

**STATE OF INDIANA**  
**Board of Tax Review**

In the matter of the Petition for Review )  
of Assessment, Form 131 )

Petition No.: 02-077-95-1-4-01123

02-077-96-1-4-00023

02-077-97-1-4-00141

Parcel No.: 64-0008-0083

Assessment Years: 1995, 1996, 1997

Petitioner: Angelo Puglisi & Mehandra Patel  
4606 Lincoln Highway East  
Fort Wayne, IN 46803

Petitioner Representative: Peter McLaughlin  
Property Assessment Services, Inc.  
2980 E. Northern Ave., Suite A2  
Phoenix, AZ 85028

**Findings of Fact and Conclusions of Law**

The Indiana Board of Tax Review (State Board), as successor to the Appeals Division of the State Board of Tax Commissioners, having reviewed the facts and evidence, and having considered the issues, now makes the following findings of fact and conclusions of law.

**Issues**

1. Whether the grade should be C for all motel and restaurant buildings.

2. Whether the condition for all improvements should be poor to very poor.
3. Whether economic and functional obsolescence of 50% should be applied to all improvements.
4. Whether increase of railroad traffic adjacent to property impacts land value.

### **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, Peter McLaughlin, Property Assessment Services, Inc., on behalf of Angelo Puglisi & Mehandra Patel (the Petitioners), filed a Form 131 petition requesting a review by the State Board. The Form 131 was filed on January 31, 1997. The Allen County Board of Review's (County Board) Notice of Assessment is dated January 2, 1997.
3. Pursuant to IC 6-1.1-15-4, a hearing was held on June 16, 1998 before Hearing Officer Jeffery Kiess. Testimony and exhibits were received into evidence. Mehandra Patel was self-represented. Carolyn Werling represented Adams Township.
4. At the hearing, the subject Form 131 petition was made a part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition was labeled Board Exhibit B and the request for additional information was labeled Board Exhibit C. In addition, the following exhibits were submitted to the State Board:  
Petitioner's Exhibit 1-letter with income and expense information for 1995  
Petitioner's Exhibit 2-letter with income and expense information for 1996.

5. The structure is located at 4606 Lincoln Highway East, Fort Wayne, Adams Township, Allen County.
6. The Hearing Officer requested additional evidence from the Petitioner (Board Exhibit C). This evidence was received on June 29, 1998.
7. The subject property was viewed on June 17, 1998. Mehandra Patel, taxpayer, Carolyn Werling, Adams Township Assessor, and the Hearing Officer were present at the viewing.

**Issue 1 - Whether the grade should be C for all motel and restaurant buildings.**

8. Petitioner's Exhibit 1 states, ".....we feel the grade for all improvements should be a C." This is the extent of the testimony and documentation concerning this issue. Buildings B, C, D, E, and F are presently graded "C".

**Issue 2 - Whether the condition for all improvements should be poor to very poor.**

9. Petitioner's Exhibit 1 states, ".....the condition factor for all improvements should be poor to very poor." This is the extent of the testimony and documentation concerning this issue.

**Issue 3 - Whether economic and functional obsolescence of 50% should be applied to all improvements.**

10. Presently buildings A, B, C, D, E, and F are receiving 30% obsolescence and building G is receiving 15% obsolescence.
11. The taxpayer and his representative provided three separate ways to quantify economic obsolescence:

- a. Occupancy rate for the years 1993, 1994, 1995 and 1996 averaged 36% while the citywide occupancy rate was 60% for this time period. Typically, if the actual occupancy rate would be 0%, 50% economic obsolescence would be granted. Therefore, the present occupancy rate equates to 20% economic obsolescence.
- b. Daily room rent for the years 1993, 1994, 1995 and 1996 averaged \$25.99 while the citywide daily room rent was \$46.25 for this time period. Typically, if the actual daily room rate would be \$0.00, 50% economic obsolescence would be granted. Therefore, the present occupancy rate equates to 22% economic obsolescence.
- c. Capitalization of income and expenses for the motel based on the taxpayer's calculations result in an income approach value between \$520,592 and \$592,592.

The above are three different methods to quantify economic obsolescence and are not to be cumulative in nature.

**Issue 4- Whether the increase of railroad traffic adjacent to property impacts land value.**

12. The structures' location does not allow for a turning lane off State Road 930 (Lincoln Highway East). The property has a railroad track in the rear with approximately 12 to 15 trains per day traveling that route.
13. The information presented was for the motel and related improvements only. There was no information presented regarding the restaurant building (G).

