

**STATE OF INDIANA
Board of Tax Review**

LEBRATO & ASSOCIATES, INC.)	On Appeal from the Allen County
)	Property Tax Assessment Board of
)	Appeals
Petitioner,)	
)	Petition for Review of Assessment,
)	Form 131
v.)	Petition No. 02-074-01-1-4-00051
)	Parcel No. 93-0319-0014
ALLEN COUNTY PROPERTY TAX)	
ASSESSMENT BOARD OF APPEALS)	
And WAYNE 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:

Issues¹

1. Whether the true tax value of the property is too high in relation to its market value.

¹ Please see Finding ¶ 6 for revised issues and explanation of such.

2. Whether functional and economic obsolescence should be applied.
3. Whether the assessment of patios is incorrect.
4. Whether the property should be assessed as residential “row type.”
5. Whether the condition should be classified as “poor.”

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, James H. Calkins, president of MacAusland, Inc., (the Petitioner) filed a Form 131 petition requesting a review by the State. The Form 131 was filed on August 24, 2001. The Allen County Property Tax Assessment Board of Appeals’ (PTABOA) Final Determination was issued on July 27, 2001. *Board Ex. A*
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on January 10, 2002 before Hearing Officer Joseph Stanford. Testimony and exhibits were received into evidence. James Calkins, James Calkins III, and Patricia Calkins represented the Petitioner. John Rogers, Judith Dafforn, and Mike Ternet represented the PTABOA. Jerry Zuber and Robert Stelhorn represented Wayne Township.
4. At the hearing, the subject Form 131 petition was made part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition was

labeled Board Exhibit B. In addition, the following items were received into evidence:

Petitioner's Exhibit A – Copy of closing statement (Confidential)

Petitioner's Exhibit B – Copies of Elwood tables

Petitioner's Exhibit C – Copy of subject property record card

Petitioner's Exhibit D – Photographs of pool, bathhouse, and utility storage building

Petitioner's Exhibit E – Photograph of golf course fence

Petitioner's Exhibit F – Photographs of subject property

Petitioner's Exhibit G – Copy of rule from manual concerning depreciation

Petitioner's Exhibit H – Copy of economic development bond application

Petitioner's Exhibit I – Copy of article from *Fort Wayne News-Sentinel*

Petitioner's Exhibit J – Copy of appraisal report

Petitioner's Exhibit K – Copy of rent roll (Confidential)

Petitioner's Exhibit L – Copy of article about Southtown Mall

Petitioner's Exhibit M – School ratings

Petitioner's Exhibit N – Script of hearing presentation

Petitioner's Exhibit 2-D- Sale brochure for Greenwood Apartment complex (This exhibit was entered as evidence for another appeal, but referenced in relation to the subject improvements in this appeal.)

5. The property that is the subject of this appeal is located at 220 East Hoover Drive, Fort Wayne, Indiana (Wayne Township, Allen County). The property is known as Fairview Court Apartments and consists of 112 units. The tax year under appeal is 2001. The assessed value under appeal is \$134,800 (land) and \$1,834,600 (improvements). The hearing officer did not view the property.
6. Subsequent to the hearing, the Petitioner became aware that inadvertently the wrong summary of issues had been attached to the Form 131 and

sent in the correct summary. The local officials stipulated to the revision and the corrected summary has been labeled Petitioner's Exhibit O. The correct issues for petition 02-074-001-1-4-00051 are:

1. Whether the true tax value is excessive when compared to the market value of the subject improvements.
2. Whether the improvements on page 5 of the property record card (pool, bathhouse, utility storage building, asphalt and fence) should have a condition rating of poor.
3. Whether the condition of the apartments should be poor, thus increasing the physical depreciation.
4. Whether economic obsolescence is warranted.

A. Issue 1 – Whether the true tax value of the property is excessive when compared to the market value of the subject improvements.

7. Petitioner testified that the property is assessed much higher than its actual market value. Using the present value tables to calculate the value of the mortgage payments, he calculates a market value of \$2,282,347. The Wayne Township Assessor told him that true tax value should only be between 50% and 60% of true tax value. The true tax value of the improvements is currently \$1,834,600; it should be between \$1,141,173.72 and \$1,369,408.46. *Calkins Testimony (Transcript, pages 13-16). Petitioner's Exhibits A, B, and O.*
8. Petitioner testified that an apartment complex in Greenwood, Indiana is currently for sale, listed at \$6,350,000. The real estate taxes for the

Greenwood property are only \$238 per unit, compared to \$541 per unit for the subject property. The Petitioner requests a true tax value of \$1,150,000. *Calkins Testimony (Transcript, pages 58-59). Petitioner's Exhibit 2-D.*

B. Issue 2 – Whether the improvements on page 5 of the PRC should be classified as “poor” condition.

Issue 3- Whether the condition of the apartments should be poor, thus increasing the physical depreciation.

