

STATE OF INDIANA
Board of Tax Review

DUGAN REALTY (owner)/)	On Appeal from the Marion County
THOMSON CONSUMER)	Property Tax Assessment Board of Appeals
ELECTRONICS, INC. (tenant))	
)	
Petitioner,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition No. 49-940-99-1-4-00462
)	Parcel No. 19053889
MARION COUNTY PROPERTY)	
TAX ASSESSMENT BOARD OF)	
APPEALS And WAYNE TOWNSHIP)	
ASSESSOR)	
)	
Respondents.)	

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

Whether functional obsolescence depreciation is warranted.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. Pursuant to IC 6-1.1-15-3, Frank Sheer, Thomson Consumer Electronics, LLP. (the Petitioner) filed a Form 131 petition requesting a review by the State. The Form 131 was filed on April 20, 2000. The Marion County Property Tax Assessment Board of Appeals (PTABOA) issued the determination on the underlying Form 130 petition on March 24, 2000.

3. Pursuant to IC 6-1.1-15-4, a hearing was held on February 7, 2001 before Hearing Officer Paul Stultz, Testimony and exhibits were received into evidence. Mr. James South (Arthur Andersen, LLP), Mr. Frank Sheer (Director of Tax Operations, Thomson multimedia, Inc.) and Ms. Julie Halliburton (State Tax Manager, Thomson multimedia, Inc.) represented the Petitioner. Mr. Gregory Dodds, Deputy Township Assessor, represented Wayne Township.

4. At the hearing, the subject Form 131 was made a part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition is labeled Board Exhibit B. In addition the following exhibits were submitted:
Petitioner's Exhibit 1-Binder containing the following:
 - a. Power-of -attorney
 - b. Taxpayer disclosure acknowledgement
 - c. Lease Agreement (selected pages)
 - d. Lessor Authorization
 - e. Form 130
 - f. PTABOA hearing
 - g. Form 115
 - h. Form 131
 - i. Original property record card (PRC)

- j. Revised PRC
- k. Commentary on defining and identifying functional obsolescence
- l. Commentary on describing present use
- m. Commentary on quantifying functional obsolescence
- n. Commentary on burden of proof requirement
- o. Conclusion

Petitioner's Exhibit 2-Pages from the lease agreement (See Finding #5.)

Petitioner's Exhibit 3- Binder containing the following:

- a. Summary of values
 - b. Summary of appeal and property description
 - c. Current subject PRC
 - d. Revised subject PRC
 - e. Building diagram and photos of property improvements
 - f. Unit-In-Place calculations
 - g. Actual cost summary.
5. At the hearing, the Hearing Officer requested additional evidence from both parties. The subject PRC and the calculation for the functional obsolescence for the area above the office (5,000 square feet) were requested from Mr. Dodds. This evidence was received February 16, 2001 by mail and was labeled Respondent's Exhibit 1. A copy of selected pages of the lease that states the life of the lease was requested from the Petitioner. This evidence was received February 12, 2001, and labeled as Petitioner's Exhibit 2.
6. The Petitioner requested additional time to respond to the Respondent's Exhibit 1. Due to statutory time limits imposed by Ind. Code 6.1-15-4 for the State to issue a Final Determination, the Petitioner agreed to waive the forty-five day limit. The Hearing Officer granted the Petitioner until March 12, 2001 to respond to Respondent's Exhibit 1. The Petitioner's signed waiver is Board Exhibit C.
7. The Petitioner did respond on March 12, 2001 by mail. The response is labeled Petitioner's Exhibit 4.

8. The subject is assessed as a light warehouse and industrial office facility and is located at 710 South Girls School Road, Indianapolis, Wayne Township, Marion County.
9. The Hearing Officer did not view the subject property.

Issue - Whether functional obsolescence depreciation is warranted.

