

**STATE OF INDIANA
Board of Tax Review**

MACAUSLAND, INC.)	On Appeal from the Allen County
)	Property Tax Assessment Board of
)	Appeals
Petitioner,)	
)	Petition for Review of Assessment,
)	Form 131
v.)	Petition No. 02-074-01-1-4-00052
)	Parcel No. 94-2263-0018
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:

Issues

1. Whether the ratio of true tax value to market value is higher than that of neighboring properties.

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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 Exhibit 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. LSA Document #94-53 (Amendment to 50 IAC

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2.2) is labeled Board Exhibit C. In addition, the following items were received into evidence:

Petitioner's Exhibit 2-A – Copy of closing statement (Confidential)

Petitioner's Exhibit 2-B – Photographs of property at 350 West Hollis Street

Petitioner's Exhibit 2-C – Tax bill and property record for property at 350 West Hollis Street, Fort Wayne

Petitioner's Exhibit 2-D – Apartment sales brochure

Petitioner's Exhibit 2-E – Photograph of water damage

Petitioner's Exhibit 2-F – Copy of rent roll (Confidential)

Petitioner's Exhibit 2-G – Copy of 50 IAC 2.2-10-7(e)(2)(F)

Petitioner's Exhibit 2-H – Copy of flood zone map

Petitioner's Exhibit 2-I – Copy of bill for flood insurance

Petitioner's Exhibit 2-J – Subject property record card

Petitioner's Exhibit 2-K – Copy of 50 IAC 2.2-7(b)

Petitioner's Exhibit 2-L – Copy of graded photographs from manual

Petitioner's Exhibit 2-M - Copy of 50 IAC 2.2-11-1

Petitioner's Exhibit 2-N – Photographs of Woodhurst Condominiums

Petitioner's Exhibit 2-O – Instruction for “closing a sale”

Petitioner's Exhibit 2-P – Script of presentation.

5. The property that is the subject of this appeal is located at 6014 Fairfield Avenue, Fort Wayne, Indiana (Wayne Township, Allen County). The property is known as Coventry Court Townhomes and consists of 192 townhouses. The tax year under appeal is 2001. The assessed value under appeal is \$220,200 (land) and \$2,428,700 (improvements). The hearing officer did not view the property.

A. Issue No. 1 – Whether the ratio of true tax value to market value is higher than that of comparable properties

6. When considering the subject property as well as comparable properties, there is not a fair distribution of the tax burden. For example, a home at 350 West Hollis Street, Fort Wayne, has a true tax value of only 37% of the price that it is currently listed for sale. However, the subject property's true tax value is 120% of its actual September 1993 purchase price. *Calkins Testimony (Transcript, page 57). Petitioner's Exhibits 2-A, 2-B, and 2-C.*

7. While the subject property sold for \$2,200,000 in September 1993, 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 \$425 per unit for the subject property. The Petitioner requests a true tax value of \$1,100,000. *Calkins Testimony (Transcript, pages 56, 58, 59). Petitioner's Exhibit 2-A, 2-D.*

B. Issue No. 2 – Whether functional and economic obsolescence should be applied

8. There are several reasons functional obsolescence exists. The most significant of these reasons is the location of plumbing and water lines. Due to poor location of water lines, the lines often freeze and burst in the winter, resulting in water damage. Additionally, 176 of the 192 townhouses have only one bathroom, which is located upstairs. This eliminates the possibility of renting to senior citizens or handicapped individuals. The units also lack dishwashers. Finally, the subject buildings are 36 years old and in constant need of repair and maintenance. *Calkins Testimony (Transcript, pages 58-63). Petitioner's Exhibit 2-E.*

9. 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. In addition, the property is located in a flood zone. Capitalizing the annual flood insurance premium of \$21,501, at 8.5%, results in a loss in value of \$252,952.94. Finally, due to economic conditions, the property suffers from 30% vacancy. The Petitioner requests a total of 45% obsolescence. Currently, 15% obsolescence is applied to the property. *Calkins Testimony (Transcript, pages 64-67). Petitioner's Exhibit 2-F.*

C. Issue No. 3 – Whether the assessment of patios is incorrect

10. The patios were incorrectly added to the assessment. He only enclosed about 40 concrete slabs with cedar boards, which cost about \$20,000. *Calkins Testimony (Transcript, page 68.)*
11. The concrete slabs constitute patios. They were not included in previous assessments and were recently discovered and added. *Stellhorn Testimony (Transcript, page 90).*

**D. Issue No. 4 – Whether the property should be assessed as residential
“row type”**

12. Petitioner testified that the subject property meets the definition of “row type” as defined in 50 IAC 2.2-10-7(b). The townhouses qualify as residential and the subject matches the photographs of row houses in the manual. *Calkins Testimony (Transcript, pages 70-74, 77-81). Petitioner's Exhibits 2-K, 2-L.*

13. The PTABBOA argues that the subject cannot be considered “row type” because the units cannot be individually owned. There is no individual legal description for each unit. *Rogers Testimony (Transcript, pages 77-81)*.

