STATE OF INDIANA
Board of Tax Review

BRIDGEPORT/OLIN BRASS CORP.	)	On Appeal from the Marion County
	)	Property Tax Assessment Board
Petitioner,	)	of Appeals
	)	
v.	)	Petition for Review of Assessment, Form 131
	)	Petition No. 49-970-99-1-3-00451
MARION COUNTY PROPERTY TAX	)	Parcel No. 9050066
ASSESSMENT BOARD OF APPEALS	)	
And WAYNE TOWNSHIP ASSESSOR,	)	
	)	
Respondents.	)	

Findings of Fact and Conclusions of Law

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

Issue

Whether additional obsolescence is warranted for the subject property.

Findings of Fact

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

2. Pursuant to Ind. Code § 6-1.1-15-3, Baden, Gage & Schroeder, LLC, on behalf of Bridgeport Corp/Olin Brass Corp. (the Petitioner), filed a petition requesting a review by the State. The Marion County Property Tax Board of Appeals issued its determination on July 28, 2000. The Form 131 Petition was filed on August 26, 2000.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on August 23, 2001 before Hearing Officer Debra Eads. Testimony and exhibits were submitted into evidence. Mr. Tracey Carboni of Baden, Gage & Schroeder represented the Petitioner. Mr. Gregory Dodds represented Wayne Township. No one was present to represent Marion County.

4. At the hearing, the Form 131 Petition was made a part of the record and labeled Board Exhibit A. The Form 117 Notice of Hearing was labeled Board Exhibit B. In addition, the following exhibits were submitted into evidence:

Petitioner's Exhibit 1 – Binder including (a) information for three (3) sales comparison properties; (b) appraisal report dated February 10, 1998; (c) *Property Assessment Valuation* section concerning depreciation; (d) Rule 10, pages 31 and 32 from 50 IAC 2.2; (e) information from a continuing education class relative to obsolescence; and (f) Olin Brass historical comparative data

Respondent's Exhibit 1 – Form 115 dated July 28, 2000 for subject property
Respondent's Exhibit 2 – Plat maps for subject property and surrounding area
Respondent's Exhibit 3 – Property record card for parcel 9011625
Respondent's Exhibit 4 – Form 115 dated January 6, 2000 for parcel 9011625
Respondent's Exhibit 5 – State Board of Tax Commissioners Final Determination and Findings of Fact for parcel 9047209 dated June 5, 2001

5. The property is located at 1800 South Holt Road, Indianapolis, Wayne Township, Marion County. The Hearing Officer did not conduct an on-site inspection of the property.

Obsolescence

6. Petitioner testified to the following : The subject property was built in the early 1940s; the buildings are old, high maintenance buildings, which are not suited for an alternate use and are nearing the end of their economic life. There is a limited demand for this type of property because of the diminished utility. The shutdown of approximately 35% of the operation, the 80% decline in the workforce, the appraised value and accrued depreciation calculations indicate a significant amount of depreciation exists. The comparable properties indicate a range of 50% to 75% abnormal depreciation, with the typical being 50%; therefore, we are requesting an overall 50% abnormal obsolescence factor. *Carboni Testimony*. Petitioner's Exhibit 1.

7. Respondent testified to the following: In 1998, the County determined the obsolescence factor should be changed from 18% to 25%; this decision was not appealed to the State. Other industrial properties in the neighborhood of the subject property are receiving 25% obsolescence (as is the subject property). The true comparability of the properties submitted as comparable to the subject property and used to calculate the accrued depreciation has not been established. In fact, the appraisal states on page 185 that the appraisers were unable to locate any market data of similar properties, which can be directly compared to the subject. Furthermore, the appraiser stated that some comparables were superior in age and adjusted the value downward, when the comparables were built in the 1920s and the 1940s. There was also no explanation as to how the capitalization rate was developed. If the State grants additional obsolescence, none should be applied to the 1991 building or the pole barn. *Dodds Testimony*. Respondent's Exhibits 1-4.

