

REPRESENTATIVES FOR PETITIONER:  
Fred McCarter, C.M.I.  
Paul Kropp, Kropp & Associates

REPRESENTATIVES FOR RESPONDENT:  
Jennifer L. Becker, Scipio Township  
Carol McDaniels, LaPorte County Assessor

---

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:	)	Petition for Review of Assessment,
	)	Form 131
PEARSON EDUCATION, INC.	)	
	)	Petition No.: 46-060-01-1-3-00002
Petitioner,	)	
	)	County: LaPorte
v.	)	
	)	Township: Scipio
SCIPIO TOWNSHIP ASSESSOR	)	
	)	Parcel No. 62-10-05-300-007
Respondent.	)	
	)	Assessment Year: 2001
	)	

---

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

---

**February 6, 2004**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (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**

### **Issues**

1. The issues presented for consideration on the petition were:

Issue 1 - *Whether the buildings constructed in 1987 (1987 Construction) should be graded "C" rather than "C+2".*

Issue 2 - *Whether the buildings constructed in 1963, 1965, and 1968 (Pre-87 Construction) should be valued under the GCK schedule with a "C+2" grade or, in the alternative, valued under the GCI schedule with a "D" grade.*

Issue 3 - *Whether all buildings should be depreciated from the thirty-year life expectancy table.*

Issue 4 - *Whether a base rate adjustment should be made to the base rates for the warehouse areas due to lack of partitioning.*

Issue 5 - *Whether the sprinkler pricing should be determined using the total gross square footage of the building.*

Issue 6 - *Whether 36.7% economic obsolescence is warranted due to vacancy.*

Issue 7 - *Whether an effective age of 1971 should be assigned to the entire facility.*

### **Procedural History**

2. Pursuant to Ind. Code § 6-1.1-15-12, Fred McCarter of C.M.I. filed a Form 131 petition on behalf of Pearson Education, Inc. (Petitioner) petitioning the Board to conduct an administrative review of the above petition. The Form 131 petition was filed on January 4, 2002. The determination of the LaPorte County Property Tax Assessment Board of Appeals (PTABOA) was issued on December 7, 2001.

### **Hearing Facts and Other Matters of Record**

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on October 15, 2003 in LaPorte, Indiana before Ellen Yuhan, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

4. The following persons were present at the hearing:

For the Petitioner:

Fred McCarter, C.M.I.

Paul Kropp, Kropp & Associates

For the Respondent:

Jennifer L. Becker, Scipio Township

Carol McDaniels, LaPorte County Assessor

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

For the Petitioner:

Fred McCarter

Paul Kropp

For the Respondent:

Jennifer L. Becker

Carol McDaniels

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 – A summary of the issues raised on the petition.

Petitioner's Exhibit 2 – A copy of a letter to the LaPorte County Assessor with the following attachments:

- a. The partitioning adjustment and effective age calculations.
- b. A letter from Larson-Danielson Construction regarding the construction of the 1987 buildings.
- c. A checklist for prepared for identifying kit building characteristics.
- d. Summaries of several Indiana Tax Court decisions regarding kit buildings.

Petitioner's Exhibit 3 – Obsolescence calculations.

Petitioner's Exhibit 4 – An exterior photograph of the 1987 Construction.

Petitioner's Exhibit 5 – An interior photograph of the 1987 Construction.

Petitioner's Exhibit 6 – An interior photograph of the 1987 Construction.

Petitioner's Exhibit 7 – An interior photograph of the 1987 Construction.

Petitioner's Exhibit 8 – An exterior photograph of the 1987 Construction.

Petitioner's Exhibit 9 – Page 13 of 18 from a Final Determination issued by the State Board of Tax Commissioners in the matter of Kwana Village.

For the Respondent:<sup>1</sup>

Respondent's Exhibit 1 – An exterior photograph of a building identified by the Respondent as the 1987 Construction.

Respondent's Exhibit 2 – An exterior photograph of a building identified by the Respondent as the 1987 Construction.

Respondent's Exhibit 3 – An exterior photograph of a building identified by the Respondent as the 1987 Construction.

