

REPRESENTATIVE FOR PETITIONER: Leslie C. Shively, Attorney at Law

REPRESENTATIVES FOR RESPONDENT: None

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

MARVIN GRUBB,)	
)	
Petitioner)	Petition No.: 26-019-01-1-4-00005
)	County: Gibson
v.)	Township: Patoka
)	Property Parcel No.: 0190115500
GIBSON COUNTY PROPERTY)	Assessment Year: 2001
TAX ASSESSMENT BOARD)	
OF APPEALS and PATOKA)	
TOWNSHIP ASSESSOR,)	
)	
Respondent)	
)	

Appeal from the Final Determination of
Gibson County Property Tax Assessment Board of Appeals

January 16, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Findings of Fact and Conclusions of Law

Procedural History

1. Pursuant to Ind. Code § 6-1.1-15-3 Leslie C. Shively, Attorney at Law, filed a Form 131 on behalf of Marvin Grubb (the Petitioner), petitioning the Board to conduct an administrative review of the above petition. The determination of the Gibson County Property Tax Assessment Board of Appeals (PTABOA) was issued on December 7, 2001. The Form 131 petition, which identified only the issue of economic obsolescence, was filed on January 7, 2002.
2. The Board received an Addendum to the Form 131 petition on June 21, 2002. Mr. Shively stated a copy of the Addendum was sent to the Gibson County Assessor. The Addendum added the issues of “functional and physical obsolescence” to the economic obsolescence issue before the Board. (Board’s Exhibit C).¹

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on June 26, 2002, before Joan L. Rennick, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
4. The following representatives were present at the hearing:
 - For the Petitioner:
Leslie C. Shively, Attorney at Law.

 - For the Respondent:
No representatives were present.

¹ The failure of the local officials to offer any objection to this addendum to the appeal will be treated as a waiver. The Board will consider the additional issues included on the addendum to the original Form 131 petition.

An improvement may experience a loss in value from physical depreciation, functional obsolescence, and/or economic [external] obsolescence. 50 IAC 2.2-1-20; 50 IAC 2.2-10-7(e). The Board therefore will treat the Petitioner’s reference to “physical obsolescence” as raising the issue of physical depreciation.

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Marvin Grubb, Petitioner; and

William R. Bartlett II, certified general appraiser.

For the Respondent: None.

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 - Real estate appraisal prepared by William R. Bartlett, II and D. Stephen Parker, certified general appraisers.

Petitioner's Exhibit 2 - A copy of complaint filed in Gibson Superior Court by Mr. Grubb.

Petitioner's Exhibit 3 - A copy of the addendum to the 131 Petition and a letter from the Indiana Department of Labor dated May 22, 2001.

For the Respondent: None

7. The following additional items are officially recognized as part of the record of proceedings:

Board's Exhibit A – Form 131 petition.

Board's Exhibit B – Notice of Hearing.

Board's Exhibit C – Addendum to the Form 131 petition

Board's Exhibit D - Property record card.

8. The property consists of two buildings, a 1,953 square foot building and a 4,976 square foot building.² The structure is assessed as general retail and located at 128-130 N. Main,

² Because the improvements are all located on one parcel, the Board will collectively refer to these structures in the singular, in conformance with the language used in the Petitioner's appraisal.

Princeton, Patoka Township, Gibson County. The Administrative Law Judge did not view the property.

9. The assessed value for 2001 is:
Land: \$7,000 Improvements: \$75,900 Total: \$82,900.
10. The single issue presented for consideration by the Gibson County PTABOA was:
Whether economic obsolescence should be applied to the assessment.
11. The additional issues presented for consideration by the Board, as expressed in the Addendum to the Petition, are:
 1. *Whether additional physical depreciation should be applied.*
 2. *Whether additional functional obsolescence should be applied.*

Jurisdictional Framework

12. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
13. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

Indiana's Property Tax System

14. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
15. Indiana has established a mass assessment system through statutes and regulations designed to assess property according to what is termed "True Tax Value." See Ind. Code § 6-1.1-31, and 50 Ind. Admin. Code 2.2.

16. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
17. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property's market value. See *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998) (*Town of St. John V*).
18. The Indiana Supreme Court has said that the Indiana Constitution “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”, nor does it “mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant”, but that the proper inquiry in tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” See *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
19. Although the Supreme Court in the *St. John* case did declare the cost tables and certain subjective elements of the State's regulations constitutionally infirm, it went on to make clear that assessment and appeals must continue to be determined under the existing rules until new regulations are in effect.
20. New assessment regulations have been promulgated, but are not effective for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

State Review and Petitioner's Burden

21. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
22. The petitioner must submit ‘probative evidence’ that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be

considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]

23. The petitioner has a burden to present more than just ‘de minimis’ evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]
24. The petitioner must sufficiently explain the connection between the evidence and petitioner’s assertions in order for it to be considered material to the facts. ‘Conclusory statements’ are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
25. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).
26. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a ‘prima facie case’ and, by a ‘preponderance of the evidence’ proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A ‘prima facie case’ is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner’s position is correct. The petitioner has proven his position by a ‘preponderance of the evidence’ when the petitioner’s evidence is

sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of the Issues³

ISSUE 1: Whether additional physical depreciation should be applied.

ISSUE 2: Whether additional functional and economic obsolescence should be applied.

27. The building owned by the Petitioner and the adjacent buildings are joined by party walls. The Petitioner contended the building adjacent to the subject building on the south side is in deplorable condition and is causing his building considerable damage. The Petitioner asserted that the physical depreciation should be increased to 80% and that a total obsolescence amount of 60% (20% functional obsolescence and 40% economic obsolescence) should be applied to the property under appeal.
28. At the time of the assessment, the Petitioner's building contained an audio video store and a travel agency.
29. The 4,976 square foot portion of the building is assessed in average condition and received 65% physical depreciation. The basement received 60% obsolescence and the second floor was not valued.
30. The 1,953 square foot portion of the building is assessed in average condition and also received 65% physical depreciation. The basement and second floor sections of the building received 80% obsolescence.
31. The applicable rules governing these issues are:
50 IAC 2.2-1-20
Depreciation is defined as a "loss in value from all causes. It may be further classified as follows:

³ Because the Petitioner's evidence is the same for both issues, the discussion is consolidated to include both issues raised by the Petitioner.

- (1) Physical, which refers to the loss of value caused by physical deterioration.
- (2) Functional.
- (3) Economic.”

50 IAC 2.2-1-40

Obsolescence is defined as “a diminishing of a property’s desirability and usefulness brought about by either functional inadequacies or overadequacies inherent in the property itself, or adverse economic factors external to the property.”

50 IAC 2.2-1-29

Functional obsolescence depreciation is defined as “obsolescence caused by factors inherent in the property itself.”

50 IAC 2.2-10-7(d)

“Physical depreciation on a commercial and industrial building is a combination of age and condition.”

50 IAC 2.2-10-7(e)(1)

“Functional obsolescence may be caused by, but is not limited to, the following:

- (A) Limited use or excessive material and product handling costs caused by an irregular or inefficient floor plan.
- (B) Inadequate or unsuited utility space.
- (C) Excessive or deficient load capacity.”

50 IAC 2.2-1-24

Economic obsolescence depreciation is defined as “obsolescence caused by factors extraneous to the property.”

50 IAC 2.2-10-7(e)(2)

“Economic obsolescence may be caused by, but is not limited to, the following:

- (A) Location of the building is inappropriate for the neighborhood.
- (B) Inoperative or inadequate zoning ordinances or deed restrictions.
- (C) Noncompliance with current building code requirements.
- (D) Decreased market acceptability of the product for which the property was constructed or is currently used.
- (E) Termination of the need of the property due to actual or probable changes in economic or social conditions.
- (F) Hazards, such as the danger from floods, toxic waste, or other special hazards.”

32. Evidence and testimony considered particularly relevant to this determination include the following:

- A. The Petitioner described the building as “a turn of the century storefront style building with living area on the second floor. The building is two stories in height. Metal posts support the floor system and are spaced at adequate intervals. The second floor was designed as an apartment in [the] early 1900’s and at some time converted to office and now is vacant and has no value.” (Petitioner’s Exhibit 1, page 1). The Petitioner included photographs of the relevant portion of downtown Princeton, including the building under appeal, as a part of Petitioner’s Exhibit 1.
- B. An appraisal of the property was performed by certified general appraisers to establish the market value of the property, and to determine the physical deterioration and the functional obsolescence of the building for ad valorem assessment purposes.
- C. An inspection of the property by the appraisers indicates the building suffers from significant physical depreciation due to age and condition.
- D. The appraisers determined that the second floor is extremely dated and restoration would not be cost effective. There is no demand for second floor space in Princeton.