E. Issue No. 5 – Whether the condition should be classified as “poor”

14. While not directly addressing this issue, Mr. Calkins seemed to indicate that the condition rating was changed when the patio assessment was added. He testified that the apartments are in constant need of repair and maintenance, and should be considered in poor condition.

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. Issue No. 1 – Whether the ratio of true tax value to market value is higher than that of comparable properties

18. In developing ratios for comparison of true tax value to market value, the Petitioner has flaws in the calculation. First, when comparing the ratio of the subject property to a property listed for sale in another city, the Petitioner assumes that *purchase price* and *listing price* are the same. Clearly, the two are not the same. In fact, the purchase price of a property often turns out to be significantly less than the listing price. One cannot simply look at the listing price of a property and assume it to be the eventual sales price when performing ratio calculations.
19. Even if the Petitioner were adequately comparing the actual purchase price of two properties, he has not accounted for the difference in time between the two sales. The date of purchase of the subject was September 1993. This is being compared to a current, or even future, sale. Clearly, the difference in time must be factored in to the calculation when computing a ratio based on property sales.
20. Even if the Petitioner's ratio calculation were flawless, however, 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.

21. 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 No. 2 – Whether functional and economic obsolescence should be applied

22. 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.
23. 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.
24. 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.

25. *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.

26. *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.

27. 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.
28. *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.
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 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).

31. The Petitioner requests that obsolescence applied to the property be raised from 15% to 45%. 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.
32. The lone factor that the Petitioner attempts to quantify is the added insurance cost of being located in a flood plain. However, he fails to adequately develop a capitalization rate, or to explain how the 8.5% capitalization rate used was calculated. Capitalization rates are critical in the valuation process, and must be thoroughly developed and explained.
33. Other factors of obsolescence mentioned by the Petitioner are not quantified. The Petitioner merely comes to the conclusion that 45% 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.
34. For the reason set forth, the Petitioner has failed to prove that the 15% obsolescence applied to the property by the local officials is incorrect, and has failed to adequately quantify the 45% requested.
35. For the above reasons, the determination of the Allen County PTABOA is upheld. Therefore, there is no change in the assessment as a result of this issue.

F. Issue No. 3 – Whether the assessment of patios is incorrect

36. It is clear from both parties' testimony that concrete slabs exist on the property. These slabs meet the definition of patios, and should be

assessed as such. While the Petitioner has benefited for many years by having these patios omitted from the assessment, they were properly added to the assessment for the March 1, 2000 tax year. Therefore, there is no change in the assessment as a result of this issue.

G. Issue No. 4 – Whether the property should be assessed as residential “row type”

37. The Schedule B Row Type Adjustment is explained in 50 IAC 2.2-7-8(b). These type dwellings are multiple family dwellings, meaning two (2) or more individual units, which are separated vertically by common or party walls. Row type dwellings are different from duplexes, in which the individual dwelling units are separated horizontally.
38. Specific guidance regarding the type of structures that are eligible for the residential row-type adjustment is provided by the State Board’s LSA Document #94-53(F), an amendment to 50 IAC 2.2 published in July 1994. *Board Exhibit C*.
39. Pursuant to LSA Document #94-53(F)(1), “[s]ingle ownership of a row type apartment building containing four (4) or more units will be priced from the commercial apartment schedules (normally GCR) using the unit finish adjustment on a per floor basis.”
40. The subject apartment buildings match the category description provided by LSA Document #94-53(F)(1). Therefore, the apartments are correctly priced from the commercial apartment schedule, and there is no change in the assessment as a result of this issue.

H. Issue No. 5 – Whether the condition should be classified as “poor”

41. 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. Poor condition indicates the degree of deterioration is significantly worse than would normally be expected. 50 IAC 2.2-10-5(d)(8).
42. 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).
43. 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.
44. Concerning the issue of condition, the Petitioner failed to submit evidence sufficient to meet either prong of his two-pronged burden described above.

45. The Petitioner has made conclusory statements that the condition of the property is "poor". Conclusory statements do not constitute probative evidence of error in the assessment.
46. For the above reasons, 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