

STATE OF INDIANA
Board of Tax Review

DAVID H. MEYERS)	On Appeal from the Vanderburgh County
)	Board of Review
)	
Petitioner,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition Nos. 82-027-97-1-4-00040
)	82-027-98-1-4-00031
)	
)	Parcel No. 0965017015018
VANDERBURGH COUNTY BOARD OF)	
REVIEW And KNIGHT 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

Issue No. 1 – Whether an influence factor should be applied to the land.

Issue No. 2 – Whether the grades assigned to the mini-warehouses are correct.

Issue No. 3 – Whether the condition rating assigned to the mini-warehouses is correct.

Issue No. 4 – Whether the utility storage building should have both functional and economic obsolescence applied.

Issue No. 5 – Whether the remaining structures (mini-warehouses) should have economic obsolescence applied.

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 be considered a finding of fact.
2. Pursuant to Ind. Code § 6-1.1-15-3, Rex Hume of Uzelac & Associates, on behalf of David H. Meyers (Petitioner), filed Form 131 petitions requesting a review by the State. The Form 131 petitions for 1997 and 1998 were filed on January 12, 1998 and on January 14, 1999 respectively. The Vanderburgh County Board of Review's (County Board) Assessment Determinations on the underlying Form 130 petitions are dated December 11, 1997 and December 14, 1998 respectively.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on September 8, 1999, before Hearing Officer Mary Kay Fischer. Testimony and exhibits were received into evidence. Rex Hume represented the Petitioner. Kris Seger represented Vanderburgh County. John Gerard and Joseph Gries represented Knight Township.

4. At the hearing, the subject Form 131 petitions were made a part of the record and labeled Board Exhibits A. The Notices of Hearings on Petitions are labeled Board Exhibits B. In addition, the following exhibits were submitted:
Board Exhibits C – Withdrawal Agreement
Board Exhibits D – Waiver of 10 day hearing notification for 1997 petition

Petitioner Exhibit 1 – Attachments to the Form 131 petition:

- Board of Review Memorandum dated August 3, 1998
- Subject's property record card (PRC) 1997
- Copy of Form 130 petition
- Subject's PRC 1998
- Letter from Uzelac & Associates to Mr. Khris Seger, Vanderburgh County Assessor's Office regarding obsolescence
- Supporting Document - new steel framed pre-engineered building compared to the present or old building, showing a functional obsolescence figure of 15%
- Comp Rates – a comparison of other mini-warehouses in Evansville to the subject
- 1997 Schedule E Form 1040 (one page)
- Facsimile from Mr. Hume to Mr. Seger with summary of income and expenses for 1997 attached
- Memo from the Mr. Meyer to Mr. Hume regarding subject property dated October 30, 1997

Respondent Exhibit 1 – Brief for each petition

Respondent Exhibit 2 – Copy of PRC for Parcel No. 172031095033

Respondent Exhibit 3 – Photocopies of the subject property

5. At the hearing, the Petitioner signed a Waiver (Board Exhibit D) for the 10-day minimum advance notice of hearing for the 1997 petition. The petitions for the

1997 and 1998 years are for the same parcel, have identical issues, and will be addressed as one petition in these proceedings.

6. At the hearing, the Hearing Officer requested additional information from the Petitioner. The Petitioner was given until September 18, 1999 to submit the information requested. The Petitioner submitted a response to the Hearing Officer's in a timely manner on September 14, 1999. The Hearing Officer's request and the Petitioner's response are entered into the record and labeled as Board Exhibit E and Petitioner Exhibit 2 respectively.
7. The subject property is located at 1140 Maxwell Avenue, Evansville, Knight Township, Vanderburgh County.
8. The Hearing Officer did not inspect the subject property.

Issue No. 1 – Whether an influence factor should be applied to the land.

Issue No. 2 - Whether the grade applied to the to the mini-warehouses is correct.

Issue No. 3 – Whether the condition rating assigned to the mini-warehouses is correct.