- E. The first floor has little open space and is not conducive for retail because retail space must be attractive in public areas, have adequate restroom space, good lighting, and attractive signs. The appraisers estimate 20% functional obsolescence is present on the first floor of the subject property.
- F. The adjacent building on the south is falling down and seriously impacts the subject property. The subject building is in three (3) different sections and at least twenty-one (21) feet of the subject building is unusable because of the crumbling wall. This is a hazardous area and no employees are allowed in this area. This section has no value at the present time and the cost to cure may be greater than the building value.
- G. The Central Business District (CBD) has little retail business. Retail business does exist outside the CBD. Wal-mart, Goody's, and Kmart are located west of US 41. Most retail properties are located along Broadway west of the CBD. It is the opinion of the appraisers that 40% economic obsolescence exists.

Analysis of the Issues

Issue 1: *Whether additional physical depreciation should be applied*

- 33. The Petitioner requests physical depreciation in the amount of 80%. The Respondent has applied 65% physical depreciation.
- 34. "Physical depreciation on a commercial and industrial building is a combination of age and condition." 50 IAC 2.2-10-7(d).
- 35. The Petitioner explained the manner in which he determined that the property should receive 80% physical depreciation as follows:
 - "The building was constructed in 1880's. The age of the building is 122 years. The building appeared to be remodeled in the 1920's or 1930's. Marshall Valuation Service life expectancy guidelines estimate a Low Cost 'C' building to have a life of 40 years. The building is obviously well beyond 40 years. By observation of the deferred maintenance and age of the building, the appraisers

estimate that the effective age of the subject property is 32 years with an expected life of 40 years and the following calculation can be made:

32 Years [divided by] 40 Years = 80% Depreciation”

(Petitioner’s Exhibit 1, page 2).⁴

36. Summarizing, the Petitioner concluded that the building has an effective age of 32 years and an expected life of 40 years.

37. Effective age is defined as “an age assigned to a structure based on its remaining economic life as of the effective valuation date. It may be more or less than the structure’s actual age. When the actual age of a structure is affected by changes in the structure’s remaining economic life, the assessor shall use the effective age in calculating the depreciation of the structure.” 50 IAC 2.2-1-25.1.

38. By Regulation, a structure that has an effective age of 32 years, an expected life of 40 years, and is in average condition should receive an adjustment for physical depreciation in the amount of 45%. 50 IAC 2.2-11-7, Commercial and industrial depreciation tables.⁵ As discussed, the local officials (apparently basing the amount of physical depreciation on the actual age of the structure, rather than the Petitioner’s proposed effective age) made an adjustment for physical depreciation in the amount of 65%. Obviously, the change sought by the Petitioner would result in an increase in the assessment, rather than a decrease.

39. However, the Petitioner provided no explanation as to the manner in which he determined that the effective age of the structure is 32 years. The Petitioner’s unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.

⁴ The Final Reconciliation portion of the appraisal instead used a 70% physical depreciation factor (Petitioner’s Exhibit 1, page 7). The Petitioner provided no explanation for the use of two different amounts of proposed physical depreciation. It is appropriate for the Board to consider such discrepancies when weighing the credibility of the appraisal.

⁵ As noted, condition is also an element of physical depreciation. “Condition, the degree of wear and tear displayed by a building, is determined relative to the age of the building. 50 IAC 2.2-10-7(b). Although the Petitioner claimed the interior is “in fair condition” (Petitioner’s Exhibit 1, page 1), the Petitioner presented no evidence (or even asserted) that the overall condition is worse than would be expected for a building constructed circa 1880.

40. The Petitioner has not provided probative evidence that the effective age of the structure is 32 years. The Board therefore will not increase the assessment, as would be required if the Petitioner's argument concerning the effective age of the structure is given credence.
41. For all the reasons above, the Petitioner failed to meet his burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

ISSUE 2: *Whether additional functional and economic obsolescence should be applied.*

42. The Petitioner contended that the building should receive additional obsolescence depreciation, for a total of 20% functional and 40% economic obsolescence.
43. 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.
44. 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.
45. 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).
46. 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).

47. The local officials recognized the existence of obsolescence by the application of obsolescence to various areas of the building. Because both parties agree that the building has experienced some level of obsolescence, the first prong of the two-prong burden articulated in *Clark* has been satisfied.

48. The appraisal described the manner in which the proposed amount of functional obsolescence was determined:

“Also, the first floor displays functional obsolescence for retail property. A retail property must be attractive in public areas. There must be adequate restroom space. There should be strong lighting and attractive signs. Retail space must be opened for ease of renovation. The subject building is opened but the space is small and not conducive for retail. It is the opinion of the appraisers 20% functional obsolescence exists.” (Petitioner’s Exhibit 1, page 2).

