

**STATE OF INDIANA  
Board of Tax Review**

PARK 100 FOODS, INC.,	)	On Appeal from the Tipton County
	)	Property Tax Assessment Board
Petitioner,	)	of Appeals
	)	
v.	)	Petition for Review of Assessment, Form 131
	)	Petition No. 80-002-00-1-4-00002
TIPTON COUNTY PROPERTY TAX	)	Parcel No. 0100000470100900
ASSESSMENT BOARD OF APPEALS	)	
And CICERO 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 physical depreciation is calculated using the correct effective age and condition rating.
  
2. Whether functional and economic obsolescence should be applied to the subject building.

## 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, Tracy Carboni of Baden, Gage & Schroeder, LLC, on behalf of Park 100 Foods, Inc. (Petitioner), filed a Form 131 petition requesting a review by the State. The Tipton County Property Tax Assessment Board of Appeals' (PTABOA) Final Assessment Determination on the underlying Form 130 is dated March 16, 2001. The Form 131 petition was filed on April 13, 2001.
  
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on December 19, 2001, before Hearing Officer Paul Stultz. Testimony and exhibits were received into evidence. Mr. Carboni represented the Petitioner. Mr. Scott Potts and Ms. Linda Altherr, County Assessor, represented the Tipton County Assessor's Office. Ms. Debra Lange, Township Assessor, represented the Cicero Township Assessor's Office. The following individuals represented the PTABOA: Mr. Don Gray, Mr. Edward Quear, Ms. Virginia Baker, and Mr. Ronald Fetters.
  
4. At the hearing, the Form 131 petition was made a part of the record and labeled Board's Exhibit A. The Notice of Hearing is labeled Board's Exhibit B. In addition, the following exhibits were entered into the record:  
Board's Exhibit C - Continuance/Waiver.  
Board's Exhibit D - Request for additional evidence.  
Board's Exhibit E - Various letters and facsimiles requests from Ms. Altherr and approvals from the State for a continuance of hearing.  
  
Petitioner's Exhibit 1 – Disclosure statement  
Petitioner's Exhibit 2 – Indiana Real Property Assessment Analysis prepared by Mr. Carboni.

Respondent's Exhibit 1 – Ten photographs.

Respondent's Exhibit 2 – Copy of two-page statement responding to the issues raised by the Petitioner.

Respondent's Exhibit 3 - Copy of letter with Petitioner's PTABOA hearing evidence attached. (All attached evidence is also included in Petitioner's Exhibit 2 above).

Respondent's Exhibit 4 - Two aerial photographs of subject building.

5. The subject property is a general office building that had been a commercial garage prior to the March 1, 2000, assessment date. The building is located at 325 East Adams Street, Cicero Township, Tipton County.

6. The Hearing Officer did not view the subject property.

7. At the hearing, the parties agreed the year under appeal is 2000 and the values of record are:

Land	\$4,270
Improvements	\$67,300

8. At the hearing, the Hearing Officer requested additional information from Mr. Potts. Mr. Potts' additional evidence was received January 10, 2002, and was made part of the record and labeled as follows:

Respondent's Exhibit 5 - Letter dated January 7, 2002, from Mr. Potts to the Hearing Officer.

Respondent's Exhibit 6 - Package of documents containing the following:

- a. Form 130 petition with attachments.
- b. County PTABOA final determination.
- c. Form 133 with attachments.
- d. State Board of Tax Commissioners Final Determination for petition number 08-015-95-3-3-10000.

Respondent's Exhibit 7 - Copies of Form 11, Notice of Assessment of Land and Structures, and property record card for Frontier CO-OP, Inc. with photograph attached.

Respondent's Exhibit 8 - Copy of the property record card, with photograph attached, for Impact Cooperative, Inc.

9. Mr. Carboni provided a two-page response to Mr. Potts' additional evidence. Mr. Carboni's response was received on February 9, 2002, and made a part of the record as Petitioner's Exhibit 3.
10. Mr. Carboni testified that his compensation for representing the Petitioner is based on a contingency fee arrangement.

