

**STATE OF INDIANA  
Board of Tax Review**

EDWARD G. AURAND	)	On Appeal from the Elkhart County
	)	Board of Review
	)	
Petitioner,	)	Petition for Review of Assessment,
	)	Form 131
v.	)	Petition No. 20-025-95-1-4-00215
	)	Parcel No. 250611103001
ELKHART COUNTY BOARD OF	)	
REVIEW and CONCORD 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**

1. Whether the condition rating is correct.
2. Whether additional obsolescence depreciation is warranted.
3. Whether the State has provided instructions for determining the effects that location and use have on the value of real property, for determining the cost of reproducing improvements, and for determining the productivity of earning capacity of the land for the subject property as required by IC 6-1-1-31-6.

4. Whether the valuation method used to determine the assessed value of the subject property is not uniform nor at an equal rate and is not based upon a just valuation.

### **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, M. Drew Miller with Landmark Appraisals, Inc. filed a Form 131 petition on behalf of Edward G. Aurand, d/b/a Omega Industries (Petitioner) requesting a review by the State. The Form 131 petition was filed on September 17, 1997. The Elkhart County Board of Review' s (County Board) Notice of Assessment of Real Property on the underlying Form 130 is dated September 8, 1997.
3. Pursuant to IC 6-1.1-15-4, an initial administrative hearing was scheduled and held on May 13, 1998, before Hearing Officer Richard Schultz. Testimony and exhibits were received into evidence. Lance Rickard, of Landmark Appraisals, Inc., and David Pippen, attorney at law, represented the Petitioner. Robert Price represented the Concord Township Assessor's Office. Although formal written notice was mailed to the Elkhart County Assessor's Office, no one appeared on its behalf.
4. On June 28, 2000 the State scheduled a re-hearing for the hearing held on May 13, 1998. This hearing was scheduled for July 19, 2000 before Hearing Officer Ellen Yuhan. At the July 19, 2000 hearing, testimony and exhibits were received into evidence. M. Drew Miller, of Landmark Appraisals, Inc., represented the Petitioner. Cathy Searcy represented the County Board. Barbara Werich and Richard Schlueter represented the Concord Township Assessor's Office.

5. At the July 19, 2000 hearing, the Form 131 petition was made part of the record and labeled State's Exhibit A. The Notice of Hearing on Petition – Re-Schedule is labeled as State's Exhibit B.
6. At this hearing, Mr. Miller requested that all evidence and testimony submitted at the earlier hearing held May 13, 1998, be included as evidence in this hearing as well as any new evidence that should be presented at this hearing.
7. The following documents originally presented by Mr. Richard to the State at the May 13, 1998 hearing, are made a part of the July 19, 2000 hearing record and labeled as:
  - Petitioner's Exhibit 1 - Assessment Review and Analysis, which includes: (a) Notice of Hearing for May 13, 1998; (b) errors and contentions; and (c) calculation of obsolescence
  - Petitioner's Exhibits 2 - 5 - Exterior photographs of the subject property
  - Petitioner's Exhibit 6 - Sales of comparable properties
8. In addition, at the hearing held on July 19, 2000, Mr. Miller submitted to the State the following exhibits into evidence:
  - Petitioner's Exhibit 7 – Includes the following: (a) Notice of Hearing for July 19, 2000; (b) Form 115, Notice of Assessment; (c) Township Assessor's response to Petitioner's claim; (d) property record card (PRC) for the subject parcel; (e) definition of obsolescence; (f) causes of obsolescence; (g) calculation of obsolescence; and (h) copies of photographs
  - Petitioner's Exhibit 8 - An article entitled *Identifying, Measuring, and Treating Functional Obsolescence in an Appraisal*, Larson, Michael D., Journal of Property Tax Management, Spring 1999
  - Petitioner's Exhibit 9 - Interior photograph of subject structure

