

**STATE OF INDIANA
Board of Tax Review**

PARKE & ASSOCIATES, LLC)	On Appeal from the Porter County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petition for Review of Assessment, Form 131
)	Petition No. 64-004-01-1-4-00002
)	
)	
PORTER COUNTY PROPERTY TAX)	Parcel No. 01-000400091
ASSESSMENT BOARD OF APPEALS)	
And CENTER 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 review the facts and evidence, and having considered the issues, now finds and concludes the following:

Issues

1. Whether 40% economic obsolescence should be applied due to extended vacancy.
2. Whether the subject building should be valued under the basis of a construction date of 1997 with a condition rating of "Good" rather than an effective construction date of 1989 with a condition rating of "Average".

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, Paul Kropp, Kropp & Associates, on behalf of Parke & Associates, LLC (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 was filed on June 27, 2001. The PTABOA gave notice on June 1, 2001 of its determination denying the issue of obsolescence raised on the underlying Form 130 petition and assigning an effective year of 1989 as the year of construction.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on September 25, 2001 before Hearing Officer Ellen Yuhan. Testimony and evidence were received into evidence. Paul Kropp and Harley Snyder were present on behalf of the Petitioner. Shirley LaFever and Lindy Wilson were present on behalf the PTABOA. Susan Larson was present on behalf of Center Township.

4. At the hearing, the subject Form 131 petition was made part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following items were submitted to the State:

Petitioner's Exhibit A – An explanation justifying obsolescence and the method used to quantify the obsolescence.

Petitioner's Exhibit B – A copy of a document entitled *Standards for the Application of Obsolescence* used in Marion County and correspondence between the Petitioner and the Center Township Assessor regarding the application of obsolescence.

Petitioner's Exhibit C – An explanation of the objection raised regarding the effective age assigned to the subject building.

Respondent's Exhibit A – A copy of the property record card for the subject property reflecting the assessed values established by the PTABOA.

5. As a result of testimony, the State requested the PTABOA to submit additional information. Specifically, the calculation used by the local assessing official to establish effective age was requested. The State's Request for Additional Evidence was entered into the record as Board Exhibit C. The deadline for the submission of this information was set for October 4, 2001.
6. On September 27, 2001, the State, via US Mail, received a letter from Ms. Larson explaining the method used to establish an effective age for the subject property. The letter was entered into the record as Respondent's Exhibit B. On October 4, 2001, the State received the Petitioner's response to the additional evidence provided by the Respondent. The Petitioner's response was entered into the record as Petitioner's Exhibit D.
7. The subject property is a single story general office building located at 2601 Valley Drive, Valparaiso, Center Township, Porter County. The year under appeal is 2001. The assessed values established by the PTABOA for 2001 are \$45,900 for land and \$429,300 for improvements. The Hearing Officer did not view the property.
8. The Petitioner's representative is a Certified Level I and Level II Indiana Assessor-Appraiser, belongs to the Indiana Association of Assessing Officials, and is a professional engineer. The fee arrangement between the Petitioner and its representative is on a contingency fee basis. *Kropp Testimony.*

Testimony and Evidence Regarding Obsolescence

9. Petitioner testified that the subject property was vacant during the years 1998, 1999, and 2000 with no revenue generated during these years. Marion County's

“Standards for the Application of Obsolescence”, suggests the application of 50% obsolescence following a three-year vacancy period. The subject building should receive 40% obsolescence for the assessment year 2001. *Kropp Testimony. Petitioner’s Exhibits A and B.*

10. Petitioner testified that when the subject building was acquired, the furnaces were rusted, the drywall had 3-to 4 feet of mold and mildew, there were leaks in the roof, the ceiling tiles had caved in, plumbing fixtures and pipes had burst, and the electric and floor coverings had to be replaced. The subject building was uninhabitable at the time of acquisition. *Snyder Testimony.*
11. Respondent testified that the subject building was a mess, but was only vacant for five (5) months under the new owner. Obsolescence was refused because of lack of documentation. *Larson Testimony. LaFever Testimony.*

Testimony and Evidence Effective Age and Condition Rating

12. Petitioner testified that the year of construction for the subject building was changed from the actual year of 1977 to an effective year of 1989 following the PTABOA hearing. The subject building underwent major renovation in order to return it to a useful state. The renovation would not have been necessary had the subject building been properly maintained during the years it was vacant or had it been properly closed down when vacated by the prior occupant. The alterations resulting from the renovation should be accounted for in the assessment as a condition rating change rather than assigning an effective year of construction. *Kropp Testimony. Petitioner. Exhibit C.*
13. Petitioner testified that the renovation included the replacement of damaged drywall throughout, the replacement of floor coverings, the replacement of damaged ceiling tiles, the replacement of damaged water pipes and other plumbing fixtures, the replacement of the heating and cooling units, the

replacement of windowsills, the replacement of the electrical system, the repair of the roof and the repair of damaged roof trusses. If the reassessment had occurred in 1999 as originally planned, the condition of the subject building would have been rated as “ Very Poor”. As a result of the renovation, the condition rating of the subject building was upgraded to “Good”. *Kropp Testimony. Snyder Testimony. Petitioner’s Exhibit C.*

