

**STATE OF INDIANA**  
**Board of Tax Review**

In the matter of the Petition for Review )  
of Assessment, Form 131 )      Petition No. : 49-901-97-1-4-00015

Parcel No. : 9047851

Assessment Year: 1997

Petitioner:    Merchants National Bank & Trust  
                  1900 East 9<sup>th</sup> Street  
                  Locator 2145  
                  Cleveland, Ohio 44114

Petitioner Representative: Richard Archer  
                                  Ernst & Young LLP  
                                  One Indiana Square, Suite 3400  
                                  Indianapolis, Indiana 46204

**Findings of Fact and Conclusions of Law**

The Indiana Board of Tax Review (State Board), as successor to the Appeals Division of the State Board of Tax Commissioners, having reviewed the facts and evidence, and having considered the issues, now makes the following findings of fact and conclusions of law.

**Issues**

1.     Whether the subject structure was correctly assessed as a highway bridge.
2.     Whether functional obsolescence depreciation is warranted.

**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, Richard L. Archer of Ernst & Young, LLP, on behalf of Merchants National Bank & Trust (Petitioner), filed a Form 131 petition requesting a review by the State Board. The Form 131 petition was filed on January 8, 1999. The Marion County Board of Review's (County Board) Assessment Determination on the underlying Form 130 is dated December 11, 1998.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on August 25, 1999, before Hearing Officer Helen Wagener. Testimony and exhibits were received into evidence. Richard L. Archer represented the Petitioner. Jack Compton represented the Wayne Township Assessor's Office (Respondent). Although formal written notice of the hearing was mailed to the Marion County Assessor's Office, no one appeared on its behalf.
4. At the hearing, the subject Form 131 petition was made a part of the record and labeled Board Exhibit A. Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following exhibits were submitted to the State Board:  
Petitioner's Exhibit 1 - Contains the following:
  - a.) Narrative
  - b.) Arial photocopy of subject property
  - c.) Plat map of subject property
  - d.) Property record card (PRC) for subject parcel
  - e.) PRC for purported comparable propertyPetitioner's Exhibit 2 - Photographs of subject property  
Petitioner's Exhibit 3 - Photographs of highway bridges  
Petitioner's Exhibit 4 – Photographs of purported comparable structure  
Petitioner's Exhibit 5 – Photograph of purported comparable structure

Petitioner's Exhibit 6 – Reply to additional evidence request

Respondent's Exhibit 1 – PRC for subject property

Respondent's Exhibit 2 – Plat map for subject

Respondent's Exhibit 3 – Arial photocopy of subject

Respondent's Exhibit 4 – Additional evidence requested at the hearing

5. The subject structure is located at 3711 Georgetown Road, Indianapolis, Wayne Township, Marion County.
6. The Hearing Officer did not view the subject property.
7. At the hearing, the Hearing Officer requested cost figures for a bridge located on Parcel No. 9013922 from Mr. Archer. The Hearing Officer received a letter dated August 31, 1999 from Mr. Archer indicating that he was unable to obtain the information requested.
8. At the hearing, the Hearing Officer requested comparable PRCs from Mr. Compton indicating bridge pricing. Mr. Compton subsequently provided this information in a timely manner (Respondent Exhibit 4).
9. In a letter dated August 25, 2000 Mr. Archer was requested to present a sketch and appropriate measurements of the subject structure, the calculations used to determine the base rate of \$12.15 and a copy of the PRC for Parcel No. 9047397. Mr. Archer was given until September 5, 2000 to respond. Mr. Archer responded in a timely manner. The request for the additional information and Mr. Archer's response are labeled Board Exhibit C and Petitioner's Exhibit 7 respectively.

**Issue No. 1 - Whether the structure was correctly assessed as a highway bridge.**

11. It is the Petitioner's contention the structure under review should not be valued as a highway bridge but as a "parking deck" (parking garage).
12. The subject property is located at the southeast corner of 38<sup>th</sup> Street and Georgetown Road and is accessed by Parcel No. 9047397. Parcel No. 9047397 is triangular in shape with a creek running along the hypotenuse of the triangle. Furthermore, the subject parcel (9047851) is attached to Parcel No. 9047397 and the ground under the subject parcel is basically a creek or unusable land. *Archer testimony.*
13. In order for the subject parcel to be utilized to provide additional parking for the bank located on the adjacent parcel, a "parking deck" had to be constructed on the parcel. The "parking deck" actually spans Parcel Nos. 9047397 and 9047851, however, the assessor placed the assessment of the entire structure on Parcel No. 9047851. *Archer testimony.*
14. The structure under review is constructed of pre-cast concrete T-Beams supported by concrete on each end and one intermediate concrete beam supported by steel pipe columns. The clear span is approximately 30 feet. There is a weight limit of vehicles not to exceed 6,000 pounds and signs are posted because of the concern of overloading the "parking deck". Similar type construction is found in many parking garages. *Archer testimony.*
15. It is obvious that substantially more material was used in the construction of highway bridges than in the subject structure. In addition, equipment and time that would be required to construct a highway bridge would be much higher than that to construct a "parking deck". *Archer testimony & Petitioner's Exhibits 3 - 5.*
16. The assessor priced the "parking deck" as a highway bridge from 50 IAC 2.2-12-5, Schedule G, which is inappropriate. The structure is not located on a highway nor is it subjected to the wear and tear of highway traffic. If the structure were

priced as a single-story parking garage, it would be assessed at \$12.15 per square foot (SF) instead of \$26.00 SF. *Archer testimony.*