9. At the hearing held on July 19, 2000, the Respondent submitted the following exhibits as evidence to the State:  
Respondent's Exhibit 1 – Includes the following: (a) PRC with the County Board values; (b) Form 115, Notice of Assessment; (c) Form 130 petition; (d) Form 11, Assessment of Land and Structures; (e) original 1995 PRC; (f) power-of attorney; (g) Township Assessor's response to the Petitioner's claim; and (h) inspection notes from August 11, 1997
10. The subject property is an industrial facility located at 2501 Middlebury Street, Elkhart, Indiana (Concord Township, Elkhart County).
11. The Hearing Officer did not view the subject property.
12. The Assessed Values for 1995 as determined by the County Board are:  
Land: \$14,400 Improvements: \$27,170 Total: \$ 41,570.
13. The subject property was given a condition rating of "Fair" for one half of the building and "Poor" for the other half of the building by the local officials for 62% physical depreciation. The subject property was given a 15% obsolescence depreciation deduction by the local officials.
14. At the July 19, 2000 hearing, Mr. Miller testified that he is a Level II Certified Indiana Assessor-Appraiser and a member of the American Society of Appraisers. Landmark Appraisals, Inc. is contracted on a contingency fee basis and Mr. Miller is a principal of Landmark Appraisals, Inc. Mr. Miller further testified that he had prepared the analysis and had done a site inspection.

**Issue 1 - Whether the condition rating is correct.**

15. The subject structure has not had any major renovation done and is presently used for cold storage. In the summer, the tar on the roof melts and then drips

inside the building. The exterior photographs submitted into evidence show the need for painting and maintenance. The subject PRC contains a note in the memorandum section that designates the old office area as being in “very poor” condition and dangerous. The Township Assessor’s response to the Form 130 petition states that the local officials considered half of the building to be in “fair” condition and the other half to be in “poor” condition. *Miller testimony & Petitioner’s Exhibits 2 – 5 and 7.*

16. The County Board determined the building to be in “poor” condition, but the PRC does not reflect that fact. *Searcy testimony.*
17. The building’s utility storage area was divided into two sections. The Township Assessor determined the front section to be in “fair” condition and the back section to be “poor”. The office area’s use was changed to light warehouse and determined to be in “poor” condition. The structure’s condition should be “poor” because the majority of it is in “poor” condition. *Werich testimony.*

**Issue 2 - Whether additional obsolescence depreciation is warranted.**

18. The subject structure was originally built in 1957 with little concern for heating and cooling inefficiencies. The flat roof is prone to leaks and in the summer the tar melts and drips inside the structure. The column spacing is rather narrow. The construction is considered superadequate in today’s market and the design is obsolete. *Miller testimony & Petitioner’s Exhibit 9.*
19. In calculating the replacement cost, costs from the General Commercial Kit (GCK) pricing schedule were used and the reproduction cost taken from the PRC. The replacement cost vs. reproduction cost calculation indicates the loss in value is \$3.66 per square foot, equating to 28% obsolescence depreciation. *Miller testimony & Petitioner’s Exhibit 7.*

20. The Township Assessor does not believe that any obsolescence was warranted because of corrections made to the structure's assessment. *Werich testimony.*
21. Changes made by the County Board were as follows (See State's Exhibit A):
  - a. 18,000 square foot of light utility storage area was separated into two (2) areas of light utility storage;
  - b. The front half light utility storage area received a negative adjustment to the base rate for lighting and the condition rating remaining at "fair";
  - c. The rear half light utility storage area received negative adjustments to the base rate for lighting, heating, framing, and a change in the condition rating to "poor"; and
  - d. The industrial office area (992 square feet) was changed to light warehousing with negative adjustments applied for partitioning, lighting framing and a change in the condition rating to "poor".

**Issue No. 3 - Whether the State has provided instructions for determining the effects that location and use have on the value of real property, for determining the cost of reproducing improvements, and for determining the productivity of earning capacity of the land for the subject property as required by IC 6-1-1-31-6.**

**Issue No. 4 - Whether the valuation method used to determine the assessed value of the subject property is not uniform nor at an equal rate and is not based upon a just valuation.**

22. At the July 19, 2000 hearing, no evidence or testimony was submitted by Mr. Miller as it related to the above named issues.

## 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.

## 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 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. “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.

