

STATE OF INDIANA
Board of Tax Commissioners

In the matter of the Petition for Review)
of Assessment, Form 131) Petition No.: 82-029-95-1-4-00797

Parcel No.: 1171031090003

Assessment Year: 1995

Petitioner: Eades Properties Limited Partnership
P.O. Box 20190
Evansville, Indiana 47708

Petitioner Representative: Ronald E. Gettel, MAI
2030 Fox Chase Run
Fort Wayne, Indiana 46825

Findings of Fact and Conclusions of Law

The State Board of Tax Commissioners (State Board), having reviewed the facts and evidence, and having considered the issues, now makes the following findings of fact and conclusions of law.

Issues

1. Whether the base rate of the land is overstated.
2. Whether the condition rating of the structure on Card 2 of 2 is correct.
3. Whether the grade and design factor of the structure depicted on Card 1 of 2 is correct.

4. Whether additional obsolescence depreciation is warranted for the structure depicted on Card 2 of 2.
5. Whether obsolescence depreciation is warranted for the structure depicted on Card 1 of 2.

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 IC § 6-1.1-15-3, Ronald Gettel, MAI, SREA, on behalf of Eades Properties Limited Partnership (Petitioner) filed a Form 131 petition requesting a review by the State Board. The Form 131 was filed on July 18, 1997. The Vanderburgh County Board of Review's (County Board) Assessment Determination on the underlying Form 130 is dated June 27, 1997.
3. Pursuant to IC § 6-1.1-15-4, a hearing was held on March 10, 1999, before Hearing Officer Virginia Whipple. Testimony and exhibits were received into evidence. Ronald Gettel, represented the Petitioner. Khri Seger and Tammy Elkins represented Vanderburgh County.
4. At the hearing, the subject Form 131 petition was made a part of the record and labeled Board Exhibit A. Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following exhibits were submitted:
Board Exhibit C – Request for Information

Petitioner Exhibit 1 – Plat map
Petitioner Exhibit 2 – Subject site use plan
Petitioner Exhibit 3 – Copy of 50 IAC 2.2-10-5 (d) (8)

Petitioner Exhibit 4 – Photographs of the structures

Petitioner Exhibit 5 – Westgate Shopping Center, photo and property record card
(PRC)

Petitioner Exhibit 6 – Town Center Mall, photo and PRC

Petitioner Exhibit 7 – North Brook Shopping Center, photo and PRC

Petitioner Exhibit 8 – Lawndale Shopping Center, photo and PRC

Petitioner Exhibit 9 – List of former tenants

Petitioner Exhibit 10 – Summary of "Lease Terms"

Petitioner Exhibit 12 – Site valuation summary sheet

Respondent Exhibit 1 – A copy of the subject's PRC

Respondent Exhibit 2 – County's brief

5. The subject property is located at 2200 - 2212 Stringtown Road, Evansville, Pigeon Township, Vanderburgh County.
6. The Hearing Officer did not view the subject property.
7. At the hearing, the Hearing Officer requested additional information from Mr. Gettel (Board Exhibit C) with a deadline of March 24, 1999. In a fax dated March 13, 1999, Mr. Gettel requested a 7-day extension due to the planned closure of his office. The Hearing Officer agreed to extend the deadline for the requested information until March 31, 1999. The fax is entered into the record and labeled as Board Exhibit D.
8. The Hearing Officer received Mr. Gettel's response to the additional information request (Board Exhibit C) in a timely manner. Mr. Gettel's response is dated March 27, 1999 and is entered into the record and labeled as Petitioner Exhibit 11.
9. The Hearing Officer also received the Respondent's response to the Petitioner's response to the State Board's request for information. The Respondent's

response is dated April 8, 1999 and is entered into the record and labeled as Respondent Exhibit 3.

10. Consequently, the Petitioner sent a response to Respondent's Exhibit 3 dated April 19, 1999. This response is entered into the record and labeled as Petitioner Exhibit 13.

Issue No. 1 – Whether the base rate of the land is overstated.