Respondent's Exhibit 4 – An exterior photograph of a building identified by the Respondent as the 1987 Construction.

Respondent's Exhibit 5 – An exterior photograph of a building identified by the Respondent as the 1987 Construction.

---

<sup>1</sup> The Respondent initially identified the buildings shown in Resp. Ex. 1 through 9 as the 1987 Construction. However, after discussion between the parties, the parties agreed that the buildings depicted in Resp. Ex. 1 through 9 actually represent the Pre-87 Construction.

Respondent's Exhibit 6 – An exterior photograph of a building identified by the Respondent as the 1987 Construction.

Respondent's Exhibit 7 – An exterior photograph of a building identified by the Respondent as the 1987 Construction.

Respondent's Exhibit 8 – An exterior photograph of a building identified by the Respondent as the 1987 Construction.

Respondent's Exhibit 9 – An exterior photograph of a building identified by the Respondent as the 1987 Construction.

Respondent's Exhibit 10 – The PTABOA Response to the issues raised on the Form 131 petition.

Respondent's Exhibit 11 – The property record card (PRC) for the property reflecting the 2001 assessed value established by the PTABOA.

Respondent's Exhibit 12 – The PRC for the property reflecting the 1998 assessed value.

Respondent's Exhibit 13 – A copy of the Form 115, Determination of the PTABOA, issued on December 7, 2001 for the March 1, 2001 assessment year.

Respondent's Exhibit 14 – A copy of the hearing script used by the LaPorte County PTABOA.

Respondent's Exhibit 15 – A copy of *Arthur & Carol Kemp v. State Board of Tax Commissioners*, 726 N.E. 2d 395 (Ind. Tax 2000).

Respondent's Exhibit 16 – A copy of 50 IAC 2.2-10-6.1(a) "Schedule A Base Prices" referencing the "General Commercial Kit" model description.

Respondent's Exhibit 17 – A copy of 50 IAC 2.2-11, Model for GCI - Light Warehouse.

Respondent's Exhibit 18 – A copy of the graded photographs of a C grade Light Warehouse and a C grade Pre-engineered Kit Structure from 50 IAC 2.2-11.

Respondent's Exhibit 19 – A copy of 50 IAC 2.2-11-7, the Thirty-year Life Expectancy table and the Forty-year Life Expectancy Table.

Respondent's Exhibit 20 – A copy of *Ronald D. Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998).

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

Board Exhibit A – The Form 131 petition with attachments.

Board Exhibit B – The Notices of Hearing dated September 3, 2003.

Board Exhibit C – A Request for Additional Information requesting the submission of a Client Disclosure required pursuant to 50 IAC 15-5-5 from Mr. McCarter.

8. The following matters were stipulated and agreed to by the parties:

[A] A base rate adjustment for lack of partitioning is applied to the base rates of the warehouse areas.

[B] The cost adjustment for sprinklers is based upon the total gross square footage of the building.

[C] An effective age of 1971 is assigned to the building.

9. On October 22, 2003, via facsimile, the Board received a properly completed Client Disclosure from Mr. McCarter as required by 50 IAC 15-5-5. The Client Disclosure form was made a part of the official record of proceedings.

10. The subject property is a large publishing facility located at 4747 W. State Road 2 in LaPorte, Indiana. The assessment year under appeal is 2001. The assessed value established by PTABOA is:

Land: \$51,900

Improvements: \$4,266,000.

11. Mr. McCarter is a Level II Certified Indiana Assessor-Appraiser. He is compensated on a contingency basis.

### **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 § 6-1.1-15-8.

### **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.

### **State Review and Petitioner's Burden**

15. 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 Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
16. 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 Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax. 1998), and *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 890 (Ind. Tax 1995). ['Probative evidence' is evidence that serves to prove or disprove a fact.]