### **Credibility of Witness**

17. The State's position is that it has the right to make general inquiry regarding, and to consider, the method by which a witness is compensated. Information about the witness's fee can be relevant and necessary in order to evaluate the potential partiality of the witness. A contingent fee arrangement may be considered to inherently affect the objectivity of a witness. The State believes it appropriate to consider the potential of such an arrangement to improperly motivate the witness and adversely affect the reliability of the testimony. It is for these reasons that the State will consider the method of witness compensation in the process of determining the credibility and weight to be given to testimony of a witness whose fee is contingent on the outcome of the issues that he or she is testifying about. This position is supported by the discussion in the case of *Wirth v. State Board of Tax Commissioners*, 613 N.E. 2d 874 (Ind. Tax 1993).

### **Issue 1- Whether the condition rating is correct.**

18. "Condition" is a judgment of the physical condition of the item relative to its age. Condition ratings range from "NV" (no-value) to "EX" (excellent). Those pertinent to the case at bar are:

"F" (fair) – to indicate the structure is in fair condition relative to its age. The degree of deterioration is somewhat worse than would normally be expected.

“P” (poor) – to indicate the structure is in poor condition relative to its age. The degree of deterioration is significantly worse than would normally be expected.

19. At the hearing, the Township, the County and the Petitioner agreed that the condition rating for the subject structure should be “poor”. The State accepts the parties’ agreement to the condition of the subject structure but this acceptance should not be construed as an independent finding concerning the condition of the structure.
  
20. A review of the County PRC shows that the County calculated the subject structure’s physical depreciation to be 62%. If the same calculation used by the County to determine the physical depreciation of the subject structure is used, it is then determined that for a structure built in 1957 that is 47% fire-resistant and 53% wood joist framing, with a condition rating of “poor”, the physical depreciation would then be 65%.

Fire-resistant - 9,000 square feet (47%) - “poor” condition, 38 years old, 40-Year Life Table

$$60 \times .47 = 28.20$$

Wood joist – 9,992 square feet (53%) – “poor” condition, 38 years old, 30-Year Life Table

$$70 \times .53 = 37.10$$

$$28.20 + 37.10 = 65.30\% = 65\%$$

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

**Issue 2 – Whether additional obsolescence depreciation is warranted.**

22. The local assessing officials applied 15% obsolescence depreciation to the subject building. At the initial State hearing, Mr. Rickard (Petitioner’s

representative) argued that the building had experienced 78% obsolescence depreciation. At the second State hearing, Mr. Miller (Petitioner's representative) contended that the building should receive 28% obsolescence depreciation. *Respondent's Exhibit 1 & Petitioner's Exhibits 1 and 7.*

### The concept of depreciation and obsolescence

23. 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 (2<sup>nd</sup> ed. 1996); *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d at 806 (citing Am. Inst. Of Real Estate Appraisers, *The Appraisal of Real Estate*, 321 (10<sup>th</sup> ed. 1992)).
24. 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.
25. 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. Accordingly, depreciation can be documented by using recognized appraisal techniques. *Id.*
26. Functional obsolescence depreciation is defined as "obsolescence caused by factors inherent in the property itself." 50 IAC 2.2-1-29.

27. “Functional obsolescence may be caused by, but is not limited to, the following:  
(A) Limited use or excessive material and product handling costs caused by an irregular or inefficient floor plan.  
(B) Inadequate or unsuited utility space.  
(C) Excessive or deficient load capacity.”  
50 IAC 2.2-10-7(e)(1).
28. Economic obsolescence depreciation is defined as “obsolescence caused by factors extraneous to the property.” 50 IAC 2.2-1-24.
29. “Economic obsolescence may be caused by, but is not limited to, the following:  
(A) Location of the building is inappropriate for the neighborhood.  
(B) Inoperative or inadequate zoning ordinances or deed restrictions.  
(C) Noncompliance with current building code requirements.  
(D) Decreased market acceptability of the product for which the property was constructed or is currently used.  
(E) Termination of the need of the property due to actual or probable changes in economic or social conditions.  
(F) Hazards, such as danger from floods, toxic waste, or other special hazards.”  
50 IAC 2.2-10-7(e)(2).
30. 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.
31. There are five recognized methods 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 age-life method, and (5) the observed condition (breakdown) method. IAAO Property

Assessment Valuation at 156; IAAO property Appraisal and Assessment Administration at 223.