11. The subject property is presently valued on a front foot basis with a base rate of \$400.
12. The location of the subject property is secondary to a much better location on the north side of Diamond Avenue known as Town Center Mall. Visibility to the subject is limited and the main structure is located so close to the property line that trucks must deliver cargo while parked in the street. In addition, there are still vacant building sites near the subject's location. *Gettel testimony.*
13. The site use plan indicates the location of the structures on the subject parcel. The subject parcel is part of 18 contiguous parcels of land. Because it is a part of 18 parcels the square foot (SF) price should be lower than \$1.30. *Gettel testimony and Petitioner Exhibit 2.*
14. A Site Valuation sheet indicates parcels ranging from \$.91 cents to \$1.52 per SF and because of this a lower value per SF price should be used. *Gettel testimony and Petitioner Exhibit 12.*

Issue No. 2 – Whether the condition rating of the structure on Card 2 of 2 is correct.

15. The subject structure on Card 2 of 2 is a one-story brick building with basement. The present condition of the building is "fair".

16. The condition of the structure on Card 2 of 2 is “poor” or “very poor”. *Gettel testimony & Petitioner Exhibit 4.*
17. The Hearing Officer asked Mr. Gettel the exact date the photographs were taken. Mr. Gettel replied that he did not know the exact date, but they were taken early in 1996.
18. After considering 50 IAC 2.2-10-5(d)(8), the County Board determined the condition to be “fair” by stating the degree of deterioration is in somewhat worse condition than would normally be expected. *Seeger testimony.*

Issue No. 3 – Whether the grade and design factor of the structure depicted on Card 1 of 2 is correct.

19. The subject structure on Card 1 of 2 is valued as general retail with a grade factor of “C”.
20. The photograph and the PRC for Westgate Shopping Center show this parcel to be close in comparison to the subject. The County Board reduced Westgate’s grade to a “C-1”. The structures are similar in quality and the grade of the structure on Card 1 of 2 should also be “C-1”. In addition, other comparable shopping centers support this contention. *Gettel testimony & Petitioner Exhibits 5 – 8.*
21. The Hearing Officer requested that Mr. Gettel provide physical facts on how the subject compared to the grade specifications listed in 50 IAC 2.2. *Board Exhibit C.*
22. During the course of testimony, the Hearing Officer asked Mr. Gettel if the comparables (Petitioner Exhibits 6, 7, and 8) were priced the same way as the subject. Mr. Gettel responded by saying that they were all graded differently.

However, after further consideration, Mr. Gettel stated that he did not know the answer to the Hearing Officer's question.

23. The grade issue was not an issue heard by the County Board, however, the grade is applied pursuant to 50 IAC 2.2. *Seeger testimony.*
24. At the hearing, the Hearing Officer requested, in part, additional information (Board Exhibit C) from Mr. Gettel relating to the physical facts of how the subject property fits the manual in relation to grade.

Issue No. 4 – Whether additional obsolescence depreciation is warranted for the structure depicted on Card 2 of 2.

25. The structure on Card 2 of 2 presently is receiving 20% obsolescence depreciation.
26. At the hearing, Mr. Gettel did not present any testimony concerning this issue.
27. Respondent Exhibit 2 shows that the County Board applied 20% obsolescence because the building was originally constructed as a fast food restaurant; however, it is being used as general office space. *Seeger testimony.*

Issue No. 5 – Whether obsolescence depreciation is warranted for the structure depicted on Card 1 of 2.

28. The structure on Card 1 of 2 is not receiving any obsolescence depreciation presently.
29. The location of the subject structure is not good. Obsolescence is warranted due to the inferior location, poor layout, high tenant turnover rate and rents being well below normal. Twenty-five percent (25%) obsolescence should be applied. *Gettel testimony & Petitioner Exhibits 9 & 10.*

30. The summary of selected lease terms in itself is insufficient evidence and without evidence supported by the application of one or more of the recognized standard appraisal procedures, it is impossible to determine obsolescence. *Seeger testimony*.
31. At the hearing, the Hearing Officer requested the following additional information from Mr. Gettel (Board Exhibit C):
 - a. A layout of the rental rates in relationship to the subject; and
 - b. Quantification of rents for the obsolescence requested.

NOTE: Mr. Gettel did not address this request in his response (Petitioner Exhibit 11).

