STATE OF INDIANA
Board of Tax Review

In the matter of the Petition for Review)
of Assessment, Form 131) Petition No. : 54-030-95-1-4-00022

Parcel No. : 0230841601

Assessment Year: 1995

Petitioner: HC Industries
Debbie Dillinger, Manager – Property Taxes
3 Allegheny Ctr.
Pittsburgh, PA 15212

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 assessment fails to consider appropriate physical, functional, and economic (external) obsolescence factors in arriving at true tax value.

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, Robert S. Hersh, Manager – State Taxes on behalf of HC Industries (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 was filed on December 20, 1996. The Montgomery County Board of Review's (County Board) Assessment Determination on the underlying Form 130 petition is dated November 25, 1996.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on November 19, 2001, before Hearing Officer Joan L. Rennick. Testimony and exhibits were received into evidence. Deborah A. Dillinger, Manager - Property Taxes, Alcoa represented the Petitioner. Peggy Hudson, Montgomery County Assessor, and Sue Sams, Union Township Assessor, represented the Respondent.

4. At the hearing, the subject Form 131 was made a part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following exhibits were submitted to the State Board:
   Petitioner's Exhibit 1 – History of appeal/Issues/Identification - West Plant
   Petitioner's Exhibit 2 – Map of interior product flow of West Plant
   Petitioner's Exhibit 3 (a through c) – Exterior photos of West Plant
   Petitioner's Exhibit 4 – Acquisition agreement dated September 28, 1998
   Petitioner's Exhibit 5 – History of appeal of ATB Building/Issues/Identification
   Petitioner's Exhibit 6 (a through b) – Exterior photos of ATB Building

   Respondent's Exhibit 1 – Property record card (PRC) of subject property

5. The property is located at 1201 Elmore, Crawfordsville, Union Township, Montgomery County.

6. The Hearing Officer did not view the subject property.

7. At the hearing, the parties agreed the year under appeal was 1995 and the Assessed Values of record were Land: $30,330 and Improvements: $1,054,730 for a Total Assessed Value of $1,085,060. .

Whether the assessment fails to consider appropriate physical, functional, and economic (external) obsolescence factors in arriving at true tax value.

8. The appeal under review is for improvements only. Alcoa acquired HC Industries in 1989 including the structures previously built on the parcel. Some adjustments were made after the County Board hearing, but the amount of functional obsolescence to be applied is in question.

9. The structures under review are referred to as the West Plant and the Administration & Technology Building (AT Building). Currently those office areas in the West Plant designated as A-1 and A-2 are receiving 20% obsolescence and the office area in the AT Building designated B-1 is receiving 15% obsolescence. The Petitioner is requesting 65% functional obsolescence to be applied.

Functional Obsolescence Testimony

10. The AT Building no longer suits the needs of the company because in 1995 and 1996 Alcoa downsized moving approximately 27% of the staff to Indianapolis where the global management group is located. The AT Building is superadequate for the company and it is not feasible for the company to lease the space to outside tenants. The AT Building was built in 1993 and would be designed smaller and simpler today. *Dillinger testimony*.

11. The AT Building is a misimprovement for the neighborhood because of a golf course on one side and an athletic field on the other side. *Dillinger testimony*.

12. At the West Plant there is excessive material product handling costs due to an inefficient floor plan evidenced by the product flow map. The "storage" area highlighted in yellow is an area with low ceiling heights or beams that limits the placement of machinery. *Dillinger testimony* & Petitioner's Exhibit 2.

13. There is a poor relationship between office space, manufacturing and warehousing. Office area accounts for 30%, manufacturing 36%, and warehouse 34%. The real estate manuals indicate 10% office space is optimal for an industrial facility. *Dillinger testimony*.

14. While the East Plant makes plastic twist-off closures for bottle caps and the North Plant makes wide mouth plastic twist-off closures for bottle caps, the West Plant builds the machinery for the Alcoa plants worldwide and Alcoa is the West Plant's only customer. Because of Alcoa being their only customer, when Alcoa reduces the volume of this business or goes out of business, the West plant does not operate at optimum levels. *Dillinger testimony*.