9. At the hearing, Mr. Hume signed a withdrawal agreement (Board Exhibit C) removing these issues (referenced as No. 1, No. 2 and No. 3 above) from review by the State.

Issue No. 4 – Whether the utility storage building should receive both functional and economic obsolescence applied.

Issue No. 5 – Whether the remaining structures (mini-warehouses) should have economic obsolescence applied.

10. The Petitioner contends that the subject property suffers from obsolescence due to the lack of generating sufficient income to make it a viable business and requests the application of 95% economic obsolescence on all the mini-warehouse structures and 15% functional and 80% economic obsolescence on the larger building.
11. The Petitioner testified that the obsolescence issue applies to two (2) World War II ammunition warehouses connected together by a metal canopy enclosing the space between them (which was later subdivided for multi-tenant use), and numerous pole-framed mini-warehouses. *Hume testimony.*
12. The Petitioner acquired the property in 1996 following bankruptcy proceeding. The previous owner's financial records showed a 75% occupancy rate, however only 50% of those tenants were paying rent. In addition, less than half of the larger structure was occupied. *Hume testimony.*
13. Mr. Hume opined that evidence was submitted in the original appeal indicating an income to expense ratio of 45% for 1997 (the new owner's first year in business). If an appraiser capitalized the 1997 income and loss statement it would indicate a negative value for the subject property. *Petitioner Exhibit 1.*
14. Mr. Hume added that the larger subject structure (a World War II era building) has physical constraints, which make it impossible to modify for tenants needs. Some of the concerns are: the entire structure has one (1) electric and gas drop, walls are in inconvenient places, floors are at different levels, and utility service problems exist. To support this position, Mr. Hume submitted proposed values for 1998 of a new steel pre-engineered building (ideal building) indicating the new structure equated to 85% of the old larger building and that the functional obsolescence would then be 15% due to the walls, floor, and problems with utility service. *Petitioner Exhibit 1.*

15. Regarding the mini-warehouses Mr. Hume submitted a chart into evidence comparing the subject mini-warehouses and other mini-storage facilities in the Evansville area. The survey was accomplished by telephone and the chart reflects rents per month by unit size for the subject and the comparables. *Petitioner Exhibit 1.*
16. This comparison chart also indicates the rent charged before and after the Petitioner lowered its monthly rent to reduce the 50% vacancy rate. Depending on unit size, an analysis of the chart shows that the subject's property receives economic rent ranging from 59% to 83% of local averages, and is in the 59% to 75% range for most of the unit sizes. *Hume testimony & Petitioner Exhibit 1.*
17. Mr. Hume testified the subject mini-warehouse average square foot rental price is \$4.63, while the owners of another property informed him that he (the other owner) had to get an average of \$6.00 per square foot to earn a 10% - 11% return. Furthermore, the other property owner does not pay himself a salary.
18. The Petitioner testified that nominal rents have declined by 20% to 25% as part of the Petitioner's effort to fill space, with the mini-warehouse rents ranging from \$3.00 to \$4.50 per square foot and rents in the larger structure ranging from \$2.40 to \$2.90 per square foot. *Hume testimony*
19. The Petitioner made significant improvements in 1997, which included extensive advertising, evicting tenants who had not paid, and discounting rents to attract new tenants. The Petitioner also made some physical improvements to the property (i.e. installed storm drains to alleviate flooding). As of the March 1, 1998 assessment date, occupancy was just 50%. *Hume testimony.*
20. Mr. Gerard queried Mr. Hume on the excessive deferred maintenance cost reflected in the Petitioner's analysis. Mr. Gerard questioned whether the net loss

corrects the deferred maintenance cost or whether they are typical for the property. *Respondent Exhibit 1 & Petitioner Exhibit 1.*

