

**STATE OF INDIANA
Board of Tax Review**

LANDIS AND GYR ENERGY)	On Appeal from the Tippecanoe County
MANAGEMENT INCORPORATED)	Property Tax Assessment Board of
)	Appeals
)	
Petitioner,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition No. 79-106-96-1-3-00008
)	Parcel No. 106064000075
TIPPECANOE COUNTY PROPERTY)	
TAX ASSESSMENT BOARD OF)	
APPEALS And FAIRFIELD 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:

Issue

1. Whether a combination of functional and economic obsolescence should be applied to the assessment.

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, Joseph C. Sansone Co. (formerly Property Tax Research) on behalf of Landis & Gyr Energy Management, Inc. (the Petitioner) filed a petition requesting a review by the State Board. The Form 131 petition was filed on November 25, 1996. The Tippecanoe County Board of Review's (BOR) Final Determination on the underlying Form 130 was dated November 8, 1996.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on June 26, 1998 before Hearing Examiner Joan L. Rennick. Testimony and exhibits were received into evidence. Mr. Greg Poore represented the Petitioner. Ms. Oneta Tolle, Fairfield Township Assessor represented the Township. Mr. Scott Potts represented Manatron.

4. At the hearing, the Form 131 was made a part of the administrative record and labeled Board Exhibit A. The Notice of Hearing was labeled Board Exhibit B. In addition, the parties submitted the following exhibits to the State Board:

Petitioner Exhibit 1-Hearing Notice, calculations, photographs, plant construction history, property record card (PRC), inspection data by Sabre, and leasing brochure prepared by Shook Agency

Petitioner Exhibit 2 -comparable sales data

Petitioner Exhibit 3-synopsis of comparable sales data

Respondent Exhibit 1- BOR minutes for August 8, 1998 and September 4, 1998

Respondent Exhibit 2-obsolescence procedures adopted by the BOR

Respondent Exhibit 3- Hearing Notice and PRC.

5. The property is located at 3601 Sagamore Parkway North, Lafayette, Fairfield Township, Tippecanoe County.
6. The Hearing Examiner viewed the property on July 1, 1998 and Mr. Greg Poore was present for the viewing.

Obsolescence

7. Mr. Poore testified to the following:
 - (a) The Petitioner is requesting a 35% obsolescence factor, which is a combination of functional and economic obsolescence.
 - (b) The sketch of the building submitted as evidence (Petitioner Exhibit 1) shows the obsolete areas with the corresponding square footage. The office and research and development areas have been excluded from the calculations.
 - (c) The Shook Agency has been trying to market the subject property for two (2) years; a 41,676 square foot section has been leased on a month-to-month basis for approximately seven (7) months.
 - (d) The main reason for the difficulty in marketing the property is the low height clearance of the structure.
 - (e) The functional utility has not changed, but the market and the typical users have changed. Much of the structure has become obsolete over time and some portions are totally obsolete in the 90's.
 - (f) The obsolete areas are being used for storage of unnecessary items and have no heating or lighting.
 - (g) The future plans are to continue reducing the use of the building as most of the manufacturing has been transferred out of the country.
 - (h) He has calculated the maximum obsolescence factor of 95% for the areas not being used and completely obsolete and 50% for the area that has been vacant, but is being used because it does have some utility.
 - (i) The Petitioner is requesting an overall obsolescence figure of 35% and that is a combination of functional and economic obsolescence.

- (j) The cost to cure for the unused, low clearance areas is demolition because it was not economically feasible to raise the ceilings in those areas. No one would build twelve (12) foot wall heights in an industrial building and they would also want as much clear span as possible.
 - (k) The leased area in the rear of the structure does have a twenty-eight foot wall height, but it is not in a desirable location and has the least desirable lease.
8. Mr. Potts testified to the following:
- (a) The BOR recognized the deficiency of low clearance and granted 10% functional obsolescence to the assessment.
 - (b) Not enough time has elapsed for a history of economic obsolescence to be established for the facility. The guidelines prepared by the Tippecanoe County assessors (Respondent Exhibit 2) states a 30% economic obsolescence factor will be granted for no income over a two (2) year period and 50% economic obsolescence for no income for three (3) years or more.
9. Mr. Poore testified this is a state appeal and local guidelines do not apply because the State Tax Board equalizes values throughout the state.

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 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 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. Obsolescence

1. The concept of depreciation and obsolescence

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. Recognition of obsolescence beyond physical depreciation is a profession that requires supportable evidence. This recognition of cause and effect may be supported by use of some of the following techniques and methods: (1) the paired data analysis, (2) a capitalization of rent loss, (3) the breakdown method, (4) the market extraction method, and (5) the age-life method. Even when fully prepared to the requirements acceptable in professional appraisal standards and ethics, these techniques and methods are considered support approaches in justifying and documenting obsolescence.
21. The use of any singular technique or method identified above without the use of other approaches to value would be considered unethical and incomplete.
22. As stated in an excerpt from *The Appraisal of Real Estate*, Eleventh Edition, published by the Appraisal Institute of America: The breakdown method is the most comprehensive and detailed way to measure depreciation. When used in conjunction with market extraction and age-life methods, the breakdown method desegregates a total depreciation estimate into its component parts. Furthermore, there are five primary techniques used to calculate the different types of depreciation in the breakdown method. These include estimation of cost to cure, application of an age-life ratio, application of the functional obsolescence procedure, analysis of paired data, and capitalization of rent loss. Cost to cure is a measure of both curable physical deterioration and curable functional obsolescence. An age-life ratio is used to measure curable physical deterioration and incurable physical deterioration for both short-lived and long-lived

components. The functional obsolescence procedure may be used to estimate all types of functional obsolescence. Analysis of paired data and capitalization of rent loss may be used to estimate incurable functional obsolescence caused by a deficiency as well as external obsolescence.