10. Mr. South requested that he be allowed to enter a report in its entirety. There was no objection raised to this request and the report was entered and labeled Petitioner's Exhibit 1.
11. Dugan Realty owns the subject property and Thomson Consumer Electronics is responsible for the property taxes levied on the subject property. Page 6, Article 4. TAXES of the lease agreement (Petitioner's Exhibit 1, section 3) states in part "Tenant, Thomson, shall pay or cause to be paid all Real Estate Taxes assessed or imposed upon the Demised Premises which become due or payable during the Lease Term." A letter from Carol Smith, Property Manager for Dugan Realty verifies that Thomson is liable for the property taxes associated with the subject real estate and has the right to appeal any assessment related to the property. *South Testimony. Petitioner's Exhibit 1(c)(d).*
12. Thomson manufactures and sells consumer electronics, such as televisions, VCRs, telephones, and DVDs. The product comes in from Mexico or Asia and is quickly shipped out to our dealer's distribution centers. There are around 100 truck docks and over 200 trucks loading or unloading per day. The inventory is stacked and a racking system is not used. A few racks are used for product that is going to be stored for a longer period of time. The subject warehouse was built to industry specifications, and while Thomson was involved in the planning and design of the warehouse, Thomson did not determine all dimensions, such as wall height. Thomson constructed a comparable warehouse in 1992 in

Bloomington with a wall height of 23 feet due to Thomson's unique storage requirements. Currently, the subject warehouse is used to full capacity and Thomson has gone off site to lease additional space in 2000 and so far in 2001. *Halliburton Testimony. Petitioner's Exhibit 1(l).*

13. Mr. South asked Ms. Halliburton, "Why did you lease a building with 32 feet wall height if you only needed 20 feet of wall height?" Ms. Halliburton replied that from Dugan's perspective, Dugan wanted to build a warehouse that met industry standards.
14. 50 IAC 2.2-1-40 defines obsolescence as meaning functional inadequacies or over adequacies inherent in the property itself. 50 IAC 2.2-10-7(e)(1) provides that functional obsolescence is caused by conditions within the property, such as a poor floor plan, inadequate utility space, or excessive or deficient load capacity, which makes the property unsuited to perform the function for which the improvement was employed. *South Testimony. Petitioner's Exhibit 1(k).*
15. Michael Larson in *Measuring, and Treating Functional Obsolescence in an Appraisal* provides these additional examples of functional obsolescence:
 - Functional obsolescence is either a physical element that buyers are unwilling to pay for or a deficiency that impairs the utility of a property when compared with a more modern replacement.
 - Functional obsolescence stems from superadequacies or deficiencies inherent in the property.
 - Functional obsolescence due to superadequate or excess construction is usually quantified by the difference between the cost of reproduction new and the cost of replacement new.
 - Cost of reproduction new is the estimated cost required to reproduce a duplicate of a replica of the entire property at one time in like kind and materials in accordance with current market prices.
 - Cost of replacement is the estimated cost required to replace the entire property at one time with a modern new unit using the most

current technology and construction materials that will duplicate the production capacity and utility of an existing unit at current market prices.

- In some instances, however, functional obsolescence can be derived by identifying the superadequate and excess construction components exhibited in the property being appraised.
- Excess construction is a form of functional obsolescence that represents the existence of current building volume that is not currently nor likely to be used in the future.
- Excess operating costs are also forms of functional obsolescence used when the property's design results in operation efficiencies that cause higher expenses for the owner or occupant.

South Testimony. Petitioner's Exhibit 1(k).