Conclusions of Law

1. The Petitioner is statutorily limited to the issues raised on the Form 130 petition filed with the County Board or issues that are raised as a result of the County Board'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 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 Board. 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 Board, however, the Appeals Division of the State Board 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 Board.

2. The Appeals Division 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 Board’s decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State Board to review the actions of the County Board, but does not require the State Board to review the initial assessment or undertake reassessment of the property. The State Board 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 Board 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 Board 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 Board 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 Board 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 Board'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 Board is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State Board 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 Board’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 Board’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 the base rate of the land is overstated.

18. Indiana’s approximately 3 million land properties are valued on a mass appraisal basis.
19. The General Assembly has recognized that assessing officials cannot provide a commercial-grade/fee appraisal for every parcel in the State, but must instead rely on mass appraisal techniques commonly used by tax assessors throughout the United States. Ind. Code § 6-1.1-31-3(4) permits the use of “generally

accepted practices of appraisers, including generally accepted property assessment valuation and mass appraisal principles and practices.”

20. The Tax Court has similarly recognized the necessity of mass appraisal practices (and some of their flaws). *See King Industrial Corp. v. State Board of Tax Commissioners*, 699 N.E. 2d 338, 343, n. 4 (Ind. Tax 1998)(The use of land classifications are commonly used to save time and money when assessing property).
21. Land valuation – through land order – is the one part of Indiana’s assessment system that actually approximates fair market valuation through the use of sales data.
22. Ind. Code § 6-1.1-31-6(a)(1) states that land values shall be classified for assessment purposes based on acreage, lots, size, location, use, productivity or earning capacity, applicable zoning provisions, accessibility, and any other factor that the State Board determines by rule is just and proper.
23. For the 1995 reassessment, the county land valuation commission determined the value of non-agricultural land (i.e. commercial, industrial, and residential land) by using the rules, appraisal manuals and the like adopted by the State Board. 50 IAC 2.2-2-1. *See also* Ind. Code §§ 6-1.1-4-13.6 (West 1989) and –31-5 (West 1989). By rules, the State Board decided the principal that sales data could serve as a proxy for the statutory factors in Ind. Code § 6-1.1-31-6. Accordingly, each county land valuation commission collected sales data and land value estimates and, on the basis of that information, determined the value of land within the County. 50 IAC 2.2-4-4 and –5. The county land valuation committee then held a public hearing on the land order values. Ind. Code § 6-1.1-4-13.6(e)(West 1989); *See Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d 1058, 1061 (Ind. Tax 1993).

24. The State Board reviewed the land orders established by the county land valuation committee, and could make any modifications deemed necessary for uniformity and equality purposes. Ind. Code § 6-1.1-4-13.6(f)(West 1989); *Mahan*, 622 N.E. 2d at 1061. After the State Board completed its review of the county land order, the State Board was required to give notice to the affected assessors. In turn, only county and township assessors could appeal the State Board's determination of values. *Id* at 4-13.6(g); *Poracky v. State Board of Tax Commissioners*, 635 N.E. 2d 235, 239 (Ind. Tax 1994)("An appeal of a land order, just as an appeal of a judgment or order, must follow the prescribed procedural mandates."). The final stage in the process provided for dissemination of the State Board's final decision on the land order: "[t]he county assessor shall notify all township assessors in the county of the values as determined by the commission and as modified by the [State Board] on review or appeal. Township assessors shall use the values as determined by the commission and modified by the State Board in making assessments." Ind. Code § 6-1.1-4-13.6(h).
25. The Tax Court has consistently held that taxpayers must follow the required appeals procedures when challenging property tax assessments. *The Kent Company v. State Board of Tax Commissioners*, 685 N.E. 2d 1156, 1158 (Ind. Tax 1997)("The law is well-settled that a taxpayer challenging a property tax assessment must use the appropriate means of doing so."); *Williams Industries v. State Board of Tax Commissioners*, 648 N.E. 2d 713, 718 (Ind. Tax 1995)(The legislature has created specific appeal procedures by which to challenge assessments, and taxpayers must comply with the statutory requirements by filing the proper petitions in a timely manner).
26. As previously stated, Ind. Code § 6-1.1-4-13.6(e)(West 1989) provided for a public hearing held by the local officials regarding values contained within the county land order. Once the public hearing was held, the only statutory means for requesting a change or challenging a land order was an administrative appeal to the State Board *by the county and township assessors*. Ind. Code § 6-1.1-4-

13.6(g)(West 1989); *Poracky*, 635 N.E. 2d at 238 & 39.