**Issue No. 1 - Whether the physical depreciation is calculated using the correct effective age and condition rating.**

11. Testimony by all parties supports the following facts: The subject building was a commercial garage built in 1957. As of March 1, 2000, the Petitioner had converted the structure to a general office building. The building had partitioning, ceiling tiles, carpeting, and other typical office finish added to the interior of the structure. The roof was repaired and new roof covering was installed. There was no additional square footage added to the subject building. There was no change made to the framing of the subject building. The only changes made to the exterior structure were that the garage doors were enclosed and some openings were made for windows. A new electrical service was also installed.
12. The subject of contention is the method used by the Cicero Township Assessor to account for the changes made to the subject building. The Assessor used cost values in 50 IAC 2.2-11-6 (Schedule C) to determine that the cost new for the interior components is \$20.96 per square foot (sf). This is 53.5% of the total cost of \$39.15 per sf. Mr. Potts contended that 41.7% of the entire structure has a construction date of March 1, 2000, leaving 58.3% of the structure with a March

1, 1957 construction date. The effective year of construction for the structure should be 1975 and the condition should be average.

13. Citing 50 IAC 2.2-10-7(b), the Petitioner contended the building's condition should be revised to "very good" due to the change in the effective age and the increase in the remaining useful life of the subject building. The Petitioner asserted the method used by the Township Assessor is not the correct way to account for the changes in the building.
15. The Respondents presented ten photographs of the exterior of the subject building. The photographs support the fact that no additional area was added to the subject building and that no structural changes to the framing or exterior of the subject building were made, except to enclose the garage doors and to insert openings for windows.

**Issue No. 2- Whether functional and economic  
obsolescence should be applied to the subject building.**

16. The Petitioner contended that the property has experienced functional and economic obsolescence in the amount of 15% – 20%. The PTABOA determined that the property should receive no obsolescence depreciation.
17. The Petitioner contended the subject's wall height of 13 feet is a superadequacy.<sup>1</sup> The newly installed electrical system has excess service that also is a superadequacy, although the capacity of the new electrical system is not known.

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<sup>1</sup> Superadequacy is defined as "an element more than adequate for its function." International Association of Assessing Officers (IAAO) Property Assessment Valuation, 168 (2<sup>nd</sup> ed. 1996).

18. The Petitioner asserted the cost of the superadequacy is the cost difference between the 12-foot wall height and the 13-foot wall height. Mr. Carboni computed this amount to be \$9,500. (Petitioner's Exhibit 2, pages 29 and 30).
19. The Petitioner contended the cost to fill in a pit, demolish a boiler wall, add new overhead doors, block up openings, and re-wire and update the electrical work are the cost of deficiency. The superadequacy is computed to be 5% and the deficiency to be 10.9%; total functional obsolescence is therefore 15.9%. The warranted obsolescence depreciation should be 15% to 20%. (Petitioner's Exhibit 2, pages 30, 33, and 36).
20. Responding on behalf of the local officials, Mr. Quear testified that a portion of the subject building has cooking facilities and there is a 700 to 900 square foot refrigerated area. Electrical service that is greater than normal is needed to support the cooking and refrigeration equipment, and the HVAC system.
21. The Petitioner further contended that the subject property suffers external obsolescence because the subject property is an industrial property located in a residential neighborhood, and heavy truck traffic has to be routed through the residential streets. (Board's Exhibit A, attachment to the Form 131 petition).
22. Mr. Quear contended the subject property is not located in a residential area and that Mr. Carboni is confusing the property under appeal with the Petitioner's processing facility.

### **Conclusions of Law**

1. The Petitioner is 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. 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, Petitioner has not requested that such discretion 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. 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).
8. 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.]
9. 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.]
10. 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.]
11. 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).

12. 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.]

### **C. Review of Assessments After *Town of St. John V***

13. 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.
14. 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.

15. *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. Credibility of the witness**

18. The State's position is that it has the right to make general inquiry regarding, and to consider, the method by which a witness is compensated. Information about the witness's fee can be relevant and necessary in order to evaluate the potential partiality of the witness. A contingent fee arrangement may be considered to inherently affect the objectivity of a witness. The State believes it appropriate to consider the potential of such an arrangement to improperly motivate the witness and adversely affect the reliability of the testimony. It is for these reasons that the State will consider the method of witness compensation in the process of determining the credibility and weight to be given to testimony of a witness whose fee is contingent on the outcome of the issues that he or she is testifying about. *Wirth v. State Board of Tax Commissioners*, 613 N.E. 2d 874 (Ind. Tax 1993); *Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230, 1241, n. 17 (Ind. Tax 1998).

