REPRESENTATIVES FOR PETITIONER:
Fred Lawson, Review Corporation

REPRESENTATIVES FOR RESPONDENT:
Joan Sietz, Dearborn County Assessor

BEFORE THE
INDIANA BOARD OF TAX REVIEW

In the matter of:

CENTRAL MANAGEMENT AND INVESTMENTS,	)	
	)	Petition No.: 15-021-97-1-5-00003
Petitioner	)	
	)	County: Dearborn
v.	)	
	)	Township: Center
CENTER TOWNSHIP,	)	Parcel No.: 072820000100021
	)	Assessment Year: 1997
Respondent	)	

Appeal from the Final Determination of
Dearborn County Board of Review

March 18, 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

Issues

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

   ISSUE 1 – *Whether the subject parcel's land has been classified correctly.*

   ISSUE 2 – *Whether an influence factor should be applied to the land due to restrictions and ingress/egress problems.*

   ISSUE 3 – *Whether the subject improvement has been assessed using the correct pricing schedule.*

   ISSUE 4 – *Whether economic and functional obsolescence should be applied to the subject improvement.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3 Timothy Boyce with Review Corporation, filed a Form 131 on behalf of Central Management and Investments (Petitioner) petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on August 28, 2002. The Dearborn County Board of Review's (County Board) Notice of Assessment of Real Property is dated August 1, 2002.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on December 18, 2002 in Lawrenceburg, Indiana before Jennifer Bippus, 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:
Mr. Fred Lawson, Review Corporation

For the Respondent:
Ms. Joan Seitz, Dearborn County Assessor

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

For the Petitioner:
Mr. Fred Lawson

For the Respondent:
Ms. Joan Seitz

6. The following exhibits were presented:

For the Petitioner:
Petitioner's Exhibit A – A prepared statement of the issues by Mr. Lawson
Petitioner's Exhibit B – A copy of the Letter of Agreement (Agreement) for the total cost of the subject structure only
Petitioner's Exhibit C – A copy of the Quitclaim Deed for the subject property

For the Board:
Board's Exhibit A - A copy of the Form 131
Board's Exhibit B - A copy of the Notice of Hearing on Petition

7. Prior to the hearing, the ALJ received the following documents via the U.S. Mail from the Respondent:

Respondent's Exhibit A – A copy of an aerial map including the subject property
Respondent's Exhibit B – A copy of a letter sent to Ms. Seitz from Aurora Utilities about utility service for the subject property

Respondent's Exhibit C – A copy of the County Board worksheets for the subject property

Respondent's Exhibit D – A copy of the Notice of Hearing on Petition – Form 117

Respondent's Exhibit E – A copy of the subject's property record card (PRC) after the changes were made by the County Board

Respondent's Exhibit F – A copy of the Notice by County Board of Review of Hearing on Petition dated August 3, 1998

Respondent's Exhibit G – A copy of the old (1989) and new (1995) PRCs showing the land valued on a front foot basis for 1989 and on an acreage basis for 1995

Respondent's Exhibit H – A copy of the Letter of Agreement from Better Modular Buildings stating the construction price of the subject building

Respondent's Exhibit I – A copy from Porta Carports with the price of another building located on the subject property

Respondent's Exhibit J – A copy of date stamped envelope from Review Corporation to the Dearborn County Assessor

Respondent's Exhibit K – A copy of the return receipt to the Department of Local Government Finance dated 8/30/02

Respondent's Exhibit L – A copy of several PRCs of properties along the same strip of land as the subject property with the land pricing

Respondent's Exhibit M – A copy of the Form 131

Respondent's Exhibit N – A copy of the Form 130

Respondent's Exhibit O – A copy of the Form 115

Respondent's Exhibit P – A copy of the Form 135, Affidavit of Destroyed or Removed Property

Respondent's Exhibit Q – A copy of the issues and findings by the Dearborn County Board of Review from the Board of Review hearing

Respondent's Exhibit R – Photographs of the subject improvement

8. On December 30, 2002, the ALJ faxed a letter to Mr. Boyce requesting the following information: (1) a Power of Attorney with Mr. Lawson listed as an authorized representative, and (2) a Disclosure Statement. On January 6, 2003, the ALJ left a phone message for Mr. Boyce requesting the same information. On January 7, 2003 the ALJ sent a follow up letter to Mr. Boyce again requesting the above information with a submission deadline to the ALJ of January 20, 2003.

