STATE OF INDIANA
Board of Tax Review

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<tr><td>HAROLD SCHROCK,

Petitioner,

v.

ELKHART COUNTY BOARD OF REVIEW and JACKSON TOWNSHIP ASSESSOR,

Respondents.</td><td>)
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)</td><td>On Appeal from the Elkhart County Board of Review

Petition for Review of Assessment, Form 131
Petition No. 20-008-96-1-4-00004
Parcel No. 08-15-10-104-024</td></tr>
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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:

This case initially came before the State on the Petition for Review of Assessment, Form 131, filed by Landmark Appraisals, Inc. for Harold Schrock. The issues raised on the petition were obsolescence, grade, and the legality and constitutionality of the assessment. The tax year in controversy is 1996.

On May 13, 1998, the State originally held a hearing on the Form 131 petition, in conjunction with a 1995 petition on the subject parcel. Subsequent to the hearing, decisions were issued by the Indiana Tax Court regarding a taxpayer's burden of proof on the issue of obsolescence. *See Clark v. State Board of Tax Commissioners,* 694 N.E. 2d 1231 (Ind. Tax 1998); and *Canal Square Limited Partnership v. State Board of*

Tax Commissioners, 694 N.E. 2d 801 (Ind. Tax 1998). The State scheduled additional hearings on both the 1995 and 1996 petitions, giving the taxpayer and other interested parties an opportunity to present additional evidence in light of these Tax Court decisions.

Issues

1. Whether obsolescence depreciation should be applied.
2. Whether the grade is excessive.
3. Whether the State has failed to provide instructions for determining the effects that location and use have on the value of real property, and determining the productivity of earning capacity of the land, as required by Ind. Code 6-1.1-31-6.
4. Whether the assessment violates Article X, Section I of the Indiana Constitution.

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.

A. Background of Administrative Appeal

2. The subject property is located on County Road 23, Goshen, Jackson Township, Elkhart County.

3. Landmark Appraisals, Inc., on behalf of Harold Schrock, filed a Form 130 with the Elkhart County Auditor disagreeing with the assessment of the subject property. On October 21, 1997, the Elkhart County Board of Review issued its assessment determination on the property. On October 29, 1997, the Petitioner filed a Form 131 petition with the State pursuant to Ind. Code § 6-1.1-15-3.

4. Pursuant to Ind. Code § 6-1.1-15-4, notice of hearing was timely given to the Petitioner. The hearing on the subject petition was held in conjunction with a 1995 petition on this parcel. State hearing officer Richard Schultz conducted the hearing on May 13, 1998.

5. Subsequent to the hearing, decisions were issued by the Indiana Tax Court regarding a taxpayer's burden of proof on the issue of obsolescence. *See Clark v. State Board of Tax Commissioners,* 694 N.E. 2d 1231 (Ind. Tax 1998); and *Canal Square Limited Partnership v. State Board of Tax Commissioners,* 694 N.E. 2d 801 (Ind. Tax 1998).

B. Additional Hearing Proceedings and Exhibits

6. As a result of the Tax Court decisions, an additional hearing on both the 1995 and 1996 petitions was scheduled for August 16, 2000. Proper notice was given to all parties.

7. Enclosed with the notice of additional hearing was a letter stating the reason for the hearing. The letter also stated that additional evidence could be submitted, and that evidence (documentation or testimony) previously submitted to the State would not automatically be included in the administrative record. Such evidence would have to be resubmitted at the additional hearing. These procedures applied to the issue of obsolescence, as well as any other issues raised on the appeal petition.

8. The additional hearing was held on August 16, 2000 before Hearing Officer Joseph Stanford. M. Drew Miller represented the Petitioner. Veronica Williams represented Elkhart County.

9. The following documents are part of the administrative record and labeled as Board exhibits:
   Board Ex. A – Subject Form 131

Board Ex. B – Notice of additional hearing and enclosed letter
Board Ex. C – Notice of original hearing held May 13, 1998.

10. In addition, the following item was submitted into evidence:
Respondent's Ex. 1 – Hearing notices, Forms 130 and 131, subject property record card.