**Conclusions of Law**

1. The Petitioner is limited to the issues raised in the Form 131 petition filed with the State Board. Ind. Code § 6-1.1-15-1(e) and -3(d). See *also* Form 131 petition requiring the Petitioner to identify the specific grounds for appeal. The State

Board has the discretion to address any issue once an appeal has been filed by the taxpayer. *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 in the Form 131 petition filed with the State Board.

2. The State Board 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 appraisal system. It is too time-consuming, too costly, and wholly unrealistic for individual assessments to be made based upon individual evidence.
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*), *aff'g in part and rev'g in part Town of St. John III*.
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. art X, § 1 (a), requires the creation of a uniform, equal, and just system. 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 Tax 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 Board's

decision.

## **B. Burden**

7. Ind. Code § 6-1.1-15-3 requires the State Board to review the actions of the County Board (or County Property Tax Assessment Board of Appeals (PTABOA)), but does not require the State Board to review the initial assessment or undertake reassessment of the property. The State Board 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 County Board (or PTABOA), the State Board is entitled to presume that its actions are correct. “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. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State Board is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).

10. Taxpayers are expected to make detailed factual presentations to the State Board 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 Board is not requires to give weight to evidence that is not probative of the errors the taxpayers allege. *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. The taxpayer's burden in the State Board's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. 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 Board is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State Board 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 is not "triggered" if the taxpayer does not present probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State Board's final determination even though the taxpayer demonstrates flaws in it).

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

15. Because the true tax value is not necessarily identical to fair market value, any tax appeal that seeks a reduction in assessed value solely 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 Board's regulations constitutionally infirm, the assessment and appeals process continue under the existing law 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 V*, 702 N.E. 2d at 1040.

### **Issue 1- Whether the grade should be C for all motel and restaurant buildings.**

18. "Grade" means the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.
19. Grade is used in the cost approach to account for variations from the norm or "C" grade. The quality and design of a building are the most significant variables in



establishing grade. 50 IAC 2.2-10-3.

20. The determination of the proper grade requires assessors to make a variety of subjective judgments regarding variations in the quality of materials and workmanship and the quality of style and design. *Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d 1058, 1064 (Ind. Tax 1993). For assessing officials and taxpayers alike, however, the Manual provides indicators for establishing grade. The text of the Manual (see 50 IAC 2.2-10-3), models and graded photographs (50 IAC 2.2-11-4), assist assessors in the selection of the proper grade factor.

21. The major grade classifications are A through E. 50 IAC 2.2-10-3. The cost schedules (base prices) in the Manual reflect the C grade standards of quality and design. The following factors (or multipliers) are assigned to each major grade classification:

“A” grade	160%
“B” grade	120%
“C” grade	100%
“D” grade	80%
“E” grade	40%

22. Intermediate grade levels ranging from A+10 through E-1 are also provided for in the Manual to adequately account for quality and design features between major grade classifications. 50 IAC 2.2-10-3(c).

23. The taxpayer’s burden in the State Board’s administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. 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.

24. At the hearing, the Petitioner provided no evidence in support of a grade reduction.
25. 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. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State Board is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).
26. Taxpayers are expected to make detailed factual presentations to the State Board 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 Board is not requires to give weight to evidence that is not probative of the errors the taxpayers allege. *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)).
27. For the reasons above, the Petitioner did not meet the burden in this appeal. Accordingly, there is no change in assessment as a result of this issue.

**Issue 2 – Whether the condition for all improvements should be poor to very poor.**

28. Condition is a judgment of the physical condition of the item relative to its age. Average condition indicates the structure is in average condition relative to its age, or the condition in which it would normally be expected. Fair condition indicates the structure is somewhat worse than would normally be expected.

Poor condition indicates that the degree of deterioration is significantly worse than would normally be expected. 50 IAC 2.2-10-5(d)(8).

29. The estimate of depreciation is an essential element in the cost approach. An estimate must be predicated on an understanding of the nature, components and theory of depreciation, as well as practical concepts for estimating its extent in improvements being valued. Physical depreciation is evidenced by wear and tear, decay, dry rot, cracks or structural defects. 50 IAC 2.2-10-7(a).
30. Condition, the degree of wear and tear displayed by a building, is determined relative to the age of the building. Condition measures the remaining usefulness of the building based on its age. 50 IAC 2.2-10-7(b).
31. The Petitioner did not present any evidence regarding the condition of any of the buildings at the hearing.
32. For the reason above and those cited in Conclusions 9, 10, and 11, the Petitioner did not meet the burden in this appeal. Accordingly, there is no change to the assessment as a result of this issue.