9. The ALJ received e-mail from Mr. Boyce's office on January 16, 2003 stating that the information requested was ready to be mailed. On January 31, 2003 the Board received in the mail, a new Power of Attorney listing Mr. Lawson as an authorized representative along with the Disclosure Statement.

10. The following additional items are officially recognized as part of the record of proceedings:

    For the Board:
    Board's Exhibit C – The letter faxed to Mr. Boyce dated December 30, 2002
    Board's Exhibit D – A copy of the letter sent to Mr. Boyce dated January 7, 2003

    For the Petitioner:
    Petitioner's Exhibit D – A new Power of Attorney with the Disclosure Statement typed in Section 4

11. The assessed values determined by the County Board and shown on the subject's PRC, are the assessed values under review in this appeal for the March 1, 1997 assessment date:

Land	$ 32,130
Improvements	29,330
Total	$ 61,460

12. The subject property is a commercial parcel located on Green Blvd., Aurora, Center Township, Dearborn County.

13. The ALJ did not conduct an on-site inspection of the subject property.

Jurisdictional Framework

14. 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 assessment or matters of administrative law and process.

15. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

Indiana's Property Tax System

16. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.

17. 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.

18. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).

19. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property's market value. See *State Board of Tax Commissioners v. Town of St. John,* 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V)*.

20. 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.

21. 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 effect.

22. New assessment regulations have been promulgated, but are not effective for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

State Review and Petitioner's Burden

23. The State does not undertake to reassess property, or to make the case for the petitioner. The State 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).

24. 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,* 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.]

25. 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.]

26. 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 State 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.]

27. 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., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).

28. The State 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 for the State (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 State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of Issues

<u>ISSUE 1: *Whether the subject parcel's land has been classified correctly.*</u>
<u>ISSUE 2: *Whether an influence factor should be applied to the land due to restrictions and ingress/egress problems*</u>.

29. The Petitioner contends that the land is incorrectly classified and the subject parcel should receive a negative forty percent (40%) influence factor due to ingress and egress problems caused by the sharp incline in the property.

30. The Respondent contends that the subject property is correctly assessed and that all of the properties along US Highway 50 are assessed in the same manner. The Respondent adds that the twenty percent (20%) negative influence factor presently applied to the subject property was given in both the 1989 and 1995 reassessments for the ingress and egress problems.

31. The applicable rules governing this Issues 1 and 2 are:

> **50 IAC 2.2-4-17 Commercial and industrial acreage:**
> (b) There are four (4) categories of commercial and industrial land. Those categories are primary, secondary, usable undeveloped, and unusable undeveloped.
>
> **50IAC 2.2-4-1(18)** – "Primary commercial or industrial land" refers to the primary building or plant site. The following are examples of primary land:
> (A) Land located under buildings.
> (B) Regularly used parking areas.
> (C) Roadways.
> (D) Regularly used yard storage.
> (E) Necessary support land.

50 IAC 2.2-4-1(19) – "Secondary commercial or industrial land" refers to land utilized for purposes which are secondary to the primary use of the land. The following are examples of secondary land:
(A) Parking areas that are not used regularly.
(B) Yard storage that is not used regularly.

50 IAC 2.2-4-1(23) – "Unusable undeveloped commercial and industrial land" means vacant land that is unusable for commercial or industrial purposes.

50 IAC 2.2-4-1(24) – "Usable undeveloped commercial or industrial land" means vacant land that is held for future commercial or industrial purposes.

50 IAC 2.2-4-17(8) – Influence Factor

Refers to a condition peculiar to the acreage tract that dictates an adjustment, either negative or positive, to the extended value to account for variations from the norm. The code system for various influence factors is the same as the code system for residential platted lots – 50 IAC 2.2-4-10(a)(9).

