STATE OF INDIANA
Board of Tax Review

RELIANCE ELECTRIC	)	On Appeal from the Bartholomew County
	)	Board of Review
Petitioner,	)	
	)	Petition for Review of Assessment, Form 131
v.	)	Petition No. 03-019-97-1-3-00003
	)	Parcel No. 1996193212000
BARTHOLOMEW COUNTY BOARD of REVIEW and COLUMBUS 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 an additional amount of obsolescence depreciation should be applied.
2. Whether instructions have been provided for determining the effects of location and use have on the value of real property.
3. Whether the valuation method used to assess the subject property is in violation of Article X of the Constitution of Indiana.

Findings of Fact

1. If appropriate, any finding of fact made herein shall be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-3, Landmark Appraisals, Inc. (Landmark), on behalf of Reliance Electric (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 petition was filed on March 9, 1998. The Bartholomew County Board of Review (County Board) gave notice of its decision on the underlying Form 130 petition on February 23, 1998.

3. Pursuant to Ind. Code § 6-1.1-15-4, an administrative hearing was held on October 19, 1999, before Hearing Officer Kay Schwade. Testimony and exhibits were received into evidence. Mr. Drew Miller with Landmark was present on behalf of the Petitioner. Mr. Robert Blessing was present at the hearing on behalf of the County Board. Ms. Katie Garvey and Ms. Diana Fear were present at the hearing on behalf of Columbus Township (Township).

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

   Petitioner's Exhibit A – The Assessment Review and Analysis for Reliance Electric prepared by Mr. Miller with Landmark containing the following documents:

   a. A copy of the Notice of Hearing.
   b. A statement regarding obsolescence depreciation.
   c. A statement pertaining to the causes of obsolescence depreciation.
   d. Mr. Miller's obsolescence depreciation calculation.
   e. A sketch of a building identified as the subject building.

f. Exterior and interior photographs of the subject building.

Petitioner's Exhibit B – A copy of an article entitled *Identifying, Measuring, and TreatingFunctional Obsolescence in an Appraisal* written by Michael D. Larson and taken from an unidentified publication.

Respondent's Exhibit A – A packet containing the following documents:

a. A copy of the original hearing notice dated July 8, 1998.
b. A copy of the subject Form 131 petition.
c. A copy of the underlying Form 130 petition.
d. The property record card for the subject property.

5. Due to conflicts in scheduling, the hearing time was postponed until 3:00 PM on October 19, 2000. The parties agreed to this time and signed an agreement waiving any additional notice of hearing. The agreement was entered into the record as Board Exhibit C.

6. The subject property is an industrial facility located in the city of Columbus, Columbus Township, Bartholomew County. The assessed value established by the County Board is $37,630 for land and $468,000 for improvements. The year of assessment under review is 1997. The Hearing Officer did not conduct an on-site inspection of the subject property.

7. Mr. Miller testified that the fee arrangement between the Petitioner and Landmark was on a contingency basis. Mr. Miller testified that he is the owner of Landmark.

Testimony and Evidence Regarding Obsolescence

8. Mr. Miller testified that the Petitioner and the local officials agree the subject property suffers a loss in value due to causes of obsolescence. He testified that the Petitioner disagrees with the 16% obsolescence depreciation applied by the local officials.

9. Mr. Miller testified that the subject property was originally constructed in 1888 and has had numerous additions over the years. He testified that 44% of the subject property was constructed in 1890 and prior. Mr. Miller testified that this construction time period was when there was little concern for heating and cooling efficiencies.

10. Mr. Miller testified that the subject property has multiple roof designs leaving the subject property with problem areas due to poor roof drainage and valleys. He testified that the flat, monitor, and saw tooth roof designs are out dated, high maintenance, and prone to leaking.

11. Mr. Miller testified that the add-on construction with mixed and outdated building materials resulted in an inefficient floor plan. He testified that the inefficient floor plan diminishes the subject property's desirability and marketability when compared to a modern facility.

