

**STATE OF INDIANA
Board of Tax Review**

GARY STEEL PRODUCTS CORP.)	On Appeal from the Lake County
)	Property Tax Assessment Board
)	of Appeals
Petitioner,)	
)	
v.)	Petition for Review of Assessment, Form 131
)	Petition No.45-030-99-1-4-00001
LAKE COUNTY PROPERTY)	Parcel No. 008-08-15-0020-0003
TAX ASSESSMENT BOARD OF)	
APPEALS and ROSS 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 use type allocation should be 91% warehouse and 9% small shop.
2. Whether 30% obsolescence depreciation should be applied.
3. Whether the wall height adjustment should be based on a wall height of 17 feet rather than 24 feet.
4. Whether the physical depreciation should be 40% rather than 30%.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-3, Edward L. Burke with Burke, Costanza and Cuppy, LLP, on behalf of Gary Steel Products Corporation (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 petition was filed on July 31, 2001. The Lake County Property Tax Assessment Board Of Appeals (PTABOA) gave notice of its determination on the underlying Form 130 petition on July 3, 2001.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on January 29, 2002 before Hearing Officer Ellen Yuhan. Testimony and exhibits were received into evidence. Mr. Burke and Geraldine Pigott, President of Gary Steel Products, were present on behalf of the Petitioner. Mr. Robert White was present on behalf of the Ross Township Assessor's Office. No one was present on behalf of the PTABOA.

4. At the hearing, the Form 131 petition was made a part of the record and labeled State Exhibit A. The Notice of Hearing on Petition is labeled State Exhibit B. In addition, the following exhibits were submitted to the State:

Petitioner's Exhibit 1 – An exterior photograph of the subject property.

Petitioner's Exhibit 2 – Exterior photographs of the subject building from various viewpoints.

Petitioner's Exhibit 3 – Interior photographs of the subject building depicting different areas of use.

Petitioner's Exhibit 4 – A binder containing the following documents:

- a. A copy of the subject Form 131 petition.

- b. A drawing depicting the floor plan and elevation of the subject building.
- c. The Petitioner's explanation of its grounds for appeal.
- d. A copy of a letter dated December 4, 1995 from Merrillville Public Works regarding the weight limit imposed by city ordinance for certain streets in Merrillville and maps depicting the location of these streets in relation to the subject property.
- e. A copy of the subject property's property record card reflecting the 1999 assessed values established by the local assessing officials, a comparison of building components between the subject building and light manufacturing, light utility storage, and light warehouse uses, a worksheet copy of a property record card, and a copy of the subject property's property record card reflecting the 1989 assessed values established by the local assessing officials and the State.
- f. A copy of a State Final Determination, Form 118, dated May 17, 1996, establishing the assessment of the subject property for March 1, 1989.
- g. A copy of the underlying Form 130 petition with the attachments submitted to the PTABOA.
- h. Portions of the narratives for depreciation and pricing copied from 50 IAC 2.2-10-7 and 50 IAC 2.2-10-6.1, respectively.

Petitioner's Exhibit 5 – Photographs of road signs depicting a weight limit of 6 tons for a portion of Highway 55 and an unidentified roadway.

Respondent's Exhibit 1 – A cover letter from the Ross Township Assessor detailing the Township's position with the following documents attached (as labeled):

1A – A copy of a Certificate of Compliance issued to Primich Engineered Products on January 12, 1973.

1B – A copy of a letter dated March 13, 1974 to Ted Primich, Gary Steel Products, from the Merrillville Planning Commission regarding a change from the original building permit information.

1C – A copy of an application for a building permit to construct a 30,000 square foot building at the subject location (1931 East Main Street).

1D – A copy of a letter dated September 11, 1974 regarding occupancy change from warehouse to office factory from Eugenides Associates.

2A – A copy of Merrillville Code Section 12-60 regarding load limits in general and a copy of Ind. Code § 9-20-1-3 regarding the authority provided for local road restrictions and limitations.

3A – A copy of the architect drawing for the front wall section displaying the measurements, including wall height, for the subject building.

4A – A copy of a Form 11, Notice of Assessment, dated April 30, 1999, giving notice of the March 1, 1999 assessment for the subject property and the reason for change in assessment.

5A- A copy of the State Form 118 submitted by the Petitioner regarding the subject property.