50 IAC 2.2-4-10(a)(9) and 50 IAC 2.2-4-17(8) - Influence Factor:

Influence factors may be applied for the following conditions:

a. "topography"
b. "under improved"
c. "excess frontage"
d. "shape or size"
e. "misimprovement"
f. "restrictions"
g. "other"

32. Evidence and testimony considered particularly relevant to this determination include the following:

a. The land should be classified as .72 acre primary (30,000 square feet of asphalt and a 1,518 square foot building), 1.28 acre secondary (sloping topography) and 1.00 acre as usable undeveloped (utility easement and drainage ditch areas) with .675 acre of this 1.00 acre being totally unusable. *Lawson testimony.*

b. The Petitioner presented a copy of the Quitclaim Deed, citing the easements. However, additional information could not be found about the easements. *Petitioner's Exhibit C & Lawson testimony.*

c. A forty percent (40%) negative influence factor should be applied to the land due to restrictions and for ingress/egress problems (topography). *Lawson testimony*.

d. The subject's land assessment is uniform with other land assessments along US Highway 50, as shown by the property record cards of all of the businesses in this area. *Sietz testimony & Respondent's Exhibit L*.

e. The twenty percent (20%) negative influence factor, presently applied to the subject land, was given in both the 1989 and 1995 reassessments and that the factor must have been applied to account for the sloping quality of the land, and the ingress/egress concerns. *Sietz testimony & Respondent's Exhibits E and G.*

Analysis of ISSUES 1 and 2

33. The Petitioner contends that the subject parcel is incorrectly classified as 3.00 acres primary and .08 acres usable undeveloped. The Petitioner contends that the land should be classified as .72 acres primary, 1.28 acres secondary and 1.00 usable undeveloped (with .675 of this 1.00 acre being totally unusable). It should be noted that per the subject's PRC the total acreage is 3.08 acres and per the Quitclaim Deed total acreage is 3.082 acres. The Petitioner's total acreage equals 3.00 acres.

34. In addition, the Petitioner opines that a negative influence factor of 40% should be applied to the land due to restrictions (drainage ditch and easements) and topography (sharp incline of the land effecting ingress/egress).

35. 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.

Land Classification

36. 50 IAC 2.2-4-17(b) states in part, "Normally, large acreage tracts are partitioned to indicate the various uses of the individual tract. Small acreage tracts of one (1) acre or less are often utilized as a primary building site and require the primary land classification."

37. The Petitioner determined that the asphalt paving (30,000 square feet) and the structure used as general office (1,518 square feet) constitute the primary land classification. The sloping topography of the subject parcel was determined by the Petitioner to be secondary land with the easements and drainage ditch making up the usable undeveloped land classification.

38. A review of the Petitioner's primary land calculation showed that the Petitioner was partially correct when it included the asphalt paving (regularly used parking areas, roadways, and regularly used yard storage) and the general office building (land under buildings) as primary lands. However, the Petitioner failed to include in its primary land classification calculation a second structure (pole barn) on the subject property and the parcel's "necessary support land".

39. As stated in ¶31 under 50 IAC 2.2-4-1(18) – "necessary support land" is another example of primary land. Any discussion of primary lands would not be complete without a discussion regarding land under buildings, regularly used parking areas, roadways, regularly used yard storage and "necessary support land".

40. Examples of items which may be taken into consideration as “necessary support land” include: zoning requirements, building set back lines, required buffer zones between parcels, landscape areas, sidewalks, etc. The Petitioner did not present any testimony or submit any evidence relating to “necessary support land”.

41. Though the Petitioner submitted a calculation for the primary land classification (paving and a single building), the Petitioner failed to submit similar calculations that establish that the remaining acreage is properly classified as secondary or usable undeveloped land. The Petitioner instead makes conclusory remarks as to the amounts of secondary and usable undeveloped lands. The Petitioner concluded that “1.28 acres not under asphalt” are to be considered as secondary land and “1.00 acre not usable”. The Petitioner did not submit any supportive documentation, such as a map of the subject parcel detailing the locations of the different land classifications and the measurements associated with these classifications.

42. In previous reassessments, providing measurements of paving and buildings alone may have constituted the primary land classification, however, under the guidelines established in the Real Property Assessment Manual (50 IAC 2.2) for the 1995 general reassessment (which this appeal falls under), such a calculation would now be incomplete.

43. As stated in ¶26, “the petitioner must sufficiently explain the connection between the evidence and the 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. Conclusory statements are statements, allegations, or assertions that are unsupported by any detailed factual evidence. Conclusory statements do not constitute probative evidence. *Sterling Management-Orchard Ridge Apartments v. State Board of Tax Commissioners,* 730 N.E. 2d 828,839 (Ind. Tax Ct. 2000); *Whitley,* 704 N.E. 2d at 1119 (Ind. Tax 1998).

