

**STATE OF INDIANA
Board of Tax Review**

DAVID R. WEBB COMPANY, INC.)	On Appeal from the Johnson County
)	Property Tax Assessment Board of Appeals
Petitioner,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition No. 41-002-01-1-3-00003
)	Parcel No. 91003443065/00
JOHNSON COUNTY PROPERTY TAX)	
ASSESSMENT BOARD OF APPEALS)	
And BLUE RIVER TOWNSHIP)	
ASSESSOR)	
)	
Respondents.)	

Findings of Fact and Conclusions of Law

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

Issue

Whether obsolescence depreciation should be applied to the subject structure.

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 § 6-1.1-15-12, Mr. Fred McCarter with C.M.I. on behalf of David R. Webb Company, Inc. (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 petition was filed with the State on January 16, 2002. The Johnson County Property Tax Assessment Board of Appeals (PTABOA) Notification of Final Assessment Determination on the underlying Form 130 is dated December 17, 2001.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on May 21, 2002 before Administrative Law Judge Paul Stultz. Testimony and exhibits were received into evidence. Mr. McCarter represented the Petitioner and Mr. Tim Barry appeared as a witness for the Petitioner. Mr. Mark Alexander and Ms. Sandra Pendleton, Blue River Township Assessor, represented Johnson County.
4. At the hearing, the subject Form 131 petition was made a part of the record and labeled as Board's Exhibit A. Notice of Hearing on Petition is labeled as Board's Exhibit B.
5. The subject property is located at South Holland Street, Edinburgh, Blue River Township, Johnson County.
6. The Administrative Law Judge did not view the subject property.

7. At the hearing, the parties agreed the year under appeal is 2001 and the values of record are:

Land	\$11,200
Improvements	\$280,500
8. On May 23, 2002, Mr. McCarter sent to the State, by facsimile, a Property Tax Representative Disclosure (Disclosure Statement). This Disclosure Statement was entered into the record and labeled as Petitioner's Exhibit 1.
9. On June 3, 2002, the State received in the mail a copy of the subject's property record card (PRC). The PRC was entered into the record and labeled as Respondent's Exhibit 1.
10. At the hearing, Mr. McCarter stated that he is compensated based on a contingency basis.

Whether obsolescence depreciation should be applied to the subject structure.

11. The Petitioner filed a Form 130 petition with the Johnson County Assessor requesting a review of its real property assessment for 2001. The issues submitted for review by the Petitioner were: use, partitioning adjustment, wall height, and obsolescence. See Board's Exhibit A.
12. The PTABOA upon their review of the Petitioner's Form 130 petition made the following changes:
 - a. 5,300 square feet (SF) of the subject building was determined to be deficient of interior features consistent with the general office cost schedule that was applied. This area was re-priced using the small shop cost schedule;
 - b. 2,100 SF of the office area was determined to lack partitioning. A negative adjustment of \$2.66 was applied to this area;

- c. The wall height was determined to be 12 feet and an adjustment was made accordingly; and
- d. Obsolescence depreciation (20%), previously applied to adjust the subject's building assessment, was removed.

13. Upon receipt of the Form 115 reflecting the changes made by the PTABOA, the Petitioner then filed a Form 131 petition with the State requesting a review by the State, of the obsolescence issue only.
14. The Petitioner contends that the obsolescence depreciation previously applied to the subject structure and removed by the PTABOA was warranted. It is the Petitioner's claim that the company's facilities are located throughout the city of Edinburgh and this results in inefficiency. The problem is a company wide problem that involves the subject building. *McCarter testimony.*
15. The Petitioner does acknowledge that the subject structure does not suffer from functional obsolescence. However, the current recession has created economic obsolescence in the property. *McCarter testimony.*
16. The Respondent contends the PTABOA removed the 20% obsolescence depreciation based on an on-site inspection of the subject that revealed it was directly across the street from the manufacturing facility and thus no obsolescence was warranted. *Alexander testimony & Board's Exhibit A, PTABOA minutes.*
17. The Respondent further contends that the Petitioner did not provide the PTABOA with any probative evidence that the subject structure was due either functional or economic obsolescence. The Petitioner did not prove the subject building suffered any loss in value. *Alexander testimony.*

Conclusions of Law

1. The Petitioner is 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. 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. Tax 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 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.