12. Mr. Miller testified that the brick and concrete block construction with metal and wood framing materials is considered a superadequacy as well as obsolete.

13. Mr. Miller also testified that the subject property has a low land to building ratio at 1.25:1, which causes limited or restricted ingress and egress as well as access to portions of the subject property.

14. Mr. Miller further testified that, in today's market, a facility such as the subject property would be constructed with a more square, uniform shape with large open bays and minimal partitioning. He testified that a modern facility with better utility would be constructed as a less expensive light pre-engineered building.

15. Mr. Miller testified, referring to the article written by Michael Larson (Pet. Ex. B), that, to measure obsolescence, a comparison is made between the reproduction cost new of the subject building and the replacement cost new of a modern

facility. Mr. Miller testified that the obsolescence calculation submitted compares the reproduction cost from the subject property's property record card adjusted for grade to the reproduction cost of a replacement building using the square foot costs found in the General Commercial Kit (GCK) cost schedule.

16. Mr. Miller testified that the square foot cost of a replacement building using the GCK cost schedule is $9.93 per square foot. He testified that this is based on a perimeter-to-area ratio of 1 and a wall height of 24 feet with unfinished interior in 90% of the building and 10% finished interior. Mr. Miller testified that the square foot cost of the subject building using the reproduction cost adjusted for grade is $18.63 per square foot.

17. The calculation submitted by the Petitioner and prepared by Mr. Miller is a follows:

Replacement Cost:

Light Metal	$4.00
Insulation	.50
Steel girts and purlins	.30
Finish – 90% unfinished, 10% finished divided	3.12
Rigid steel frame	1.15
Subtotal	$8.01
Wall height adjustment	.92
Total	$9.93

Reproduction Cost	$18.63
Replacement Cost	9.93
Loss in Value	$ 8.70

Loss in Value	$ 8.70
Divided by Reproduction Cost	18.63
Equals Obsolescence Depreciation	46%

18. Mr. Miller testified that the $18.63 per square foot cost does not include the cost of the dock facilities, plumbing fixtures, and other exterior or special features currently found at the subject property. He also testified that the $9.93 per square foot cost for the replacement building does not include the costs for docks, plumbing fixtures, and other exterior or interior features. He testified that the docking facilities, plumbing fixtures, and so on would be the same for either building and, therefore, the cost of these items would not affect the outcome of the calculation. Mr. Miller testified that, if the dock facilities were needed, the cost could then be added in.

19. Mr. Miller testified that he did not consult with an engineer or an architect when determining the replacement facility demonstrated in his calculation of obsolescence.

Testimony and Evidence Regarding Instructions for Determining the Effects of Location and Use Have on the Value of Real Property

20. The Petitioner did not offer any testimony or evidence regarding this issue.

Testimony and Evidence Regarding the Constitutionality of the Method of Assessment

21. The Petitioner did not offer any testimony or evidence regarding this issue.

Conclusions of Law

1. The Petitioner is statutorily 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. See also the Forms 130 and 131 petitions. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative

step of the review process be completed. *State v. Sproles,* 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form130/131 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. "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. The taxpayer's burden in the State's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V,* 702 N.E. 2d at 1040.

12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State 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.

Credibility of Certain Evidence

18. Mr. Miller's testimony and calculations is the mainstay of evidence submitted in support of the Petitioner's claim in this appeal. The State considers this evidence, but the contingency fee arrangement between the Petitioner and Landmark calls into question the credibility of it. (The validity of this evidence is also questioned for other reasons set forth in Conclusions below.) Clearly, expert witnesses should not receive contingent fees. Courts agree that an expert witness whose fee is contingent upon the outcome of a case is improperly motivated and can not objectively inform the court on an issue before it. "It is the potentially adverse influence of the motivation to enhance its compensation that makes a contingent fee arrangement for an expert witness inappropriate." *City & County of Denver v. Board of Assessment*, 947 P.2d 1373, 1379 (Colo. 1997)(citing *New England Tel. & Tel. Co. v. Board of Assessors of Boston*, 392 Mass. 865, 468 N.E. 2d 263, 265 (1984)). "[A] bargain to pay compensation to an expert witness for the purpose of 'forming an opinion' is lawful 'provided that payment is not contingent on the success in litigation affected by the evidence." At this point, the State emphasizes the expert witness, Mr. Miller, is the owner of Landmark. Id (citing Arthur Linton Corbin, *Corbin on Contracts*, § 1430 (1962 & Supp. 1997)). *See also Wirth v. State Board of Tax Commissioners*, 613 N.E. 2d 874 (Ind. Tax 1993) (The contingent fee nature of the representative's agreement goes to the weight of the testimony.)