49. The appraisal also described the manner in which the proposed amount of economic obsolescence was determined:

“Finally, the appraisers observed that the Central Business District has little retail business. Retail businesses do exist outside the Central Business District. Walmart [sic], Goody’s and Kmart are located west of US 41. Most retail is located along Broadway west of the Central Business District. It is the opinion of the appraisers that economic obsolescence exists. It is the opinion of the appraisers that 40% economic obsolescence exists.” (Petitioner’s Exhibit 1, page 2).

50. In support of his position, the Petitioner presented a summary appraisal prepared by Messrs. William R. Bartlett II and D. Stephen Parker, both certified general appraisers with the appraisal firm of Bartlett, Parker & Associates, Inc. Mr. Bartlett was also present as a witness at the administrative hearing to offer testimony concerning this

appraisal, which was prepared using the cost approach as well as the sales comparison approach to value.⁶

51. This appraisal does not conform to the Uniform Standards of Professional Appraisal Practice (USPAP) established by the Appraisal Standards Board.
52. Although the evidence indicated that the property contained income-producing general retail businesses, the appraisal did not include an income capitalization approach to value. Further, no explanation was presented to explain the reason the income capitalization approach was not included in the appraisal.
53. An appraiser is required to “explain and support the exclusion of any of the usual valuation approaches.” USPAP Standards Rule 2-2(b)(x), The Appraisal Foundation (1998). “Departure from binding requirements (i) through (xii) above is not permitted.” Comment following USPAP Standards Rule 2-2(b)(xii), The Appraisal Foundation (1998).
54. Further, a review of the appraisal indicates flaws in both the Cost Approach and the Sales Comparison Approach calculations presented by the Petitioner.
55. The Petitioner’s cost approach analysis concluded that the total depreciated cost of the structure was \$24,000 (Petitioner’s Exhibit 1, page 3).
56. “The cost approach is based on a comparison between the cost to develop a property and the value of the existing property or a similarly developed property.” International Association of Assessing Officers (IAAO) Property Assessment Valuation, 148 (2nd ed. 1996)
57. Although the cost approach is a recognized means of determining value, this method is not the most reliable for measuring depreciation in some types of properties. Indeed,

⁶ The three generally recognized approaches to value are the cost approach, the sales comparison approach, and the income approach. (International Association of Assessing Officers Property Assessment Valuation, 42 (2nd ed. 1996)).

professional authority disagrees with the Petitioner's reliance upon the cost approach as the preferred method of determining the value of older buildings that have experienced significant depreciation.

58. "This [cost] approach is typically most applicable when valuing new or relatively new construction when the improvements represent the highest and best use of the site, the site value is well documented and supported, and no functional or external (economic) obsolescence is present." IAAO Property Assessment Valuation, 148 (2nd ed. 1996).
59. Further, "One serious limitation of the cost approach is the difficulty of estimating the accrued depreciation for older structures." *Id* at 182.
60. In addition to these inherent limitations, additional flaws in the Petitioner's cost approach are readily apparent.
61. As discussed, the Respondent applied 65% physical depreciation in the determination of the reproduction cost of the property. The Petitioner, however, used 80% physical depreciation in his calculation of the replacement cost of the structure.
62. "Determining excess construction cost involves comparisons of the costs new of two hypothetical buildings: an exact replica of the subject improvement and a modernized, yet equally efficient, building. As 'new' structures, these fictitious buildings in theory suffer no physical depreciation whatsoever. Because Indiana is concerned with the depreciated excess construction cost of an improvement, physical depreciation must first be applied to the hypothetical buildings before replacement cost is subtracted from the cost of reproduction. **If the same percentage of physical depreciation is not assigned to both buildings, the resulting figure will not accurately reflect the subject improvement's depreciated excess construction cost.**" *Inland Steel Co. v. State Board of Tax Commissioners*, 739 N.E.2d 201, 215 (Ind. Tax 2000) (Emphasis added).⁷

⁷ "Superadequate construction and excess construction are two forms of functional obsolescence. [Footnote omitted]. Superadequate construction 'represents the existence of past construction practices that are not currently used to build facilities of a like utility.' [Citation omitted]. Excess construction, in turn, 'represents the existence of current building volume that is [neither] currently nor likely to be used in the future.' [Citation