**E. Issue No. 1 - Whether the physical depreciation is calculated using the correct effective age and condition rating.**

19. The relevant facts regarding this issue are not in dispute. The building under appeal was a commercial garage built in 1957. At some point prior to the March 1, 2000, assessment, the Petitioner converted the structure to a general office building. During this conversion, the building had partitioning, ceiling tiles, carpeting, and other typical office finish added to the interior of the structure. The roof was repaired and new roof covering was installed. However, there was no additional square footage added to the subject building. Further, there was no change made to the framing of the subject building. The only changes made to

the exterior of the structure were the enclosure of the garage doors were enclosed and the addition of some windows. A new electrical service was also installed.

20. The Petitioner contended that the effective age of the building should be computed from its original construction date of 1957. The Petitioner further contended that the condition of the structure is best described as “very good.”
21. The PTABOA determined that, because of remodeling, the effective age of the building should be changed and based upon the year 1975. The PTABOA further determined that the condition of the structure is best described as “average”.
22. At issue, then, is the correct method to account for the remodeling of the building.
23. “‘Actual age’ means the number of years elapsed since the original construction up to the effective valuation date.” 50 IAC 2.2-1-2.
24. “‘Effective age’ means 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.
25. Condition is “a judgment of the physical condition of the item relative to its age.” 50 IAC 2.2-10-5(d)(8).
26. “Condition, the degree of wear and tear displayed by a building, is determined relative to the age of the building. Condition measures the remaining usefulness of the building based on its age...Modernization refers to corrective measures that are taken to bring the building in conformity with change in style or technology. It requires replacing parts of the building with modern replacements

of the same kind. Modernization of a building may affect the condition classification of a building. The replaced construction components may increase the remaining useful life and decrease the effective age of the building. Because specific components of a modernization project do not add a defined number of years to the life of a building, the assessor must weigh the overall condition of the building against its actual age. For example, when an older building has experienced significant modernization, the assessor must determine if the building's condition has improved. If so, the assessor shall assign a higher condition rating based on the original age of the building." 50 IAC 2.2-10-7(b).

27. The Petitioner's method to support its position is to view the structure at its actual construction date of 1957, or 38 years old on the date of assessment. Since the long-lived components have not been altered, they are 38 years old and in average condition. This would generate a 50% depreciation factor for the long-lived items. The short-lived items are viewed as excellent for a 38-year old structure. This would generate a 35% depreciation factor. Interpolating the two depreciation factors results in a factor of 42.5% ( $35\% \times 50\% + 50\% \times 50\%$ ). This would indicate the condition rating should either be "good" (if 45% depreciation is accepted), or "very good" (if 40% depreciation is accepted).
28. The definition of effective age in 50 IAC 2.2-1-25.1 contains no specific mathematical formula to use in its determination. The Petitioner did not identify any judicial authority that has recognized this calculation as evidence of proving the effective age of a structure.
29. In further support of its position that the original age should be used but the condition increased, the Petitioner also referred to instructions contained in 50 IAC 2.2-10-7(b). In relevant part, these instructions state: "Because specific components of a modernization project do not add a defined number of years to the life of a building, the assessor must weigh the overall condition of the building against its actual age. **For example, when an older building has experienced**

**significant modernization, the assessor must determine if the building's condition has improved. If so, the assessor shall assign a higher condition rating based on the original age of the building.”** Id (Emphasis added).

30. Instructions contained in the Regulation, 50 IAC 2.2, are sufficient evidence to sustain the Petitioner's burden of proof regarding the alleged error in assessment. Therefore, we will not address the issue of whether Petitioner's calculation methodology, described in paragraph 27, above, is reliable or probative.
31. As discussed, 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 their decision with substantial evidence.
32. The Cicero Township Assessor accounted for the changes made to the subject building by adjusting the year of construction, based upon cost values contained in 50 IAC 2.2-11-6 (Schedule C).
33. In support of this theory, the Respondent presented two examples of properties with a modified effective year of construction (Petitioner's Exhibits 7 and 8). Although this evidence demonstrates that the year of construction and the year of remodeling are different for these properties, these examples do not explain why the effective year was changed or the manner in which the effective year was calculated.
34. The Respondent further argued that the State recognized this proposed calculation in the Final Determination issued in response to an administrative appeal filed by Pletch Enterprise. However, the Pletch Enterprise case is not controlling because in that case the parties stipulated to the methodology used. Therefore, the result in Pletch Enterprise was not a State Determination and cannot be used to support the Respondent's argument.