Conclusions Regarding Obsolescence

19. Approximately two years before the hearing on this appeal, the Tax Court held that obsolescence could be documented by using recognized appraisal techniques. *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801, 806 (Ind. Tax 1998*). Canal Square*, 694 N.E. 2d at 806. Landmark did not use such techniques to quantify obsolescence in this appeal. Because Landmark failed to quantify obsolescence, the State will not make any change to the County Board's initial assessment on this issue.

The Concept of Depreciation and Obsolescence

20. Depreciation is an essential element in the cost approach to valuing property. Depreciation is a loss in value from any cause except depletion, and includes physical depreciation and functional and external (economic) obsolescence[1]. *IAAO Property Assessment Valuation*, 153 & 154 (2nd ed. 1996); *Canal Square*, 694 N.E. 2d at 806 (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 practical concepts for estimating the extent of it in improvements being valued. 50 IAC 2.2-10-7.

21. Depreciation is a market value concept and the true measure of depreciation is the effect on the marketability and sales price. *IAAO Property Assessment Valuation* at 153. The definition of obsolescence in the Regulation, 50 IAC 2.2-10-7, is tied directly to that applied by professional appraisers under the cost approach. *Canal Square*, 694 N.E. 2d at 806. Accordingly, depreciation can be documented by using recognized appraisal techniques. *Id.*

22. Functional obsolescence is a loss in value resulting from changes in demand, design, and technology, and can take the form of deficiency (for example, only one bedroom), the need for modernization (for example, an outdated kitchen), or superadequacy (for example, overly high ceilings). *IAAO Property Assessment Valuation* at 154 & 155.

23. External or economic obsolescence is the loss of value resulting from factors external to the property (for example, national economic conditions). *IAAO Property Assessment Valuation* at 155.

[1] Depletion is the loss in value of property due to consumption of oil, gas, precious metals, and timber. *IAAO Property Assessment Valuation*, 153 (2nd ed. 1996).

24. Under the cost approach, there are five recognized methods used to measure depreciation, including obsolescence; namely: (1) the sales comparison method, (2) the capitalization of income method, (3) the economic age-life method, (4) the modified economic age-life method, and (5) the observed condition (breakdown) method. *IAAO Property Assessment Valuation* at 156.

Regardless of the approach used to value property, and in the simplest of terms, the principle of substitution underlies all approaches to quantifying obsolescence. *IAAO Property Assessment Valuation*, 24 and Chapter 8, 155 – 186.

Burden Regarding the Obsolescence Claim

25. 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).

26. 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*, 694 N.E. 2d at 1233. If one or both requirements are not met, obsolescence is denied.

Conclusions Regarding the Obsolescence Claim

27. The local assessing officials applied 16% obsolescence to the subject buildings. The State must find that the parties agree to the existence of obsolescence and, thus, the Petitioner is relieved from the burden of establishing causes of obsolescence. However, the Petitioner must still quantify the 46% obsolescence it seeks.

28. The Petitioner prepared a calculation entitled “Replacement cost v. Reproduction cost” to quantify 46% obsolescence depreciation (Pet. Ex. A). Using this calculation, the Petitioner compares a $18.63 square foot price to a $9.93 square foot price and concludes that the difference represents 46% obsolescence.