6A – The subject property's property record card reflecting the 1999 assessed values established by the local assessing officials.

7A – A copy of the forty-year life expectancy table from 50 IAC 2.2-11.

5. The subject property is a one-story concrete block warehouse/manufacturing facility and is located at 1931 E. Main Street, Griffith, Ross Township, Lake County. The year of assessment under appeal is 1999. The assessed values established by the PTABOA for 1999 are \$12,230 for land and \$141,650 for improvements. The Hearing Officer did not view the subject property.

Testimony and Evidence Regarding Usage Allocation

6. Petitioner testified that the subject building is warehousing and manufacturing with 1,500 square feet partitioned off for restrooms, a lunchroom, and a 330 square foot office area. A State Final Determination, Form 118, (1989 Form 118) issued in 1996 established the allocation of use at 91% warehouse and 9% small shop applicable to the 1989 assessment year. *Burke Testimony. Petitioner's Exhibits 3 and 4(f).*

7. Respondent testified that the office area is enclosed and separate from the shop area. *White Testimony*.
8. Respondent testified that the subject property is valued as light warehouse, general office, and light manufacturing. *Respondent's Exhibit 6A; Petitioner's Exhibit 4(e)*.

Testimony and Evidence Regarding Obsolescence

9. Petitioner testified that the subject property is accessed from State Road 55 to 57th Avenue in Merrillville. The City of Merrillville established a 6-ton load limitation for 57th Avenue resulting in an inability to use this route for access. Trucks use an alternate route for delivery or pick up which increases delivery or pickup time 20 minutes each way. The additional 20 minutes travel time results in increased transportation costs. The load limitation imposed by the City of Merrillville occurred after the subject building was constructed. This load limitation reduces the marketability of the subject property. *Burke Testimony. Petitioner's Exhibit 4(c), 4(d), 4(f), and 5.*
10. Petitioner testified that the area surrounding the subject property has remained unchanged in the last thirty years. The roads subject to the 6-ton load limitation are narrow, two-lane roadways with sharp turns making transportation difficult. The ordinance imposed by the City of Merrillville allows the operation of vehicles exceeding the load limitation if entry is required for delivery or pick up of goods and is made at the point closest to the destination and does not extend beyond the nearest intersection past the destination. *White Testimony. Respondent's Exhibit 2A.*
11. Petitioner testified that when the building was built in 1973, the availability of city water and city sewer was anticipated within a year or two following construction. To date, because city water and city sewer are not available, the subject property does not have access to public water and sewer utilities. The lack of water

prevents the building from having a sprinkler system, an essential feature for general warehousing. The lack of sanitary sewers prevents use of the building by a large number of employees – currently only 2 to 3 employees are at this location. *Burke Testimony. Petitioner’s Exhibits 4(c) and 5.*

12. Respondent testified that the subject property has a private well and septic system providing on site utilities. When the original certificate of construction was issued it was known that city water or sanitary sewers were not available at the subject property. The building permit indicates that only six (6) parking spaces were to be constructed which would limit the number of employees, or other persons, at the location. *White Testimony. Respondent’s Exhibits 1C.*
13. Petitioner testified that obsolescence depreciation was applied for the 1989 assessment. *Petitioner’s Exhibit 4 and 4(f).*

Testimony and Evidence Regarding Wall Height Adjustment

14. Petitioner testified that the building has an exterior wall height of approximately 24 feet, but the interior wall height is 17 or 18 feet. The building should be assessed on the basis of the 17-foot height as indicated in 50 IAC 2.2-10-6.1(a)(6). *Burke Testimony. Petitioner’s Exhibits 2, 4(b), 4(c) and 4(h).*
15. Respondent testified that the plan of the building shows the uneven eave height. The height averages 23 feet. The assessment for 2000 reflects a wall height of 23 feet. *White Testimony. Respondent’s Exhibits 3A and 6A.*

Testimony and Evidence Regarding Physical Depreciation

16. Petitioner testified that the subject building was constructed and occupied in 1973. As of 1999, the subject building is 26 years old. The 40-year life expectancy table found in 50 IAC 2.2-11 indicates 40% physical depreciation for

buildings between the ages of 26 and 30 years and in average condition. *Burke Testimony. Petitioner's Exhibit 4(c).*

17. Respondent testified that the completed construction of the subject building was added to the assessment rolls as of March 1, 1974. Physical depreciation is applied only in the year of a general reassessment. As of the year of general reassessment, March 1, 1995, the subject building was 21 years old. *White Testimony.*

Conclusions of Law

1. The Petitioner is limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (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. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal,

such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.

