

ATTORNEYS FOR PETITIONER:  
**RICHARD J. DEAHL**  
**TIMOTHY D. HERNLY**  
BARNES & THORNBURG LLP  
South Bend, IN

ATTORNEYS FOR RESPONDENT:  
**STEVE CARTER**  
ATTORNEY GENERAL OF INDIANA  
**MATTHEW R. NICHOLSON**  
**JOHN D. SNETHEN**  
DEPUTY ATTORNEYS GENERAL  
Indianapolis, IN

---

**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.	)	

---

ORDER ON PETITIONER'S PETITION FOR REHEARING

---

**NOT FOR PUBLICATION**  
**September 24, 2007**

FISHER, J.

Comes now the Petitioner, Beta Steel Corporation (Beta), and files a Petition for Rehearing (Petition) pursuant to Indiana Appellate Rules 54 and 63. In its Petition, Beta challenges this Court's holding in *Beta Steel Corporation v. John R. Scott, Portage Township Assessor, Porter County, Indiana*, No. 71T10-0211-TA-127, slip opinion (Ind. Tax Ct. March 16, 2007) (*Beta Steel*). Having reviewed Beta's Petition and having held a hearing thereon, the Court DENIES Beta's Petition.

## FACTS AND PROCEDURAL HISTORY

Beta owns a steel manufacturing plant in Porter County, Indiana. In valuing the plant for the 1999 assessment date, the Portage Township Assessor (Assessor) did not assign an obsolescence adjustment to the plant's primary manufacturing facility (primary facility).

Beta challenged the assessment arguing, among other things, that the primary facility was functionally obsolete because it was overbuilt. See *Beta Steel Corp. v. Scott*, No. 71T10-0211-TA-127, slip op. at 6 (Ind. Tax Ct. March 16, 2007). In turn, Beta presented three calculations, which quantified the obsolescence between 55% and 75%.

Neither the local assessing officials nor the Indiana Board of Tax Review (Indiana Board) awarded Beta any relief. Beta filed an original tax appeal on November 1, 2002. After hearing the parties' oral arguments, the Court issued an opinion in which it affirmed the Indiana Board's final determination. In so doing, the Court explained that because obsolescence is a market value concept, Beta's obsolescence calculations should have incorporated market values. *Id.* at 5, 9 n.7. Although two of Beta's calculations did incorporate market values, the Court concluded that they were not probative for other reasons. *Id.* at 6-9, 9 n.7. The Court determined that Beta's third calculation, however, had no probative value because it did not incorporate market values. *Id.* at 9 n.7.

On April 16, 2007, Beta Steel filed its Petition. The Assessor did not file any response thereto. See Ind. Appellate Rule 54(C).

## ANALYSIS & ORDER

In its Petition, Beta argues that the Court's decision in *Beta Steel* is erroneous because it ignores the fact that its third obsolescence calculation specifically uses the methodology as prescribed in the applicable assessment regulations. Beta explains that because this methodology does not require the use of market data to quantify obsolescence, it necessarily made a prima facie case that it was entitled to an obsolescence adjustment. (See Pet'r Pet. for Reh'g at 5; Oral Argument Tr. at 5-9). The Court, however, disagrees.

The Court has explained that although Indiana's "True Tax Value system eschew[ed] market value as its basis, [ ] it need[ed] market values to be considered" with respect to obsolescence. See *Lake County Trust Co. No. 1163 v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1253, 1258 n.3 (Ind. Tax Ct. 1998), review denied (citation omitted). Consequently, market value concepts and data are needed in order to quantify obsolescence in the true tax value system. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 334 (Ind. Tax Ct. 1999) (providing that this Court announced a prospective rule in *Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998) that required taxpayers to quantify obsolescence at the administrative level with generally accepted appraisal techniques).<sup>1</sup> See also, e.g., *Hometowne Assocs., L.P. v. Maley*, 839 N.E.2d 269, 273 (Ind. Tax Ct. 2005); *Lacy*

---

<sup>1</sup> This is so because obsolescence measures a property's actual loss in value as it relates to the market. See, e.g., Michael D. Larson, *Identifying, Measuring, and Treating Functional Obsolescence in an Appraisal*, 10 J. PROP. TAX MGMT. 42 (1999). Thus, when quantifying obsolescence a taxpayer must determine its improvement's loss of value in real world dollars before converting that loss into a percentage reduction and applying it against the improvement's true tax value. See *Lacy Diversified Indus., Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1224-25 (Ind. Tax Ct. 2003).

*Diversified Indus., Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1223, 1224 nn.11-12 (Ind. Tax Ct. 2003); *Inland Steel Co. v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 210-14 (Ind. Tax Ct. 2000), *review denied*; *Canal Square Ltd. P'ship v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 806-07 (Ind. Tax Ct. 1998); *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1242 n.18 (Ind. Tax Ct. 1998). Therefore, the Court appropriately determined that Beta's third obsolescence quantification, which did not use market value concepts and data, had no probative value.

### **CONCLUSION**

For the foregoing reasons, the Court DENIES Beta's Petition.

SO ORDERED this 24th day of September, 2007.

---

Thomas G. Fisher, Judge  
Indiana Tax Court

#### **DISTRIBUTION:**

Richard J. Deahl  
Timothy D. Hernly  
BARNES & THORNBURG LLP  
600 1<sup>st</sup> Source Bank Center  
100 North Michigan Street  
South Bend, IN 46601

Steve Carter  
ATTORNEY GENERAL OF INDIANA  
By: Matthew R. Nicholson  
John D. Snethen  
Deputy Attorneys General  
Indiana Government Center South, Fifth Floor  
302 West Washington Street  
Indianapolis, IN 46204-2770