16. The facility contains an office inside the warehouse that is 5,000 square feet (SF). The office has a standard wall height of 12 feet. This creates 20 feet of dead space above the office. *South Testimony.*
17. On the original property record card, a 40% obsolescence factor was applied to cure the loss of value for the area above the 5,000 (SF) office. *Halliburton Testimony. Petitioner's Exhibit 1(j).*
18. The methods used to measure and calculate the functional obsolescence are as follows:
Super-adequacy exists due to our method of storing product. Interviews with operation personnel revealed the following estimates regarding the stackability requirements of the products handled:

Percent of Products	Maximum stack height (in feet)
15%	5
25%	10
50%	15
10%	20

Of the total available wall height of 32 feet; Thomson can only use the first 20 feet. The excess (unusable) capacity is 10 feet or 31% of the total wall height. Two feet is allocated to mechanical structures, such as piping, vents, etc. The excess wall height over the 5,000 SF office area is 69%, total wall height 32 feet minus 10 feet used for office, floor to ceiling, leaves excess of 22 feet. 22 feet divided by 32 feet equals 69%. The difference in total wall height and used wall height is a 31% difference in total cost. The total unusable space in cubic feet, based on stackable heights per product mix, is 33% plus 24% or 57%. The chart on page 5 of Petitioner's Exhibit 1, section 13 is a visual demonstration of how Thomson uses the available space. *Halliburton Testimony. Petitioner's Exhibit 1(m)*

19. She identified and quantified the existence of functional obsolescence at the subject warehouse. The functional obsolescence is in the form of a super-adequacy, namely ten foot of excess wall height. The obsolescence was quantified in a couple of different ways. The Petitioner requests that 30% obsolescence be applied to the remainder value of the total light warehouse area, and that 40% obsolescence be applied to the remainder value for the industrial office area of 5,000 SF. *Halliburton Testimony.*
20. Mr. Dodds asked Ms. Halliburton if Thomson was the original tenant. Ms. Halliburton answered that Thomson was the original tenant.
21. The Petitioner's trucks have to have room above the 20 feet to stack and retrieve their product. *Dodds Testimony.*
22. He was not aware of any appeal where the original tenant requested obsolescence for excessive wall height, and expressed a concern about the uniformity in granting obsolescence in this case. *Dodds Testimony.*

Other Findings of Fact

23. Mr. South testified that the Marion County PTABOA issued the Petitioner a Notification of Final Assessment Determination (Form 115) dated March 24, 2000. He stated that the PTABOA faxed a worksheet with a corrected amount determined for the improvements. Total Improvement Assessed Value per the Form 115 is \$9,018,830. Total Improvement Assessed Value per the facsimile dated April 18, 2000 is \$9,016,900.
24. The Hearing Officer asked Mr. Dodds if the Petitioner was ever issued a Form 115 with the corrected \$9,016,900. Mr. Dodds replied that the PTABOA assessment of \$9,018,830 was not changed. He claimed that a new Form 115 was to be sent to the Petitioner but that did not ever happen.
25. The Hearing Officer asked Mr. Dodds "Is the assessment of record for the subject improvements for 1999 assessed value \$9,018,830?"
26. Mr. Dodds stated that he did not know how to answer that question. The \$9,018,830 is the figure that is on the only Notification of Final Assessment Determination (Form 115) issued by the County Assessor.
27. Mr. Dodds stated that when they applied the narrative to the improvements they came up with an assessed value lower than \$9,018,830.
28. Both parties agreed that at the present time the assessment of record for the subject improvements is \$9,018,830. They agreed that the Petitioner has not been sent a corrected Notification of Final Assessment Determination (Form 115) with the total improvements being stated at \$9,016,900.

Conclusions of Law

1. The Petitioner is limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 130 petition. 50 IAC 17-5-3. See also the Forms 130 and 131 petitions authorized under Ind. Code §§ 6-1.1-15-1, -2.1, and -4. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.

2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

A. Indiana's Property Tax System

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.
4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State's decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax*

Commissioners, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).

8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. See 50 IAC 17-6-3. "Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies." *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.
10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
11. One manner for the taxpayer to meet its burden in the State's administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). In this way, the

taxpayer properly frames the inquiry as to “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Town of St. John V*, 702 N.E. 2d at 1040.

12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer’s case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not “triggered” if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State’s final determination merely because the taxpayer demonstrates flaws in it).

C. Review of Assessments After *Town of St. John V*

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property’s market value will fail.

