

**STATE OF INDIANA
Board of Tax Review**

THE BANK OF ORLEANS)	On Appeal from the Orange County Property
DBA FIFTH THIRD BANK)	Tax Assessment Board of Appeals
)	
Petitioner,)	
)	Petition for Review of Assessment, Form 131
)	Petition No.: 59-010-01-1-4-00001
)	
v.)	
)	Parcel No.: 010019016010
)	
)	
ORANGE COUNTY PROPERTY TAX)	
ASSESSMENT BOARD OF APPEALS)	
And ORLEANS 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:

Issues

1. Whether the grade of the subject building is correct.

2. Whether the condition of the subject building is correct.
3. Whether 40% functional obsolescence should be applied.
4. Whether a negative ceiling finish adjustment should be applied.
5. Whether the square footage of the building is correct.

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 Ind. Code § 6-1.1-15-3, Mr. Duane Zishka of Uzelac and Associates filed a petition on behalf of The Bank of Orleans d/b/a Fifth Third Bank (Fifth Third Bank) requesting a review by the State. The Orange County Property Tax Assessment Board of Appeals (PTABOA) determination was issued on October 24, 2001. The Form 131 petition was filed on November 26, 2001.
3. Pursuant to Indiana Code § 6-1.1-15-4, a hearing was held on March 21, 2002, before Hearing Officer Jennifer Bippus. Testimony and exhibits were received into evidence. Duane Zishka and Kermit Lamb, President of Fifth Third Bank, represented the Petitioner. Linda Reynolds, Orange County Assessor, represented the Orange County Assessor's Office.
4. At the hearing, the following Board Exhibits were made part of the record:
Board's Exhibit A – A copy of the Form 131 petition.
Board's Exhibit B – A copy of the Notice of Hearing.
Board's Exhibit C – A copy of the list of witnesses and exhibits for the Form 131 hearing submitted by the Petitioner.
Board's Exhibit D - A copy of the Request for Additional Evidence.

Board's Exhibit E – A copy of the disclosure statement.

Board's Exhibit F – A copy of the stipulation agreement for the ceiling finish adjustment.

5. At the hearing, the Petitioner submitted the following evidence:

Petitioner's Exhibit A – A copy of the issues presented by the Petitioner.

Petitioner's Exhibit B – Photographs of the subject property.

Petitioner's Exhibit C - Purported comparable Fifth Third Banks.

Petitioner's Exhibit D – A copy of 50 IAC 2.2-11-4, photographs of grade A and grade B banks.

Petitioner's Exhibit E – A copy of 50 IAC 2.2-11-1, the model for the General Commercial Mercantile–Bank

Petitioner's Exhibit F – A copy of 50 IAC 2.2-10-3, Grade, with A and B grade classifications highlighted.

Petitioner's Exhibit G – A sketch purporting to identify the square footage of the subject building.

Petitioner's Exhibit H – Supporting documentation for the ceiling finish adjustment prepared by the Petitioner.

Petitioner's Exhibit I – “Incurable functional obsolescence caused by superadequacy” from *The Appraisal of Real Estate*.

Petitioner's Exhibit J – “Reproduction and Replacement Cost Bases” from *The Appraisal of Real Estate*.

Petitioner's Exhibit K – Supporting documentation for the 40% functional obsolescence request prepared by the Petitioner.

6. As additional evidence, the Respondent presented the following on April 4, 2002:

Respondent's Exhibit A – The square footage of the building as measured by Ms. Reynolds and Mr. Lamb.

7. The property is a bank building located at 200 S. Maple Street, Orleans, Orleans Township, Orange County.

8. The Hearing Officer did not view the property.
9. The assessed value as determined by the Orange County PTABOA is:
Land: \$16,500 Improvements: \$448,700 Total: \$465,200
10. The year under appeal is March 1, 2001.
11. To resolve the issue of square footage, the parties were instructed to measure the structure together. The parties were given until April 1, 2002, to submit the evidence. The first measurement was submitted on March 26, 2002, with the final square footage calculation submitted on April 4, 2002. This evidence is accepted as timely filed.

Issue No. 1 - Whether the grade of the subject building is correct.