14. Respondent testified that the change regarding the year of construction was made as a result of a field inspection. Because the renovation required the removal of the interior components of the subject building, the replacement of these components extended the life of the subject building. When a building is routinely maintained during its lifetime, it still contains the original heating and cooling units, wiring, windowsills, etc. However, the removal and replacement of such items adds additional life to a building. *Larson Testimony.*
15. The local assessing officials established the effective age by first determining that the changes resulting from the renovation (interior finish costs) reflected approximately 50% of the entire cost of the subject building. Then, the original year of construction was subtracted from the year of renovation to arrive at a difference of 24 years (2001 – 1977 = 24). To determine the increase in life expectancy of the subject building, the 24-year difference was multiplied by 50% (the percentage of cost attributable to the renovation) and the result was an increased life expectancy of 12 years. The original year of construction (1977) plus the increased life expectancy (12 years) equals an effective year of construction of 1989. *Resp. Ex. B.*

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. 50 IAC 17-

5-3. See also the Forms 130 and 131 petitions authorized under Ind. Code §§ 6-1.1-15-1, -2.1, and -4. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.

2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

A. Indiana's Property Tax System

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.

4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State’s decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).

8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. See 50 IAC 17-6-3. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.
10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. “Allegations, unsupported by factual evidence, remain mere allegations.” *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
11. One manner for the taxpayer to meet its burden in the State’s administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). In this way, the taxpayer properly frames the inquiry as to “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Town of St. John V*, 702 N.E. 2d at 1040.

12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not "triggered" if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State's final determination merely because the taxpayer demonstrates flaws in it).

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

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property's market value will fail.
16. Although the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and

appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.

17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

Whether 40% Economic Obsolescence Should be Applied Due to Extended

Vacancy

Definitions and Burden

18. The subject property is not currently receiving an obsolescence depreciation adjustment. The Petitioner claimed 40% obsolescence depreciation.
19. Depreciation is an essential element in the cost approach to valuing property. Depreciation is the loss in value from any cause except depletion¹, and includes physical depreciation and functional and external (economic) obsolescence. International Association of Assessing Officers (IAAO) Property Assessment Valuation, 153 & 154 (2nd ed. 1996); *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801, 806 (Ind. Tax 1998) (citing Am. Inst. of Real Estate Appraisers, *The Appraisal of Real Estate*, 321 (10th ed. 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 concepts for estimating the extent of it in improvements being valued. 50 IAC 2.2-10-7.
20. 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

¹ Depletion is the loss in value of property due to consumption of oil, gas, precious metals, and timber.

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.*

21. Economic obsolescence depreciation is defined as “obsolescence caused by factors extraneous to the property.” 50 IAC 2.2-1-24.
22. “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 the economic or social conditions.
 - (F) Hazards, such as danger from floods, toxic waste, or other special hazards.” 50 IAC 2.2-10-7(e).
23. The elements of economic obsolescence can be documented using recognized appraisal techniques. These standardized techniques enable a knowledgeable person to associate cause and effect to value pertaining to a specific property.
24. 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).
25. Regarding obsolescence, the taxpayer has a two-prong burden of proof: (1) the taxpayer has to prove the 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).

Causes of Obsolescence

26. “[I]n advocating for an obsolescence adjustment, a taxpayer must first provide the State Board with probative evidence sufficient to establish a prima facie case as to the causes of obsolescence.” *Champlin Realty Company v. State Board of Tax Commissioners*, 745 N.E. 2d 928, 932 (Ind. Tax 2001).
27. 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*, 745 N.E. 2d at 936.
28. The Petitioner claims that the subject building is entitled to an adjustment for economic obsolescence because the subject building stood vacant for the three years prior to the Petitioner’s purchase of the subject building. The Petitioner believes, because under Marion County’s standards 50% obsolescence is applied after a 3-year vacancy period, that a 40% obsolescence adjustment is appropriate.
29. The record leaves no doubt that the subject building stood vacant for a period of time prior to the Petitioner’s acquisition. Although vacancy could be manifested as a result of the existence of obsolescence, vacancy itself is not indicative that a building suffers from a cause of obsolescence. In other words, the mere fact that a building is vacant does not mean the building is suffering a loss in value due a cause of obsolescence. Vacancy could also be the result of management issues. Therefore, pointing to the vacancy of a building is not enough to demonstrate that obsolescence exists.