16. Although the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.
17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

D. Issue - Whether functional obsolescence depreciation is warranted.

Definitions and Burden

18. The PTABOA determined that the portions of the building under appeal should receive no functional obsolescence. The Petitioner attempts to support a 40% obsolescence adjustment.
19. Depreciation is an essential element in the cost approach to valuing property. Depreciation is the loss in value from any cause except depletion, and includes physical depreciation and functional and external (economic) obsolescence.¹ IAAO Property Assessment Valuation, 153 & 154 (2nd ed. 1996); *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801, 806 (Ind. Tax 1998) (citing Am. Inst. Of Real Estate Appraisers, *The Appraisal of Real Estate*, 321 (10th ed. 1992)). Depreciation is a concept in which an estimate must predicated upon a comprehensive understanding of the nature, components, and theory of depreciation, as well as practical concepts for estimating the extent of it in improvements being valued. 50 IAC 2.2-10-7.

¹ Depletion is the loss in value of property due to consumption of oil, gas, precious metals, and timber. IAAO Property Assessment Valuation, 153 (2nd ed. 1996).

20. Depreciation is a market value concept and the true measure of depreciation is the effect on marketability and sales price. IAAO Property Assessment Valuation at 153. The definition of obsolescence in the Regulation, 50 IAC 2.2-10-7, is tied directly to that applied by professional appraisers under the cost approach. *Canal Square*, 694 N.E. 2d at 806. Accordingly, depreciation can be documented by using recognized appraisal techniques. *Id.*
21. *The Appraisal of Real Estate*, Eleventh Edition, states that a flaw in the structure, materials, or design of the improvement causes functional obsolescence. It is attributable to defects within the property, as opposed to external obsolescence, which is caused by external factors. Functional obsolescence may be curable or incurable. Functional obsolescence can be caused by a deficiency, which means that the subject property is below standard in respect to market norms. It can also be caused by a superadequacy, which means that the subject property exceeds market norms. There are five types of functional obsolescence: curable functional obsolescence caused by a deficiency requiring an addition (installation) of a new item, curable functional obsolescence caused by a deficiency requiring the substitution (replacement) of an existing item (“curable defect”), curable functional obsolescence caused by a superadequacy which is economically feasible to cure, incurable functional obsolescence caused by a deficiency, and incurable functional obsolescence caused by superadequacy.
22. Under the cost approach, there are five recognized methods used to measure depreciation, including obsolescence; namely: (1) the sales comparison method, (2) the capitalization of income method, (3) the economic age-life method, (4) the modified economic age-life method, and (5) the observed condition (breakdown) method. IAAO Property Assessment Valuation at 156.
23. Regardless of the approach used to value property, and in the simplest of terms, the principle of substitution underlies all approaches to quantifying obsolescence. IAAO Property Assessment Valuation, 24 and Chapter 8, 155 – 186 .

24. It is incumbent on the taxpayer to establish a link between the evidence and the loss of value due to obsolescence. After all, the taxpayer is the one who best knows his business and it is the taxpayer who seeks to have the assessed value of his property reduced. *Rotation Products Corp. v. Department of State Revenue*, 690 N.E. 2d 795, 798 (Ind. Tax 1998).
25. Regarding obsolescence, the taxpayer has a two-prong burden of proof: (1) the taxpayer has to prove that obsolescence exists and (2) the taxpayer must quantify it. *Clark*, 694 N.E. 2d at 1233. If one or both requirements are not met. Obsolescence is denied.

