

REPRESENTATIVE FOR PETITIONER:

Todd Shebesta, Easley, McCaleb & Associates

REPRESENTATIVES FOR RESPONDENT:

Deborah S. Ottinger, Boone County Assessor
Emmadell Sturgis, Boone County Deputy Assessor
Mandi Wilson, Boone County Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

BHC OF LEBANON, INC.,)	
)	Petition for Review of Assessment,
Petitioner)	Form 131
)	
)	Petition Nos: 06-015-00-1-4-00006
v.)	06-015-00-1-4-00007
)	
)	County: Boone
CENTER TOWNSHIP ASSESSOR,)	Township: Center
BOONE COUNTY)	Parcel Nos: 0152977000
)	0154555000
Respondent)	
)	Assessment Year: 2000

Appeal from the Final Determination of the
Boone County Property Tax Assessment Board of Appeals

March 7, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the “Board”.

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Findings of Fact and Conclusions of Law

Issue

1. The issue presented for consideration by the Board was:

Whether economic/external obsolescence depreciation should be applied to the subject's improvements.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3 Todd Shebesta, Vice President of Easley, McCaleb & Associates, Inc. filed Form 131s on behalf of BHC of Lebanon, Inc. (Petitioner), petitioning the Board to conduct an administrative review of the above petitions filed on May 13, 2002. The Boone County Property Tax Assessment Board of Appeals (PTABOA) Notifications of Final Assessment Determinations were issued on April 10, 2002.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on November 21, 2002 in Lebanon, Indiana before Dalene McMillen, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-5-2.

4. The following persons were present at the hearing:

For the Petitioner:

Todd Shebesta, Easley, McCaleb & Associates, Inc.

For the Respondent:

Deborah Ottinger, Boone County Assessor

Emmadell Sturgis, Boone County Deputy Assessor

Mandi Wilson, Boone County Deputy Assessor

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Todd Shebesta

For the Respondent:

Deborah Ottinger

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 consisting of the following:

A. A summary of testimony submitted by Mr. Shebesta, dated November 21, 2002

B. 1999 and 2000 operating statements (summary of profit and loss) ending June 30th

C. 1999 and 2000 occupancy and average daily rate report

- D. The subject property's amendment to listing contract price, dated March 1, 2002
- E. The subject property's original listing contract, dated May 21, 2001
- F. The subject property's settlement statement, dated October 30, 2002
- G. A copy of Mr. Shebesta's Certification of Tax Representative, dated February 5, 2002
- H. A copy of Mr. Shebesta's Level II Certified Indiana Assessor-Appraiser Certificate, dated March 30, 2001
- I. A copy of the Petitioner's disclosure form required by 50 IAC 15-5-5
- J. A copy of the power of attorney between BHC of Lebanon, Inc. to Mr. Shebesta, Easley, McCaleb & Associates, dated October 29, 2001
- K. A copy of Mr. Shebesta's educational qualifications

For the Respondent:

Respondent's Exhibit 1 – A copy of the Marion County standards for the application of obsolescence used for tax years 1995 through 2001, received by the Center Township Assessor, January 31, 2002

For the Board:

Board's Exhibit A – Form 131 petitions, dated May 13, 2002

Board's Exhibit B – Notices of Hearing on Petitions (Form 117), dated October 3, 2002

7. At the hearing, the parties agreed that the assessment date under appeal is March 1, 2000 and the Assessed Values under appeal are as follows:

Petition No. 06-015-00-1-4-00006 Parcel No. 0152977000

Land: \$3000

Improvements: \$108,860

Total: \$111,860

Petition No. 06-015-00-1-4-00007 Parcel No. 0154555000

Land: \$6870

Improvements: \$292,170

Total: \$299,040

8. The subject property is a psychiatric hospital and treatment facility located at 1711 Lafayette Avenue, Lebanon, Center Township, Boone County.
9. The ALJ did not conduct an on-site inspection of the subject property.

Jurisdictional Framework

10. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessments or matters of administrative law and process.
11. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

Indiana's Property Tax System

12. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, § 1.
13. Indiana has established a mass assessment system through statutes and regulations designed to assess property according to what is termed "True Tax Value." See Ind. Code § 6-1.1-31, and 50 Ind. Admin. Code 2.2.
14. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).

15. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property's market value. See *Town of St. John V*, 702 N.E. 2d 1034, 1043 (Ind. 1998) (*Town of St. John V*).
16. The Indiana Supreme Court has said that the Indiana Constitution “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”, nor does it “mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant”, but that the proper inquiry in tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” See *Town of St. John V*, 702 N.E. 2d at 1039 - 40.
17. Although the Supreme Court in the *St. John* case did declare the cost tables and certain subjective elements of the State's regulations constitutionally infirm, it went on to make clear that assessment and appeals must continue to be determined under the existing rules until new regulations are in affect.
18. New assessment regulations have been promulgated, but are not in affect for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

State Review and Petitioner's Burden

19. The Board does not undertake to reassess property, or to make the case for the petitioner. The Board's decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
20. The petitioner must submit “probative evidence” that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State*

Board of Tax Commissioners, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 1230 (Ind. Tax 1998). [“Probative evidence” is evidence that serves to prove or disprove a fact.]

21. The petitioner has a burden to present more than just “de minimis” evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Board of Tax Commissioners*, 715 N.E. 2d 1018 (Ind. Tax 1999). [“De minimis” means only a minimal amount.]
22. The petitioner must sufficiently explain the connection between the evidence and petitioner’s assertions in order for it to be considered material to the facts. “Conclusory statements” are of no value to the Board in its evaluation of the evidence. See *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329 (Ind. Tax 1999). [“Conclusory statements” are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
23. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.*, 743 N.E. 2d 247, 253 (Ind. Tax 2001), and *Blackbird Farms Apartments, LP v. Department Local Government Finance*, 765 N.E. 2d 711 (Ind. Tax 2002).
24. The Board will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a “prima facie case” and, by a “preponderance of the evidence” proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765 (Ind. Tax 1997). [A “prima facie case” is established when the petitioner has presented enough probative and material (i.e. relevant) evidence

to the Board (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a "preponderance of the evidence" when the petitioner's evidence is sufficiently persuasive to convince the Board that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of the Issue

Whether economic/external obsolescence depreciation should be applied to the subject's improvements.

25. The Petitioner contends that the subject properties had experienced economic (external) obsolescence depreciation due to low occupancy rates and requests the application of one (1) of the following methods of value:
 - A. A 60% obsolescence depreciation factor; or
 - B. Reduce the True Tax Value (TTV) of the combined properties to: land at \$29,600 and improvements at \$645,400 for a total TTV of \$675,000.
26. The property record cards, (PRC) show no obsolescence depreciation was applied to the assessment of the properties under review.
27. The Respondent contends the subject properties had only been closed for three (3) months (closed January 1, 2000) as of the March 1, 2000 assessment date under appeal, therefore the PTABOA did not feel obsolescence depreciation was warranted.
28. The applicable rules governing this issue are:

50 IAC 2.2-10-7 Commercial and Industrial Building Depreciation

In pertinent part: “In addition to physical depreciation, some buildings experience loss of value due to obsolescence.” “Functional obsolescence is caused by internal factors. Economic obsolescence is caused by external factors.”

50 IAC 2.2-1-24 Economic Obsolescence

Economic obsolescence (or economic depreciation) is defined as “obsolescence caused by factors extraneous to the property.”

29. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The Petitioner is requesting the subject properties be reduced to a combined True Tax Value of: land \$29,660 and improvements \$645,400 for a total True tax Value of \$675,000 or to have a 60% obsolescence depreciation factor applied to the subject properties. *Shebesta testimony & Petitioner’s Exhibit 1A.*
 - b. The psychiatric hospital and general office closed January 6, 2000. *Shebesta testimony.*
 - c. The psychiatric hospital was licensed for 76 beds. The average occupancy in 1998 was 31.79% and in 1999 was 43.53% for a two-year combined loss \$2,032,785. Psychiatric hospitals historically make a profit when they achieve 75% or higher occupancy rates. *Shebesta testimony & Petitioner’s Exhibit 1C.*
 - d. The subject properties were part of a group of 25 psychiatric facilities across the country, purchased by the Petitioner in 1996. Therefore, the Petitioner has no operating or occupancy records prior to the purchase of the subject facility. *Shebesta testimony.*
 - e. The subject properties were listed for sale on May 21, 2001 for \$1,500,000. On March 1, 2002 the price was reduced to \$1,000,000. The subject property then sold on October 30, 2002 for \$675,000. *Petitioner’s Exhibits 1E and 1F.*
 - f. Other factors contributing to the obsolescence of the hospital is the Balance Budget Act of 1997, which changed the way the government reimburses Medicaid and Medicare patients; and the spawning of managed care, which are

the negotiated contracts between hospitals, HMO's and insurance companies, shifting the financial risk to the hospital. *Shebesta testimony*.