**Issue 3 - Whether economic and functional obsolescence of 50% should be applied to all improvements.**

1. The concept of depreciation and obsolescence

33. 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.
34. Economic obsolescence depreciation is defined as “obsolescence caused by factors extraneous to the property.” 50 IAC 2.2-1-24.

35. “Economic obsolescence may be caused by, but is not limited to, the following:  
(A) Location of the building is inappropriate for the neighborhood.  
(B) Inoperative or inadequate zoning ordinances or deed restrictions.  
(C) Noncompliance with current building code requirements.  
(D) Decreased market acceptability of the product for which the property was constructed or is currently used.  
(E) Termination of the need of the property due to actual or probable changes in economic or social conditions.  
(F) Hazards, such as danger from floods, toxic waste, or other special hazards.”  
50 AC 2.2-10-7(e)(2).
36. Functional obsolescence depreciation is defined as “obsolescence caused by factors inherent in the property itself.” 50 IAC 2.2-1-29.
37. “Functional obsolescence may be caused by, but is not limited to, the following:  
(A) Limited use or excessive material and product handling costs caused by an irregular or inefficient floor plan.  
(B) Inadequate or unsuited utility space.  
(C) Excessive or deficient load capacity.”  
50 IAC 2.2-10-7(e)(1).
38. 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.
39. “There are five methods used to measure accrued depreciation, two indirect and three direct. Each has advantages and disadvantages and has a different degree of reliability. Direct methods involve measuring the depreciation of the subject property, whereas indirect methods use sales of comparable properties and income loss from rental properties to measure depreciation. The methods

are categorized as follows:

*Indirect methods*

1. sales comparison method
2. capitalization of income method

*Direct methods*

1. economic age-life method
  2. modified economic age-life method
  3. observed condition (breakdown) method”  
IAAO Property Assessment Valuation, 155-156 (2<sup>nd</sup> ed. 1996).
40. “The *sales comparison method*: estimates cost new of subject property; comparable properties are found and site values deducted; contributory improvement values remain; contributory improvement values are deducted from cost for each sale property, yielding measure of accrued depreciation; accrued depreciation figure is converted to percentage and applied to subject property.” *Id* at 183.
41. “The *capitalization of income method*: capitalizes the income of subject property into an estimate of value, with site value deducted; indicated improvement value is compared with estimated cost new to provide indication of improvement value remaining.” *Id*.
42. “The *economic age-life method*: is based on straight-line depreciation and is limited because depreciation of real property rarely occurs in a straight line. The method may be applicable for short-lived items.” *Id* at 184.
43. “The *modified economic age-life method*: recognizes the effect of curable items of both physical deterioration and functional obsolescence. Depreciation amounts for these items are deducted from cost new. The remaining amount is

then depreciated using the age-life method. This is the indicated amount of depreciation for the subject property.” *Id.*

44. “The *observed condition (breakdown) method*: breaks down depreciation into all its components. Although it is the most complete method, it is rarely used because it is so labor-intensive.” *Id.*

## 2. Burden regarding the obsolescence claim

45. 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).
46. 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).

## 3. The evidence submitted

47. The Petitioner submitted statements of operating results for 1992-1996, a letter, which included the causes of the obsolescence and the methodology used to calculate the obsolescence factor, and a comparison of citywide occupancy rates and room rates with the subject’s occupancy rates and room rates.
48. The Petitioner used the income approach to value to calculate the obsolescence factor. Using an average of \$80,000 for the net operating income and a capitalization rate of 13.5%, the result, after subtracting a value for personal property, was \$520, 592, or an assessment of \$173,530.

49. The subject property is receiving obsolescence on buildings A, B, C, D, E, and F in the amount of 30%. Building G is receiving 15% obsolescence.

4. The reliability and probity of the evidence

50. Before applying the evidence to reduce the contested assessment, the State Board must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.
51. Under *GTE North, Inc., supra, and Thornton Telephone Company v. State Board of Tax Commissioners*, 629 N.E. 2d 962,965 (Ind. Tax 1994), the State Board may give due consideration to the reliability of studies presented by a taxpayer, but must provide a explanation if it finds the studies unreliable. Included in this requirement is the prescription by the Tax Court in *GTE North* that the State Board defines what standards it will use to define whether a study or mode of analysis is "recognized" or "accepted". *GTE North, Inc.*, 629 N.E. 2d at 888.
52. The Unites States Supreme Court has defined how a study or analysis becomes recognized or accepted. In *Daubert v. Merrill Dow Pharmaceuticals*, 113 S. Ct. 2786 (1993), the Court addressed whether scientific evidence has sufficient indicia of reliability to allow its admission under the Federal Rules of Evidence. Although the State Board is accorded broad discretion to consider such evidence as it deems pertinent (see IC 4-22-5-1), and therefore it is not expressly subject to formal rules of evidence, the State Board finds the analysis of relevancy presented in *Daubert*, which was cited with approval by the Indiana Supreme Court in *Steward v. State*, 652 N.E. 2d 490 (Ind. 1995), particularly instructive to the State Board in determining what relevancy to accord petitioner's calculations for purposes of weighing its evidentiary value.
53. In *Daubert*, the Court held that to be relevant, "[p]roposed testimony must be supported by appropriate validation - i.e. 'good grounds', based on what is known". 113 St. Ct at 2795. In order to determine whether scientific or technical