17. 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 Board of Tax Commissioners*, 715 N.E. 2d 1018 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]
18. 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 Board of Tax Commissioners*, 714 N.E. 2d 329 (Ind. Tax 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
19. 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 Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.* 743 N.E. 2d 247, 253 (Ind. Tax 2001), and *Blackbird Farms Apartments, LP v. Department of Local Government Finance* 765 N.E. 2d 711 (Ind. Tax, 2002).
20. The Board 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 Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 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 Board (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 Board that it outweighs all



evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

### **Discussion of the Issues**

*Issue 1 - Whether the buildings constructed in 1987 (1987 Construction) should be graded "C" rather than "C+2".*

21. The 1987 Construction is valued under the GCK pricing schedule with a grade of "C+2".
22. The Petitioner contends that the 1987 Construction should be graded "C" rather than "C+2".
23. The Respondent maintains that the 1987 Construction is correctly graded at "C+2".
24. The applicable rules and case law governing this issue are:
  - 50 IAC 2.2- 1-30**  
Grade means the classification of an improvement based on certain construction specifications and quality of materials and workmanship.
  - 50 IAC 2.2-1-31**  
Grade factor means a factor or multiplier applied to a base grade level for the purpose of interpolating between grades or establishing an intermediate grade.
  - 50 IAC 2.2-10-3**  
Grade is used in the cost approach to account for deviations from the norm or "C" grade. The quality and design of a building are the most significant variables in establishing grade.
  - 50 IAC 2.2-10-3(a)(3)**  
"C" grade buildings are moderately attractive and constructed with average quality materials and workmanship. These buildings have minimal to moderate architectural treatment and conform with the base specifications used to develop the pricing schedules. They have an average quality interior finish with adequate built-ins, standard quality features, and mechanical features.

**50 IAC 2.2-11-4**

Graded photograph of Pre-Engineered Kit Structure.

***Ronald D. Clark d/b/a The Arches v. Department of Local Government Finance, 779 N.E.2d 1277 (Ind. Tax 2002)***

The petitioner has the burden of showing (1) the assigned grade is incorrect and (2) what the correct grade should be.

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

[A] The building constructed in 1987 is a Butler brand building with no deviations from the basic model. *McCarter testimony; Petitioner's Exhibit 2, pages 3 and 4; and Petitioner's Exhibits 4-8.*

[B] The County has a burden to establish a relationship between the cost of the alleged deviations and the increase in grade. *McCarter testimony.*

[C] The size of the building, 117,250 square feet, which requires a heavier roof load tolerance and vertical column tolerance to support a building of this size as well as additional features such as concrete block, plate glass windows, and numerous overhead doors justifies an increase in grade to "C+2". *Becker testimony; Respondent's Exhibit 10, page 3; Respondent's Exhibits 1-9.*

[D] Following the Court's direction in *Kemp*, the PTABOA found that the Petitioner didn't submit evidence proving the correct grade for the buildings should be "C" rather than "C+2". *Becker Testimony; Respondent's Exhibit 15.*

Analysis of Issue 1

25. The 1987 Construction is a 107,250 square foot warehouse and a 10,500 square foot warehouse originally valued as "C" grade structures under the General Commercial Industrial (GCI) Schedule. The PTABOA, as the result of the underlying Form 130 petition, revalued the buildings under the General Commercial Kit (GCK) Schedule and increased the grade to "C+2".

26. The Petitioner contends that the buildings are basic Butler buildings with no deviations or additional features warranting an increase in grade.
27. The Respondent claims that the grade was increased to account for numerous deviations and additional features.
28. The testimony offered by the Petitioner along with the checklist of kit building characteristics completed by the contractor responsible for the construction of the buildings, the letter from a contractor stating that the 1987 Construction represented typical Butler brand construction, the exterior photographs, and the interior photographs presented by the Petitioner depict the 1987 Construction as steel frame, metal sided structures without any additional features such as concrete block, overhead doors or plate glass windows. (Pet. Ex. 2) This evidence tends to show that the 1987 Construction does not have any features that create any deviation from the typical kit type structure. This evidence is given considerable weight and is probative of the Petitioner's claim that the 1987 Construction should be graded "C".
29. The Respondent offered exterior photographs as evidence of the additional features responsible for the increased grade. However, these photographs actually represent the Pre-87 Construction and are not relevant in this matter. The testimony offered by the Respondent justifying the increase in grade due to the size of the structure necessitating additional structural support is conclusory in nature because it is not supported by factual evidence. Conclusory statements do not constitute evidence sufficient to rebut the Petitioner's prima facie case.
30. The Petitioner has shown by a preponderance of the evidence that the "C+2" grade assigned to the 1987 Construction is in error and that the correct grade should be "C".