27. Taxpayers did not have the right to challenge the values established by the county land orders after the county land commission made a determination on them.
28. The State Board is aware of Tax Court decisions that go against limiting taxpayers' rights to challenge land order values at the State administrative level. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365 (Ind. Tax 1998).
29. Moreover, the Tax Court implicitly found that Ind. Code § 6-1.1-4-13.6 (West 1989) violated the requirements of due course of law (due process) because the statute did not provide for taxpayer hearings prior to the State Board's "final say" on land values. *Town of St. John III*, 690 N.E. 2d at 373, n. 2, & 384, n. 31. (It is believed that the Tax Court also found that the amended version of Ind. Code § 6-1.1-4-13.6, effective 1998, remedied the Court's due process concerns. *Town of St. John III*, 690 N.E. 2d at 384, n. 31).
30. The State Board respectfully concludes that *Town of St. John V* changed the landscape regarding the issue of taxpayers' entitlement to challenge land order values.
31. Article X, § 1, of the Indiana Constitution was the basis of the Tax Court's ruling that a taxpayer may challenge his land order valuation in an individual appeal. *Zakutansky*, 691 N.E. 2d at 1368.
32. The Tax Court's basis for its finding was reversed by the Supreme Court in *Town of St. John V*. The Property Taxation Clause (Article X, § 1, of the Indiana Constitution) "[R]equires . . . a system of assessment and taxation characterized by uniformity, equality, and just valuation, but the Clause does not require absolute and precise exactitude as to the uniformity and equality of each

individual assessment. *The tax system must also assure that individual taxpayers have a reasonable opportunity to challenge whether the system prescribed by the statute and regulations was properly applied to individual assessments, but the Clause does not create a personal, substantive right of uniformity and equality.*” *Town of St. John V*, 702 N.E. 2d at 1040. (Emphasis added).

33. Further, the Tax Court’s finding that the assessment system violated the Due Course of Law Clause in *Town of St. John III* was expressly nullified by the Supreme Court in *Town of St. John V*, 702 N.E. 2d at 1040, n. 8.
34. Accordingly, a taxpayer is not constitutionally entitled to file an appeal to the State challenging the values established by a promulgated land order on an individual appeal basis. Taxpayers may, however, administratively appeal the application of the land order to his assessment (i.e., the taxpayer’s property should have been valued from one section of the land order rather than another).
35. Assuming *arguendo* that taxpayers are entitled to challenge land order values in individual appeals, they must present probative evidence to make a prima facie case that the assessment is incorrect. Mr. Gettel failed to make such a case in this appeal.
36. Mr. Gettel opines that the land value is overstated. It is Mr. Gettel’s “opinion” that the subject parcel’s location is secondary to a better location on the north side of Diamond Avenue. Mr. Gettel argues that visibility is limited; the main structure is located so close to the property line requiring trucks to deliver cargo while parked in the street; that there are still vacant building sites near the subject’s location; and the subject parcel is one of 18 contiguous parcels and should be valued under \$1.30 per square foot.
37. Repeating, the taxpayer’s burden in the State Board’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.

38. In support of the Petitioner's position, Mr. Gettel presented a Site Valuation comparison of eight (8) parcels and the subject parcel (Petitioner Exhibit 12). Mr. Gettel attempts to make a comparison of the nine (9) parcels based on a "Site Size per PRC" and "TTV per SF". However, before applying the evidence to reduce the contested assessment, the State Board must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.
39. Of the eight (8) properties purported to be in the same area as the subject, only three (3) appear on plat map presented by the Petitioner into evidence (Petitioner Exhibit 1). It should be noted, that none of the three (3) properties front the same street as the subject. Mr. Gettel does not present any PRCs for any of the eight (8) other properties nor does he submit additional plat maps for those parcels not on Petitioner Exhibit 1, in support of this comparison.
40. Mr. Gettel's testimony and evidence is also somewhat confusing as to what value he feels is correct. On the Form 131 petition Mr. Gettel states, "The true tax value on the land is equivalent to approximately \$1.35 per square foot. That's suitable for some primary retail locations but not for this location." At the hearing, Mr. Gettel testified that because the subject parcel is one of 18 contiguous parcels of land the square foot value should be lower than \$1.30. Also at the hearing, Mr. Gettel, referencing the Site Valuation, determines a square foot range of \$.91 to \$1.52. In doing so, Mr. Gettel concludes the lower value square foot price should be used.
41. The fact that the parcels may be contiguous to one another does not require the parcels to be reviewed as one "larger parcel". Mr. Gettel did not explain how any of the "contiguous" properties relate to one another. It is not enough to say that they are commercial properties. Mr. Gettel does not make any comparison or