17. The parcel adjacent to the subject has a similar structure that is used to park cars. Furthermore, the adjacent structure has either not been assessed at all or is assessed as a concrete slab at \$1.50 SF. *Archer testimony.*
18. The structure under review should be priced as either a one-story parking garage at \$12.15 SF, or as a concrete slab at \$1.50 SF, which is consistent with a similar structure on the adjacent parcel. *Archer testimony.*
19. The structure in question is a bridge and is assessed accordingly using the pricing schedules found in 50 IAC 2.2. Other bridges in Wayne Township are assessed as bridges. *Compton testimony & Respondent's Exhibit 4.*
20. At the hearing, both parties were requested to submit additional evidence by the Hearing Officer. Mr. Archer was unable to comply with this request. Mr. Compton submitted the requested information in a timely manner.

**Issue No. 2 - Whether functional obsolescence depreciation is warranted.**

21. The subject structure should receive “a significant amount” of functional obsolescence depreciation. The local assessing officials did not apply any functional obsolescence depreciation to the property. *Archer testimony.*
22. Functional obsolescence is warranted in this case due to the subject structure’s cost being significantly higher than would be required if the terrain had been level verses a creek bottom. The value of the property is not more than the cost of level land plus the cost of a standard parking lot of equal size. *Archer testimony.*

23. Mr. Archer presented calculations representing an “ideal” situation in which he concluded that the true tax value of the parcel should not exceed \$42,720. *Archer testimony & Petitioner’s Exhibit 1.*
24. Furthermore, the Hearing Officer’s decision on Issue No. 1 would impact the percentage of obsolescence that should be applied. A second formula and calculations are submitted that would also result in a true tax value close to \$42,720. *Archer testimony & Petitioner’s Exhibit 1.*
25. Mr. Compton stated he would not address the issue of obsolescence.

### **Conclusions of Law**

1. The Petitioner is statutorily limited to the issues raised on the Form 130 petition filed with the County Board or issues that are raised as a result of the County Board’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 County Board. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the County Board disagree with the County Board’s decision on the Form 130, then a Form 131 petition may be filed with the State Board. 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 County Board and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State Board,

however, the State Board 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 Board.

2. The State Board 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 Board’s decision.

## **B. Burden**

7. Ind. Code § 6-1.1-15-3 requires the State Board to review the actions of the County Board, but does not require the State Board to review the initial assessment or undertake reassessment of the property. The State Board 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 County Board, the State Board 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 Board 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 Board 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 Board 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 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.
12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State Board is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State Board 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.<sup>2</sup> 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 Board'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 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.
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.

### **Issue No. 1 - Whether the structure was correctly assessed as a highway bridge.**

18. Mr. Archer contends the structure should be assessed as either a one-story parking garage at \$12.15 SF or as a concrete slab at \$1.50 SF, which represents four (4) inches of concrete paving on a four (4) inch base. Because the subject

structure is assessed as a highway bridge, it is Mr. Archer's opinion the structure's value is overstated. Furthermore, Mr. Archer opines the subject structure is not a bridge.

19. The *American Heritage Dictionary, Third Edition* defines a bridge as "a structure spanning and providing passage over a gap or barrier, such as a river or roadway."
20. The Petitioner stated that since a vehicle cannot cross the structure, the structure is not a bridge. A review of photographs of the structure provided by Mr. Archer, however, indicates that the structure spans a creek, is used for ingress and egress of the banking facility and to some extent may be used for additional bank parking.
21. Mr. Archer submitted photographs of interstate highway bridges in an effort to quantify the difference in quality of construction. However, Mr. Archer did not submit any information on the costs of construction or materials used of the highway bridges or for the subject structure.
22. The quality of construction is recognized in 50 IAC 2.2-12-5, Schedule G, for highway bridges and they are further defined into three (3) types: low-cost, medium-cost, or high-cost construction. The structure under appeal was assessed as low-cost construction.
23. Mr. Archer submitted photographs of a neighboring parcel and stated that either the "similar" structure is not assessed at all, or it was assessed as concrete paving. However, Mr. Archer cannot discuss comparability if he cannot determine how the purported comparable structure was assessed. Mr. Archer cannot just present a photograph and declare the structures are comparable. Mere references to photographs or regulations, without explanation, do not

qualify as probative evidence. *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329, 333 (Ind. Tax Ct. 1999).