11. Mr. Miller stated that he had no additional evidence or testimony to submit, and asked that evidence and testimony submitted at the May 13, 1998 hearing be incorporated into this hearing. He testified that he received the letter accompanying the notice of this additional hearing, stating that the purpose of the additional hearing was to allow the parties to submit additional evidence.

12. Ms. Williams testified that the previous County Board of Review made the decision concerning the subject petition. She stated that she has no problems with the previous decision.

C. Evidence and Testimony Submitted at Original Hearing

13. At the original hearing on May 13, 1998, Lance Rickard, Drew Miller, and David Pippen represented the Petitioner. The record shows that the following items were submitted into evidence:
Petitioner's Ex. 1 – Assessment Review and Analysis
Petitioner's Ex. 2 – Summary of sales.

14. Mr. Rickard submitted an exhibit consisting of 11 sales (Pet. Ex. 2). His intent was to establish a fair market value of the buildings based on those sales. The land value, a standard $20,000 per acre (Mr. Rickard suggested that a range of $5,000 to $25,000 existed), was subtracted from the sale price to indicate a fair market value for each building. The fair market values are compared with a computed reproduction cost (square footage multiplied by a set dollar amount, between $17 and $26) to determine the amount of total depreciation.

Depreciation is then annualized for each of the 11 sales. Mr. Rickard stated that Sale No. 9 is the most comparable to the subject. This sale shows accrued depreciation of 70%. Landmark, however, adjusted the accrued depreciation down to 40%, because the building is 11 years older than the subject. After accounting for physical depreciation, Landmark's conclusion is that, in 1996, 25% obsolescence should be applied to the subject property, which includes both buildings, identified as Sylvan Building #27 and Sylvan Building #28.

15. Mr. Rickard testified that the comparable sales used were not adjusted to 1996, the year of appeal. Mr. Miller stated, however, that Landmark is not trying to establish a market value, but an amount of obsolescence. Depreciation is calculated through the date of the sale.

16. Mr. Rickard also contends the grade is overstated on both buildings. Mr. Rickard stated that the current grade on both buildings is "D." (The grade is actually "D-1" on both). He testified that the buildings are constructed with economy materials, fair workmanship, are devoid of architectural treatment, and have substandard quality interior finish. He contends the grade of both buildings should be no higher than "D-2."

17. Landmark submitted no evidence or testimony concerning the legality or constitutionality of the assessment.

Conclusions of Law

1. The Petitioner is statutorily 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. Ind. Code §§ 6-1.1-15-1, -2.1, and –4. See also the Forms 130 and 131 petitions. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles,* 672 N.E. 2d 1353

(Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form130/131 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 even though the taxpayer demonstrates flaws in it).

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

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property's market value will fail.

16. Although the Courts have declared the cost tables and certain subjective elements of the State'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.

D. Issue No. 1 – Whether obsolescence depreciation should be applied

18. 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.

19. 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.

20. 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).

21. 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).

22. For the reasons that follow, the Petitioner has fallen far short of meeting either prong of its two-prong burden of proof.

23. The first prong of a taxpayer's burden of proof is to show that obsolescence exists. Inherent in this requirement is to prove, or at least discuss, the cause(s) of the alleged obsolescence. In the case at bar, the Petitioner has not proven, discussed, or even mentioned a cause of obsolescence. The Petitioner fails to even disclose whether the alleged obsolescence is functional or economic in nature. The Petitioner merely contends that obsolescence exists.

24. Buildings are not deemed to be obsolete solely because the Petitioner says so. The Petitioner is required to submit probative evidence that obsolescence exists. Despite two hearings, and two "bites at the apple", the evidence required of the Petitioner to prove that obsolescence exists, or identify causes of the alleged obsolescence, is completely lacking from the record. Therefore, the Petitioner has failed to meet the first prong of its two-prong burden of proof.

25. The Petitioner has also fallen short of meeting the second prong of its burden. The Petitioner's attempt at quantifying the alleged obsolescence, using the sales comparison method, is a hodge-podge of unsupported figures and assumptions.