Burden regarding the obsolescence claim

32. 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).
33. 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).
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 improvement to suffer losses in value.” *Champlin Realty Company v. State Board of Tax Commissioners*, 745 N.E. 2d 936 (Ind. Tax 2001).

Petitioner’s evidence

35. The Petitioner contends the “subject property suffers, to some degree, from just about all of the causes of functional and economic obsolescence as described in the assessing regulations.” See Petitioner’s Exhibit 7.
36. Though the Petitioner does not go into any detailed explanation as to how these causes of obsolescence in the Regulation effect the subject structures value, the fact that both the Petitioner and the local assessing officials agree that some

amount obsolescence depreciation should be applied to the subject structure (but disagree as to the amount of obsolescence that is warranted), satisfies the Petitioner's first prong of its burden of proof.

37. Having said that, the Petitioner is still left with the second prong of its burden of quantifying the amount of obsolescence it seeks.

38. As previously stated, "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 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"

International Association of Assessing Officers (IAAO) Property Assessment Valuation, 155-156 (2<sup>nd</sup> ed. 1996).

39. "The *sales comparison method*: estimates cost new of subject property; comparable properties are found and site values deducted; contributory improvement values remain; contributory improvement values are deducted from cost for each sale property, yielding measure of accrued depreciation; accrued depreciation figure is converted to percentage and applied to subject property." *Id* at 183.



40. “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.*
41. “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.
42. “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.*
43. “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.*
44. At the first hearing, Mr. Rickard employed the sales comparison method to measure obsolescence (Petitioner’s Exhibit 1). At the second hearing, Mr. Miller employed the economic age-life method and the Replacement vs. Reproduction method (a type of the observed condition method) (Petitioner’s Exhibit 7).
45. Although recognized or valid methods of calculation may be presented in support of obsolescence depreciation claims, the numbers set forth in these calculations must be valid and supported as well.
46. 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.

## Analyzing the evidence

### Mr. Rickard's evidence:

47. The calculation submitted by Mr. Rickard is based on the sales comparison approach; eleven (11) purported comparable sales are included in Petitioner's Exhibit 6. The analysis prepared by Mr. Rickard contended that the subject is most similar to Sale #1 and the total accrued depreciation should be 90%.
  
48. However, merely characterizing properties as comparable is insufficient for appeal purposes. 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." IAAO Property Assessment Valuation, 103 (2<sup>nd</sup> ed. 1996).
  
49. Mr. Rickard was required to present probative evidence that the purported comparable properties he offered are, in fact, comparable to the subject property. For example, the purported comparable properties range in size from 15,600 square feet to 366,000 square feet. However, Mr. Rickard offered no comparison of common features or amenities among the properties, and no discussion of whether the property under appeal and the purported comparable properties are all "influenced by the same economic trends and environmental (physical), economic, governmental, and social factors." *Id.*
  
50. Similarly, Mr. Rickard presented no discussion to support his conclusion as to why Sale #1 was deemed to be the most comparable to the subject property.

51. Additionally, to calculate the depreciation factors for the sale properties, the land value was deducted from the sale price to arrive at the fair market value for the improvements. However, no explanation or documentation was provided to show how the Petitioner determined the land value for each of the properties was \$20,000 per acre, regardless of size and location of those properties.
52. Mr. Rickard's unsubstantiated conclusions concerning comparable properties do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
53. For all of the reasons set forth above, the State is under no obligation to give, and does not give, Mr. Rickard's sales comparison calculation any weight.