12. The PTABOA determined that the grade of the building is A-1. The Petitioner contended that the grade of the building is best described as B-1.
13. The Petitioner contended the following:
 - (a) The subject building has a flat roof line, no hip or gable roofline. The face board is painted particle board. The interior finish is of good quality, there is no crown molding, no indirect or recessed lighting, and the door trim is plain and inexpensive. There are a few window walls in the building.
Zishka Testimony.
 - (b) Property record cards of eight Fifth Third Banks were introduced and none of the claimed comparables are graded A; these banks are all B grades. The architectural design of the comparables is more extensive than the subject, but they are not outstanding as an A grade would specify.
Petitioner's Exhibit C; Zishka Testimony.
 - (c) The photograph graded A in 50 IAC 2.2-11-4 shows a much more substantial building than the subject. The B grade buildings in the same

exhibit are more comparable to the subject. *Petitioner's Exhibit D; Zishka Testimony.*

14. Ms. Reynolds contended that the PTABOA did not calculate the sawtooth part of the building into the square footage. This part of the building is considered in the grade. The additional support for the flat roof system necessary for the air conditioning is considered in the grade as well. According to hearsay, the building was constructed very well and this has been carried through the years in the grade. Ms. Reynolds opined the building is not a C grade and is definitely better than a B grade.

Issue No. 2 - Whether the condition of the subject building is correct.

15. Fifth Third Bank contended that the condition of the building is Average. The PTABOA determined that the condition of the building is best described as Good.
16. Fifth Third Bank contended that the building was built in 1972 and has received normal maintenance. The proper condition should be Average. The purported comparable properties all were determined to be in Average condition and the subject is not any better than these. There was interior remodeling done, but the remodeling did not extend the life of the subject building. *Zishka Testimony.*
17. Ms. Reynolds asserted that the building is brick and is very well maintained for a structure thirty years old. The condition is classified as Good and this is appropriate. *Reynolds Testimony.*

Issue No. 3 - Whether 40% functional obsolescence should be applied.

18. The Petitioner contended that the bank has experienced 40% incurable functional obsolescence due to a superadequacy (excessive space). The PTABOA granted 10% functional obsolescence because the bank vaults are used only for storage.

19. Fifth Third Bank, citing *The Appraisal of Real Estate*, asserted, “a replacement is a structure of comparable utility employing the design and materials that are currently used in the building market”. The following calculation was offered: The Petitioner presented the average ‘replacement’ cost of the eight comparables as \$243,338. The reproduction cost (total base) of the subject building (without basement) is \$446,220. Using the replacement cost minus the subject building reproduction cost, the final obsolescence value is 45%. A conservative rounding would be the 40% requested. *Petitioner’s Exhibits I, J, K; Zishka Testimony.*

20. Mr. Lamb offered the following testimony concerning the bank’s operations: The bank has downsized to the current eight employees; formerly there were twenty-three employees. A building half the size would be adequate space. The bookkeeping department is gone from the subject building and the records vault is used only for paper storage. With direct deposit people do not use the facility as much as in the past. The teller windows are still in operation. There were new offices placed in the front of the building in March 2000 for efficiency reasons. The back of the bank is used for the teller windows only and the offices are no longer used in that area.

21. Ms. Reynolds testified that the building was a full service bank. The PTABOA took into consideration that new offices were built in 2000. The PTABOA thought the bank did not want to make use of the offices it already had and, therefore, the PTABOA did not see a need to grant additional obsolescence. The PTABOA allowed 10% obsolescence because the records vault is used for storage only.

Issue No. 4 - Whether a negative ceiling finish adjustment should be applied.

22. The Petitioner and the County officials agreed that the building should receive a negative ceiling finish adjustment in the amount of \$0.79. A signed stipulation is included in the record as Board’s Ex. F.

Issue No. 5 - Whether the square footage of the building is correct.

23. At the administrative hearing, the parties were instructed to measure the structure together. The first measurement was submitted on March 26, 2002. The final square footage calculation agreed to by the parties was submitted on April 4, 2002.

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.

Issue No. 1 - Whether the grade of the subject building is correct.

18. The PTABOA determined that the grade of the building is A-1. The Petitioner contended that the grade of the building is best described as B-1.
19. Grade is used in the cost approach to account for deviations from the norm or C grade. 50 IAC 2.2-10-3(a). The determination of the proper grade factor 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. *Whitley*, 704 N.E. 2d at 1117; *Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d at 1064; 50 IAC 2.2-7(f).
20. The pricing schedules contained in 50 IAC 2.2-11-6 reflect the C grade standards of quality and design unless otherwise stated. The following schedule illustrates the multiplier applied to each of the listed grade classifications:
 - (1) "A" grade indicates a multiplier of one hundred sixty percent (160%).
 - (2) "B" grade indicates a multiplier of one hundred twenty percent (120%).
 - (3) "C" grade indicates a multiplier of one hundred percent (100%).
 - (4) "D" grade indicates a multiplier of eighty percent (80%).

(5) "E" grade indicates a multiplier of forty percent (40%).