analysis of the properties. Does the same individual or corporation own the parcels? Are the parcels valued from the same section of the Land Order? Other than being valued as commercial land, are the parcels put to the same use such as surface parking or mall? Or are the parcels separate and distinct with either freestanding buildings, strip malls, or other type of commercial structures on them?

42. In determining whether properties are truly comparable, “Factors and trends that affect value, as well as the influences of supply and demand, should be considered. The greatest comparability is obtained when the properties being compared are influenced by the same economic trends and environmental (physical), economic, governmental, and social factors. There may not be any comparability when one property is heavily influenced by one set of factors and another property is significantly affected by dissimilar factors.” *Property Assessment Valuation*, Second Edition, page 103.
43. Merely characterizing properties as comparable is insufficient for appeal purposes. The Petitioners are required to present probative evidence that the purported comparable properties they offer are, in fact, comparable to the subject property. No such foundation was present in either the evidence presented or the testimony offered at the hearing.
44. Mr. Gettel does not present any sales data analysis to show that the value attributed to the land was incorrect.
45. Taxpayers are expected to make factual presentations to the State Board 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 Board 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)).

46. A review of the Land Order for Vanderburgh County, Pigeon Township indicates that \$400.00 per front foot is within the range of the Land Order.
47. For all the reasons set forth above, the Petitioner did not meet his burden in this appeal. Accordingly, no change in the assessment is made as a result of this issue.

Issue No. 2 – Whether the condition rating of the structure on Card 2 of 2 is correct.

48. Condition is a judgment of the physical condition of the item relative to its age. Average condition indicates the structure is an average condition relative to its age, or the condition in which it would normally be expected. Fair condition indicates the structure is somewhat worse than would be normally be expected. Poor condition indicates that the degree of deterioration is significantly worse than would normally be expected. Very poor indicates the structure is in very poor condition relative to its age. The deterioration of the structure is extreme compared to what would normally be expected. The degree of deterioration indicates that the structure is approaching unsoundness.
49. The estimate of depreciation is an essential element in the cost approach. An estimate must be predicated on an understanding of the nature, components, and theory of depreciation, as well as practical concepts for estimating its extent in improvement being valued. Physical depreciation is evident by wear and tear, decay, rot, cracks or structural defects. 50 IAC 2.2-10-7(a).
50. Condition, the degree of wear and tear displayed by a building, is determined relative to the age of the building. Condition measures the remaining usefulness of the building based on its age. 50 IAC 2.2-10-7(b).

51. It is the opinion of the Petitioner that the condition rating should be either “poor” or “very poor”. To support this position, the Petitioner submitted nine (9) photographs of the subject structure. They consisted of one (1) exterior photograph taken from a distance, six (6) exterior and two (2) interior photographs (Petitioner Exhibit 4).
52. A review of this evidence indicates the following:
- a. The six (6) exterior photographs are of the same rear section of the building. The photographs depict what seems to be a gravel roof in need of repair as well as a section of canopy in need of repair;
 - b. One of the two (2) interior photographs shows the same rear section but this time the photograph is taken from the inside looking out, of water stained ceiling tile. There is no explanation as to whether the water leak was repaired and the tiles never replaced or if this was an on going problem in 1995;
 - c. The second interior photograph is of a section of floor which seems to show missing ceramic tile in somewhat of an “L” shape. However, a closer look indicates the possible existence of a counter or work area that may have occupied this space at one time. The fact that the counter was removed and a decision not to fill this space having been made, is not a cause for condition;
 - d. Photographs are lacking of any disrepair or deterioration to the rest of the subject structure. There are no photographs of the rest of the brick structure itself showing a need for any sort of structural repair due to wear and tear and age; and
 - e. Photographs of a single exterior surface of a structure having five (5) exterior surfaces or pictures of a section of ceiling and a section of floor are not probative evidence for the condition-rating sort by the Petitioner for the entire building.