2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

A. Indiana's Property Tax System

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.
4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State's decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. See 50 IAC 17-6-3. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.
10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. “Allegations, unsupported by factual evidence, remain mere allegations.” *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at

1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).

11. One manner for the taxpayer to meet its burden in the State's administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V*, 702 N.E. 2d at 1040.
12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not "triggered" if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State's final determination merely because the taxpayer demonstrates flaws in it).

C. Review of Assessments After *Town of St. John V*

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property's market value will fail.
16. Although the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.
17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

Conclusions Regarding Use Type Allocation

18. The Petitioner seeks to have the use allocation changed from light warehouse, general office, and light manufacturing models to light warehouse and small shop models. The Petitioner relies on a Final Determination issued by the State in 1996 for the March 1, 1989 assessment as the basis for its challenge. The Petitioner also presented interior photographs and the testimony of Mr. Burke in support of this issue.
19. The parties clearly agree, and the evidence plainly demonstrates, that an office area exists within the subject building; that a product is manufactured within the subject building; and that the manufactured product is warehoused within the subject building. Thus, the actual uses of the subject building are not in dispute;

rather, the point of dispute focuses on the use models selected for valuing the subject building.

20. Base rates are established by selecting the use type model (or use model) that best describes the structure for valuation. *50 IAC 2.2-10-6.1*. Light warehouse, general office, and small shop are all examples of use types. *50 IAC 2.2-11-5*. Therefore, to prevail, the Petitioner must show that the subject building is best described as light warehouse and small shop rather than light manufacturing, light warehouse, and general office. While the Petitioner did present evidence in an attempt to show error in use type selection, the evidence fell short of constituting probative evidence.
21. In Indiana, each tax year is distinct and separate. *Williams Industries v. State Board of Tax Commissioners*, 648 N.E. 2d 713 (Ind. Tax 1995). Thus, a final determination addressing a prior assessment year does not constitute probative evidence of an error alleged for another assessment year. Therefore, the 1989 Form 118 offered by the Petitioner is not probative evidence of the alleged use type selection error.
22. The photographs offered by the Petitioner merely demonstrate that the building is comprised of manufacturing, warehousing, and office areas. These photographs do not demonstrate how the subject building is best described as light warehouse and small shop rather than light manufacturing, light warehouse, and general office. Thus, the photographs submitted by the Petitioner are not probative evidence of the alleged use type selection error.
23. For all of the above reasons, the Petitioner has not presented evidence probative of the alleged error in use type selection. As such, the Petitioner has not met the burden placed upon it in assessment challenges. Therefore, the State will not make the use type selection change sought by the Petitioner and the assessment made by the local officials is undisturbed.

Conclusions Regarding Obsolescence

24. Depreciation is an essential element in the cost approach to valuing property. Depreciation is a loss in value from any cause except depletion, and includes physical depreciation and functional and external (economic) obsolescence.¹ IAAO Property Assessment Valuation, 153 & 154 (2nd ed. 1996); *Canal Square*, 694 N.E. 2d at 806 (citing Am. Inst. Of Real Estate Appraisers, *The Appraisal of Real Estate*, 321 (10th ed. 1992)). 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 is a loss in value resulting from changes in demand, design, and 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.

27. External or economic obsolescence is the loss of value from factors external to the property (for example, national economic conditions). IAAO Property Assessment Valuation at 155.

¹ Depletion is the loss in value of property due to consumption of oil, gas, precious metals, and timber. IAAO Property Assessment Valuation, 153 (2nd ed. 1996).