44. Though the Petitioner failed to submit probative evidence to support the changes in the land classification it had requested, the Petitioner did submit evidence (Quitclaim Deed, Petitioner's Exhibit C) that supports a change in the land classification regarding .675 acres being valued as a right-of-way. The Respondent did not rebut the evidence presented regarding the right-of-way.

45. For all the reasons set forth above, even though the Petitioner failed to submit probative evidence that adequately supported the changes in the land classification it requested, the Petitioner did submit evidence regarding .675 acres being valued as right-of-way.

46. It is determined that the land be valued in the following manner:
Primary land - 2.325 acres primary at $40,000 per acre
Usable undeveloped land - .08 acres at $5,000 per acre
Right-of-Way - .675 acres at no value

A change in the assessment is made as a result of this issue.

<u>Influence Factor - Land</u>

47. In addition to the requested changes in the land classifications for the subject parcel, the Petitioner appealed for the application of a negative influence factor to the land.

48. The values established in the County Land Valuation Order may be adjusted by the application of influence factors. An influence factor is defined in 50 IAC 2.2-4-17(8) as "a condition peculiar to the lot that dictates an adjustment to the extended value to account for variations from the norm."

49. The Petitioner opined that a negative influence factor of forty percent (40%) should be applied to the land because of restrictions (easements and drainage ditch) and topography affecting the ingress/egress to the subject parcel. The Respondent stated that a negative 20% influence factor had been applied to the subject parcel for both the 1989 and 1995 reassessments due to ingress/egress problems. It should be noted that the appeal under

review is for tax year 1997 and thus falls under the rules and regulations promulgated for the 1995 general statewide reassessment.

50. To prevail in an appeal for the application of a negative influence factor, a taxpayer must present both "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999).

51. A taxpayer has a two (2)-prong burden regarding the application of an influence factor: (1) to determine the reasons for the application of an influence factor, and (2) to quantify the amount of the influence factor requested.

52. In the case at bar, the Petitioner's evidence consisted of Mr. Lawson's prepared statement asserting:

> Subject's land parcel is sloping which restricts the land's utility. The sharp incline of the land makes the ingress-egress to the land's usable area difficult. A drainage ditch area runs along the front of the land and utility easements run along the entire front and side of the parcel. Of the parcel's 3+ acres, less than one acre can be prudently improved with building improvements. Due to the above-mentioned facts, the negative influence factor relevant to the subject land is estimated to exceed 40%. Petitioner's Exhibit A.

53. Both parties agree that an influence factor should be applied. Therefore, the Petitioner's remaining burden is to quantify the amount of the influence factor it seeks. On this point the Petitioner's testimony that "the influence factor is *estimated* to exceed 40%", is neither probative nor does it establish a prima facie case for the quantification of the amount of the influence factor requested.

54. For all the reasons set forth above, the Petitioner failed to establish the reasons to apply a 40% negative influence factor to the land. No change in the assessment is made as a result of this issue.

Issue No.3 – Whether the subject improvement has been assessed using the correct pricing schedule.

55. The Petitioner contends the subject building (general office) has metal exterior sidewalls and a wood superstructure. The Petitioner further contends the subject structure is a modular building and does not meet the qualifications set forth for the GCM model in the Real Property Assessment Manual (50 IAC 2.2).

56. The Respondent contends that all of the auto sales buildings in the immediate area are assessed correctly using the GCM - General Office schedule (Respondent Exhibit L). The Selection of Schedules in 50 IAC 2.2 calls for auto and truck agencies administrative offices to be assessed using the GCM - General Office. In addition, a "D" grade was applied to the subject structure to account for deviations of construction materials from the model.

57. The applicable rules governing this Issue 3 are:

50 IAC 2.2-11-5 Selection of Schedules
Is an alphabetical list of various commercial and industrial improvements. Lists the use type from Schedule A or if Schedule A does not apply, the proper schedule to be used in computing the reproduction cost.