21. Mr. Hume responded that both costs are included. For example, the expense items include some typical cost but they do not include the costs for capital improvements. In addition, part of improving the property was a demolition expense and that expense was not included in the analysis. However, repair expenses and expenses to make the units marketable are included.
22. Mr. Gerard submitted photocopies of the subject's mini-warehouses and PRCs for two (2) comparable properties (866 Maxwell Avenue and 2900 N. Weinbach Avenue).
23. In addition, Mr. Gerard questioned the Petitioner on whether he included the comparables in his rent analysis. Mr. Hume responded in the negative to that question. Mr. Hume explained that the Maxwell Avenue property is new construction and the Weinbach Avenue property owner refused to answer the Petitioner's questions on rent. *Respondent Exhibits 2 and 3.*
24. Mr. Gerard asked Mr. Hume about the sale price of the subject property in 1996. Mr. Hume replied that to the best of its knowledge, \$300,000 was paid for the property and it was a gross over payment in his opinion. However, Mr. Hume added, the sale price was based on 80% occupancies and the seller's records proved to be fictitious.
25. Mr. Gerard referenced the Weinbach Avenue property as the best comparable to the subject and added it would be interesting to note how they compare in rental prices. *Respondent Exhibit 2.*
26. Mr. Hume stated that even if the Weinbach Avenue mini-warehouse units reflected the same rental rates, this would not rule out the application of

obsolescence for the subject property. The same rental rate would not necessarily define the same cost problems reflected in the subject property.

27. Mr. Gerard queried Mr. Hume on his definition of cost problems. Mr. Hume replied that prior to reducing rental rates, the Petitioner had expenses far exceeding his income. Furthermore, after reducing rental rates, the Petitioner still had problems attracting tenants because of the poor location. Even if all of the Petitioner's units were 100% occupied on the March 1, 1998 assessment date, the Petitioner's rate reduction on rental units would put the Petitioner at a break-even point.
28. Mr. Gerard challenged Mr. Hume's statements regarding the "poor" location by stating that three (3) blocks from the subject's location are new mini-warehouses. In Mr. Gerard's opinion, no one would build new mini-warehouses if the location was depressed and the owner could not realize his capital investment.
29. Mr. Hume inferred that economic obsolescence changes on a year-to-year basis, and it is the assessor's discretion to review obsolescence annually.
30. Mr. Gerard questioned Mr. Hume on the years he used for his analysis. To which Mr. Hume responded that the rent figures and the comparisons are for August of 1998. However, Mr. Hume continued by stating that a complete analysis was not submitted for all of 1998, as his exhibit ends March 1, 1998.
31. Mr. Gerard opined that any analysis for 1997 would be inaccurate because of new ownership and start-up of the business. Mr. Gerard advised that trending would be a more beneficial method in quantifying obsolescence if complete 1998 information was submitted.

Conclusions of Law

1. The Petitioner is limited to the issues raised on the Form 130 petition filed with the County Board of Review (County Board) or issues that are raised as a result of the County Board'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 County Board. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the County Board disagree with the County Board'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 County Board 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 County Board, 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 County Board, 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 an influence factor should be applied to the land.

Issue No. 2—Whether the grade assigned to the mini- warehouses is correct.

Issue No. 3 – Whether the condition rating assigned to the mini- warehouses is correct.

18. At the hearing, Mr. Hume signed a withdrawal agreement (Board Exhibit C) removing these issues from review by the State.
19. Accordingly, there is no change in the assessment as a result of these issues.

Issue No. 4 – Whether the utility storage building should have both functional and economic obsolescence applied.

Issue No. 5 – Whether the remaining structures (mini-warehouses) should have economic obsolescence applied.

20. The Petitioner contends that obsolescence depreciation should be applied to all of the subject structures (larger World War II building and mini-warehouses). The Petitioner is requesting that 15% functional and 80% economic obsolescence should be applied to the larger structure and 95% economic obsolescence should be applied to the mini-warehouses. None of the structures under review in this appeal presently receive any obsolescence depreciation.