28. 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 (breakdown) method.). IAAO Property Assessment Valuation at 156.
29. The elements of functional and economic obsolescence can be documented using recognized appraisal 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.
30. 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).
31. 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).
32. The Petitioner claims that the subject property suffers from both functional and economic (or external) obsolescence. The Petitioner points to road restrictions imposed by local ordinance and the lack of public utilities (water and sewer) as the causes of the alleged obsolescence depreciation.
33. The Petitioner first claims that the subject property suffers a loss in value due to the additional time requirements for transporting goods to and from the subject property. The Petitioner submitted maps of the area, photographs of road signs notifying the public of the load limitations imposed, and correspondence

regarding the load limitations imposed for certain roads in the area in support of this argument. While this evidence speaks to the load limitations imposed for the roadways in the area, this evidence does not give any indication of why or how the load limitations cause the alleged loss in value.

34. The Petitioner merely points to this evidence and concludes that the additional 20 minutes required traveling to and from the subject property results in a decreased marketability and a loss in value. The Petitioner has not presented any evidence demonstrating how or to what extent this additional travel time affects the marketability of the subject property. As such, the statements offered by the Petitioner are merely conclusory in nature. Conclusory statements do not constitute evidence probative of an alleged error.
35. Next, the Petitioner claims that, due to the lack of public water the subject building does not have a sprinkler system and due to the lack of sanitary sewers there is a limit on the number of employees the subject property can employ, the subject property suffers a loss in value. The only evidence on record regarding the lack of public utilities rests in the testimony of Mr. Burke and the Petitioner's written grounds for appeal (Pet. Ex. 4(c)). This evidence makes a claim that the subject property has suffered a loss in value due to a lack of public utilities; however, this evidence does not give an indication of why or how the lack of public utilities affects the subject property' value.
36. The Petitioner points to the lack of public water utility, the lack of a sprinkler system, and concludes that a loss of value has occurred. While a lack of sprinklers could impact the value of a particular type of property, the Petitioner has not shown that the lack of sprinklers has adversely impacted the subject property's value. Rather, the Petitioner has merely pointed to the lack of public water utility, the lack of a sprinkler system, and makes the conclusion that a loss has occurred. The record is void of any evidence showing how or why this lack of public water utility affects the value of the subject property. Thus, the argument regarding the lack of sprinkler system is based on a conclusory

statement. As stated above, conclusory statements do not constitute evidence probative of the alleged loss in value.

37. The Petitioner also points to a lack of sanitary sewers causing a limit to the number of employees the subject building can maintain and concludes a loss in value has occurred. It should be noted that, although the Petitioner claims the subject property lacks sanitary sewers, the record makes it clear the subject property does, in fact, have a private septic system for the purpose of sanitary waste. Thus, the subject property does not lack provisions for sanitary waste removal. Rather, the Petitioner's true complaint is the lack of public sewer utilities. While the evidence leaves no doubt that the subject property does not have public sewer utilities, the evidence does not give any showing of why or how this affects the value of the subject property. It is not enough to simply point to an alleged deficiency and claim a loss has occurred. Pointing to the lack of public sewer utilities and concluding the subject property has suffered a loss in value is nothing more than a conclusory statement. As stated earlier, conclusory statements do not constitute evidence probative of the alleged loss in value.
38. Finally, the Petitioner leans on the fact that obsolescence depreciation was applied as a result of the 1989 Form 118. As stated earlier in these findings, because each tax year is distinct and separate, a final determination issued for one assessment year is not probative evidence of an error for another assessment year. Thus, the 1989 Form 118 is not evidence probative of an error in obsolescence depreciation.
39. For all of the above reasons, the Petitioner has not presented evidence probative of the alleged loss in value suffered by the subject property. As such, the Petitioner has not met its burden regarding its obsolescence claim. Therefore, the State will not make the obsolescence change sought by the Petitioner and the assessment established by the local assessing officials is undisturbed.

Conclusions Regarding Wall Height Adjustment

40. The Petitioner contends that the wall height of the subject building is 17 feet rather than 24 feet. The Petitioner is relying on the interior floor to ceiling height in making this argument. The Petitioner believes that the narrative regarding wall height adjustments found in 50 IAC 2.2-10-6.1(a)(6) supports the use of the interior wall height when determining the application of a wall height adjustment. The Petitioner maintains that, because the interior wall height of the subject building is 17 feet, the positive wall height adjustment used in valuing the subject building is incorrect.

41. Although the Petitioner makes the argument that the wall height is incorrect, the Petitioner acknowledged that the exterior wall height is, in fact, 24 feet. Thus, the exterior wall height of 24 feet is undisputed. Therefore, the ultimate issue is whether the interior wall height should be used to make a wall height adjustment rather than the exterior wall height. While the Petitioner did present evidence and testimony in an attempt to demonstrate error, the evidence and testimony primarily focused on the exterior wall height of the subject building.