15. In 1998 the West plant was sold to Tridan Parts and Service Corp. for $1,465,000 with $300,000 being allocated to the land, buildings, and fixtures. When the Remainder Value established by the County Board is compared to the actual sales price of $300,000, it indicates an obsolescence adjustment of 65%. *Dillinger testimony & Petitioner's Exhibit 4.*

16. The 1998 sale price is the closest indicator to what the market would have supported. HC Industries purchased the West Plant from Hyster in 1988 for $445,000. Nothing comes close to the Remainder Value of $875,000 established by the local assessing officials. *Dillinger testimony.*

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17. The machines produced at the West Plant are for the sole use of Alcoa in their

production of bottle caps and functions on an "as needed" basis. The problems caused by an irregular or inefficient floor plan are inconsequential and no obsolescence is warranted on this "job shop". *Hudson testimony.*

18. Allocation of space is dependent on the needs of the user and independent of the "average" and therefore obsolescence is not warranted on this issue. *Hudson testimony.*

19. Under utilization of the office areas is due to corporate downsizing and requires a history of utilization be developed to determined the amount of obsolescence to be applied. The situation needs to be rechecked yearly to determine the amount of obsolescence warranted. *Hudson testimony.*

20. The County Board recommended no obsolescence for 1995. However, for March 1, 1996 a 20% economic obsolescence factor was to be applied to the office areas only. This translates into a 15% economic obsolescence factor for the entire building. *Hudson 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. “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 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 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. The taxpayer's burden in the State'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 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.

Whether the assessment failed to consider appropriate physical, functional, and economic (external) obsolescence factors in arriving at the true tax value.

1. Definitions and Burden

18. Depreciation is an essential element in the cost approach to valuing property. Depreciation is the loss in value from any cause except depletion, and includes physical depreciation and functional and external (economic) obsolescence. *IAAO Property Assessment Valuation*, 153 & 154 (Second Edition, 1996); *Canal Square Limited Partnership v. State Board of Tax Commissioners,* 694 N.E. 2d 801, 806 (citing AM. Inst. of Real Estate Appraisers, The Appraisal of Real Estate, 321 (Tenth Edition, 1992)).

19. Depreciation is a concept in which an estimate must be predicated upon a comprehensive understanding of the nature, components, and theory of depreciation, as well as practical concepts for estimating the extent of it in improvements being valued. 50 IAC 2.2-10-7.

20. Depreciation is a market value concept and the true measure of depreciation is the effect on marketability and sales price. *IAAO Property Assessment Valuation* at 153. The definition of obsolescence in the Regulation, 50 IAC 2.2-10-7, is tied directly to that applied by professional appraisers under the cost approach. *Canal Square*, 694 N.E. 2d at 806. Accordingly, depreciation can be documented by using recognized appraisal techniques. *Id.*

21. 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.

22. The use of any singular technique or method identified above without the use of other approaches would be considered unethical and incomplete.

23. 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).

24. Regarding obsolescence, the taxpayer has a two-prong burden of proof: (1) the taxpayer has to prove that obsolescence exists, and (2) the taxpayer must quantify it. *Clark*, 694 N.E. 2d 1233.

25. It is the Petitioner's contention that additional functional obsolescence should be applied to the subject structures. The Petitioner requested the application of 65% functional obsolescence depreciation.

26. Ms. Dillinger's testimony and evidence for the application of obsolescence for the AT Building consisted of the following:
    a. The structure is superadequate for the location and their needs;
    b. The structure is an over-improvement for the neighborhood; and
    c. Due to the company downsizing only 27% to 35% of the structure is used.

27. Ms. Dillinger's testimony and evidence for the application of obsolescence for the West Plant consisted of the following:
    a. Excessive material and product handling (Petitioner's Exhibit 2);
    b. Inefficient floor plan and low ceilings;
    c. Poor proportion of office space to manufacturing and warehouse space;
    d. Market acceptability; and
    e. The fact the subject property sold in 1998 for $300,000 (Petitioner's Exhibit 4).

28. The State will consider a number of factors to determine the relevancy of evidence regarding obsolescence. The first factor is whether the alleged maladies of the property actually lead to a loss in value as required by 50 IAC 2.2-10-7 (e). Evidence of such loss of value may be based on the assessor's observations of the property and its value, or from anecdotal evidence if sufficiently reliable. In many cases there will be causes of obsolescence that cannot easily be seen by the assessor. In these cases it is incumbent on the taxpayer to establish a link between the evidence and the loss of value. For statistical evidence this may be established by providing sufficient evidence of correlation of the evidence to value. For anecdotal evidence establishing reliability is more difficult. Statements by the taxpayer or consultant regarding the value of property are inherently unreliable unless they can be confirmed either by other statements or by the opinions of impartial observers.

29. Functional obsolescence is loss in value caused by factors inherent in the property itself. 50 IAC 2.2-1-29. Functional obsolescence is the loss in value resulting from changes in demand, design, and technology and takes the form of:

    f. Normal deficiency – absence of a component when the market demands it to be there (for example, no second bathroom)
    g. Need for modernization – (for example, an outdated kitchen)
    h. Superadequacy – an element more than adequate for its function (For example, overly high ceilings)

    IAAO Property Assessment Valuation at 168 & 169.

2. Causes of obsolescence

30. "[I]n advocating for an obsolescence adjustment, a taxpayer must first provide the State Board with probative evidence sufficient to establish a prima facie case as to the causes of obsolescence." *Champlin Realty Company v. State Board of Tax Commissioners,* 745 N.E. 2d 928, 932 (Ind. Tax 2001).