8. An appraisal is included in the brief but the Petitioner is not relying on the appraisal in order to support the request for additional obsolescence. Mr. Carboni asked if the other properties in the neighborhood of the subject area that were receiving 25% obsolescence had 35% of their improvements shut down and whether they were still being used for their original use. *Carboni Testimony*.

Conclusions of Law

1. The Petitioner is statutorily 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. Ind. Code §§ 6-1.1-15-1, -2.1, and –4. See also the Forms 130 and 131 petitions. 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. "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 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 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. The taxpayer's burden in the State'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 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 even though 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.

Obsolescence

18. 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.

19. 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.

20. 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).

21. 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).

22. There are five (5) recognized methods used to measure depreciation, including obsolescence; namely: (1) the sales comparison method, (2) the capitalization of income method, (3) the economic age-life method, (4) the modified economic age-life, and (5) the observed condition (breakdown) method. IAAO Property Assessment Valuation at 156; IAAO Property Appraisal and Assessment Administration at 223.

23. The Township and the Petitioner agreed in principal that obsolescence exists with regard to the subject property. The existence of obsolescence is supported by the application of obsolescence depreciation by the Marion County PTABOA. The Petitioner must then establish that the amount of obsolescence applied by the PTABOA was insufficient.

24. The Petitioner used the sales comparison method in an effort to quantify the appropriate obsolescence depreciation for the subject property. At the heart of the sales comparison method is the degree of comparability of the sale properties used to calculate the accrued depreciation and the adjustments made to account for differences between the purported comparable properties and the subject property.

25. The methodology used by the Petitioner was substantially correct, however, there are several flaws that are apparent. While Mr. Carboni testified that he was not relying heavily on the appraisal, he did use the replacement cost new total and the three comparable properties in Indiana. As Mr. Dodds observed, the appraiser stated on page 185 that the major weakness of the Sales Comparison Approach is that the appraisers were unable to locate any market data of similar properties, which can be directly compared to the subject. The Petitioner failed in any substantive way to establish comparability between the sale properties and the subject property.

26. Furthermore the land values deducted from the sale prices of the comparables are unsubstantiated. No documentation was submitted to explain those values or to show what amount of land was being valued. The information submitted shows the property record cards of the three comparable properties have different land areas than shown in the data included in the appraisal. For instance, the property record card for Sherman Park, LP shows 28.279 acres assessed at $18,000 per acre. The appraisal data shows that 46.27 acres were included in the sale. In his calculation Mr. Carboni used $570,100 for Sherman's land value; this amount, divided by $18,000 (the value assigned by the local officials), results in acreage of 31.67 acres. If Mr. Carboni had used the value estimated by the appraiser, $25,000 per acre, the acreage would be 22.8. This same flaw also pertains to the other comparables used in his calculation.

27. While the Petitioner did not base his obsolescence calculation on the Income Capitalization Approach, the Respondent mentioned it in his testimony. The appraiser on page 169 of the appraisal report states that "……the appraisers rely on an overall capitalization rate of 13.50%, which is in excess of the comparable range in overall capitalization rates. Properties similar to the subject are typically purchased on a speculative basis for an alternative reuse development program. Thus, there are no capitalization rates which can be directly compared to the subject." This would seem to eliminate the Income Capitalization Approach as a viable method for estimating the value of the subject.

28. The Petitioner queried the Respondent as to whether the other properties in the subject area that are receiving 25% obsolescence had 35% of the improvements shut down and whether these properties were still being used for their original use. These questions apply equally to the "comparables" supplied by the Petitioner. The Petitioner supplied no specifics about the reasons for application of obsolescence to the "comparables"; therefore, it is difficult to determine whether those same circumstances (and the accompanying obsolescence) apply to the subject property.

29. For the above reasons, the Petitioner has failed to meet the second prong of the burden of proof. Therefore, the State denies the request for additional obsolescence. No change is made to the assessment as a result of the obsolescence issue.

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

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Chairman, Indiana Board of Tax Review