

**STATE OF INDIANA  
Board of Tax Review**

ANCHOR GLASS CONTAINER CORP.	)	On Appeal from the Randolph
	)	County Property Tax Assessment
	)	Board of Appeals
Petitioner,	)	
	)	Petition for Review of Assessment,
	)	Form 131
v.	)	Petition No. 68-021-96-1-3-00003
	)	Parcel No. 0210289200
RANDOLPH COUNTY PROPERTY TAX	)	
ASSESSMENT BOARD OF APPEALS	)	
and	)	
WHITE RIVER 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 30% obsolescence should be granted to the subject property.

## 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, Todd Heath of DuCharme, McMillen & Associates, Inc., on behalf of Anchor Glass Container Corporation (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 was filed on November 26, 1996. The Randolph County Board of Review's (BOR) Assessment Determination is dated October 29, 1996.
  
3. Pursuant to IC 6-1.1-15-4, a hearing was held on July 2, 1998, before Hearing Officer Robert Coleman. Testimony and exhibits were received into evidence. Todd Heath represented the Petitioner. Robert Boldman, of Appraisal Research, Inc., and Janet Carpenter, Deputy County Assessor, represented the Randolph County Assessor's Office.
  
4. At the hearing, the subject Form 131 was made a part of the record and labeled Board's Exhibit A. The Notice of Hearing on Petition was labeled Board's Exhibit B. A copy of the property record card showing the 1996 assessed value was labeled Board's Exhibit C. In addition, the following exhibits were submitted to the State:

Petitioner's Exhibit A - Assessment Analysis including:

1. Property record card showing valuation record for 1989.
2. Exterior and interior photographs of the subject property.

Petitioner's Exhibit B - Assessment Analysis as presented to the local Board of

Review including:

1. Letter of presentation to BOR.
  2. Assessment Analysis.
  3. Proposed property record cards.
  4. Computations.
  5. Print showing areas of structures.
  6. Print showing classification of areas.
  7. Property record cards showing County's 1995 assessment.
  8. County 1989 print of structures.
  9. A copy of the Board of Review determination for 1989.
  10. Photographs and information regarding alleged comparable properties.
  11. Exterior and interior photographs of the subject structure.
5. At the hearing the Hearing Officer requested additional evidence. The Petitioner was allowed fourteen days to present the requested evidence. The State timely received the following documents that were entered into evidence:
- Petitioner's Exhibit C – A list of properties purportedly comparable to parcel no. 0210289200, including photographs and information regarding each.
- Petitioner's Exhibit D – A copy of a property record card that reflects the subject property's assessment for 1989, 1990, and 1994.

6. The subject property is a light manufacturing facility located at 603 East North Street, Winchester, in White River Township, Randolph County, Indiana.
7. The Hearing Officer viewed the property on July 24, 1998.

**Whether 30% obsolescence should be granted to the subject property.**

8. The BOR applied obsolescence ranging from five to fifty percent to the plant buildings, with the majority of the buildings receiving five percent obsolescence. Various utility sheds received no obsolescence depreciation. The Petitioner contended that all of the structures should receive at least thirty percent obsolescence.
9. The Petitioner asserted that the property had received thirty percent obsolescence depreciation for the 1989 assessment. The Petitioner contended that this same amount should be applied to the 1996 assessment. (Petitioner's Exhibit A).
10. The original structure that is the subject of this appeal was constructed in 1917. There have been twenty-six additions with varying eave heights and roof styles since that time. The property has limited parking and no area for expansion because it is located in a residential area. The property has poor ingress and egress. Because of these detriments the Petitioner maintains functional obsolescence depreciation of thirty percent is appropriate. (Heath testimony and Petitioner's Exhibit B)
11. The property contains a "mix" of buildings used for glass manufacturing. The main warehouse, which is 154,000 square feet, was built in 1966. The building is 32 feet high, which is appropriate for the type of product that is manufactured. One hundred percent of the structures are utilized in the production and storage of the product. There is ongoing remodeling at the facility. The company

recently purchased ten million dollars worth of new equipment for the facility.  
(Boldman testimony.)

12. The State set the assessed value of the subject property for 1989 at \$1,355,500. For 1996, the Board of Review established an assessed value of \$2,080,760, which is a fifty three percent increase. The increase is due mainly because a reduced amount of functional obsolescence was applied to the 1996 assessment. (Heath testimony).

### **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 Board 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. Whether 30% obsolescence should be granted to the subject property.**

18. The BOR applied obsolescence ranging from five to fifty percent to the plant buildings, with the majority of the buildings receiving five percent obsolescence. Various utility sheds received no obsolescence depreciation. The Petitioner contended that all of the structures should receive at least thirty percent obsolescence.
19. Depreciation is a concept in which an estimate must be 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.
20. The elements of functional and economic obsolescence can be documented

using recognized appraisal techniques. These standardized techniques enable a knowledgeable person to associate cause and effect to value pertaining to a specific property.

21. 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).
22. 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 v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1233 (Ind. Tax 1998).
23. As discussed, the property record card shows the application of obsolescence depreciation by the local officials. Because the parties agree that some amount of obsolescence is present in the facility, the first prong of the two-prong *Clark* test has been met.
24. Depreciation, including functional obsolescence, can be documented by using recognized appraisal techniques. *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801, 806 (Ind. Tax 1998). There are five recognized methods used to measure depreciation, including obsolescence. They are: (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. International Association of Assessing Officers (IAAO) Property Assessment Valuation, 156 (2<sup>nd</sup> ed. 1996).
25. The Petitioner, however, did not use any of these methods in an attempt to quantify its claim for thirty percent obsolescence. Instead, the Petitioner based

its claim on the State Final Determination for the 1989 assessment.

26. However, obsolescence depreciation is a factor that may change if additional problems are experienced or if current problems are cured. The Petitioner presented no evidence to establish that market reaction to the alleged deficiencies in the property was the same in both 1989 and 1996.
27. Further, in Indiana, each tax year is separate and distinct. *Williams Industries v. State Board of Tax Commissioners*, 648 N.E. 2d 713 (Ind. Tax 1995). A State Final Determination of a 1989 assessment therefore does not constitute probative evidence in this appeal.
28. Petitioner's Exhibit B contains nine photographs (labeled as comparable) with varying amounts of obsolescence listed adjacent to each photograph. However, there is no analysis to establish these properties are comparable, either to each other or to the property under appeal. This exhibit also contains no explanation as to the factors causing the purported obsolescence in these nine properties, or the manner in which these factors relate to the property under appeal.
29. In further support of its position, an Industrial Comparable Sales Summary (Petitioner's Exhibit C) was also submitted as evidence. Again, there is no analysis to establish that these properties are comparable. Additionally, the Petitioner did not explain how the sales information compiled in the summary is relevant to its request for thirty percent functional obsolescence depreciation sought in this appeal.
30. The Petitioner has therefore failed to quantify its claim for thirty percent obsolescence, as required by the second prong of the two-prong test articulated in *Clark*.
31. For all the reasons above, the Petitioner failed to meet its burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

## Summary of Final Determination

### ISSUE 1: Whether 30% obsolescence should be granted to the subject property.

32. The Petitioner failed to meet its burden in this appeal. There is no change in the assessment as a result of this issue.

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.

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Chairperson, Indiana Board of Tax Review