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.

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.
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) the taxpayer must 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.

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.

Whether obsolescence depreciation should be applied to the subject structure.

The concept of depreciation and obsolescence

18. 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 (Second Edition, 1996); *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801, 806 (citing Am. Inst. of Real Estate Appraisers, *The Appraisal of Real Estate*, 321 (Tenth Edition, 1992)).
19. 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.
20. 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 directly to that applied by professional appraisers under the cost approach. *Canal Square*, 694 N.E. 2d at 806 (Ind. Tax 1998). Accordingly, depreciation can be documented by using recognized appraisal techniques. *Id.*
21. Functional obsolescence means obsolescence caused by factors inherent in the property itself. 50 IAC 2.2-1-29. Functional obsolescence is the loss resulting from changes in demand, design, and technology, and can take the form of deficiency, the need for modernization or superadequacy. IAAO Property Assessment Valuation at 154 & 155.
22. Economic obsolescence means obsolescence caused by factors extraneous to the property. 50 IAC 2.2-1-24. External or economic obsolescence is the loss of value

resulting from factors external to the property. IAAO Property Assessment Valuation at 154.

23. The elements of functional and economic obsolescence can be documented using recognized appraisal techniques. *Canal Square*, 694 N.E. 2d 801 (Ind. Tax 1998). These standardized techniques enable a knowledgeable person to associate cause and effect to value pertaining to a specific property.
24. Under the cost approach, there are five 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 method, and (5) the observed condition method. IAAO Property Assessment Valuation at 156.

Burden regarding the obsolescence claim

25. 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).
26. 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*, 694 N.E. 2d at 1233.

Evidence submitted and evaluation of the evidence

27. It is the Petitioner's contention that the obsolescence depreciation, removed by the PTABOA, should be reinstated for the subject building. The Petitioner's request is based on what the Petitioner claims to be a company wide problem where facilities of the company (including the subject structure) are located throughout the city

resulting in inefficiency. In addition, the current recession has created economic obsolescence. The Petitioner acknowledges that the subject structure does not suffer from functional obsolescence.

28. As stated in Conclusions of Law ¶¶9 and 10, the fundamental principle of administrative law is that the burden of proof is on the person petitioning the agency for relief. That taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. These presentations should both outline the alleged errors and support the allegations with evidence.
29. Conclusion of Law ¶13 states, for a taxpayer 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 fact.”
30. Other than the testimony given by the Petitioner at the State hearing for the application of economic obsolescence to the subject structure, the Petitioner failed to submit any documentation in support of the claims made.
31. Though the Petitioner may state causes for obsolescence depreciation as the inefficiency of the company due to company facilities being situated throughout the city and the current recession, the listing of such causes do not prove that obsolescence exists. 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 losses in value.” *Champlin Realty Company v. State Board of Tax Commissioners*, 745 N.E. 2d 928, 932 (Ind. Tax 2001).
32. However, assuming *arguendo* that the Petitioner’s unsupported statements on the causes of obsolescence affecting its company were acceptable, the Petitioner would then be required to quantify the amount of obsolescence depreciation (20%) it seeks. The Petitioner failed to do this.

33. As stated in Conclusions of Law ¶24, there are five recognized methods used to measure depreciation, including obsolescence. The Petitioner makes no attempt to use any of these methods. Instead, the Petitioner simply requests the 20% obsolescence depreciation previously applied, be reinstated.
34. For all the reasons set forth above, the Petitioner failed to meet its burden in this appeal. The request for the application of obsolescence depreciation is denied. No change in the assessment is made as a result of this issue.

SUMMARY OF STATE DETERMINATION

Whether obsolescence depreciation should be applied to the subject structure.

The Petitioner's request for the application of obsolescence depreciation is denied.

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