- g. Based on the guidelines found in the Standards for the Application of Obsolescence for Marion County, it suggests that if a facility has been closed for two (2) years the economic obsolescence depreciation would be 30%. *Ottinger testimony & Respondent's Exhibit A*.
- h. The subject properties were only vacant for three (3) months - from January 1, 2000 when the facility closed to the March 1, 2000 assessment date. Therefore, economic obsolescence could not be justified. *Ottinger testimony*.

Analysis of the Issue

Obsolescence

1. The concept of depreciation and obsolescence

- 30. 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 International Association of Assessing Officers (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)).
- 31. 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.

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).

32. 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 found within 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.*
33. Economic obsolescence (or economic depreciation) is defined as “obsolescence caused by factors extraneous to the property.” 50 IAC 2.2-1-24. External (economic) obsolescence is loss in value as a result of an impairment in utility and desirability caused by factors external to the property (outside the property’s boundaries) and is generally deemed to be incurable. IAAO Property Assessment Valuation at 155.
34. Functional obsolescence depreciation is defined as “obsolescence caused by factors inherent in the property itself.” 50 IAC 2.2-1-29. Functional obsolescence results from changes demand, design and technology and can take the form of deficiency (for example, only one bedroom), need for modernization (for example, outmoded kitchen), or superadequacy (for example, overly high ceilings). IAAO Property Assessment Valuation 154 & 155; IAAO Property Appraisal and Assessment Administration, 220 & 221 (1990); 50 IAC 2.2-10-7.
35. 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. *Canal Square*, 694 N.E. 2d 801 (Ind. Tax 1998).
36. There are five (5) recognized methods used to measure depreciation, including obsolescence; namely: (1) the sales comparison method, (2) the income capitalization 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 156; IAAO Property Appraisal and Assessment Administration at 223.

2. Measuring external (economic) obsolescence

37. In the case at bar, the issue under review is one of external or economic obsolescence. *The Appraisal of Real Estate*, Eighth Edition, provides that external influences can cause a loss in value to any property. In the cost approach, the total loss in value due to such influences is allocated between the land and the improvements. Only the portion of the loss that is applicable to improvement is deducted from the current reproduction or replacement cost as external obsolescence. The effect of external influences on land value is calculated in the land valuation.
38. There are two methods of measuring external [economic] obsolescence: (1) capitalizing the income or rent loss attributable to the negative influence; and (2) comparing comparable sales of similar properties, some exposed to the negative influence and others not. If verified sales data are sufficient, the latter method is preferable.” IAAO Property Assessment Valuation, 173 (2nd ed. 1996); *The Appraisal of Real Estate*, Eight Edition.
39. The *capitalization of income method*: capitalizes the income of the subject property into an estimate of value, with the site value deducted; indicated improvement value is compared with estimated cost new to provide an indication of improvement value remaining. IAAO Property Assessment Valuation at 183.
40. The *sales comparison method*: estimates the cost new of the 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 is converted to percentage and applied to subject property. *Id.*

3. Burden regarding the obsolescence claim

41. 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).
42. 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).

4. Causes of Obsolescence

43. “[I]n advocating for an obsolescence adjustment, a taxpayer must first provide the Board with probative evidence sufficient to establish a prima facie case as to the causes of obsolescence.” *Champlin Realty Company v. State Board of Tax Commissioners*, 745 N.E. 2d 928, 932 (Ind. Tax 2001).
44. “Where there is no cause of obsolescence, there is no obsolescence to quantify.” *Id.*, citing *Lake County Trust v. State Board of Tax Commissioners*, 694 N.E. 2d 1253, 1257 (Ind. Tax 1998).
45. The identification of causes of obsolescence requires more than randomly naming factors. “Rather, the taxpayer must explain how the purported causes of obsolescence cause the subject improvements to suffer losses in value.” *Champlin*, 745 N.E. 2d at 936.
46. The Petitioner argues obsolescence depreciation is appropriate for the following reasons:
 - a. Low occupancy rates: 1998 the occupancy rate was 31.79% and in 1999 it was 43.53% for a two-year combined loss of \$2,032,785;

- b. The industry standard to make a “profit” is 75% occupancy or higher;
 - c. The Balanced Budget Act of 1997, which changed the way government reimbursed Medicaid and Medicare;
 - d. The growth of managed care (negotiated contracts between hospitals, HMO’s and insurance companies); and
 - e. The facility closed on January 6, 2000 and later sold October 30, 2002 for \$675,000;
47. In addition, the Petitioner seeks to have the Assessed Values of the subject properties reduced based on one (1) of two (2) following methods:
- a. Reducing the combined TTV of the two (2) subject properties to: land \$29,660 and improvements \$645,400 for a total TTV of \$675,000. *Petitioner’s Exhibit 1*; or
 - b. Applying a 60% economic obsolescence factor to the improvements. *Board’s Exhibit A*.
48. Before applying the evidence to reduce the contested assessment, the Board must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.