26. First, the Petitioner fails to support the land values listed on the sale properties. Mr. Rickard suggested that the range of land values for these properties range from $5,000 per acre to $25,000 per acre. The Petitioner submitted no evidence to support the range given. The Petitioner then, without explanation, chose to value the land at $20,000 per acre, towards the high end of the suggested range, for all eleven sales. Not surprisingly, a higher land value as a percentage of the sale price leads to a higher obsolescence percentage for the building. The State notes that the subject property's land is valued at only $10,000 per acre. This leads the State to assume either that the Petitioner has used inflated land values, or that the sale properties are not comparable to the subject. Either assumption leaves the Petitioner's calculations sorely lacking in credibility.

27. Likewise, the Petitioner has not supported the reproduction costs given for the sale properties. The Petitioner uses $17 per square foot for one property, $20 per square foot for nine properties, and $26 per square foot for one property, to calculate the reproduction costs of these properties. The record is devoid of any evidence, however, to support any of the square foot prices used to calculate the reproduction costs. As with land values, inflated reproduction costs would lead to inflated obsolescence depreciation percentages in the Petitioner's calculations.

Therefore, the square foot prices used to calculate the reproduction costs, and the land values used, must be supported with evidence.

28. The Petitioner bears the burden of proving that the sale properties used are comparable to the subject. The properties should be comparable in age, condition, construction type, size, use, and location, among other elements. The Petitioner fails to meet this burden. The Petitioner has not submitted evidence concerning condition, use, and location of many of the sale properties to make a judgment about comparability. While some of the properties are comparable in size, many are two to six times larger. Finally, both buildings situated on the subject property are only seven years old. The sale properties range in age from 17 to 50 years old. Age is likely the most important consideration when comparing physical and obsolescence depreciation, yet none of the sale properties are comparable to the subject in age.

29. The Petitioner contends that “Sale No. 9” is most comparable to the subject, because it is the closest in size. Other than size, the State is hard-pressed to find any other similarities. The sale property is 18 years old; the subject is seven. The sale property consists of four metal buildings; the subject consists of two concrete block buildings. The sale property sits on 13 acres of land; the subject sits on 5.7 acres. The condition of the sale property is unknown. Similarities or differences in the locations are not discussed. Thus, even the Petitioner’s “most comparable” sale property cannot be considered comparable.

30. Finally, even without the shortcomings discussed above, the Petitioner shows no support for its determination that the subject property is 40% depreciated from all causes. The Petitioner states only that Sale No. 9, which is 70% depreciated from all causes, is much older than the subject. Therefore, an adjustment is made. The Petitioner, however, offers no theory, evidence, calculation, or explanation of its adjustment, and how it arrived at 40%.

31. For all of the reasons set forth above, the Petitioner has failed to meet either prong of its two-prong burden of proof. As a result, there is no change in the assessment as a result of this issue.

E. **Issue No. 2 – Whether the grade is excessive**

32. "Grade" means the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.

33. Grade is used in the cost approach to account for variations from the norm or "C" grade. The quality and design of a building are the most significant variables in establishing grade. 50 IAC 2.2-10-3.

34. The determination of the proper grade requires assessors to make a variety of subjective judgments regarding variations in the quality of materials and workmanship and the quality of style and design. *Mahan v. State Board of Tax Commissioners,* 622 N.E. 2d 1058, 1064 (Ind. Tax 1993). For assessing officials and taxpayers alike, however, the Manual provides indicators for establishing grade. The text of the Manual (see 50 IAC 2.2-10-3), models, and graded photographs (50 IAC 2.2-11-4) assist assessors in the selection of the proper grade factor.

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

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

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

37. To repeat, 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. *Town of St. John V,* 702 N.E. 2d at 1040.

38. In the case at bar, the Petitioner has merely offered a conclusory statement that the grade is overstated. Conclusory statements do not constitute probative evidence of errors in the assessment. Since the Petitioner submitted no evidence concerning this issue, there is no change in the assessment.

F. <u>Issue No. 3 – Whether the State Board has failed to provide instructions for determining the effects that location and use have on the value of real property, and determining the productivity of earning capacity of land, as required by Ind. Code 6-1.1-31-6</u>

39. The Petitioner submitted no testimony or documentary evidence concerning this issue. As stated previously, though 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.

G. <u>Issue No. 4 – Whether the assessment violates Article X, Section I of the Indiana Constitution</u>

40. See Conclusion #39.

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