The Concept of Depreciation and Obsolescence

21. 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. *International Association of Assessing Officials (IAAO) property Assessment Valuation*, 153 & 154 (2nd ed. 1996); *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801, 806 (Ind. Tax 1998)(citing *Am. Inst. Of Real Estate Appraisers, The Appraisal of Real Estate*, 321 (10th ed. 1992)).
22. 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.
23. 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 2.2-10-7, 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.*

24. Functional obsolescence depreciation is defined as “obsolescence caused by factors inherent in the property itself.” 50 IAC 2.2-1-29.
25. Economic obsolescence depreciation is defined as “obsolescence caused by factors extraneous to the property.” 50 IAC 2.2-1-24.
26. 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).
27. “There are five methods used to measure accrued depreciation, two indirect and three direct. Each has advantages and disadvantages and has a different degree of reliability. Direct methods involve measuring the depreciation of the subject property, whereas indirect methods use sales of comparable properties and income and loss from rental properties to measure depreciation. The methods are categorized as follows:
- Indirect methods*
1. sales comparison method
 2. capitalization of income method
- Direct methods*
1. economic age-life method
 2. modified economic age-life method
 3. observed condition (breakdown) method”
- IAAO Property Assessment Valuation*, 155-156 (2nd ed. 1996).
28. “The *sales comparison method*: estimates cost new of subject property; comparable properties are found and site valued deducted; contributory improvement values remain; contributory improvement values are deducted from cost of each sale property, yielding measure of accrued depreciation; accrued

depreciation figure is converted to percentage and applied to subject property.”
Id at 183.

29. “The *capitalization of income method*: capitalizes the income of subject property into an estimate of value, with site value deducted; indicated improvement value is compared with estimated cost new to provide indication of improvement value remaining.” *Id*.
30. “The *economic age-life method*: is based on straight-line depreciation and is limited because depreciation of real property rarely occurs in a straight line. The method may be applicable for short-lived items.” *Id* at 184.
31. “The *modified economic age-life method*: recognizes the effect of curable items of both physical deterioration and functional obsolescence. Depreciation amounts for these items are deducted from cost new. The remaining amount is then depreciated using the age-life method. This is the indicated amount of depreciation for the subject property.” *Id*.
32. “The *observed condition (breakdown) method*: Breaks down depreciation into all its components. Although it is the most complete method, it is rarely used because it is so labor-intensive.” *Id*.

Burden regarding the obsolescence claim

33. “[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).
34. The identification of causes of obsolescence requires more than randomly naming factors. “Rather, the taxpayer must explain how the purported causes of

obsolescence cause the subject improvements to suffer losses in value.”
Champlin, 745 N.E. 2d at 936.

35. Regarding obsolescence, the taxpayer has a two-prong burden of proof. The taxpayer must present evidence sufficient to prove obsolescence: (1) the factors that cause obsolescence, and (2) then quantify the amount of obsolescence that exists. *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998).

Causes of obsolescence

36. The Petitioner contends that 95% obsolescence depreciation should be applied to all of the subject structures (larger World War II era building and mini-warehouses) due to the following reasons:
- a. The lack of sufficient income to make the business viable;
 - b. The income and expense ratio for the first year of operation for 1997 was 45%.
 - c. If an appraiser capitalized the 1997 income and loss statement it would indicate a negative value. The larger structure has physical constraints such as one (1) electric and gas drop, walls in inconvenient places, floors at different levels, and utility service problems.
 - d. The ideal replacement for the larger structure would equate to 85% of the present reproduction cost, thus suggesting the functional obsolescence to be 15%;
 - e. Lower rental fees than other facilities due in part to the poor location; and
 - f. A higher purchase price for the property than it is worth.

Analysis of evidence submitted

37. The Petitioner's evidence was submitted attached to the Form 131 petition (Board Exhibit A). The attachments contain the following exhibits:
- a.) Board of Review Memorandum dated August 3, 1998;
 - b.) Subject's property record card (PRC) 1997;
 - c.) Copy of Form 130 petition;
 - d.) Subject's 1998 PRC;
 - e.) Letter from Uzelac & Associates to Mr. Seger, Vanderburgh County Assessor's Office regarding obsolescence
 - f.) Supporting Document for 15% functional obsolescence on the larger structure;
 - g.) Comparative rental rates of the subject's mini-warehouse to other Evansville mini-warehouses;
 - h.) Supplemental Income and Loss-Schedule E, for 1997 (one page);
 - i.) Fax cover sheet (two pages) with supplemental data for income/expense ratio, dated December 2, 1997; and
 - j.) Memo Mr. Hume from Mr. Meyers (taxpayer) dated October 30, 1997.
38. At the Hearing Officer's request, the Petitioner also submitted additional evidence of a Supplemental Income and Loss Statement-Schedule E, for 1998 (Petitioner Exhibit 2).
39. Before applying the evidence to reduce the contested assessment, the State must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.