50 IAC 2.2-10-3(b).

21. The General Commercial Mercantile – Bank model is found in 50 IAC 2.2-11-1(6). Certain differences between the subject and the model can be accounted for by the use of Schedule C included in 50 IAC 2.2-11-6. For example, if the model calls for partitions, and the subject lacks partitions, Schedule C is used to remove this cost from the price of the subject building. The lack of partitions, then, would *not* be considered again in the determination of grade.
22. Differences between the subject and the model not addressed by the pricing schedules are accounted for by adjusting the grade. Thus, the development of the proper grade requires an analysis of the differences between the subject and the model, and how these differences affect the cost of the building. A Petitioner wishing to challenge the grade placed on his property must identify the specific differences between the subject and the model, and quantify the resulting difference in cost to compute the grade.
23. In support of its position, the Petitioner submitted photographs and copies of property record cards of eight purported comparable Fifth Third Banks. These alleged comparable properties are located in several different Indiana counties.
24. The comparability of properties is not determined by common ownership. Rather, comparability is measured by common features that exist among the properties.
25. Merely characterizing properties as comparable is insufficient for appeal purposes. The Petitioner is required to present probative evidence that the purported comparable properties it offers are, in fact, comparable to the subject property. In determining whether properties are truly comparable, "Factors and trends that affect value, as well as the influences of supply and demand, should be considered. The greatest comparability is obtained when the properties being

compared are influenced by the same economic trends and environmental (physical), economic, governmental, and social factors. There may not be any comparability when one property is heavily influenced by one set of factors and another property is significantly affected by dissimilar factors.” International Association of Assessing Officers (IAAO) Property Assessment Valuation, 103 (2nd ed. 1996).

26. As discussed, the purported comparable banks are located in several different counties. Further, the year of construction for these purported comparable properties range from 1989 through 2000. The property under appeal was constructed in 1972.
27. The Petitioner offered no comparison of common features or amenities among the properties, and no discussion of whether the counties in which the purported comparable properties are located are all “influenced by the same economic trends and environmental (physical), economic, governmental, and social factors.” IAAO Property Assessment Valuation, 103 (2nd ed. 1996).
28. The Petitioner’s conclusions concerning the comparability of the properties do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119. The Petitioner has failed to establish that its purported comparable properties are, in fact, truly comparable.
29. Further, the property record cards for the purported comparable properties indicate one B+1 grade, three B grades, and four B-1 grades applied to these bank properties. The Petitioner failed to explain the manner in which buildings graded B+1 and B support a claim for a grade of B-1. The Petitioner also failed to explain the manner in which the claimed deficiencies in the property under appeal, when compared to the purported comparable properties or the model, result in a grade of B-1 rather than some other grade.

30. The Petitioner presented only two photographs of each of the purported comparable properties (Six of the purported comparable buildings have only one interior and one exterior photograph; there are no photographs of the interior of the other two properties) (Petitioner's Exhibit C).
31. The exhibit, however, does not include any explanation of the photographs as they pertain to the grade of the subject property. Photographs, absent this foundation, do not constitute probative evidence. "[T]his Court has rejected attempts by taxpayers to put forth evidence such as photographs without explanations." *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329, 333 (Ind. Tax 1999).
32. The Petitioner also offered a page of graded photographs copied from 50 IAC 2.2 (Petitioner's Exhibit D) showing one A grade bank and several B grade banks. Once again, only conclusory statements were offered to relate these photographs to the grade of the bank under appeal.
33. Fifth Third Bank did not elaborate on the quality of the materials, workmanship, style, or design found in any of the buildings. The Petitioner merely concluded that the quality of the materials and workmanship of the building should be graded B-1, citing such features as "good quality wallpaper" and "average quality lighting" (Petitioner's Exhibit B). It did not show specific differences between the subject and the model, and did not quantify its request.
34. Absent this foundation, the State is under no obligation to give, and does not give, this evidence any weight.
35. Having failed to identify properties that were similarly situated, the Petitioner's comparison did not demonstrate that the subject property was being treated any differently than similarly situated properties.

36. 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.

Issue No. 2 - Whether the condition of the subject building is correct.