50 IAC 2.2-11-5(a)(5) – Auto and truck agencies
(A) Administrative offices – GCM general office

***Barth Inc. v. State Board of Tax Commissioners,* 699 N.E. 2d 802 (Ind. Tax 1998)(*Barth 1)* and 50 IAC 2.2-10-6.1(a)**
The State Board's Regulation explains how to determine the base rate. Initially, one selects the model (GCM, GCI, or GCR) that *best resembles the physical characteristics* of the building being assessed.

50 IAC 2.2-10-6 and 11–5

Reproduction Cost – Depreciation = True Tax Value. In general terms, the reproduction cost for commercial and industrial property is the base rate for the model selected (GCM, GCI, or GCR) with adjustments.

50 IAC 2.2-10-6.1 Pricing

(a) "Schedule A Base Prices" consists of base square foot unit rates by floor for various "Use' and "Finish" types for two (2) types of exterior walls. The rates are for a range of perimeter to area ratios for a specified type of construction, and adjustments are provided to account for variations in wall heights and structural framing.

Analysis of ISSUE 3

58. The Petitioner testified that the subject structure is a one (1) story metal-sided building with a wood superstructure. Petitioner contends that the subject structure is similar to a metal skinned modular or metal pre-engineered building and should not be assessed from the GCM schedule.

59. The Petitioner submitted into evidence an Agreement (Petitioner's Exhibit B) dated May 26, 1993, which indicated that the cost of the subject structure would be $58,560. Based on this agreement, it is the Petitioner's opinion that since the Real Property Assessment Manual (1995) reflects 1992 building costs, the $58,560 should be reduced by fifteen percent (15%), with the building cost (prior to depreciation) being no greater than $49,780 ($58,560 x .85 = $49,776 = $49,780). The Petitioner declared that the present assessment is $20,000 more than the price shown on the Agreement..

60. The Respondent asserts that the GCM schedule is the correct pricing schedule and that the grade was reduced to a "D" grade to account for the lower quality of construction. Respondent also states that structures similar to the subject in the immediate area as the subject have been valued using the same schedule. *Sietz testimony & Respondent Exhibit L.*

61. 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.

Pricing Schedule

62. The Board's Regulation explains how to determine the base rate. Initially, one selects the model (GCM, GCI, or GCR) that *best resembles the physical characteristics* of the building being assessed. *Barth Inc. v. State Board of Tax Commissioners,* 699 N.E. 2d 802 (Ind. Tax 1998)(*Barth 1)*. The Regulation also provides for a number of use-type models, e.g., GCI- Light Maunufacturing. See 50 IAC 2.2-11-1, -2 and -3 describing features for each use-type model. The use-type models were never intended to describe with exactitude the features of the building being assessed. In fact, it would be impossible for any regulation to accomplish such a task. Because the features of the building being assessed will not conform exactly to the use-type models, adjustment *may* be made to the base rates provided for in 50 IAC 2.2-11-6.

63. There are two methods to adjust an improvement's assessment for deviations from the model. The first is to adjust the grade of the subject. "Where possible, this type of an adjustment should be avoided because it requires an assessing official's subjective judgment." *Clark v. State Board of Tax Commissioners,* 742 N.E. 2d 46, 49 (Ind. Tax 2001)(*Clark II)*. See also *Whitley,* 704 N.E. 2d 1113.

64. "Under some circumstances, an improvement's deviation from the model used to assess it may be accounted for via a grade adjustment." However, the evidence presented must explain how and to what extent the subject deviates from the model, why those deviations deserve an adjustment, and why a subjective (as opposed to objective) adjustment is appropriate. *Quality Farm and Fleet, Inc. v State Board of Tax Commissioners,* 747 N.E. 2d 88, 94 (Ind. Tax 2001).

65. The second, and preferred method, "is to use separate schedules that show the cost of certain components and features present in the model. This method allows an assessing official to make an objective adjustment to improvement's base rate." *Clark II,* 742 N.E. 2d at 49. See also *Whitley,* 704 N.E. 2d 1113.

66. The Petitioner must identify the model used to assess the improvement. The Petitioner must also demonstrate whether the current grade does not already account for lower construction costs due to these features. *Miller Structures v. State Board of Tax Commissioners,* 748 N.E. 2d 943, 953 (Ind. Tax 2001). Accordingly, the Petitioner must show how the subject deviates from the model, and quantify how the alleged deviations affect the subject's assessment.