*Issue 2 - Whether the buildings constructed in 1963, 1965, and 1968 (Pre-87 Construction) should be valued under the General Commercial Kit (GCK) schedule with*

*a “C+2” grade or, in the alternative, valued under the General Commercial Industrial (GCI) schedule with a “D” grade.*

31. The Pre-87 Construction is currently valued under the GCI pricing schedule as light warehouse, small shop and general office, with a grade of “C-1”.
32. The Petitioner contends that the Pre-87 Construction should be valued under the GCK pricing schedule with a grade of “C+2” applied. In the alternative, the grade should be reduced to a “D” grade if the buildings are valued under the GCI pricing schedule.
33. The Respondent contends the Pre-87 Construction is fire-resistant framing with concrete block and steel exterior walls and more closely resembles the GCI Light Warehouse Model in 50 IAC 2.2.
34. The applicable rules and case law governing this issue are:

**50 IAC 2.2-10-6.1**

There are four “association groupings” for commercial buildings, and each grouping has a separate schedule to facilitate selection. The four groupings are General Commercial (GCM), General Commercial Industrial (GCI), General Commercial Residential (GCR), and General Commercial Kit (GCK). Assessing officials are to select and use the pricing schedule that best represents the structure being assessed. The GCM, GCI, GCR association groupings include use type descriptions to facilitate selection of the appropriate pricing schedule. GCK does not include use type descriptions. GCK is utilized for valuing pre-engineered, pre-designed wood pole or steel frame buildings used for commercial or industrial purposes. Buildings classified as special purpose designed buildings are not valued using the GCK pricing schedule.

**50 IAC 2.2-11-2**

General Commercial Industrial Models.

**50 IAC 2.2-1-30**

Grade means the classification of an improvement based on certain construction specifications and quality of materials and workmanship.

**50 IAC 2.2-1-31**

Grade factor means a factor or multiplier applied to a base grade level for the purpose of interpolating between grades or establishing an intermediate grade.

**50 IAC 2.1-10-3(a)**

Grade is used in the cost approach to account for deviations from the norm, or “C” grade. There are five major grade classifications.

“C” grade buildings are moderately attractive and constructed with average quality materials and workmanship. These buildings have minimal to moderate architectural treatment and conform with the base specifications used to develop the pricing schedules. They have an average quality interior finish with adequate built-ins, standard quality features, and mechanical features.

“D” grade buildings are constructed with economy materials and fair workmanship. These buildings are devoid of architectural treatment and have a substandard quality interior finish with minimal built-in features, substandard quality electrical and plumbing fixtures, and a substandard quality heating system.

**50 IAC 2.2-11-4.1**

Graded photographs

***Ronald D. Clark d/b/a The Arches v. Department of Local Government Finance, 779 N.E.2d 1277 (Ind. Tax 2002)***

Requirement to prove the current grade is incorrect and what the proper grade should be.

***Barker v. State Board of Tax Commissioners, 712 N.E. 2d 563 (Ind. Tax 1999)***

A building can have modifications from a basic kit structure and still qualify as a kit building. Upgrades from the basic kit structure can be accounted for through the grade factor.

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

A. The buildings at issue are metal-sided, pre-engineered Butler buildings built by Larson-Danielson Construction Company, Inc. The buildings deviate from a basic Butler building with some concrete block, plate glass windows, overhead doors, and a flat, membrane roof. *McCarter testimony.*

- B. During the PTABOA site inspection, Mr. Tim Barry with Excel Builders, and expert witness on behalf of the Petitioner, indicated to the members of the PTABOA that the upgrades would increase the total cost by 10%. *McCarter testimony*.
- C. The buildings are “C+2” kit buildings with a base price ranging from \$11 to \$12 a square foot. A similar value would be achieved if the buildings were valued under the GCI schedule with a “D” grade factor. *McCarter testimony*.
- D. The entire back wall of the buildings is concrete block, over half the front is concrete block and the side walls are concrete block. The buildings also have numerous plate glass windows and overhead doors. *Becker testimony; Resp. Ex. 1-9*.