5. Evidence submitted regarding occupancy and profit

49. According to the Petitioner’s testimony, in 1996 the Petitioner purchased 25 psychiatric facilities throughout the country including the subject properties.
50. The Petitioner, prior to the purchase of the subject facilities, may have been aware that the subject facilities suffered from low occupancy rates and lower revenues. According to the Petitioner’s testimony, of the 25 properties that were sold, there may have been a select few whose high occupancy rates and profitability drove up the purchase price. The Petitioner further testified, that the subject facilities might have been one of those that did not generate income or that had a relatively low occupancy rate. The Petitioner did not

submit the purchase agreement for the purchase of the 25 properties or other evidence of the purchase prices for individual properties.

51. Prior to a purchase of this magnitude (25 properties) a prudent buyer would request a review of profit and loss statements for each of the properties to determine whether the anticipated purchase was viable. A prudent buyer would obtain an appraisal(s) of the properties offered for sale.
52. The Petitioner went on to say that, “Most psychiatric hospitals historically to make a profit try to achieve a 75% or higher occupancy. That is just an industry standard”. However, the Petitioner failed to submit any documentation that supported what the purported “industry standard” for occupancy was or to submit any documentation that indicated what the local occupancy rate would have been for the same type of business.
53. The Petitioner did submit some evidence of occupancy rates (Petitioner’s Exhibit 1C). However the Petitioner did not establish that the evidence was reliable or was meaningfully relevant to this case. For example, the Petitioner did not establish if the average daily bed occupancy included the average daily out patient visits or daily partial hospital days in the 76 total beds in service. It is the Petitioner’s responsibility to provide sufficient evidence and to maintain records in sufficient detail to establish the claim alleged.
54. Occupancy rate, even if the subject’s rates are lower than a documented local average, are not enough to prove or quantify obsolescence. Many other factors besides obsolescence can be responsible for the low occupancy rates.
55. As stated earlier, obsolescence is a measure of a loss in value to the property. A loss in value cannot be measured solely by an analysis of occupancy rates. As stated in ¶38, there are two (2) recognized appraisal methods used to measure the type of external obsolescence claimed by the Petitioner – income capitalization and the sales comparison

approach. The Petitioner presented neither of these methods in developing its request for obsolescence.

56. Several times during the course of the hearing, the Petitioner discussed the subject properties' profitability. The Petitioner testified that the subject facilities were closed because they continued to *lose money*. The occupancy rates were significantly lower than the purported industry standard for profitability of 75% occupancy. However evidence submitted by the Petitioner stated, "The owner of the subject property, Behavioral Healthcare, operates four other psychiatric hospitals in the area, and felt these facilities could better serve the area than the subject property." (See Board's Exhibit A).
57. Merely showing that a facility was not profitable is not probative evidence of economic obsolescence. Instead, the Petitioner must demonstrate the facility experienced a loss in value in the marketplace. "Without a loss of value, there can be no economic obsolescence." *Pedcor Investments-1990-XIII, L.P. v. State Board of Tax Commissioners*, 715 N.E. 2d 432, 438 (Ind. Tax 1999).
58. Based on the Petitioner's statements and evidence submitted, it is evident that the closure of the subject facilities was a business decision made by the Petitioner in an attempt to become more efficient and to reduce duplicated costs.

6. Additional external factors affecting obsolescence

59. The Petitioner also claimed that other factors were responsible for the obsolescence of the subject structures, such as changes in Medicare and Medicaid benefits and the on set of managed care. The Petitioner based this on the "Balanced Budget Act of 1997" which, according to the Petitioner, changed the way government reimbursed the subject hospital.
60. The Petitioner presented testimony that suggested the law changed reimbursements from Medicaid and Medicare patients to the hospital and that the negotiated contracts between

hospitals, HMO's and insurance companies, shifted the financial risk to the subject hospital. The Petitioner testified that this change in the tax benefit reduced financial benefits enjoyed by the hospital.

61. Although the Petitioner presented testimony about the purported disadvantages caused by changes in healthcare benefits, the Petitioner did not explain how the legislative changed to the Medicaid as Medicare programs specifically impacted the subject properties. Nor did the Petitioner submit any documentation regarding the impact of managed care on the subject properties.
62. The Petitioner failed to demonstrate that there was a loss in value to the property. The Petitioner therefore did not meet the first prong of the two-prong test articulated in *Clark*. See ¶42.