40. The Petitioner is requesting 15% functional and 80% economic obsolescence to be applied to the larger structure and 95% economic obsolescence to be applied to all of the mini-warehouses.
41. The Petitioner submits documentation supporting its request for 15% functional obsolescence for the larger building, in the form of a pricing ladder (Proposed Values) in which the Petitioner determines the reproduction cost of a structure (ideal building) valued from the General Commercial Kit (GCK) pricing schedule. At the bottom of the pricing ladder the Petitioner then compares the present reproduction cost from the current PRC for the subject structure (See the 1997 PRC) to the determined reproduction cost of the ideal building. The Petitioner determines that the ideal building's reproduction cost would be 85% of the present reproduction cost and thus the difference (15%) would be functional obsolescence.
42. 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.
43. Instead of submitting actual cost estimates (direct, indirect and entrepreneurial profit) to establish what the replacement cost (ideal building) for the existing structure would be, the Petitioner uses a reproduction cost out of the Manual priced from the GCK schedule. Any comparison of reproduction costs that compares the General Commercial Mercantile (GCM), General Commercial Industrial (GCI) or General Commercial Residential (GCR) pricing schedules to the GCK pricing schedules will always result in a lower reproduction for the GCK pricing schedule. Such a comparison is not probative evidence.
44. The Petitioner does not provide sufficient evidence to allow the State to determine the "ideal building". The Petitioner makes numerous assumptions

concerning the construction of a modern hypothetical building. For example, the Petitioner assumes the modern structure is graded at “C”, the structure is 100 feet by 120 feet with a ceiling height of 12 feet and is steel framed. The Petitioner submits no explanation as to how this information was derived and/or how this “ideal” structure would fit the existing need.

45. Based on the Petitioner’s comparison of this new structure to the old building, the Petitioner determines that functional obsolescence equals 15% because of one (1) electric and gas drop, walls in inconvenient locations, floors at different levels, and utility service problems. Though the Petitioner names factors that may be causes for obsolescence, the Petitioner does not thoroughly explain or document these concerns. The Petitioner does not show how the purported causes of obsolescence cause the subject improvements to suffer loss in value. Nor does the Petitioner explain how the 15% is determined.
46. As previously stated in these conclusions, in addition to 15% functional obsolescence, the Petitioner requests that 80% economic obsolescence be granted to the larger building. The Petitioner, however, makes no attempt to define economic obsolescence as it pertains to this structure. The Petitioner makes an attempt to include this structure with all the other structures (mini-warehouses) on the economic obsolescence issue. It appears the Petitioner equates the economic issues of this structure with those of the mini-warehouses, which is based on rents. Again, the Petitioner is asking for 80% economic obsolescence for the larger structure and 95% for the mini-warehouses.
47. Other than statements regarding rents per square foot for this building, the Petitioner submits no evidence to support its contention. The Petitioner does not submit documentation showing how the requested 80% amount was determined.
48. The rent comparison chart, submitted by the Petitioner, does not include the structure in question. The supplemental income and loss statements contain

rents received for all structures on the subject parcel. The Petitioner simply stated that rents for this structure range from \$2.40 to \$2.90 a square foot annually and that the owner pays utilities, taxes, and insurance (Findings of Fact ¶ 18). The Petitioner fails to make any comparison to any similarly situated properties as it did with the mini-warehouses.

49. The Petitioner did not calculate an income approach to value for the economic obsolescence request. The Petitioner infers that if an appraiser capitalized the 1997 income and loss statement, the numbers would support a negative value since expenses are more than revenue. However, the exhibits that the Petitioner referred to in testimony are all pertinent documents in analyzing an income approach to value.