### Analysis of Issue 2

- 36. The Petitioner argues that the subject qualifies to be valued from the GCK pricing schedule rather than the GCI pricing schedule or, if valued from the GCI schedule, the grade should be no higher than “D”.
- 37. The Petitioner did not submit any evidence to support his contention - no photographs, no specification of building materials, no cost information. The Petitioner offered testimony regarding construction characteristics claiming the Pre-87 Construction is pre-engineered, metal sided with some deviation (plate glass windows, some concrete block); however the Petitioner did not present any evidence to support the materials used to construct the structure. The Petitioner also offered testimony regarding statements made by the Petitioner’s expert witness during a site visit conducted by the PTABOA claiming that deviations, such as the plate glass, concrete block, etc., from a basic pre-engineered building increased the construction cost approximately 10%. Again, the Petitioner failed to offer any supportive evidence demonstrating the base cost and any increased costs due to the additional features. Without factual evidence supporting the testimony, this testimony is simply conclusory in nature and does not constitute evidence probative of the alleged error.

38. The Petitioner has failed to present evidence probative of the alleged schedule selection error. The Petitioner has also failed to present evidence probative of the alleged grading error. The Petitioner has not established a prima facie case regarding the issue of schedule selection or grade. There is no change to the assessment as a result of this issue.

Issue 3: Whether all the buildings should be depreciated from the thirty-year life expectancy table.

39. The Petitioner contends that all the buildings be depreciated from the thirty-year life expectancy table.
40. The Respondent contends that the buildings priced from the GCK schedule should be depreciated from the thirty-year life expectancy table and the buildings priced from the GCI schedule should be depreciated from the forty-year life table.
41. The applicable rules governing this issue are:  
**50 IAC 2.2-11-7**  
Commercial and industrial depreciation tables.
42. Evidence and testimony considered particularly relevant to this determination include the following:
- A. The forty-year life expectancy table is used for all fire-resistant buildings not listed under any other life expectancy table. The thirty-year life expectancy table is used for light pre-engineered buildings. *Becker testimony; Respondent's Exhibit 19.*
  - B. If the buildings currently assessed as GCI buildings are changed to the GCK schedule then the thirty-year table would be used. *Becker testimony; Respondent's Exhibit 19.*

Analysis of Issue 3

43. The Petitioner did not present any evidence supporting its allegation of error in the selection of life expectancy tables. The Petitioner offered a statement that the thirty-year

life expectancy table should be used for all the buildings to determine physical depreciation rather than using the forty-year life table for some of the buildings and the thirty-year life table for the others. The Petitioner's offering is unsupported by any factual evidence and, as such, is simply a conclusory statement. Conclusory statements do not constitute evidence sufficient to establish error.

44. The Petitioner has failed to establish a prima facie case regarding the alleged error in life expectancy table selection. There is no change to the assessment as a result of this issue.

Issue 4 - Whether a negative base rate adjustment should be made to the base rates for the warehouse areas due to lack of partitioning.

45. The parties entered into an agreement and stipulated to the issue of a negative base rate adjustment due to lack of partitioning. The Board accepts the parties' agreement and stipulation. In doing so, the Board does not decide the propriety of this agreement, either explicitly or implicitly. There is a change in the assessment as a result of the stipulation.

Issue 5 - Whether the sprinkler pricing should be determined using the total gross square footage of the building.

46. The parties agreed and stipulated to the issue of sprinkler pricing. The Board accepts the parties' stipulation and agreement. In doing so, the Board does not decide the propriety of this agreement, either explicitly or implicitly. There is a change in the assessment as a result of the stipulation.