4. Quantification of Obsolescence

63. Assuming *arguendo* the Board accepted the Petitioner's explanation regarding the causes of obsolescence, the Petitioner would still be required to satisfy the second part of its burden – quantification of the amount of obsolescence requested.
64. Again, there are two methods of measuring external [economic] obsolescence: (1) capitalizing the income or rent loss attributable to the negative influence; and (2) comparing comparable sales of similar properties, some exposed to the negative influence and others not. See ¶38.
65. “The capitalization of income method: capitalizes the income of the 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.” IAAO Property Assessment Valuation at 183.

66. “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.*
67. The Petitioner submits two (2) methods of their own to determine the value of the subject properties:
- a. Reducing the combined TTV of the two (2) subject properties to: land \$29,660 and improvements \$645,400 for a total TTV of \$675,000; and
 - b. The application of a 60% obsolescence depreciation factor to the properties.
68. In the Petitioner’s first method of valuation, the Petitioner merely submits a Listing Contract (Petitioner’s Exhibit 1E), an Amendment to the Listing Contract (Petitioner’s Exhibit 1D) and a Settlement Statement (Petitioner’s Exhibit 1F). It should be noted that the subject property was not listed for sale until seventeen (17) months (May 21, 2001) after the closing of the property on January 6, 2000. Ten (10) months later the Petitioner reduced the sales price. In the end, the subject property would sell thirty-four (34) months (October 30, 2002) after the property closed on January 6, 2000 and thirty-one (31) months after the assessment date under appeal (March 1, 2000). The Petitioner uses the sale price as the value for the subject properties because, “From a property owner’s standpoint we feel the most recent sale is a pretty good indication of what the real estate is worth \$675,000”. (Shebesta testimony).
69. Although the Petitioner opined the sale of the subject property is good indicator of what the real estate is worth, the Petitioner failed to submit any sales data of similar and like properties from the time of the assessment date under review that would support its opinion and be more representative of the market. Further, the Petitioner did not submit an appraisal for the subject properties. A single sale thirty-four (34) months after the assessment date under review is not indicative of the marketplace as of March 1, 2000

nor is it probative evidence of value. Such a method is not a generally recognized method of measuring economic obsolescence nor is it a method of determining value.

70. The Settlement Statement offered, as evidence does not clearly show the sale was an arms-length transaction or what the terms of sale were. The Petitioner does not submit a copy of the Purchase Agreement for review.
71. The Petitioner, in its second method of valuing the subject properties, failed to first explain how the 60% obsolescence was determined. Secondly, if the improvement Remainder Values in the Summary of Improvements on the PRCs were to have a 60% obsolescence factor applied, the Total True Tax Value for the two (2) properties would be \$500,300. This is considerably lower than the amount determined by the Petitioner in its first method of valuation. The Petitioner did not attempt to explain why the two (2) methods differed and why one was more appropriate than the other.
72. At no time did the Petitioner submit an appraisal of the property into evidence. Therefore, the Petitioner failed to demonstrate that any changes occurred in the marketplace between the time the facilities closed (January 6, 2000) and the assessment date (March 1, 2000). Having failed to establish that the market had changed, the Petitioner again failed to demonstrate any loss in value of the property.
73. At the time the Petitioner chose to close the subject facility, the Petitioner made a conscious business decision that the area serviced by the subject facilities would be better served by other Petitioner owned facilities in the surrounding areas. Such a decision does not explain how the structures are obsolete nor does it show how the structures suffered a loss in value.
74. Obsolescence is a *market* concept and constitutes the loss of value due to the wants, needs and demands of the *market*. The Petitioner did not demonstrate a loss in value of the subject properties due to the demands of the market, and has not demonstrated the

existence of obsolescence by using a recognized method of measurement. The Petitioner therefore did not meet the second prong of the two-prong test articulated in *Clark*.

75. For all reasons set forth above, the Petitioner did not meet the burden of proof in this appeal. No change in the assessment is made as a result of this issue.

Summary of Final Determination

Whether the psychiatric hospital and general office should receive obsolescence depreciation

76. The Petitioner failed to establish the causes of obsolescence that resulted in a loss of value to the structures and secondly the Petitioner failed to quantify the amount of obsolescence it sought. No change in the assessment is made as a result of this issue.

The above stated findings of fact and conclusions of law 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

IMPORTANT NOTICE

- APPEAL RIGHTS-

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.