53. Photographs of only a portion of the property under appeal is insufficient to demonstrate error.
54. The fact that the photographs are presented and the Petitioner concluded that they represent a condition rating of something less than “fair”, does not explain why the property is in a below “fair” condition relative to its age or how the photographs equate to the requested condition. Mere references to photographs or regulations, without explanation, do not qualify as probative evidence. *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329, 333 (Ind. Tax 1999).
55. For all the reasons set forth above, the Petitioner failed to show that the condition rating applied to the structure on Card 2 of 2 is incorrect. No change in the assessment is made as a result of this issue.

Issue No. 3 – Whether the grade and design factor of the structure depicted on Card 1 of 2 is correct.

56. Grade” means the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.
57. Grade is used in the cost approach to account for variations from the norm or “C” grade. The quality and design of a building are the most significant variables in establishing grade. 50 IAC 2.2-10-3.
58. The determination of the proper grade requires assessors to make a variety of subjective judgments regarding variations in the quality of materials and workmanship and the quality of style and design. *Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d 1058, 1064 (Ind. Tax 1993). For assessing officials and taxpayers alike, however, the Manual provides indicators for establishing grade. The text of the Manual (see 50 IAC 2.2-10-3), models and graded photographs (50 IAC 2.2-11-4), assist assessors in the selection of the proper

grade factor.

59. The major grade classifications are A through E. 50 IAC 2.2-10-3. The cost schedules (base prices) in the Manual reflect the C grade standards of quality and design. The following factors (or multipliers) are assigned to each major grade classification:

“A” grade	160%
“B” grade	120%
“C” grade	100%
“D” grade	80%
“E” grade	40%

60. Intermediate grade levels ranging from A+10 through E-1 are also provided for in the Manual to adequately account for quality and design features between major grade classifications. 50 IAC 2.2-10-3(c).

61. The Petitioner asserts that the appropriate Grade and Design Factor for the subject structure is “C-1”. This conclusion is based upon the Grade and Design Factors of other similar properties located in Vanderburgh County (Petitioner Exhibits 5 – 8). More specifically the property located at 411 South Barker Avenue, Westgate Shopping Center (Petitioner Exhibit 5).

62. In review of Petitioner Exhibit 5 in particular, one finds a structure quite similar to the subject right down to the tenants such as Sav-A-Lot and General Dollar.

63. The taxpayer’s burden in the State Board’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.

64. In both cases, the Petitioner identified similarly situated properties and has established disparate treatment. In doing so, the burden then shifted to the local

assessing officials to present evidence to contradict the Petitioner's evidence and justify its decision with substantial evidence.

65. The local officials did not present any evidence or testimony that contradicts the set of facts established by the Petitioner. The only testimony of record is a statement that the grade factor was not an issue before the County Board, however, the grade is applied pursuant to 50 IAC 2.2. A conclusory statement alone is not enough to contradict the evidence presented and the set of facts established by the Petitioner.
66. For all the reasons set forth above, the Respondent failed to meet its burden in this matter. Therefore, the State Board will make the change in the grade factor from "C" to "C-1". A change is made in the assessment as a result of this issue.

Issue No. 4 – Whether additional obsolescence depreciation is warranted for the structure depicted on Card 2 of 2 (Building A).

Issue No. 5 – Whether obsolescence depreciation is warranted for the structure depicted on Card 1 of 2 (Building B).

67. The Petitioner seeks the application of 35% economic obsolescence to Building A and 25% for Building B.
68. Depreciation is a concept in which an estimate must be predicted upon a comprehensive understanding of the nature, components, and theory of depreciation, as well as practical concepts for estimating the extent of it in the improvement being valued. 50 IAC 2.2-10-7(a).
69. The elements of functional and economic obsolescence can be documented using recognized techniques. Canal Square Limited Partnership v. State Board of Tax Commissioners, 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.