Issue 6 - Whether 36.7% economic obsolescence is warranted due to vacancy.

47. The Petitioner contends that the subject buildings are entitled to economic obsolescence due to vacancy brought about by industry consolidation.



48. The Respondent contends that the Petitioner has not properly identified the causes of obsolescence or quantified the percentage of obsolescence requested.

49. The applicable rules and case law governing this issue are:

**50 IAC 2.2-1-24**

Economic obsolescence is a loss in value resulting from factors external to the property (i.e., national economic conditions).

**50 IAC 2.2-12-4 (c)**

(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.

***Ronald Clark v. State Board of Tax Commissioners, 694 N.E. 2d 1230 (Ind. Tax 1998)***

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.

***Canal Square Limited Partners v. State Board of Tax Commissioners, 694 N.E. 2d 801(Ind. Tax 1998)***

Obsolescence may be quantified using generally recognized appraisal principles.

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

When seeking an adjustment for obsolescence, a taxpayer must first provide probative evidence establishing a prima facie case regarding the alleged causes of obsolescence. The taxpayer must also explain how the alleged causes of obsolescence subject the property to a loss in value.

***Rotation Products Corp. v. Department of State Revenue, 690 N.E. 2d 795 (Ind. Tax 1998)***

It is incumbent upon 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 value of his property reduced.

50. Evidence and testimony considered particularly relevant to this determination include the following:
- A. The facility has been vacant for two years because the Petitioner moved the operations to a larger facility in Lebanon, Indiana. *McCarter testimony*.
  - B. The facility currently has an asking price of \$6 million; however, the Petitioner is willing to accept any reasonable offer. *McCarter testimony*.
  - C. An attempt to quantify obsolescence has been made using four different approaches. The result of these calculations indicates a percentage of obsolescence in the low to mid thirties range. *McCarter testimony; Pet. Ex. 3*.
  - D. The income approach, a market value approach, or market value comparisons were not used to quantify obsolescence because, as of March 1, Indiana was not a market value state. *McCarter testimony*.
  - E. The Petitioner did not present any calculations quantifying obsolescence during the PTABOA hearing. *Becker testimony*.
  - F. The Petitioner did not use any of the accepted approaches to value, such as the income approach or the sales comparison approach. The evidence presented by the Petitioner is simply a list of numbers and does not measure a loss in value tied to a specific building. *Becker testimony*.
  - G. Obsolescence calculations based upon sales price less the equipment value and a guide for applying economic obsolescence developed and used by Allen County assessing officials. *Pet. Ex. 3*.

#### Analysis of Issue 6

51. The Petitioner contends the facility suffers from economic obsolescence and requests a factor 36.7% be applied.
52. The Respondent contends the Petitioner has failed to use any of the recognized approaches to value to substantiate its request for obsolescence depreciation.

53. Again, when seeking obsolescence depreciation, the taxpayer must first establish the cause or causes of the alleged obsolescence. After establishing the cause or causes of obsolescence, the taxpayer must then quantify the loss in value resulting from the obsolescence.
54. The Petitioner presented several calculations and a list of obsolescence factors applied for vacancy in Allen County in support of its obsolescence claim. The first two (2) calculations presented involved deducting an estimated value of equipment from, first, the sales price established by the Petitioner and then from the accepted offer price for the property and comparing the result to the true tax value as shown on the property record card. The third calculation adjusts an accepted offer price using an adjustment factor from a recognized cost based valuation service and compares the result with the true tax value shown on the property record card. The obsolescence guide used by Allen County to establish the appropriate percentage of obsolescence depreciation is based on the amount of vacant space. The document provided by the Petitioner appears to have been part of a decision made by the Allen County assessing officials after concluding the taxpayer in that matter had established a cause of obsolescence.
55. Both the calculations presented and the obsolescence guide used by Allen County officials were offered to quantify the amount of obsolescence claimed by the Petitioner. However, the Petitioner has not established a cause of obsolescence – the first prong of a two-prong burden. The Petitioner is required to first establish that the alleged obsolescence exists.
56. The Petitioner offered only the testimony of its representative to the extent that the facility was vacant because the Petitioner moved the operation to its facility in Lebanon, Indiana. The Petitioner did not offer any evidence of any external factors, outside of the Petitioner’s control, which may have forced the relocation of operations. The testimony simply established that the Petitioner moved the operation of this facility to a larger facility in a different location. Because the Petitioner provided no evidence or testimony

regarding the reasons behind the relocation, the Petitioner has failed to show that the relocation and subsequent vacancy was caused by factors beyond the Petitioner's control.