9. Petitioner argued that it is “unconscionable” to list the improvements, including the apartments, pool, utility storage building, and paving, in fair condition. Very little maintenance has been performed on the apartments in 31 years; the condition of all improvements should be listed as “poor.” *Calkins Testimony(Transcript, pages 17-24). Petitioner's Exhibit D, E and F.*
10. In support of the claim that the condition is poor, Petitioner argued that the Fort Wayne Economic Redevelopment Commission approved a \$5,400,000 bond issue to help acquire and repair the property. The property would have been exempt from paying real estate taxes under the conditions of the bond. *Calkins Testimony (Transcript, page 29). Petitioner's Exhibit H.*

C. Issue 4 – Whether economic obsolescence is warranted.

11. Petitioner testified that there are several characteristics of the subject that indicate functional obsolescence exists. Much of the carpeting is old green and gold shag. The stoves, refrigerators, kitchen sinks, and dishwashers are the original green or gold. The windows are energy

inefficient. The cabinets, furnaces, and light fixtures are extremely old and outdated. *Calkins Testimony (Transcript, pages 20-24).Petitioner's Exhibits F and O.*

12. Petitioner contended that Economic obsolescence also exists. The subject is located on the south side of Fort Wayne. This is an area of decline, with lack of adequate shopping, deteriorating neighborhoods, and poor schools. An appraisal indicates the value of the property as of June 20, 2000 to be \$2,500,000. Thirty-four units were vacant on April 1, 2001. Currently, no obsolescence is applied to the property. The Petitioner requests 60% to 70%. *Calkins Testimony (Transcript, pages 23-24, 26-28, and 31-45). Petitioner's Exhibits H, I, K, L, M, O..*

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

These Findings Contain Confidential Information
Protected From Disclosure Under Ind. Code § 6-1.1-35-9

- § 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.

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 1 – Whether the true tax value of the property is excessive when compared to the market value of the subject improvements.

18. The Petitioner’s assumption that true tax value should be about 50% to 60% of market value is incorrect. True tax value is not necessarily related to market value in the current assessment system. To repeat, the Indiana Tax Court has held that any appeal that seeks a reduction in the assessment based on its relation to market value will fail.
19. Again, 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. Therefore, there is no change in the assessment as a result of this issue.

E. Issue 2 – Whether the improvements on page 5 of the PRC should be classified as “poor” condition.

Issue 3- Whether the condition of the apartments should be poor, thus increasing the physical depreciation.

20. Condition is a judgment of the physical condition of the item relative to its age. Average condition indicates the structure is an average condition relative to its age, or the condition it would normally be expected. Fair condition indicates the structure is in fair condition relative to its age. The

degree of deterioration is somewhat worse than would normally be expected. 50 IAC 2.2-10-5(d)(8).

21. The estimate of depreciation is an essential element in the cost approach. An estimate must be predicated on an understanding of the nature, components, and theory of depreciation, as well as practical concepts for estimating its extent in improvements being valued. Physical depreciation is evidenced by wear and tear, decay, dry rot, cracks or structural defects. 50 IAC 2.2-10-7(a).
22. To repeat, the taxpayer's burden in the State Board'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.
23. Concerning the issue of condition, the Petitioner failed to submit evidence sufficient to meet either prong of his two-pronged burden described above.
24. The Petitioner submitted photographs of the exterior and interior of the subject structures to indicate their condition. However, the Petitioner relied on the fact that an economic development company had applied for bond financing in the amount of \$5,400,000 to acquire and renovate the property. The bond issue is not related to the assessment function. However, it is interesting to note that in the application for bond financing the renovation amount was estimated to be \$1,450,000; while in the

appraisal submitted, it is stated on page 18, that the capital expenditure would be \$790,000.

25. Furthermore, in the transmittal letter of the appraisal, the appraiser states that the subject property is considered to be in average condition. On page 18, the appraiser states that the condition of the improvements vary but are generally considered fair.
26. The Petitioner has made conclusory statements that the condition of the property is “poor” and offered evidence that conflicts with said statements. Conclusory statements do not constitute probative evidence of error in the assessment.
27. For the above reasons, the determination of the Allen County PTABOA is upheld.

F. Issue 4 – Whether economic obsolescence is warranted.

28. 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.
29. 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.

30. 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.
31. *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.
32. *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.
33. 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.
34. *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.
35. 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).

36. Regarding obsolescence, the petitioner has a two-prong burden of proof: (1) the petitioner has to prove that obsolescence exists, and (2) the petitioner must quantify it. *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1233 (Ind. Tax 1998).
37. The Petitioner requests that obsolescence be applied to the property in the amount of 60% to 70%. The Petitioner has listed several items of both functional and economic obsolescence that may exist. However, the second prong of his burden of proof is to quantify the obsolescence, using accepted appraisal methods.
38. The Petitioner's evidence is devoid of any quantification of the obsolescence requested. The Petitioner merely comes to the conclusion that 60% to 70% total obsolescence should be applied. Thus, the Petitioner has failed to meet the second prong of his two-prong burden of proof, which is to adequately quantify the amount of obsolescence being requested.
39. For the reasons set forth, the determination of the Allen County PTABOA is upheld.

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

These Findings Contain Confidential Information
Protected From Disclosure Under Ind. Code § 6-1.1-35-9

Lebrato & Associates
Findings & Conclusions
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