Mr. Miller's evidence:

54. In the second hearing before the State, Mr. Miller professed to offer two (2) calculations in an attempt to quantify the degree of obsolescence depreciation that the building should receive: "In estimating this loss in value two approaches have been relied upon. The economic age life method and the Replacement vs. Reproduction method." (Petitioner's Exhibit 7).
55. The evidence presented by Mr. Miller, however, did not include any calculation using the economic age-life method.
56. Mr. Miller also asserted that the reproduction v. replacement cost method "measures the cost differences between the cost to duplicate the improvements and the cost to construct a structure of like utility using modern, [sic] building techniques, design and materials." (Petitioner's Exhibit 7). Mr. Miller computed the difference between his reproduction and replacement cost methods to support his assertion that the building has experienced 28% obsolescence depreciation. This approach, on its face, is one that may result in a reasonable analysis of the amount of a property's obsolescence.

57. Mr. Miller opined that the modern replacement building would be a structure like that described in the GCK pricing schedule, and his replacement cost calculation was based on the costs contained in that schedule.
58. Mr. Miller, however, did not produce evidence of comparable properties or any other professional authority in support of his conclusion that a replacement structure would be the type of structure found in the GCK pricing schedule - a light, pre-engineered building.
59. Mr. Miller did not provide sufficient evidence to allow the State to determine whether a GCK building has the characteristics that the “ideal replacement building” would need to possess.
60. Mr. Miller’s unsubstantiated conclusions concerning the nature of a replacement structure do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
61. Mr. Miller also presented a reproduction cost value, in which he converted the reproduction cost from the PRC into a square foot value (\$245,950 reproduction cost divided by 18,992 square feet = \$12.95 per square foot).
62. The reproduction cost used by Mr. Miller included items such as special features (a commercial canopy) and an adjustment for grade. As the pricing ladder of the PRC clearly indicates, these are adjustments that are made after the determination of the square foot price. This has the effect of inflating the reproduction cost relative to the replacement cost and distorting the obsolescence. Mr. Miller’s reproduction cost calculation is therefore in error.
63. Because Mr. Miller’s reproduction and replacement cost calculations are both flawed, the State is under no obligation to give, and does not give, the resulting obsolescence calculation any weight.

64. Finally, as stated in Conclusions of Law ¶¶22, the Petitioner's representatives presented two (2) methods of quantification that resulted in widely differing amounts of obsolescence depreciation (78% v. 28%). The discrepancy between the calculations further undermines the level of credibility to be given to either of them.
65. The Petitioner has failed to quantify the amount of claimed obsolescence as required by the second prong of the two-prong test articulated in *Clark*.
66. For all the reasons set forth above, the Petitioner failed to meet its burden on this issue. Accordingly, there is no change in the assessment as a result.

**Issue No. 3 - Whether the State has provided instructions for determining the effects that location and use have on the value of real property, for determining the cost of reproducing improvements, and for determining the productivity of earning capacity of the land for the subject property as required by IC 6-1-1-31-6.**

**Issue No. 4 - Whether the valuation method used to determine the assessed value of the subject property is not uniform nor at an equal rate and is not based upon a just valuation.**

68. At the hearing, the Petitioner failed to present any evidence or testimony concerning these issues. As a result there is no change in the assessment as it pertains to these issues.

## **SUMMARY OF STATE DETERMINATIONS**

### **Issue No. 1 – Whether the condition rating is correct.**

Changed the condition rating of the subject structure from “fair” to “poor”, resulting in a change in the physical depreciation and a change in the assessment.

### **Issue No. 2 – Whether additional obsolescence depreciation is warranted.**

Petitioner did not meet its burden in quantifying the amount of obsolescence it sought. No change in the assessment is made.

### **Issue No. 3 - Whether the State has provided instructions for determining the effects that location and use have on the value of real property, for determining the cost of reproducing improvements, and for determining the productivity of earning capacity of the land for the subject property as required by IC 6-1-1-31-6.**

### **Issue No. 4 - Whether the valuation method used to determine the assessed value of the subject property is not uniform nor at an equal rate and is not based upon a just valuation.**

The Petitioner failed to present testimony or submit evidence as it related to these issues. No change in the assessment is made as a result.

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.

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Chairman, Indiana Board of Tax Review

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**IMPORTANT NOTICE**

**- APPEAL RIGHTS -**

**You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.**