57. The Petitioner did not present any evidence to establish the cause or causes of the alleged economic obsolescence. The Petitioner has failed to meet the first prong of the two-prong obsolescence burden. The calculations presented by the Petitioner in an attempt to quantify the claimed obsolescence are of no consequence in this matter because, again, the existence of obsolescence must first be established before the obsolescence can be quantified. The Petitioner has not established a prima facie case regarding its obsolescence claim.

*Issue 7 - Whether an effective age of 1971 should be assigned to the entire facility.*

58. The parties agreed and stipulated to the effective age of the facility. The Board accepts the parties' stipulation and agreement. In doing so, the Board does not decide the propriety of this agreement, either explicitly or implicitly. There is a change in the assessment as a result of the stipulation.

### **Summary of Final Determination**

*Determination of Issue 1 - Whether the buildings constructed in 1987 (1987 Construction) should be graded "C" rather than "C+2".*

59. The Petitioner, by a preponderance of the evidence, has met its burden and shown that the "C+2" grade assigned to the 1987 Construction is in error and that the correct grade should be "C". A change is made to the assessment as a result of this issue.

Determination of Issue 2 - *Whether the buildings constructed in 1963, 1965, and 1968 (Pre-87 Construction) should be valued under the GCK schedule with a “C+2” grade or, in the alternative, valued under the GCI schedule with a “D” grade.*

60. The Petitioner failed to present probative evidence of the alleged schedule selection error. The Petitioner also failed to present probative evidence of the alleged grading error. The Petitioner did not make a prima facie case regarding the issue of schedule selection or grade application. There is no change to the assessment as a result of this issue.

Determination of Issue 3 - *Whether all buildings should be depreciated from the thirty-year life expectancy table.*

61. The Petitioner failed to present evidence regarding the alleged error in the selection of life expectancy tables. The Petitioner has not made a prima facie case regarding this issue. There is no change to the assessment as a result of this issue.

Determination of Issue 4 – *Whether a negative base rate adjustment should be made to the base rates for the warehouse areas due to lack of partitioning.*

62. The parties agreed and stipulated to the issue of negative base rate adjustment due to lack of partitioning. The Board accepts the parties’ stipulation and agreement. In doing so, the Board does not decide the propriety of this agreement, either explicitly or implicitly. There is a change in the assessment as a result of this stipulation.

Determination of Issue 5 - *Whether the sprinkler pricing should be determined using the total gross square footage of the building.*

63. The parties agreed and stipulated to the issue of sprinkler pricing. The Board accepts the parties’ stipulation and agreement. In doing so, the Board does not decide the propriety

of this agreement, either explicitly or implicitly. There is a change in the assessment as a result of this stipulation.

Determination of Issue 6 – *Whether 36.7% economic obsolescence is warranted due to vacancy.*

64. The Petitioner failed to present probative evidence establishing the cause or causes of obsolescence. The Petitioner did not make a prima facie case regarding the issue of obsolescence. The Petitioner did not meet the first prong of the two-prong obsolescence burden. There is no change to the assessment as a result of this issue.

Determination of Issue 7 - *Whether an effective age of 1971 should be assigned to the entire facility.*

65. The parties agreed and stipulated to the effective age of the facility. The Board accepts the parties' stipulation and agreement. In doing so, the Board does not decide the propriety of this agreement, either explicitly or implicitly. There is a change in the assessment as a result of the stipulation.

The above stated findings of fact and conclusions of law 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 \_\_\_\_\_, 2004.

---

Commissioner, 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.**