63. The Petitioner's use of 80% physical depreciation in his calculation of replacement cost, rather than the 65% applied by the Respondent, therefore does not conform to generally accepted standards of assessment practice.
64. Additionally, the Petitioner's cost calculation failed to adjust the proposed replacement costs to the appropriate year.
65. "The reproduction cost schedules in this manual are based upon costs prevailing throughout the State of Indiana as of January, 1991." 50 IAC 2.2, Forward [sic].
66. The appraisal, however, did not adjust the costs to 1991 values. Instead, the appraisal indicated that an adjustment was made for June 2002 current costs and April 2002 local costs. (Petitioner's Exhibit 1, page 3).
67. Because the analysis consists of a comparison between 1991 costs and 2002 costs, the appraisal does not determine how much, if any, of the difference between these costs is attributable to inflation rather than obsolescence.
68. For all the above reasons, the Board does not find the Petitioner's cost approach analysis to be of probative value.
69. The Petitioner also utilized the sales comparison approach to arrive at a proposed value of the property.
70. "The *sales comparison method*: estimates cost new of subject property; comparable properties are found and site values deducted; contributory improvement values remain; contributory improvement values are deducted from cost for each sale property, yielding

omitted]." *Inland Steel Co. v. State Board of Tax Commissioners*, 739 N.E.2d 201, 213 (Ind. Tax 2000) (citing Michael D. Larson, *Identifying, Measuring, and Treating Functional Obsolescence in an Appraisal*, 10 J. Prop. Tax Mgmt. 42, 47 (1999)).

measure of accrued depreciation; accrued depreciation figure is converted to percentage and applied to subject property.” IAAO Property Assessment Valuation, 183 (2nd ed. 1996).

71. The Petitioner identified two sales in the Princeton downtown area. Based on these two purported comparable sales, the appraisers estimated the market value of the subject property to be \$31,200.
72. In determining whether properties are truly comparable, “Factors and trends that affect value, as well as the influences of supply and demand, should be considered. The greatest comparability is obtained when the properties being compared are influenced by the same economic trends and environmental (physical), economic, governmental, and social factors. There may not be any comparability when one property is heavily influenced by one set of factors and another property is significantly affected by dissimilar factors.” IAAO Property Assessment Valuation, 103 (2nd ed. 1996).
73. Merely characterizing properties as comparable is insufficient for appeal purposes. The Petitioner is required to present probative evidence that the purported comparable properties he offers are, in fact, comparable to the subject property. No such foundation was presented in either the appraisal report or during testimony offered at the hearing. The Petitioner offered no comparison of common features or amenities among the properties, and no discussion of whether the purported comparable properties are all “influenced by the same economic trends and environmental (physical), economic, governmental, and social factors.” *Id.*
74. The Petitioner’s conclusory statements concerning the comparability of the properties do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
75. Further, the use of only two purported comparable properties is inadequate in the sales comparison approach:

“Canal's review, as regards quantification of obsolescence, suffers several flaws. For example, the section of the IAAO Manual cited in the Review states that the comparative sales data method ‘does not produce a breakdown or allocation of physical deterioration, functional obsolescence, and economic obsolescence.’ [Citation omitted]. As noted [Citation omitted], the distinction between physical depreciation and obsolescence is important in calculating an improvement's true tax value. Furthermore, the IAAO Manual states that the comparative sales data method ‘requires ample sales data of truly comparable properties.’ [Citation omitted]. Canal does not explain how two sales qualify as ‘ample.’ In addition, Canal does not explain how the improvements that are the subject of the so-called ‘comparable sales’ are similar in age, condition and desirability to the subject improvements.” *Canal Realty-Indy Castor v. State Board of Tax Commissioners*, 744 N.E.2d 597, 603, n. 9 (Ind. Tax 2001).

76. In this appeal, the Petitioner has similarly failed to explain the manner in which only two purported comparable sales are “ample,” as required by generally recognized standards of assessment and appraisal practice.
77. Further, to arrive at the value obtained utilizing the sales comparison approach to value, the appraisers first deducted the estimated land value of \$10,000 from both of the purported comparable sales. However, the Petitioner offered no explanation as to the manner in which the land value was determined to be \$10,000.
78. The Petitioner’s conclusory statements concerning the value of the land do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
79. Further, as part of the sales comparison analysis, the Petitioner made adjustments to the purported sales price of the properties. As a result of these adjustments, the Petitioner reduced the purported sales price for Sale #1 from \$10.16 per square foot to a value of \$4.07 per square foot, a reduction of 60%. For Sale #2, the adjustments reduced the purported sales price from \$13.96 per square foot to a value of \$4.89 per square foot, a reduction of 65%. (Petitioner’s Exhibit 1, pages 5 – 6).