Evidence and Conclusions

26. The Petitioner claims that the subject building suffers functional obsolescence based on the fact that the Petitioner does not utilize all the available space. The subject's wall height is 32 feet. The Petitioner stacks product up to 20 feet. Functional obsolescence is also due to the unusable space above the industrial office built within the light warehouse.
27. An analysis developed by the Petitioner, see Petitioner's Exhibit 1, section 13, shows that 31% of the light warehouse is not utilized. Also, that 69% of the area above the industrial office is not used. Prior to the PTABOA hearing, the area above the industrial office had been given 40% obsolescence to account for the loss of usable space above this office; the obsolescence was removed by the PTABOA in their determination.
28. The State does not disagree with the position that the Petitioner does not utilize all the available space provided by the subject property. However the State cannot grant functional obsolescence for the following reasons.
29. The Petitioner attempts to prove functional obsolescence by presenting the case of what the subject structure does or does not do for them in their particular

situation. The Petitioner put most of the emphasis on this aspect of the case. The Petitioner's argument misapplies the concepts of functional obsolescence. Functional obsolescence is a market concept and attempts to find the cause and measure the loss in the market value of an improvement. Functional obsolescence is measured by the market's reaction to the obsolescence.

30. The Petitioner presented testimony that Thomson was involved in the planning and design of the subject warehouse, but obviously Thomson did not determine the wall height. The lessor, Dugan, wanted to build a warehouse with a 32-foot wall height to meet industry standards. The wall height was determined with the possibility of other tenants in mind.
31. The State agrees with the Petitioner that the subject warehouse is built to industry standards. Industry standards are what the market would be looking for, as suggested by testimony. Thomson may not need a 32-foot wall height, but the market requires it. This is not functional obsolescence. If the market required a 32-foot wall height and the subject had a 20-foot wall height that set of facts could possibly create some functional obsolescence.
32. The Petitioner may not need the extra volume, but that does not mean the property suffers a loss in value. The Petitioner's stacking methods are specific to their business and in no way affects the marketability of the subject structures.
33. Furthermore, while selected pages of the lease were submitted, none of those pages submitted showed the lease amount or the basis on which that amount was calculated. The lease may be on a cubic foot basis with consideration for the additional wall height.
34. The Petitioner did not use any of the five recognized methods to measure functional obsolescence as stated in Conclusion of Law ¶ 21 above. Due to the emphasis on the effect of the wall height on the individual business and not the effect on the market, none of the five recognized methods to measure functional

obsolescence could be applied to the argument in any meaningful manner.

35. To accept the Petitioner's position, the State would have to determine that the assessment of a three-bedroom house has to decrease in value when the two children move out and only one bedroom is utilized, due to functional obsolescence. Using one or three bedrooms does not decrease the value of a three-bedroom house. Using 20 feet of the available 32 feet does not decrease the value of the subject warehouse.
36. The Petitioner also included construction cost information in both Petitioner's Exhibits 1 and 2. The Petitioner contends that the true tax value should not exceed the actual cost of construction. The construction costs in the exhibits are not the same and the Petitioner presented no testimony or supporting documentation to support this contention.
37. Based on the Conclusions of Law above, the Petitioner did not prove either prong of the burden of proof. There is no change in the assessment as a result of this portion of the issue.
38. For the above reasons, the determination of the Marion County PTABOA is upheld. No further change in the assessment is made as a result of this issue.

Other Conclusions of Law

39. Mr. South testified that the Marion County PTABOA issued the Petitioner a Notification of Final Assessment Determination (Form 115) dated March 24, 2000. He stated that the PTABOA faxed a worksheet with a corrected amount determined for the improvements. Total Improvement Assessed value per the Form 115 is \$9,018,830. Total Improvement Assessed value per the facsimile dated April 18, 2000 is \$9,016,900.

40. Both parties agreed that at the present time the assessment of record for the subject improvements is \$9,018,830. This was supported by the undisputed testimony given during the hearing. They agreed that the Petitioner has not been sent a corrected Notification of Final Assessment Determination (Form 115) with the total improvements being stated at \$9,016,900. Further, the property record card may reflect an additional potential pending adjustment (“Gross Impr Error on 99-F-115 +45600”). The State determines the assessment of record for March 1, 1999, to be \$9,018,830, based on the last official action taken by the Marion County PTABOA. However, the State has no objection to the parties stipulating to a “corrected” assessed value (after any pending PTABOA adjustments are completed) in lieu of the “official” record of \$9,018,830.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review