67. Though the Petitioner described the subject structure as a metal skinned modular or metal pre-engineered building that should be assessed as such and not assessed from the GCM schedule, the Petitioner did not submit any evidence, photographs or a list of features to show how the structure deviated from the model used to assess it (GCM – General Office). No comparative analysis was submitted by the Petitioner of the subject's features to that of the features of the GCM – General Office. Nor were any features of the subject structure compared to any other structure.

Letter of Agreement

68. In support of the above premise that the subject structure should not be valued from the GCM schedule, the Petitioner submitted an Agreement with Better Modular Building, Inc. to design and erect a sales office building. The price agreed to by the parties for the *building only* was $58,560.

69. True tax value does not equal market value. Ind. Code § 6-1.1-31-6(c). True tax value does not attempt to determine the actual market value for which property would sell if it were offered on the open market. Nevertheless, true tax value's method for valuing is the same as one of the well-accepted methods for determining fair market value – reproduction cost less depreciation.

70. The cost schedules in the Real Property Assessment Manual, 50 IAC 2.2-7-11, are at the heart of true tax value's method of determining value. The cost schedules effective for the 1995 general reassessment reflect 1991 reproduction costs (based on market information derived from Marshall Valuation Services price tables) that were then reduced across the board. The overall purpose of these cost schedules was to approximate prevailing construction costs in 1991 less 15%.

71. The Petitioner's calculation of taking the Agreement price ($58,560) and reducing it by 15% to determine the value of the structure is in error. The structure under appeal was erected in 1993. The Board cannot compare 1993 construction cost information to information that is based on 1991 dollars (cost schedules in the Manual). Accordingly, 1993 cost information would have to be deflated to 1991 true tax value. In order to do this, comparative cost multipliers by region would need to be considered as well as a formula to take an established cost to a historical date (deflating the 1993 costs to 1991 dollars)(Marshall Valuation Services). The Petitioner's calculation failed to take any of this into account.

72. In addition, though the Petitioner represented a dollar amount on the Agreement as the cost of the subject structure, the Petitioner failed to recognize that cost consists of all the direct labor and materials and indirect expenditures required to complete the construction of an improvement. A builder or developer includes all expenses incurred in the development of the improvement, as well as overhead and a sufficient amount of profit to cover the risk associated with constructing the improvement. Thus, if cost is to represent value, it is necessary that all appropriate costs be included in the estimate. International Association of Assessing Officials (IAAO) Property Assessment Valuation (2nd. ed. 1996) at 130.

73. Cost may be divided into three (3) kinds: direct, indirect, and entrepreneurial profit. All three (3) kinds of cost are necessary to produce reliable cost estimates. Examples of direct costs include labor, materials, supervision, electrical and water service, other utilities, equipment rental, and installation of components. Indirect costs include (but are

not limited to) architecture and engineering, building permits, title and legal expenses, insurance, real estate and other taxes during construction, construction loan fees and interest payments during construction, overhead, profit, advertising, and sales expense. Entrepreneurial profit is a market-derived number that reflects the amount developers or entrepreneurs expect to receive for their contribution to the improvement. IAAO Property Assessment Valuation (2nd. ed. 1996) at 130.

74. When the Agreement was reviewed further, a number of additional concerns came to the forefront:

a. As stated in the Agreement, the cost of $58,560 represents the cost of the *building only*.

b. The price for the subject structure is FOB (Freight on Board) Factory, Elkhart, Indiana. The subject structure would be erected in Lawrenceburg, Indiana some 257 miles to the south. The additional cost to move the structure from Elkhart to Lawrenceburg is not included in the $58,560.

c. The Agreement indicated that after the sum of $58,560 was paid in two (2) installments of $29,560 with the order and $29,000 upon delivery of the building to the site, there was a "balance due upon completion, prior to occupancy, site work, freight, etc. (as estimated on the attached sheet) to be billed at actual cost, plus 15% OHP to BMB". (BMB being Better Modular Buildings, Inc.)

d. There was no "attached sheet" submitted into evidence by the Petitioner (per the Agreement) that would have listed the additional services and their costs, which may or may not have been determined to be part of the building costs.

e. There was a notation on the Agreement that "site work invoices to be paid directly to vendors." The Petitioner did not submit any of these invoices into evidence.

f. The size of the subject structure shows twenty-four (24) feet by forty-six (46) feet in one section of the Agreement and twenty-four (24) feet by sixty-six (66) feet in another. Changes in the size of a structure would lead to increases in the cost of construction as well as additional costs in the site preparation.