35. In further support of its position, the Respondent also referred to instructions contained in 50 IAC 2.2-10-7(b). In relevant part, these instructions state: “Modernization of a building may affect the condition classification of a building. **The replaced construction components may increase the remaining useful life and decrease the effective age of the building.**” Id (Emphasis added).
36. However, this language provides no support for the Respondent’s position. As noted, the definition of effective age in 50 IAC 2.2-1-25.1 contains no specific mathematical formula. Instead, it defines "effective age" as, "an age assigned to a structure based upon its remaining economic life as of the effective valuation date.” The calculation of effective age therefore requires some analysis of the remaining economic life of the building. The record contains no indication that this analysis was performed prior to changing the effective age of the structure.
37. The Tipton County officials have therefore failed to present substantial evidence to rebut the Petitioner’s prima facie case.
38. For all reasons stated above, the State determines the date of construction of the subject building is 1957 and the condition is “very good.” There is a change in the assessment as a result of this issue.

**F. Issue No. 2 - Whether functional and economic obsolescence should be applied to the subject building.**

39. The Petitioner contended that the property has experienced both functional and economic obsolescence in the total amount of 15% – 20%. The PTABOA determined that the property should receive no obsolescence depreciation.
40. Economic obsolescence depreciation is defined as “obsolescence caused by factors extraneous to the property.” 50 IAC 2.2-1-24.

41. “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 danger from floods, toxic waste, or other special hazards.”  
50 IAC 2.2-10-7(e)(2).
46. Functional obsolescence depreciation is defined as “obsolescence caused by factors inherent in the property itself.” 50 IAC 2.2-1-29.
47. “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 2.2-10-7(e)(1).
48. 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.
49. The elements of functional and economic obsolescence can be documented using recognized appraisal techniques. *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 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.

50. 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).
51. 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).

#### Functional Obsolescence

52. Concerning its claim of functional obsolescence, the Petitioner contended the subject's wall height of 13 feet is a superadequacy. The Petitioner further contended that the newly installed electrical system has excess electrical service that is also a superadequacy, although the capacity of this new electrical system is not known.
53. The Petitioner contends the cost of the superadequacy is the cost difference between the 12-foot wall height typical to the industry and the 13-foot wall height. The Petitioner computed this amount to be \$9,500, or superadequacy obsolescence in the amount of five percent. (Petitioner's Exhibit 2, pages 29 and 30).
54. The Petitioner further contended that the cost to fill in a pit, demolish a boiler wall, add new overhead doors, block up openings, and re-wire and update the electrical work create additional functional obsolescence in the amount of 10.9%. (Petitioner's Exhibit 2, pages 30, 33, and 36).
55. The identification of causes of obsolescence requires more than randomly naming factors. "Rather, the taxpayer must explain how the purported causes of



obsolescence cause the subject improvements to suffer losses in value.”

*Champlin Realty Company v. State Board of Tax Commissioners*, 745 N.E. 2d 928, 936 (Ind. Tax 2001).

56. The Petitioner presented no evidence in support of its contention that the alleged faults in the property have resulted in a decrease in the property’s market value. For example, no appraisal, comparable properties, or other data was presented to demonstrate the market reaction to the claimed faults.
57. The Petitioner has therefore failed to demonstrate that functional obsolescence is present in the property, as required by the first prong of the *Clark* test.
58. The Petitioner also presented two calculations purporting to quantify its claim of functional obsolescence.
59. In an attempt to quantify its claim of superadequacy obsolescence, the Petitioner subtracted the value of “current operation specifications” from the true tax value determined by the County officials. The difference was divided by the County’s true tax value to arrive at a purported obsolescence amount of approximately five percent. (Petitioner’s Exhibit 2).
60. “Curable functional obsolescence for a superadequacy is measured as the current cost new of the item minus any physical deterioration already charged, plus the cost of removal of the item, less the salvage value if any.” IAAO Property Assessment Valuation, 185 (2<sup>nd</sup> ed. 1996).<sup>2</sup>

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<sup>2</sup> Obsolescence is curable “when the value added by the cure equals or exceeds the cost of the cure.” Obsolescence is incurable “when the cost of curing [the obsolescence] is greater than the value added by the cure.” IAAO Property Assessment Valuation, 183 (2<sup>nd</sup> ed. 1996).