37. Fifth Third Bank contended that the condition of the building is Average. The PTABOA determined that the condition of the building is best described as Good.
38. Condition is a judgment of the physical condition of the item relative to its age. Average indicates the structure is in “average condition relative to its age, or the condition in which it would normally be expected.” Good indicates “the structure is in good condition relative to its age. There is minor deterioration, but it is in somewhat better condition than would normally be expected.” See 50 IAC 2.2-10-5(d)(8).
39. In support of its position, the Petitioner again referred to the eight property record cards of the purported comparable banks. As previously indicated, no foundation was presented to establish that these properties are indeed comparable to the building under appeal.
40. Further, Fifth Third Bank did not establish that the condition of purported comparable properties constructed during the period 1987 through 2000 is relevant to the condition of a building constructed in 1972. Repeating, condition is a judgment of the physical condition of the item relative to its age. 50 IAC 2.2-10-5(d)(8).
41. Fifth Third Bank therefore failed to offer any “evidence of comparable properties to demonstrate error in the ... determination of the condition of a particular improvement.” *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099, 1104 (Ind. Tax 1999).

42. The Petitioner's conclusory statements concerning the condition of the building do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
43. 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.

Issue No. 3 - Whether 40% functional obsolescence should be applied.

44. The Petitioner contended that the bank has experienced 40% incurable functional obsolescence due to a superadequacy (excessive space). The PTABOA granted 10% functional obsolescence because the bank vaults are used only for storage.
45. Functional obsolescence depreciation is defined as "obsolescence caused by factors inherent in the property itself." 50 IAC 2.2-1-29.
46. "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).
47. Superadequacy is defined as "an element more than adequate for its function." IAAO Property Assessment Valuation, 168 (2nd ed. 1996). Obsolescence is incurable "when the cost of curing [the obsolescence depreciation] is greater than the value added by the cure." *Id.* at 183.
48. 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.

49. 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.
50. 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).
51. 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).
52. The Petitioner and the PTABOA both agree that some level of functional obsolescence is present in the building, satisfying the first prong of the two-prong test articulated in *Clark*.
53. In support of its contention, Fifth Third Bank submitted a calculation purporting to quantify its claim for 40% functional obsolescence. In this calculation, the Petitioner determined an average replacement cost using the base prices of the eight banks offered as comparable properties. Fifth Third Bank then compared this average replacement cost to the base cost of the property under appeal, concluding that the property had experienced 45% (rounded to 40%) functional obsolescence. (Petitioner's Exhibit K).
54. "Incurable functional obsolescence due to a superadequacy is measured differently for replacement and reproduction cost. When replacement cost is used, the incurable functional obsolescence for a superadequacy is found by

determining a charge for the extra monetary burden of ownership, less any value added.” IAAO Property Assessment Valuation, 172 (2nd ed. 1996).

55. As discussed, Fifth Third Bank has failed to demonstrate that its purported comparable properties are, in fact, comparable to the property under appeal.
56. Additionally, the Petitioner’s calculations are flawed.
57. “*Reproduction cost* is the cost of producing an exact replica of a building or improvement using the same or very similar materials, design, and workmanship. *Replacement cost* is the cost of producing a building or improvement having the same utility, but using modern materials, design, and workmanship.” Id. at 131.
58. The cost schedules in 50 IAC 2.2 are based on reproduction costs. “The reproduction cost schedules in this manual are based upon costs prevailing throughout the State of Indiana as of January, 1991.” 50 IAC 2.2, Forward i. “Residential, commercial, and industrial land, and agricultural homesites are based on values established by the county land valuation commission and approved by the state board of tax commissioners. Buildings and other improvements are based on the cost of reproducing the improvement with new materials minus depreciation.” 50 IAC 2.2-2-1(c).
59. Although purporting to present an average **replacement** cost, the Petitioner’s calculation in fact uses base rates from the property record cards reflecting January 1991 **reproduction** costs. As discussed, reproduction costs may not be used in a calculation measuring the replacement cost of a structure. IAAO Property Assessment Valuation, 172 (2nd ed. 1996).
60. The Petitioner’s attempt to quantify functional obsolescence therefore does not conform to generally recognized methods of assessment and appraisal practice. The Petitioner has failed to quantify its claim for functional obsolescence, as required by the second prong of the two-prong test articulated in *Clark*.

61. 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.

Issue No. 4 - Whether a negative ceiling finish adjustment should be applied.

62. The Petitioner and the County officials agreed that the building should receive a negative ceiling finish adjustment in the amount of \$0.79.
63. The State accepts the parties' stipulation and agreement identified immediately above. In doing so, the State does not decide the propriety of this agreement, either explicitly or implicitly.
64. There is a change in the assessment as a result of this issue.

Issue No. 5 - Whether the square footage of the building is correct.

65. The Petitioner and the County officials submitted square footage calculations after measuring the property together. The square footage of the building is 6,600 square feet, 355 linear feet, with a perimeter area ratio of five. (Respondent's Exhibit A).
66. The State accepts the parties' stipulation and agreement identified immediately above. In doing so, the State does not decide the propriety of this agreement, either explicitly or implicitly.
67. There is a 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 this by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review