70. External or economic is the loss of value resulting from factors external to the property (for example, national economic conditions). IAAO Property Assessment Valuation at 155.
71. Functional obsolescence is the loss in value resulting from changes in demand, design, 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.
72. Under the cost approach, there are five recognized methods used to measure depreciation, including obsolescence; namely: (1) the sale 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 (breakdown) method. IAAO Property Assessment Valuation at 156.
73. 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).
74. 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).
75. At the hearing, Mr. Gettel did not present any testimony relating to the issue of obsolescence for Building A. However, Mr. Gettel's included in his response (Petitioner Exhibit 11) to the Hearing Officers request for additional information (Board Exhibit C) a discussion on obsolescence.

76. Mr. Gettel seeks the application of obsolescence depreciation based on the following:
- a. The fact that the Vanderburgh County Board had applied obsolescence for 1991 through 1994 but dropped it in 1995;
 - b. Due to a marginal secondary location for retail purposes on Stringtown Road, below-par visibility and awkward loading; and
 - c. Low rents and high turn over rates due to a poor location equating to diminished market value.
77. Before applying the evidence to reduce the contested assessment, the State Board must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.
78. Regarding what the Vanderburgh County Board did or did not do for 1991 through 1994 would have no bearing on this State Board determination. The Petitioner does not present any decisions into evidence showing the determinations made by the County Board on this issue.
79. Assuming *arguendo* that the Petitioner did present into evidence County Board decisions regarding obsolescence, the State Board would not be obligated to abide by that decision made for the 1989 reassessment alone. The Petitioner would still be required to show that the same causes, taken into account by the County Board in their decision, were the same causes for obsolescence that existed as of the assessment date of this appeal (March 1, 1995). Secondly, the Petitioner would then be responsible to quantify those causes. In Indiana, each tax year is separate and distinct. *Williams Industries v. State Board of Tax Commissioners*, 648 N.E. 2d 713 (Ind. Tax 1995).
80. Mr. Gettel determines that the location of the subject property is a “marginal secondary” location and has “below-par” visibility. Other than these conclusory statements, Mr. Gettel does not present any other documentation that supports

these claims. Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.

81. Mr. Gettel submitted into evidence an exhibit labeled Relatively Weak Location For Retail Purposes (Petitioner Exhibit 9). This exhibit seems to be a long list of tenants. However, further review reveals that details are missing. For example, there is no list of the occupancy dates, what the tenants leased, the length of time of the leases or the amount of rent paid.
82. Mr. Gettel submitted into evidence an exhibit labeled Summary Of Selected Lease Terms (Petitioner Exhibit 10). This exhibit lists the tenant, the location, present lease term, store area, and rent per square foot per year. This comparison shows a lower rental rate for the subject property. A further review indicates that many important details are again missing from this document. For example, in comparing one rental property with another, the following factors are considered: (1) effective date of lease, (2) location of property, (3) physical characteristics of property, and (4) terms of the lease. IAAO Property Assessment Valuation at 206 and 207.
83. Other considerations for comparing leased properties are: owner's responsibilities, tenant's responsibilities, taxes, right to sublease or assign, ability to make improvements to the property, security, termination of lease and special provisions. IAAO Property Assessment Valuation at 207 and 208.
84. In this comparison Mr. Gettel does not include any of this information. Mr. Gettel, as the document states, presented "selected" lease terms and not the terms for all the renters at the various locations, which may have given a totally different outcome. "Selecting" certain leases over others without an explanation is self-serving at best.
85. Taxpayers are expected to make factual presentations to the State Board 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 Board 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)).

86. The Petitioner failed to use any of the recognized methods to measure obsolescence (§70). The Petitioner failed to show that the subject's location was inferior and as a result the inferior location required lower rents thus equating to obsolescence.
87. The Petitioner failed to prove the existence of obsolescence and the Petitioner failed to explain how the 25% and 35% obsolescence depreciation requested were determined.
88. The Petitioner's inability to provide information regarding comparable properties, models, or quantifying obsolescence for this hearing reveals the claim for obsolescence depreciation is purely speculative. Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
89. For all the reasons set forth above, the Petitioner did not meet his burden on the issue of obsolescence. Accordingly, no change in the assessment is made as a result of this issue.