smith then stated, "[L]ook at the back of the property record card I attached and presented to you. Therefore, it should be priced as unfinished with only 3% wall and ceiling finish; which is what is reflected on [the] property record card." (Cert. Admin. R. at 155-56.)

In original tax appeals, each assessment and each tax year stands alone. *See Thousand Trails, Inc. v. State Bd. of Tax Comm'rs*, 757 N.E.2d 1072, 1077 (Ind. Tax Ct. 2001.) Thus, unless otherwise indicated, evidence submitted for one petition or tax year will not be used as evidence for a different petition or tax year. *Id*. Accordingly, it does not necessarily follow that the improvement's unfinished interior, as noted in the Indiana Board's final determination for 1994 and the property record card for 1991, was also unfinished in 1996. Furthermore, Smith also testified that he was not aware whether subsequent changes had been made to the subject improvement since 1991, and whether the interior was the same as when he inspected it. (Cert. Admin. R. at 155.)

In order to challenge an Indiana Board assessment, the taxpayer must do more than assert that an error exists; he must provide probative evidence concerning the alleged error. *Id.* To receive an adjustment for the lack of interior finish, the taxpayer must distinguish the characteristics of his improvement's interior from those of a purported finished interior, and must show how such a difference affects the improvement's assessment. *Cf. LDI Mfg Co., Inc. v. State Bd. of Tax Comm'rs,* 759

N.E.2d 685, 688 (Ind. Tax Ct. 2001) (where taxpayer established a prima facie case by comparing features of its improvement with those listed in the regulations). In the present case, Lonowski did not present probative evidence that the interior finish of his improvement was unfinished in 1996. Although Lonowski submitted evidence that his improvement was unfinished in 1991, he failed to establish that it was unfinished in 1996. Consequently, Lonowski's evidence is insufficient to disturb the Indiana Board's final determination.

CONCLUSION

For the reasons above, the Court AFFIRMS the final determination of the Indiana Board in this case.