29. As stated above, there are five (5) recognized and accepted methods of measuring obsolescence. The calculation offered by the Petitioner does not represent any of these five (5) methods. To repeat, depreciation is a loss in value from any cause. The calculation presented by the Petitioner does not represent a loss in value. Rather, this calculation merely represents the percentage of difference between two (2) square foot rates by comparing reproduction cost to replacement cost.

30. The Petitioner points to the article by the Petitioner (Pet. Ex. B), presumably, to validate this calculation. However, the Petitioner did not explain how or why this article has any bearing on its claim. The Petitioner’s witness merely read a portion of this article into the record.

31. Although the concept of measuring obsolescence discussed in this article is not representative of any of the five (5) accepted and recognized methods of measuring obsolescence, the State makes note of the content of this article as it relates to Landmark’s calculation. Upon reading this article, it is clear that this article does not provide validation for the Petitioner’s calculation. Although the article submitted by the Petitioner speaks to the concept that functional obsolescence due to superadequacy is measured by the difference between reproduction cost new and replacement cost, the process of measuring functional obsolescence following the concept portrayed in the article is a far more painstaking process than the calculation prepared by the Petitioner.

32. The article submitted (Pet. Ex. B) goes into great detail regarding the steps to follow to identify, measure, and treat functional obsolescence specifically using the cost approach method of valuation. With regard to measuring functional

obsolescence, the article indicates that it is important to (1) critically compare the subject property to the modern replacement facility desired by the market; (2) consulting professionals (engineers, design specialists, or contractors) to determine the current design and construction standards or real estate professionals to learn what the market desires or expects; and (3) looking for examples illustrating the market preferences or determining the market replacement alternative. (Pet. Ex. B, pp. 50 – 51)

33. Thus, the concept for measuring functional obsolescence portrayed in the Petitioner's own evidence instructs the reader to perform a thorough research of the market and current design and construction standards to ascertain what the market demands as a replacement alternative to the subject property. Clearly, the process of measuring obsolescence portrayed by the Petitioner's evidence was not followed by the Petitioner.

34. While the Petitioner's witness spoke to what he believed an alternative replacement facility would be, the record is void of any evidence supporting this testimony. The Petitioner's witness admitted that he did not consult with any professionals in the field of real estate, engineering, or construction regarding a viable replacement facility for the subject property; therefore, the replacement facility portrayed in the Petitioner's faulty calculation lacks any factual support. For the reasons discussed above, even if the State considered the faulty calculation as valid, the State must view the testimony regarding the alternative replacement facility in light of the contingency fee arrangement between the Petitioner and Landmark and, due to the lack of any factual support, must give this testimony little weight.

35. The remaining evidence presented by the Petitioner (Pet. Ex. A) seemingly goes to showing that the alleged obsolescence exists. The photographs, the narrative concerning the causes of obsolescence, and the narrative discussing obsolescence all focus on the causes of obsolescence. Again, the Petitioner was relieved of this burden. The parties agree that the obsolescence exists. The

question then turns to the amount of obsolescence suffered by the subject property.

36. It bears repeating that, in obsolescence challenges, the Petitioner must meet a two-prong burden by establishing the existence of the alleged obsolescence and quantifying the obsolescence sought through recognized and accepted methods of measuring obsolescence. Because the parties agree that the subject property suffers from obsolescence, the Petitioner was only required to show that the subject property warranted the 46% obsolescence it claims rather than the 16% obsolescence applied by the local assessing officials. The Petitioner has failed to quantify the 46% obsolescence it seeks. The calculation presented does not represent any recognized and accepted method of measuring obsolescence.

37. The calculation presented simply compares reproduction cost to replacement cost. A percentage of difference between reproduction cost and replacement cost does not represent a loss in property value and therefore will not be considered.

38. For all of the above reasons, the Petitioner has failed to quantify the obsolescence it seeks. Therefore, the State will not make the obsolescence change sought by the Petitioner. No change is made to the assessment as a result of this issue.

Conclusions Regarding the Issues of Instruction Provided in the Regulation and Constitutionality

39. The Petitioner did not present any testimony or evidence regarding these issues.

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