23. As also stated in *The Appraisal of Real Estate*, Eleventh Edition: External factors frequently affect both the land and building components of a property's value. In addition, when market data are studied to develop an estimate of external obsolescence, it is important to isolate the effect of the obsolescence on land value from the effect on the value of the improvements. The two primary methods of measuring external obsolescence are paired data analysis and the capitalization of rent loss. Paired data analysis is a useful technique when market evidence is available.
24. *The Appraisal of Real Estate*, Eleventh Edition, provides that physical deterioration is caused by wear and tear from regular use, the impact of the elements, and the effect of normal aging. Careful maintenance can slow the process of deterioration and neglect can accelerate it. Physical deterioration may be curable or incurable. The three main physical components of a building are items of deferred maintenance, short-lived components, and long-lived components. All physical components in a building fall into one of these three categories.
25. *The Appraisal of Real Estate*, Eleventh Edition, states that a flaw in the structure, materials, or design of the improvement causes functional obsolescence. It is attributable to defects within the property, as opposed to external obsolescence, which is caused by external factors. Functional obsolescence may be curable or incurable. Functional obsolescence can be caused by a deficiency, which means that the subject property is below standard in respect to market norms. It can also be caused by a superadequacy, which means that the subject property exceeds market norms. There are five types of functional obsolescence: curable functional obsolescence caused by a deficiency requiring an addition

(installation) of a new item, curable functional obsolescence caused by a deficiency requiring the substitution (replacement) of an existing item ("curable defect"), curable functional obsolescence caused by a superadequacy which is economically feasible to cure, incurable functional obsolescence caused by a deficiency, and incurable functional obsolescence caused by a superadequacy.

26. According to *The Appraisal of Real Estate*, Eleventh Edition, external obsolescence is a loss in value caused by factors outside of the subject property. This can be an economic factor, such as an oversupplied market or very expensive financing, or a locational factor, such as poor siting or proximity to a negative environmental influence. External obsolescence is generally incurable on the date of the value estimate, but this does not mean that it is permanent. External influences can affect both the site and the improvements. When this is the case, the loss in value attributable to the externality may have to be allocated between the site and the improvements.
27. *The Appraisal of Real Estate*, Eighth Edition, provides that an appraiser can use either of two methods to measure external obsolescence, namely, (1) capitalizing the rent loss attributable to the negative influence, or (2) comparing sales of similar properties, some of which are subject to negative influence and some that are not. If pertinent sales data are abundant, the second method is preferable to the first.
28. *The Appraisal of Real Estate*, Eighth Edition, provides that external influences can cause a loss in value to any property. In the cost approach, the total loss in value due to such influences is allocated between the land and the improvements. Only the portion of the loss that is applicable to improvements is deducted from the current reproduction or replacement cost as external obsolescence. The effect of external influences on land value is calculated in the land valuation.

2. Burden regarding the obsolescence claim

29. 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).
30. 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).

3. The evidence submitted

31. The Petitioner presented photographs of the subject property, sketches of the subject parcel illustrating the obsolete areas, a brochure prepared by the leasing agency, the industrial report prepared by Sabre Systems, a list of sold properties, and a calculation quantifying the requested obsolescence factor.
32. Mr. Poore submitted the requested quantification of obsolescence by the requested date. He recalculated the figures previously submitted and presented them on a comparable sales grid. When Mr. Poore recalculated the factor, the obsolescence was adjusted down from the 35% overall obsolescence originally requested to an additional 20% to 30% overall obsolescence factor. Tippecanoe County has already applied a 10% obsolescence factor to the assessment.
33. The subject is receiving an adjustment for obsolescence, therefore, the first prong of the two prong test has been met.
34. In the claim for obsolescence, the Petitioner also presented the testimony of Mr. Poore who opined that the property suffers a loss in value due to various causes

of obsolescence depreciation. The main cause of the functional obsolescence is the low ceiling clearance. The cost to cure this deficiency is not economically feasible.

35. The Petitioner also alleges economic obsolescence due to termination of the need of the property due to changes in economic conditions.
36. The Respondent submitted the minutes of the BOR's meeting concerning this appeal and the obsolescence procedures adopted by the BOR.

4. Evaluation of the evidence

37. The Petitioner opines that the list of sales presented illustrate the market's reaction to older buildings with low ceiling heights.
38. To accept this premise would mean there are no other differences between the sale properties and the subject. This would be an incorrect assumption.
39. The land values have not been extracted from the sale prices. These values are critical in determining the contributory value of the improvements. The parcel sizes of these sales range from as little as 1.88 acres to 69.8 acres.
40. The sale dates for the properties range from one pending sale to September 1991. No adjustments were made for time.
41. Mr. Poore testified that a portion of the building was leased on a month-to-month basis; he testified that this was the least desirable location and the least desirable lease. No leasing information was submitted to substantiate this.
42. The leasing brochure states that the area will be leased for \$3.40 to \$3.80 per square foot, including heat, insurance, and taxes. The only information offered that this amount can be compared to is contained in Petition Ex. 2 for the

property located 311 N. Curry in Bloomington, which shows a month-to-month rate of \$3.11 per square foot, net of utilities.

43. All of the sale properties are located in Indiana, yet no documentation was submitted to show that these properties were receiving any obsolescence depreciation.
44. The Petitioner has to prove obsolescence and quantify it. This has not been done based on reasonable and acceptable methods. The Petitioner's method for quantification is not a generally recognized method.(see conclusions of law ¶ 27).
45. For the above reasons, the Petitioner did not meet its burden in this appeal. Accordingly, there will be 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.

Chairman, Indiana Board of Tax Review