evidence is based on good grounds, a court or administrative agency must determine "whether it can be (and has been) tested. 'Scientific methodology today is based on generating hypotheses and testing them to see if they can be falsified; indeed, this methodology is what distinguishes science from other fields of human inquiry'." *Id.* At 2796 (citing Green, *Expert Witnesses and Sufficiency of Evidence in Toxic Substances Litigation: The Legacy of Agent Orange and Bendectin Litigation*, 86 Nw. U. L. Rev. 643, 645 (1992)). The Court went on to state the "[a]nother pertinent consideration is whether the theory or technique has been subjected to peer review and publication...submission to the scrutiny of the scientific community is a component of 'good science', in part because it increases the likelihood that substantive flaws in methodology will be detected." *Id.* at 2797. Furthermore, the general acceptance of a particular theory can be important in weighing its relevance. *Id.*

54. In addition to the general requirements for relevancy discussed above, both the United States Supreme Court and the Supreme Court of Indiana have recognized that scientific evidence can be reliable for one purpose and not another, and that to be relevant to a particular inquiry, the proponent of the evidence must establish a valid scientific connection between the theory and the specific facts of the case. *Daubert*, 113 S. Ct. at 2796; *Steward*, 652 N. E. 2d at 498.
55. The State Board believes that the Petitioner's evidence is meant to be offered as scientific evidence within the meaning of that term as defined by *Daubert* and *Steward*. Statistical analysis in the realms of finance and economics is a sophisticated inquiry and well-regarded studies satisfy the requirements of "good science" as described in *Daubert*. A number of federal courts, which have considered this issue since *Daubert*, have agreed. See *F.D.I.C. v. Suna Associates*, 80 F. 3d 681,687 (2<sup>nd</sup> Cir. 1996) (valuation of land); *Frymire-Brinati v. KPM Peat Marwick*, 2F. 3d 183, 186088 (7<sup>th</sup> Cir. 1993) (accounting and finance); *Joy v. Bell Helicopter Textron, Inc.*, 999 F. 2d 549, 569-70 (D.C. Cir. 1993) (economics); *Kurnez v. Honda North America, Inc.*, 166 F.R.D. 386,388 (D.C.



Mich. 1996) (same).

56. Because of the informality of the State Board's proceedings it would be impractical to require exhaustive determinations regarding the admissibility of evidence at the time of administrative hearings. Further, it would be unduly burdensome and time-consuming for the State Board to require taxpayers and local taxing officials alike to participate in such determinations at the hearings. Therefore, the State Board's general position is to admit the evidence proffered, and to consider the issue of relevancy in the weighing of the evidence.
  
57. In addition to the factors applied by the courts to establish reliability, the State Board will consider a number of additional factors to determine the relevancy of evidence regarding obsolescence. The first factor is whether the alleged maladies of the property actually lead to a loss of value as required by 50 IAC 2.2-10-7(e). Evidence of such loss of value may be based on the assessor's observations of the property, statistical evidence establishing a correlation between the faults of the property and its value, or from anecdotal evidence if sufficiently reliable. In many cases there will be causes of obsolescence that cannot be easily seen by the assessor. In these cases, it is incumbent on the taxpayer to establish a link between the evidence and the loss of value. For statistical evidence this may be established by providing sufficient evidence of correlation of the evidence to value. For anecdotal evidence establishing reliability is more difficult. Statements by the taxpayer or consultant regarding the value of the property are inherently unreliable unless they can be confirmed either by other statements or by the opinions of impartial observers.

#### 5. Evaluation of the evidence

58. Since the subject is receiving obsolescence, it is evident that the parties agree that obsolescence exists. Therefore, the first prong of the burden of proof has been met.