24. It should be noted from the photograph Mr. Archer presented of this adjacent parcel that the structure is owned by a car dealership and the structure seems to be used to park inventory.
25. 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.
26. Disparate treatment between the contested property and the other similarly situated properties was not established by the Petitioner. Mr. Archer's conclusions that the property was incorrectly assessed do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
27. For all the reasons set forth above, the Petitioner failed to meet its burden in this appeal. Accordingly, no change in the assessment is made as a result of this issue.

**Issue No. 2 - Whether functional obsolescence depreciation is warranted.**

28. Depreciation is an essential element in the cost approach to valuing property. Depreciation is the loss in value from any cause except depletion, and includes physical depreciation and functional and external (economic) obsolescence. IAAO Property Assessment Valuation, 153 & 154 (Second Edition, 1996); *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d at 806 (citing AM. Inst. Of Real Estate Appraisers, *The Appraisal of Real Estate*, 321 (Tenth Edition, 1992)). 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(a).

29. Depreciation is a market value concept and the true measure of depreciation is the effect on marketability and sales price. IAAO Property Assessment Valuation at 153. The definition of obsolescence in the Regulation, 50 IAC 2.2-10-7, is tied directly to that applied by professional appraisers under the cost approach. *Canal Square*, 694 N.E. 2d at 806. Accordingly, depreciation can be documented by using recognized appraisal techniques. *Id.*
30. Functional obsolescence is a loss in value resulting from changes in demand, design and technology, and can take the form of deficiency (for example, only one bedroom), the need for modernization (for example, an outdated kitchen), or superadequacy (for example, overly high ceilings). IAAO Property Assessment Valuation at 154 & 155; IAAO Property Appraisal and Assessment Administration, 220 & 221 (1990); 50 IAC 2.2-10-7. Functional utility is the overall usefulness and desirability of the property; the ultimate criterion is whether the improvement efficiently satisfies the wants and needs of the market. IAAO Property Assessment Valuation at 154.
31. Functional obsolescence results in a loss of value because buyers perceive a loss in utility; therefore, the price offered is lower due to reduced demand. IAAO Property Appraisal and Assessment Administration at 221.
32. External or economic obsolescence is the loss of value resulting from factors external to the property (for example, national economic conditions). IAAO Property Assessment Valuation at 155.
33. The elements of functional and economic obsolescence can be documented using recognized appraisal techniques. *Canal Square*, 694 N.E. 2d 801 (Ind. Tax

1998). These standardized techniques enable a knowledgeable person to associate cause and effect to value pertaining to a specific property.

34. There are five recognized methods used to measure depreciation, including obsolescence; namely: (1) the sales comparison method, (2) the capitalization of income method, (3) the economic age-life method, (4) the modified economic age-life method, and (5) the observed condition (breakdown) method. IAAO Property Assessment Valuation at 156; IAAO Property Appraisal and Assessment Administration at 223.
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 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).
37. It is Mr. Archer's contention the subject structure should receive "a significant amount" of functional obsolescence depreciation. Mr. Archer submitted calculations resulting in a true tax value for both land and improvements of \$42,720. In his calculations Mr. Archer described an "ideal situation" for the land and "assumed" the paving were concrete.
38. Mr. Archer's "ideal" situation is as if the land were flat and level. Mr. Archer opines that because of the subject parcel's terrain the cost of the subject structure was significantly higher than if on a level, flat plain.

39. Mr. Archer concluded the value of the subject parcel should not exceed the value of a level tract of land (\$5.00 SF) plus the cost of concrete paving (\$1.50 SF) on a conventional parking lot of equivalent size. In the case at bar, Mr. Archer alleges that \$42,720 should be the total true tax value of the parcel. Mr. Archer contends that obsolescence depreciation on the improvement value should be adjusted to reflect his total true tax value.
40. Mr. Archer's allegation that the property is entitled to obsolescence is unsupported. Evidence of loss of value or obsolescence may be based on the assessor's observations of the property, statistical evidence establishing a correlation between the faults of the property and its value, or from testimony if sufficiently reliable. Mr. Archer presented none of this information.
41. The essence of Mr. Archer's argument is that a less expensive structure could have been constructed if the topography had been different. This argument ignores the simple fact that the taxpayer made the business decision to build at this location, regardless of the topography. Mr. Archer failed to show that the structure had experienced any loss in value, from any cause, since the time that it was constructed. Merely contending that a less expensive structure could have been built under different conditions is no basis for obsolescence depreciation. Mr. Archer also seems to ignore the fact that the structure may in fact be a boon to the property because it expands the access to the bank and parking thus increasing services and convenience for their customer base.
42. Again, Mr. Archer's unsupported conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
43. In addition, Mr. Archer failed to use any of the recognized methods to measure obsolescence. Mr. Archer failed to meet either prong of the two-prong test articulated in *Clark*.

44. For all the reasons set forth above, the Petitioner failed to meet its burden in this appeal. Accordingly, no change in the assessment is made as a result of this issue.

Issued this \_\_\_\_ day of \_\_\_\_\_, 2002

By the Indiana Board of Tax Review