50. For example, the 1997 and 1998 supplemental income and loss statements indicated rents received and expenses. The Petitioner did not submit a reconstructed income and expense statement defining net operating income (NOI) with a capitalization rate applied. Testimony concerning vacancy problems at the subject's property can be defined with an NOI by calculating vacancy and collection losses. The Petitioner chose not to do so. Furthermore, the Hearing Officer cannot calculate an income approach from the supplemental income and loss statements without speculating on proper expenses. For example, Line 6 reflects an expense deduction for auto and travel. Owner business expenses that are not necessary for maintaining rent are not proper expenses even though this type of expense may be permitted for income tax reporting. In addition, taxes were (Line 16) included and are generally the third component of a capitalization rate and are defined as effective tax rate in appraising practices. The documents also include mortgage interest (Line 12) and debt service, which are considered in a capitalization rate as part of the discount rate component. The largest portion of the expenses, are categorized as lease expenses. Without further explanation, the Hearing Officer has no way of qualifying the expense.

51. Finally, the Petitioner did not submit a capitalization rate for analysis. The Petitioner mentioned in passing that a competitor stated that he (the competitor) had to get an average of \$6.00 per square foot to earn a 10% to 11% return (Findings of Fact ¶17). This does not define a return on the investment or a return of the investment to the owner of the property in question.
52. Capitalization rate is a composite rate used for converting property income into property value. The three (3) components of the capitalization rate are: the discount rate component; the recapture rate component; and the effective tax rate component. IAAO Property Assessment Valuation, 229, 233 (2nd. Ed. 1996).
53. Capitalization rates are critical in the valuation process, and must be supported. Small changes in capitalization rates make significant changes in value. For example:
- $$\frac{\$30,000 \text{ (net operating income)}}{0.10 \text{ (capitalization rate)}} = \$300,000 \text{ (value)}$$
- $$\frac{\$30,000 \text{ (net operating income)}}{0.11 \text{ (capitalization rate)}} = \$272,727 \text{ (value)}$$
54. During the course of testimony, the Petitioner referenced a document attached to the Form 131 petition entitled “Supplemental Data” (Findings of Fact ¶13). This document was used to analyze income and expenses by equating a ratio of income/expense at 45% against the subject property. By itself, the 45% ratio of income/expense is meaningless. Expense-to-income ratios are most often used to illustrate the effect of the ratio of expenses to income on the overall rate when comparing sale properties to the property being appraised.
55. The Petitioner also submitted a chart comparing the subject mini-warehouses to other mini-warehouses in the Evansville, Indiana area. This chart compared competitor’s rental rates by unit size with those rates of the subject property.

Included in this comparison are the rates before and after the purchase by the Petitioner of the subject property. It is the Petitioner's opinion that this analysis points toward economic obsolescence in the subject property.

56. Upon review of this chart and supported by testimony made at the hearing (Findings of Fact ¶19), it indicates the Petitioner lowered rental rates the first part of 1998 to attract additional business. Before the taxpayer lowered its rates, the property was commanding an average of 99% of the rates of its competitors. The calculations are as follows:

Competitors Average	Subject's Average
\$8.16	\$8.40
+ 6.38	+ 6.00
+ 4.32	+ 4.50
<u>+ 4.32</u>	<u>+ 4.00</u>
\$23.18	\$22.90

$$22.90 / 23.18 = 99\%$$

57. When the Petitioner decreased its rental rates to attract additional business, the average slipped to 70% of that of its competitors. The calculations are as follows:

Competitor's Average	Subject's Average
\$8.16	\$4.80
+ 6.38	+ 4.80
+ 4.32	+ 3.60
<u>+ 4.32</u>	<u>+ 3.00</u>
\$23.18	\$16.20

$$16.20 / 23.18 = 70\%$$

58. Although the above-cited examples may indicate the existence of economic obsolescence, they do not address collection losses, vacancies, and expenses. Any further analysis would incorporate a reconstructed income and expense statement, and the Petitioner did not submit such evidence. Furthermore, it is not the duty of the Hearing Officer to assimilate, qualify, and quantify obsolescence for the Petitioner.
59. It is also not enough for the Petitioner to make a list of purported comparable properties without a comparable analysis of those properties to the subject. One might agree that all the properties indicated are mini-warehouses. However, the Petitioner does not compare to the subject, the amenities offered at those properties. In Respondent Exhibit 1 it has been noted that the subject mini-warehouses lack security fencing and asphalt paving. The Petitioner does not rebut this statement. With that in mind, it is possible the competition can demand more rent for these or other features not available at the subject property. There is no discussion about the normal vacancy or occupancy rates of such a business or how the subject compares to the purported comparable properties regarding vacancy and occupancy rates.
60. It is noted that the information shown on this chart was obtained via telephone calls made by the Petitioner's representative. No supporting documentation was submitted. The Petitioner candidly admits that at least one of the parties contacted would not give the information asked for.
61. The \$4.63 average per square foot per year cited by the Petitioner was averaged from the taxpayers lowered rental rates. If the taxpayer lowered his rates on March 1, 1998, the \$4.63 cited by the Petitioner represents ten (10) months in 1998 but disregards the higher rates for January and February. Accordingly, the \$4.63 would be an incorrect figure when averaged for the year. When the Petitioner's average per square foot rate is compared to the average per square foot rate of the comparables (though the number of units are not shown) the

Petitioner's per square foot rate is 80% of the competition. Yet, the Petitioner requests 95% obsolescence.

62. The Petitioner's purchase of the subject property was due to bankruptcy proceeding. It is possible that the subject's problem was that of mismanagement by the previous owner. The Petitioner being an astute businessman and seeing the potential of the property, made a decision to purchase said property. It would seem logical that the Petitioner would have researched the property and may not have paid full value for the property. It would also seem logical that the Petitioner would have obtained an appraisal on the property before purchasing it, which may have included a discussion on obsolescence. No such appraisal was submitted into evidence.
63. With the start of any new venture or the purchase of an existing business, there is an initial start up time that may require additional expenses. It is clear by the Petitioner's testimony that they made a number of business decisions including advertising extensively, evicting non-paying tenants, discounting of rates to attract new clientele and some physical improvements. Even though the Petitioner discusses having to reduce rental rates as part of the obsolescence issue, the Petitioner also states that this move was designed to attract new business.
64. During testimony, the Petitioner cited various real estate appraisal terms while attempting to define the obsolescence issue for the subject property. These terms included capital expenditures, deferred maintenance and discounted cash flow analysis. However, the Petitioner did not submit any documentation or analysis in support of this testimony or of the terms used to define the obsolescence issue.

65. As stated in Conclusions of Law ¶¶35, the Petitioner's burden regarding obsolescence is two-fold: (1) the taxpayer has to prove the causes of the claimed obsolescence, and (2) then quantify the amount of obsolescence that exists.
66. Though the Petitioner expressed what it considered to be causes for obsolescence, the Petitioner failed to show how these causes in turn cause the subject improvements to suffer loss in value. The fact that the Petitioner may have made a bad business decision and is not making the amount of money that they had hoped for is not sufficient reason for the State to grant the application of obsolescence to the subject structures.
67. For all the reasons set forth above, the Petitioner failed to meet its burden in these appeals. Accordingly, no change in the assessment is made as a result of this issue.

SUMMARY OF STATE DETERMINATIONS

Issue No. 1 – Whether an influence factor should be applied to the land.

Withdrawn by the Petitioner.

Issue No. 2 - Whether the grade assigned to the mini- warehouses.

Withdrawn by the Petitioner.

Issue No. 3 – Whether the condition rating assigned to the mini- warehouses.

Withdrawn by the Petitioner.

Issue No. 4 – Whether the utility storage building should have both functional and economic obsolescence applied.

No change.

Issue No. 5 – Whether the remaining structures (mini-warehouses) should have economic obsolescence applied. No change.

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