59. The Petitioner must quantify the amount of obsolescence requested in order to meet the second prong of the two-prong burden.
60. The Petitioner attempts to use the capitalization of income method. This is one of the five accepted ways to quantify obsolescence.
61. The basic steps in the income approach are as follows:
1. Estimate potential gross income.
  2. Deduct for vacancy and collection loss.
  3. Add miscellaneous income to get the effective gross income.
  4. Determine operating expenses.
  5. Deduct operating expenses from the effective gross income to determine net operating income before discount, recapture, and taxes.
  6. Select the proper capitalization rate.
  7. Determine the appropriate capitalization procedure to be used.
  8. Capitalize the net operating income into an estimated property value.” *Id* at 204.
62. The Petitioner provided neither a figure for potential gross income, nor a study of comparable properties in the area. The only rent information was a comparison of the subject to the Ft. Wayne area as a whole, which was not substantiated with verifiable documentation. No information was given regarding rent charged by other comparable properties.
63. The second step in determining value by the income approach is described as follows:
- “After making the complete analysis for determining potential gross income for the subject property, the next step in the income approach is to determine effective gross income. *Effective gross income* is potential gross income less vacancy and collection loss, plus appropriate miscellaneous income. To determine effective gross income, each of the following factors must be considered: vacancy loss, collection loss, and miscellaneous income.” *Id* at 211.

64. “The vacancy factor for any particular property must be determined by a study of other comparable properties, as well as the recent history of vacancies in the subject property.” *Id.*
65. Again, the Petitioner provided no analysis of other comparable properties. A comparison of the subject with all other hotels and motels in Ft. Wayne is not sufficient.
66. The net operating income is determined by deducting operating expenses from the effective gross income. “Determining *operating expenses* requires a thorough analysis of typical expenses by property use type to determine proper and improper expenses.” IAAO Property Assessment Valuation, 227 (2<sup>nd</sup> ed. 1996).
67. “One point should be emphasized: the income and expenses that are proper and acceptable for income tax purposes are not the same as those that are appropriate for the income approach. Only the reasonable and typical expenses necessary to support and maintain the income-producing capacity of the property should be allowed. This is important, because the investor is interested in both short-term and long-term profits, even though the taxable income for income tax purposes for any given period may or may not be related to the real estate value in question.” IAAO Property Assessment Valuation, 204 (2<sup>nd</sup> ed. 1996).
68. The next step is selecting the proper capitalization rate to use for the property. The Petitioner did not provide any information as to how the capitalization rate was developed.
69. The understanding and proper selection of rates used in the income approach are necessary if valid estimates of value are to be made. “A small difference in the capitalization rate will result in estimates differing by thousands of dollars.” IAAO Property Assessment Valuation, 233 (2<sup>nd</sup> ed. 1996).

70. “The overall rate is used in direct capitalization and is affected by a number of factors, which relate primarily to the comparability of the sale properties from which the rate is derived.” IAAO Property Assessment Valuation, 254 (2<sup>nd</sup> ed. 1996)
71. Direct capitalization is further defined as “the simplest of the methods of capitalization; reliable under certain circumstances where the comparable sales properties have income streams with the same characteristics of risk, timing, stability, financing, and income projection as the subject.” *Id.*
72. The method used by the Petitioner is a recognized method; however, the way the Petitioner used the method is flawed. Accordingly, it cannot be used in support of additional obsolescence.
73. For all the reasons above, the Petitioner did not meet the burden in this appeal. Accordingly, there is no change in the assessment as a result of this issue.

**Issue 4 – Whether the increase of railroad traffic adjacent to property impacts land value.**

74. The Allen County Land Valuation Commission was required to collect sales data and land value estimates to create a Land Order. This Land Order identified a range of land values that the assessor used as a base rate for determining the True Tax Value of property.
75. Land Order values may be adjusted by the application of influence factors. An influence factor is defined in 50 IAC 2.2-4-10 as “a condition peculiar to the lot that dictates an adjustment to the extended value to account for variations from the norm.” Influence factors may be applied for the following conditions: topography; under improved property; excess frontage; shape or size; a misimprovement to the land; restrictions; and other influences not listed

elsewhere.

76. To prevail in an appeal for the application of a negative influence factor, the Petitioner must present both “probative evidence that would support an application of a negative influence factor and a quantification of that influence factor at the administrative level.” *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999).
77. As reasons for an influence factor, the Petitioner mentioned limited access from State Road 930 (Lincoln Highway East), and proximity to a railroad track.
78. The Petitioner did not attempt to quantify the amount of influence factor. The Petitioner provided no evidence on estimated income loss due to the limited access or the effect of the railroad tracks.
79. For the above reasons, the State Board denies the request for an influence factor. Accordingly no change is made in the assessment as a result of this issue.

Issued this \_\_\_\_ day of \_\_\_\_\_, 2002  
by the Indiana Board of Tax Review