42. The elevation sketch submitted by the Petitioner shows an exterior wall measurement of 16 feet; however, this does nothing to prove the Petitioner's claim. This evidence does not support the Petitioner's claim that the interior wall height is the proper wall height for the purpose of making a wall height adjustment; rather this evidence simply shows that an unidentified building has an exterior wall height of 16 feet.

43. The exterior photographs submitted by the Petitioner provide various views of the subject building. However, these photographs offer nothing with regard to the correct wall height of the subject building or with regard to whether the interior wall measurement is the proper wall height for making the appropriate wall height adjustment.

44. The excerpts from 50 IAC 2.2-10-6.1 submitted by the Petitioner do not demonstrate error. These pages simply provide an explanation of wall height, ceiling height, wall height adjustment, and other items involved in the pricing of commercial or industrial property in Indiana. Although this evidence does speak to both floor to floor and floor to roof heights, this evidence does not demonstrate that an error exists in the calculation of wall height adjustment.
45. The portion of 50 IAC 2.2-10-6.1 submitted by the Petitioner discusses wall heights and wall height adjustments. It is easy to see why the Petitioner believed that wall height adjustments are made based on an interior wall height. However, the Petitioner is mistaken.
46. While the use of exterior wall height is not specifically stated under 50 IAC 2.2-10-6.1, the use of exterior wall height is distinctly referred to under 50 IAC 2.2-10-2(j). An example is given for the concept of calculating a wall height adjustment for a building with “varying exterior wall heights.” Certainly, while not specified in the pricing narrative (50 IAC 2.2-10-6.1), the narrative for the concept of wall height adjustments leaves little doubt that the exterior wall height is used to calculate wall height adjustments. Thus, the Petitioner’s argument regarding the use of an interior wall height to calculate a wall height adjustment fails.
47. For all of the above reasons, the Petitioner has not presented evidence probative of the alleged wall height adjustment error. As such, the Petitioner has not met the burden placed upon it in assessment challenges. Therefore, the State will not make the wall height adjustment change sought by the Petitioner and the assessment established by the local assessing officials is undisturbed.

Conclusions Regarding Physical Depreciation

48. The Petitioner claims that, because the subject building was constructed in 1973, the subject building was 26 years old as of March 1, 1999. The Petitioner contends that, because the subject building is 26 years old in 1999, it is entitled to 40% physical depreciation rather than 30% physical depreciation. The Petitioner's argument is two-fold – the date of construction and the year in which physical depreciation is applied.
49. The Petitioner represents that the subject building was constructed and occupied in 1973 rather than 1974. However, the evidence presented by the Respondent sufficiently disputes this testimony. The Respondent presented a letter of inspection and occupancy change (dated September 11, 1974)(Respondent's Exhibit 1-D), the building permit with a notation of temporary occupancy order (dated May 30, 1974)(Respondent's Exhibit 1-C), and a letter regarding an increase for the building permit fees (dated March 13, 1974)(Respondent's Exhibit 1-B). This evidence gives good reason to believe that the construction and occupancy did not occur until sometime during the March 1, 1974 assessment year.
50. The Petitioner believes that the age of the subject building, for the purposes of applying physical depreciation, should be determined based on the current date of assessment of March 1, 1999. This is not so.
51. In Indiana, all property is reassessed in a year of general reassessment. The last general reassessment occurred March 1, 1995. At the time of general reassessment, physical depreciation is established and applied for all property constructed prior to the date of the general reassessment. Physical depreciation is not applied to real property following the general reassessment until the next general reassessment. For assessment purposes, the age of a building is established by subtracting its construction date from the date of the general reassessment. (50 IAC 2.2-1-2; -21 and 50 IAC 2.2-10-7.) Thus, the Petitioner's

argument regarding the age estimate for the application of physical depreciation fails.

52. For all of the above reasons, the Petitioner has not presented evidence probative of the alleged error in physical depreciation. As such, the Petitioner did not meet the burden placed upon it in assessment challenges. Therefore, the State will not make the physical depreciation change sought by the Petitioner and the assessment established by the local officials is undisturbed.

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