61. “Incurable functional obsolescence due to a superadequacy is measured differently for replacement and reproduction cost. To calculate incurable functional obsolescence if reproduction cost is used, take the cost to construct an improvement containing the same superadequacy, subtract any physical deterioration already charged, add the present value of the additional costs of ownership (taxes, insurance, utilities and maintenance), and subtract value added, if any. When replacement cost is used, the superadequacy is found by determining a charge for the extra monetary burden of ownership less any value added.” *Id* at 185-186.
62. The Petitioner did not characterize the claimed functional obsolescence due to superadequacy as either curable or incurable. Regardless, the Petitioner’s calculation does not conform to any of the recognized methods of measuring obsolescence resulting from superadequacy.
63. To quantify the claimed 10.9% obsolescence allegedly created by the cost to fill in a pit, demolish a boiler wall, add new overhead doors, block up openings, and re-wire and update the electrical work, the Petitioner added these costs and divided the total by the proposed new remainder value.
64. Again, although the Petitioner did not characterize the purported obsolescence as either curable or incurable, the Petitioner’s calculation does not conform to any of the recognized methods of measuring obsolescence.
65. The Petitioner has therefore failed to quantify any level of functional obsolescence, as required by the second prong of the two-prong test articulated in *Clark*.

#### Economic Obsolescence

66. The Petitioner also contended the subject property suffers external obsolescence because the subject property is an industrial property located in a residential

neighborhood, and heavy truck traffic has to be routed through the residential streets. (Board's Exhibit A, attachment to the Form 131 petition).

67. The Respondent contended the subject property is not located in a residential area and that the property under appeal is being confused with the Petitioner's processing facility.
68. Regardless, the Petitioner did not demonstrate that the location has created any loss in value. The Petitioner again presented no evidence in support of its contention that the alleged faults in the property have resulted in a decrease in the property's market value. Once again, no appraisal, comparable properties, or other data was presented to demonstrate the market reaction to the claimed faults.
69. "Without a loss of value, there can be no economic obsolescence." *Pedcor Investments-1990-XIII, L.P. v. State Board of Tax Commissioners*, 715 N.E. 2d 432, 438 (Ind. Tax 1999).
70. The Petitioner has therefore failed to demonstrate that economic obsolescence is present in the property, as required by the first prong of the *Clark* test. Further, the Petitioner did not present any calculation to quantify its claim for economic obsolescence, as required by the second prong of the two-prong *Clark* test.
71. Summarizing, the Petitioner did not demonstrate that functional or economic obsolescence is present in the subject structure, as required by the first prong of the two-prong test articulated in *Clark*. The Petitioner further did not quantify its claim, as required by the second prong of the two-prong test articulated in *Clark*.
72. For all the reasons above, the Petitioner failed to meet its burden in the appeal of this issue. Accordingly, no change is made to the assessment as a result of this issue.

## **G. Other Conclusions of Law**

73. Mr. Potts objected to the testimony of Mr. Carboni on three occasions. The first two objections concerned the relevancy of the testimony being given by Mr. Carboni. The State's general position is to admit the evidence proffered, and to consider the issue of relevancy in the weighing of the evidence. Mr. Carboni's testimony is therefore found to be admissible.
74. The third objection was concerning Mr. Carboni's testimony regarding a statement made by Mr. Orr (the Petitioner's project manager) to the PTABOA at the on site inspection. Mr. Potts claimed this testimony was hearsay and observed that Mr. Orr was not available for questioning at the State administrative hearing. However, hearsay evidence is admissible in the informal administrative law setting. 50 IAC 17-7-4.

### **Summary of Final Determination**

#### **Determination of ISSUE 1: Whether the physical depreciation is calculated using the correct effective age and condition rating.**

75. The Petitioner met its burden on this issue. The date of construction of the building is changed to 1957 and the condition is changed to "very good."

#### **Determination of ISSUE 2: Whether functional and economic obsolescence should be applied to the subject building.**

76. The Petitioner failed to meet its burden on this issue. There is no change in the assessment as a result of this issue.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this \_\_\_\_ day of \_\_\_\_\_, 2002.

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Chairman, Indiana Board of Tax Review