75. Other than the cost for the *building only*, the Petitioner submitted no other costs that would be associated with the subject structure as were indicated in the Agreement. See ¶72 and ¶73 for the different types of direct, indirect and entrepreneurial costs associated with the construction of a structure.

Subject structure is over assessed by $20,000

76. The Petitioner further opined that the subject building was assessed at $20,000 more than the Agreement price. This is incorrect. Per the subject's PRC the structure's Reproduction Cost is $62,900, with a True Tax Value of $53,800. When compared to the cost found in the Agreement of $58,560 or what the Petitioner determined the adjusted cost to be, $49,780 ($58,560 less 15%), the difference between the Petitioner's purported cost and the value shown on the PRC is not $20,000 as proclaimed by the Petitioner but considerably less.

77. For all the reasons set forth above, the Petitioner failed to submit probative evidence in support of its allegations that the assessment was in error and failed to show what the assessment should be. No change in the assessment is made as a result of this issue.

ISSUE 4: *Whether economic and functional obsolescence should be applied to the subject structure*.

78. The Petitioner contends that due to restricted use of the land and changes in the subject's neighborhood, the subject structure suffers from economic and functional obsolescence in excess of thirty percent (30%). The Petitioner further contends the property was vacant from January 1997 through 2001, creating a negative economic impact for the owner.

79. In 1996 Wal-Mart's relocation close to the subject property affected the desirability of the subject property, which was utilized as a car lot. *Lawson testimony.*

80. The Respondent contends that they were aware of the vacancy for the year under appeal (1997) and applied a ten percent (10%) obsolescence factor to the building. The Respondent further stated that other buildings, on the same main thoroughfare (US 50) as the subject, were vacant in the past with no obsolescence depreciation having been requested or applied. The Respondent further stated that there is one (1) vacant building at the current time receiving a twenty percent (20%) economic obsolescence factor, but that building has been vacant since the 1980's.

81. The applicable rules governing Issue 4 are:

50 IAC 2.2-10-7 – Commercial and industrial building depreciation

50 IAC 2.2-10-7(e)
In addition physical depreciation, some buildings experience loss of value due to obsolescence**.** These effects are much less noticeable than physical depreciation and must be examined in depth. Accurate determination of obsolescence depreciation requires an assessor to recognize the symptoms of obsolescence and to exercise sound judgment in equating his or her observation of the property to the correct deduction in value.

50 IAC 2.2-1-24 – Economic obsolescence
Obsolescence caused by factors extraneous to the property.

50 IAC 2.2-1-29 – Functional obsolescence
Obsolescence caused by factors inherent in the property itself.

Analysis of ISSUE 4

82. The Petitioner opined the subject improvement should receive *in excess* of thirty percent (30%) obsolescence because of vacancy factors and ingress and egress problems with the subject property.

83. The Respondent testified that the County applied a 10% obsolescence factor to the subject structure due to vacancy for the year under appeal.

The concept of depreciation and obsolescence

84. 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. 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 (10th ed. 1992)).

85. 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.

86. 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 in the Regulation, 50 IAC 22-10-7, is tied to the one 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.*

87. Economic obsolescence is the loss of value resulting from factors external to the property (for example, national economic conditions). IAAO Property Assessment Valuation at 155. *See also* 50 IAC 2.2-1-24 and 50 IAC 2.2-10-7.

88. Functional obsolescence is a loss of value resulting from changes in demand, design, and technology, and can take the form of deficiency (for example, only one bedroom), the need for modernization (for example, an outdated kitchen), or superadequacy (for example, overly high ceilings). IAAO Property Assessment Valuation at 154 & 155. *See*

also 50 IAC 2.2-1-29 and 50 IAC 2.2-10-7.

89. 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).

90. Under the cost approach, there are five recognized methods used to measure depreciation, including obsolescence, namely: (1) sales comparison method, (2) the capitalization of income method, (3) the economic age-life method, (4) the modified age-life method, and (5) the observed condition method.

Burden regarding the obsolescence claim

91. "[I]n advocating for an obsolescence adjustment, a taxpayer must first provide the State 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).