31. “Where there is no cause of obsolescence, there is not obsolescence to quantify.” *Id.,* citing *Lake County Trust v. State Board of Tax Commissioners,* 694 N.E. 2d 1253, 1257 (Ind. Tax 1998).

32. The identification of causes of obsolescence requires more than randomly naming factors. “Rather, the taxpayer must explain how the purported causes of obsolescence cause the subject improvements to suffer losses in value.” *Champlin,* 745 N.E. 2d at 936.

33. “Without a loss of value, there can be no economic obsolescence.” *Pedcor,* 715 N.E. 2d at 438.

34. “In the commercial context, a loss of value usually represents a decrease in the improvement’s income generating ability.” *Loveless Construction v. State Board of Tax Commissioners,* 695 N.E. 2d 1045, 1047 (Ind. Tax 1998). *See also Damon Corp. v. State Board of Tax Commissioners,* 738 N.E. 2d 1108, (Ind. Tax 2000).

35. The subject property is currently receiving an adjustment for obsolescence. The parties to this appeal are in agreement that obsolescence does exist, therefore, the Petitioner has met the first prong of the two-prong burden identified in conclusions of law ¶ 24.

3. Quantification of Obsolescence

36. The Petitioner must quantify the amount of obsolescence sought in order to meet its burden. Ms. Dillinger failed to make a detailed presentation as to what part of the request each deficiency represented. Ms. Dillinger also failed to explain if any of the causes were curable or incurable and failed to present any calculations showing the costs to cure or the loss in value.

37. Ms. Dillinger's also points to the fact the West Plant builds machinery only for the Alcoa Closure Systems at the East Plant and Alcoa overseas, thus making Alcoa their only customer. In other words, the West Plant is specifically locked into the needs of Alcoa.

38. Such statements are a weak argument for market acceptability. It is not argued that the West Plant was built specifically to be a captive shop for Alcoa to build machinery for the Alcoa locations for their product line needs. The West Plant functions for the purpose it was built to fill the needs of Alcoa's production lines and nothing more. It was a business decision made by Alcoa to construct such a structure with a single purpose in mind. In making this decision, Alcoa accepted the intrinsic risks of such a venture. Taxpayer's should not view the State as a vehicle for relief in what might be considered a bad business decision. In this argument, Ms. Dillinger does not discuss what it was about the subject structure that made the structure itself, obsolete.

39. A significant portion of Ms. Dillinger's documentation for the request for obsolescence centered on a purchase agreement dated September 28, 1998 (Petitioner's Exhibit 4). Ms. Dillinger contends that the value established by this agreement comes closest to what the market would have supported in 1995. It should be noted that the year under appeal is 1995 and not 1998.

40. Ind. Code § 6-1.1-31-6(c) states, "With respect to the assessment of real property, true tax value does not mean fair market value. True tax value is the value determined under the rules of the state board of tax commissioners." True tax value assessed against the property is not exclusively or necessarily identical to fair market value. *Town of St. John V*, 702 N.E. 2d at 1038.

41. Any tax appeal that seeks a reduction in assessed value because the assessed value assigned to the property does not equal the property's market value will fail.

42. 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.

43. Ms. Dillinger does not explain in any detail why a purchase agreement for the subject property in 1998 should be considered probative evidence for the 1995 appeal under review.

44. Assuming *arguendo,* the purchase agreement submitted was a viable entity some questions arise. How was the $300,000 for the land, building and fixtures determined? Was an appraisal done? If the entire purchase price was $1,465,000 with $300,000 for the land, building and fixtures, what was the remaining $1,165,000 for?

45. As stated in Conclusions of Law ¶10 and 11, taxpayers are expected to make factual presentations to the State Board regarding alleged errors and support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." The State Board is not required to give weight to evidence that is not probative to the errors the taxpayer alleges.

46. Again, 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.

47. The action taken by the County Board in applying obsolescence to the AT Building and the West Plant shows the County Board agreed that some form of obsolescence existed. The first prong of the taxpayer's two-prong burden has been affirmed. However, the parties disagreed as to the amount of obsolescence to be applied. At this juncture the Petitioner had the burden to quantify the amount of obsolescence they sort. The Petitioner failed to do so.

48. The Petitioner failed to use any of the recognized methods to quantify obsolescence. In her own testimony Ms. Dillinger admits that she is unsure if the 65% obsolescence depreciation sought by the Petitioner is an accurate amount.

49. For all the reasons set forth above, the Petitioner failed to meet the second prong of the two-prong burden of proof, established in *Clark*, 694 N.E. 2d 1233, regarding the issue of obsolescence. Accordingly, there is no change in the assessment as a result of this issue.

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