30. The Petitioner did not offer anything else in its attempt to establish the existence of the alleged obsolescence. The Petitioner simply pointed to the 3-year period of vacancy and concluded that an obsolescence adjustment of 40% was warranted. This is purely conclusory in nature. Offering conclusory statements falls short of constituting evidence probative of the alleged obsolescence.
31. The Petitioner has failed to show that the 3-year vacancy period created a loss in value to the subject property. Thus, the Petitioner did not meet the first prong of the two-prong test articulated in *Clark*.

Quantification of Obsolescence

32. Even if the State accepted the existence of obsolescence, the Petitioner must still quantify the amount of obsolescence requested.
33. “There are two methods of measuring external (economic) obsolescence: (1) capitalizing the income or rent loss attributable to the negative influence; and (2) comparing comparable sales of similar properties, some exposed to the negative influence and others not.” IAAO Property Assessment Valuation, 173 (2nd ed. 1996).
34. The Petitioner did neither of these. The Petitioner simply relied on a chart purportedly used by Marion County officials for the application of obsolescence, which contained a section indicating that a 50% obsolescence factor is applied for a 3-year vacancy period, and then claimed a 40% obsolescence adjustment for the subject building. This is purely a conclusory statement. The Petitioner has made no showing of an attempt to mathematically quantify the alleged obsolescence.
35. Therefore, the Petitioner has failed to meet the second prong of the two-prong test articulated in *Clark*.

36. For all the reasons above, the Petitioner did not meet its burden of proof regarding obsolescence. Thus, no change is made in the assessment as a result of this issue.

Whether the Valuation of the Subject Building Should be Based on an Effective Age of 1989 with a Condition Rating of “Average” or an Actual Age of 1977 with a Condition Rating of “Good”

37. Effective age is the age assigned to a structure based on its remaining economic life as of the effective valuation date. 50 IAC 2.2-1-25.1. Remaining economic life is the period of time between the effective valuation date to the date a structure becomes economically valueless. *IAAO Property Assessment*, 161 (2nd ed. 1996). Effective age is essentially a structure’s remaining economic life.
38. The economic life of a structure is the period of time a structure is expected to be used profitability. A structure’s total economic life cannot be greater than, and is usually shorter than, the structure’s physical life. *IAAO Property Assessment Valuation*, 161 (2nd ed. 1996). This can also be considered useful life.
39. Condition measures the remaining usefulness of a structure based on an evaluation of the amount of wear and tear experienced in relation to the structure’s age. Two factors play into the condition of a structure: (1) maintenance and (2) modernization. These factors are not one and the same. 50 IAC 2.2-10-7.
40. Maintenance is the general upkeep of a structure’s existing components. Modernization is updating a structure to conform to changes in style or technology through replacing the dated construction components with updated components serving the same purposes. Replacing construction components may cause the remaining useful life of the structure to increase and decrease the

effective age of the structure. However, replacing construction components does not add a specific number of years to the life of a structure. Rather, the modernization of a structure requires an evaluation of the overall condition of the structure in relationship to its actual age. 50 IAC 2.2-10-7.

41. If the modernization improved the structure's condition, a higher condition rating is assigned based on the original age of the structure. By assigning a higher condition rating, the increased useful life attained through modernization is recognized. 50 IAC 2.2-10-7.
42. It is clear that the parties are not disputing the extent of the renovation. The testimony from both parties makes it clear that the renovation involved the removal and replacement of much of the subject building's construction components. Certainly, both parties are in agreement that the renovation of the subject building was of the type that would be described as modernization and that this modernization was extensive. The point of dispute between the parties is the manner by which the benefit of the modernization is accounted for in the valuation process.
43. The Petitioner maintains that the renovation of the subject building did not extend its economic life. Rather, the renovation simply improved the condition of the subject building. The Petitioner contends that the subject building should be valued under the basis of its actual age of 1977 with a condition rating of "Good". The Petitioner's testimony and theory are in conjunction with the directions given in the Regulation to account for the effects of modernization of a structure. The Petitioner has presented sufficient information to show the existence of an error and the burden has shifted to the local officials to justify their position with substantial evidence.
44. The Respondent maintains that the renovation, which involved "gutting" the subject building, extended the subject building's economic life. The Respondent

asserts that an effective age is required to properly reflect this additional life. The Respondent is mistaken, in part. The Respondent is correct in that the renovation did increase the subject building's useful life; however, the Respondent is mistaken in that the manner used to account for this increase is through an effective age.

45. By assigning an effective age as a result of the renovation, the local assessing officials added 12 years to the age of the subject building. Again, modernization does not add a number of years to the age of a structure. Rather, modernization increases a structure's useful life and, because condition measures a structure's useful life in relation to its age, requires an evaluation of its condition relative to its actual age. Thus, the increase in useful life should be reflected in a condition rating and not by adding 12 years to the age of the subject building.
46. For the reasons above, the Respondent has failed to support its position regarding the effective age assigned to the subject building. As such, the Petitioner prevails in its challenge regarding age and condition. Therefore, a change is made 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.

Chairman, Indiana Board of Tax Review