92. 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 improvement to suffer loses in value." *Champlin,* 745 N.E. 2d at 936.

93. It is incumbent on the taxpayer to establish a link between the evidence and the loss of value 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 educed. *Rotation Products Corp. v. Department of State Revenue,* 690 N.E. 2d 795, 798 (Ind. Tax 1998).

94. 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).

Evidence submitted

95. 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.

96. The Petitioner's argument regarding the ingress/egress to the subject parcel was previously discussed in ISSUE 2 under Influence Factor – Land (¶47 thru ¶54) and is not a cause for obsolescence but a land issue. Again, an influence factor is a condition peculiar to a parcel (land) that requires an adjustment to account for variations from the norm and is applied for various reasons.

97. Regarding the Petitioner's assertion that the relocation of Wal-Mart affected the desirability of the subject property, the Petitioner failed to provide any supportive documents to show how or why the relocation of Wal-Mart would have any affect on the value of a property being used to sell used cars.

98. As previously stated in ¶83, the County applied 10% obsolescence depreciation to the subject structure due to vacancy. By doing so, the County essentially agreed with the Petitioner that some amount of obsolescence should be applied to the structure (However, the parties disagreed as to the amount to be applied). Thus, the first part of the Petitioner's burden of proof was met. The Petitioner's remaining burden was then to quantify the amount of obsolescence it sought.

99. On this point, the Petitioner failed to quantify the amount of obsolescence it sought for two (2) reasons. First, it failed to distinguish between the types of obsolescence (economic or functional) in its testimony. In Petitioner's Exhibit A, it stated, "the building suffers from economic and functional obsolescence in excess of 30%." The Petitioner presented no testimony regarding the amounts for each of the two (2) types of obsolescence. The two types of obsolescence are not synonymous.

100. "Taxpayers are required to specify whether they are seeking economic or functional

obsolescence, or both. The Court will not accept creative ambiguity that leaves it to the taxing authorities or this Court to determine what type of obsolescence is being sought and whether the evidence identifies and quantifies it." *See Davidson Industries v. Indiana State Board of Tax Commissioners,* 744 N.E. 2d 1067, 1071 (Ind. Tax 2001)(holding that the Court will not make a taxpayer's case for it; see also *Clark I,* 694 N.E. 2d at 1241 (holding that taxpayers must identify and quantify obsolescence to make a prima facie case).

101. Second, the Petitioner did not attempt to use any of the recognized methods to quantify obsolescence. In actuality, the Petitioner did not submit any calculation of any type in any attempt to quantify the "in excess of 30%" obsolescence it claimed.

102. As stated in ¶26, "the petitioner must sufficiently explain the connection between the evidence and the 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. *Heart City Chrysler*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]

103. For all the reasons set forth above, the Petitioner failed to explain how its assertions equated to a loss in value that would be indicative of obsolescence. The Petitioner failed to submit evidence that was probative in nature to show that the assessment of the subject property was incorrect. No change in the assessment is made as a result of this issue.

Summary of Final Determinations

<u>ISSUE 1: *Whether the subject parcel's land has been classified correctly.*</u>
<u>ISSUE 2: *Whether an influence factor should be applied to the land due to restrictions and ingress/egress problems*</u>.

104. The Petitioner failed to submit probative evidence that adequately demonstrated that the land assessment was incorrect and the specific changes sought were correct. The Petitioner also failed to establish the reasons to apply a negative influence factor to the land and failed to quantify the amount of the influence factor it was seeking. No change in the assessment is made as a result of these issues.

105. It should be noted that the Petitioner did submit evidence relating to .675 acres of the subject property being right-of-way and that the Respondent did not submit testimony or evidence rebutting this claim. A change in the assessment is made as a result of the right-of-way.

<u>*Issue No.3 – Whether the subject improvement has been assessed using the correct pricing schedule.*</u>

106. The Petitioner failed to submit probative evidence in support of its allegations that the assessment was in error and failed to show what the assessment should be. No change in the assessment is made as a result of this issue.

<u>ISSUE 4: *Whether economic and functional obsolescence should be applied to the subject structure*</u>.

107. The Petitioner failed to submit probative evidence for the causes of obsolescence and failed to quantify the amount of obsolescence it was seeking. No change in the assessment is made as a result of this issue.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

____

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.