80. “Adjustments are usually made for market conditions (time of sale), location, and physical characteristics.” IAAO Property Assessment Valuation, 105 (2nd ed. 1996).
81. There are several flaws in the adjustment process employed by the Petitioner.
82. The appraisers adjusted Sale #1 forty percent (40%) for condition and twenty percent (20%) for superior functionality. The appraisers adjusted Sale #2 forty percent (40%) for condition and twenty-five percent (25%) for superior functionality.
83. The Petitioner offered no explanation as to the manner in which the proposed adjustments were calculated. Instead, the appraisal merely offers conclusory statements such as “It is the opinion of the appraisers that a minus adjustment of 40% is required for condition.” (Petitioner’s Exhibit 1, page 4) and “It is the opinion of the appraisers that a minus adjustment [for functionality] of 25% is required.” (Petitioner’s Exhibit 1, page 5).
84. “It cannot be overemphasized that the amount of any adjustment is to be derived from the real estate market.” IAAO Property Assessment Valuation, 106 (2nd ed. 1996).
85. The Petitioner presented no evidence to establish that the amounts of the proposed adjustments had been derived from the real estate market, as required by generally accepted standards of assessment and appraisal practice.
86. The Petitioner’s conclusory statements concerning the amount of adjustments do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
87. Additionally, the Petitioner determined that Sale #1 indicated a market value of \$4.07 per square foot. The Petitioner further determined that Sale #2 indicated a market value of \$4.89 per square foot. Based on these amounts, the Petitioner then concluded that the value of the property under appeal is \$4.50 per square foot.

88. “The development and application of various units of comparison provide value estimates for the subject property. These value estimates must be reconciled into a single indicator of value for the sales comparison approach. Ideally, the value estimates will be within a narrow range. In selecting the single value estimate, the assessor must never average the results. Rather, the process requires the assessor to review the adjustments made and place the greatest reliance on the most comparable property. This comparable is the one that requires the fewest adjustments.” IAAO Property Assessment Valuation, 123 - 24 (2nd ed. 1996).
89. The Petitioner offered no explanation as to the manner in which he arrived at a final reconciled value of \$4.50 per square foot, which correlates to neither value of the purported comparable properties as determined by the Petitioner. The Board notes, however, that averaging the individual values of the purported comparable sales (\$4.07 per square foot and \$4.89 per square foot) results in a value of \$4.48, similar to the value proposed by the Petitioner. As discussed, merely averaging the value estimates is never appropriate.
90. Additionally, the need for such significant amounts of adjustments as 60% (for Sale #1) and 65% (for Sale #2) further calls into question the true comparability of these properties.
91. For all of the above reasons, the Board does not find the Petitioner’s sales comparison approach analysis to be of probative value.
92. The Board further notes that the Petitioner contended “The purpose of this appraisal is to estimate the market value of the subject property and determine the physical deterioration and functional obsolescence of the building in comparison to other similar structures, for Ad Valorem assessment purposes.” (Petitioner’s Exhibit 1, page 1).
93. The determination of economic obsolescence is therefore not even identified as an objective of the appraisal, casting additional doubt as to the reliability of the Petitioner’s conclusion that the building has experienced 40% economic obsolescence.

94. Finally, as noted, the Petitioner concluded that the value of the property was \$24,000 under the cost approach and \$31,200 when computed from the sales comparison approach. The Petitioner contended “equal weight is given to the Cost and Market [sales comparison] Approaches to Value” and concluded that a reconciliation of these two amounts resulted in a final value estimate of \$30,000. (Petitioner’s Exhibit 1, page 6).
95. However, the Petitioner offered no explanation as to the manner in which, if both approaches were given equal weight, the final determination of value was determined to be \$30,000, a value reached by neither approach.
96. The Petitioner has failed to quantify the claimed functional and economic obsolescence, as required by the second prong of the two-prong test articulated in *Clark*.
97. For all the reasons above, the Petitioner failed to meet his burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

Summary of Final Determination

Determination of ISSUE 1: *Whether additional physical depreciation should be applied*

98. The Petitioner did not meet his burden by establishing a prima facie case. Accordingly, no change is made to the assessment as a result of this issue.

Determination of ISSUE 2: *Whether additional functional and economic obsolescence should be applied*

99. The Petitioner did not meet his burden by establishing a prima facie case. Accordingly, no change is made to the assessment as a result of this issue.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.