

**STATE OF INDIANA
Board of Tax Review**

D & W Inc for 941 CORP,)	On Appeal from the Elkhart County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petition for Review of Assessment, Form 131
)	Petition No. 20-012-99-1-4-00034
ELKHART COUNTY PROPERTY TAX)	Parcel No. 25-06-06-201-001
ASSESSMENT BOARD OF APPEALS)	
And CONCORD TOWNSHIP)	
ASSESSOR,)	
)	
Respondents.)	

Findings of Fact and Conclusions of Law

The Indiana Board of Tax Review has assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners (State Board) and the Appeals Division (Appeals Division) of the State Board of Tax Commissioners (for convenience of reference, each hereafter referred to as "State"). The State having reviewed the facts and evidence, and having considered the issues, now makes the following findings of fact and conclusions of law.

Issue

Whether functional 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, PricewaterhouseCoopers, LLP, on behalf of D& W Inc. (the Petitioner), filed a petition requesting a review by the State. The Final Determination of the Elkhart County Property Tax Assessment Board of Appeals was issued on July 13, 2000. The Form 131 Petition was filed on August 11, 2000.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on October 19, 2001 before Hearing Officer Debra Eads. Testimony and exhibits were received into evidence. Amy Rainbolt of PricewaterhouseCoopers represented the Petitioner. Veronica Williams and Eugene Inbody represented Elkhart County. Robert Brewer and Richard Schlueter represented Concord Township.
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 – Original Form 130 filed with Property Tax Assessment Board of Appeals

Petitioner's Exhibit 2 – Indications of Functional Obsolescence

Petitioner's Exhibit 3 – Request for Additional Evidence by Elkhart County Property Tax Assessment Board of Appeals

Petitioner's Exhibit 4 – Calculation of Functional Obsolescence Factor

Petitioner's Exhibit 5 – Rebuttal from Concord Township Assessor

Petitioner's Exhibit 6 – Rebuttal from PricewaterhouseCoopers LLP

Petitioner's Exhibit 7 – Form 115, Notification of Final Assessment Determination

Petitioner's Exhibit 8 – Power of Attorney

Respondent's Exhibit 1 – includes (a) Form 115; (b) Findings & Conclusions; (c) Form 130; (d) Exhibits submitted by the Petitioner; (e) Exhibits submitted by the Respondent; (f) Exhibits submitted by the PTABOA

5. The subject property is located at 941 Oak Street, Elkhart, Concord Township, Elkhart County. The Hearing Officer did not conduct an on-site inspection of the property.

Functional Obsolescence

6. An obsolescence adjustment of 20% had been applied to the subject property and was removed by the Township Assessor. The obsolescence was reapplied by Elkhart County, but upon further review was again removed by the Township Assessor. The Elkhart County Property Tax Assessment Board of Appeals did not reinstate the obsolescence and the Petitioner filed for a review by the State Board. The Petitioner testified that obsolescence exists in the facility due to the difficulty of product flow through the building as well as the resulting unusually high product breakage. The causes of obsolescence indicated are the proximity of support beams in the facility, the location of numerous small passageways and partial walls that block product flow and the non-continuous nature of the product line in the facility. *Rainbolt Testimony. Petitioner's Exhibit 2.*
7. Petitioner's Exhibit 4 is the Petitioner's effort to quantify the requested obsolescence. The Petitioner used an average of three (3) different calculations of obsolescence. The three (3) calculations were based on: (1) material breakage/spoilage (75.0%), (2) the time inefficiencies factor (37.88%) and (3) the excess operating costs (50.64%). The evidence indicates the average of the three (3) calculations of obsolescence to be 54.51%, which was rounded to an indicated obsolescence of 50%. *Rainbolt Testimony. Petitioner's Exhibit 4.*
8. The PTABOA felt that insufficient source documents were submitted to them in support of the request for functional obsolescence. *Williams and Inbody Testimony.*

Conclusions of Law

1. The Petitioner is statutorily limited to the issues raised on the Form 130 petition filed with the 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.

D. Functional 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 multiple applications and removals of obsolescence to the subject property implies a continuing question as to the existence of obsolescence. The Respondent indicated that reluctance to apply obsolescence by the PTABOA was based on the calculation supplied by the Petitioner and the lack of support documentation.
24. The Respondent does not appear to disagree with the presence of obsolescence. From the testimony offered by the Respondent, it appears that the only question was whether the Petitioner supported the requested amount of obsolescence with a proper method. Accordingly, for purposes of this appeal only, the Petitioner is assumed to have met the first prong of the two-prong test for obsolescence

25. Assuming that obsolescence does exist at the subject facility, one of the five (5) recognized methods (see paragraph 22) of obsolescence calculation must be used to quantify any measurable obsolescence.
26. The effort of the Petitioner to quantify obsolescence (Petitioner Exhibit 4) does not follow any of these recognized methods. Method 3 appears to be a cursory effort at some form of capitalization, however, the Petitioner attempts to capitalize an estimation of "total annual excess costs" rather than income. There is no support for the 12% factor used and the excess costs are apparently for 1999-2000, while the true tax value is based on the 1995 Regulation.
27. There is no documentation to support the percentage of breakage/spoilage for an ideal facility or the time factor for such a facility. Without verifiable support documents, these amounts are opinions and opinions are not probative evidence.
28. The Petitioner did not meet the second prong of the two-prong burden. The quantification of obsolescence presented by the Petitioner is insufficient to quantify the amount of obsolescence requested.
29. For the reasons above, the Petitioner failed to meet the burden of proof in this appeal. Accordingly, no change is made to the assessment.

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.

Chairman, Indiana Board of Tax Review