

STATE OF INDIANA
Board of Tax Review

In the matter of the Petition for Review)
of Assessment, Form 131) Petition No. : 43-032-98-1-3-00008

Parcel No.: 004-017-020A

Assessment Year(s): 1998

Petitioner: Sun Metal Products, Inc.
 2156 North Detroit Street
 Warsaw, Indiana 46581

Petitioner Representative: Landmark Appraisals, Inc.
 By: Mr. M. Drew Miller
 7246 E. CR 800 North #A
 Syracuse, Indiana 46567

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issues

1. Whether the grade of the 89,542 square foot main building is excessive.
2. Whether obsolescence depreciation is warranted on the main building.
3. Whether the condition rating is overstated on the main building.
4. Whether the County Board provided a basis for the determination denying the opportunity for a meaningful review.
5. Whether the State Board has provided instructions for determining “the effect that location and use have on the value of the real property” nor for determining “the productivity of earning capacity of the land” for the subject as required in Ind. Code § 6-1-1-31-6.
6. Whether the valuation method used is in violation of Article X, Section I of the Indiana Constitution.

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, Mr. M. Drew Miller, Landmark Appraisals, Inc. (Landmark) filed a petition requesting a review by the State. The County Board of Review’s Final Determination on the underlying Form 130 is dated January 19, 1999. The Form 131 petition was filed on February 11, 1999.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was conducted on October 17, 2000, before Hearing Officer Dalene McMillen. Testimony and exhibits were received into evidence. Mr. M. Drew Miller represented the Petitioner. Ms. Darby L. Davis represented Kosciusko County. Ms. Kristy Mayer and Ms.

Danelle L. Solina represented Wayne Township.

4. At the hearing, the following documents were made part of the record and labeled as Board's Exhibits:

Board's Ex. A – A copy of the 131 petition.

Board's Ex. B – Form 117, Notice of Hearing on Petition.

Board's Ex. C – Request for additional evidence from Kosciusko County, dated October 17, 2000.

5. The Petitioner submitted the following documents at the hearing:

Petitioner's Ex. 1 – An "Assessment Review and Analysis" containing the following; (1) Form 117, Notice of Hearing on Petition; (2) summary of grade issue (two pages); (3) proposed grade calculations (two pages); (4) two pages on obsolescence depreciation and causes; (5) Obsolescence calculation; (6) nine photographs of the interior and exterior of the subject structure; (7) a copy of Sun Metal's property record card (PRC); (8) a copy of 50 IAC 2.2-11-2 "GCI" light manufacturing; and (9) a copy of Rule 15 page 25 unit-in-place schedule.

Petitioner's Ex. 2 – A copy of an article "Identifying, Measuring, and Treating Functional Obsolescence in an Appraisal" by Michael D. Larson, dated Spring 1999.

6. The Respondent submitted the following documents at the hearing:

Respondent's Ex. 1 – Proposed Finding submitted by Kosciusko County (three pages), a copy of Sun Metal's PRC, seven photographs of the exterior of the subject structure, a copy of the County Board minutes on Sun Metal, a

copy of the State Board Final Determination on Sun Metal for March 1, 1989, dated November 5, 1993 (six pages), three page of 50 IAC 2.2-11-4 “graded photographs”, a copy of CTB, Inc. PRC, a copy of 50 IAC 2.2-10-7 (b) and 50 IAC 2.2-12-2 “condition”, a copy of 50 IAC 2.2-10-7 “obsolescence”, and a copy of the Tax Court case of *Alcoils v. State Board of Tax Commissioners*, 49T10-9606-TA-69 & 49T10-9606-TA-71.

7. The subject property is located at 2156 North Detroit Street, Warsaw, Indiana 46581, Wayne Township, Kosciusko County.
8. The Hearing Officer did not conduct an on-site inspection of the subject property.
9. At the hearing, Mr. Miller testified that Landmark is paid on a contingency fee basis. Mr. Miller is a certified Level II Indiana Assessor/Appraiser.
10. At the hearing, the County requested additional time to provide the values for gas fired unit heaters for various use-type buildings. October 23, 2000, was established as the deadline date for the submission of this information.
11. After the hearing on October 17, 2000, the County provided the values for gas fired unit heaters for various use-type buildings. The information has been entered into the record and labeled Respondent’s Exhibit 2.

Issue No. 1 – Grade

12. Sun Metal is seeking a reduction in grade from “C-2” to “D-1” (70%).

13. The subject structure, which is a one-story light manufacturing, warehouse and industrial office building constructed with inferior quality materials and workmanship. The light manufacturing portion of the building lacks or only has minimal of the following features found in the model; reinforced concrete block wall, 25% vented steel sash windows, 2 coats of masonry paint, 8” concrete block walls with a density of 60 SF of floor per linear feet of partitioning, and gas fired, forced air. The light warehouse portion of the building lacks or only has minimal of the following features found in the model; reinforced concrete block walls and 15% terrazzo floors. (Petitioner’s Ex. 1 & *Miller testimony*)

14. In an attempt to quantify grade for 80% of the building, the Petitioner submitted the GCK cost schedules vs. County Board reproduction cost per square foot. The GCK model indicated the cost of the subject structure to be \$2.46/SF for office and \$8.87/SF for the plant for a total square foot price of \$11.33, whereas the County Board base reproduction cost is \$19.33/SF. The cost difference between the “GCK” and the County reproduction is 41% or a grade of “D-2” or 60%.

For the remaining 20% of the building the Petitioner submitted the base price for a “GCI” light manufacturing model of \$22.25 less the cost for partitioning \$2.25, heating \$0.90 from Schedule C of the Regulation and the cost for steel sash windows \$2.47 from the unit-in-place schedule for a base price of \$16.38. The model base price of \$22.25 minus the adjusted base price of \$16.38 equals \$5.87 difference, the \$5.87 divided by the \$22.25 equals 26% difference or a grade factor no higher than “D” or 80%.

In summary:

80% of the building @ 60% grade =	48%
20% of the building @ 80% grade=	<u>16%</u>
Equals	64%
Or a grade factor not to exceed “D-1” or 70%.	

(Petitioner's Ex. 1 & *Miller testimony*).

15. The "C-2" grade of the subject structure is a composite of the various portions of the structure. (*Respondent's Ex. 1 & Davis testimony*).

Issue No. 2 – Obsolescence

16. The subject is an 89,542 square foot building with the following use-types; light manufacturing, light warehouse, and two industrial offices.
17. The subject property is receiving twenty-five percent (25%) obsolescence currently.
18. The Petitioner contends the property suffers a loss in value due to functional obsolescence. Inefficient floor plan, mixed building materials, numerous additions to the building, corrosion, and varying roof lines contribute to the functional obsolescence. (*Miller testimony*)
19. Mr. Miller presented an obsolescence analysis that quantified functional obsolescence by developing a replacement cost per square foot from the "GCK" schedules in the Regulation with no obsolescence and comparing it to reproduction cost taken from the property record card converted to a square foot value; the comparison resulted in a 46% functional obsolescence factor. Therefore the Petitioner is requesting an additional 21% obsolescence factor be applied to the structure. (Petitioner's Ex. 1)
20. The County contends the Petitioner did not present any evidence to the County Board on the issue obsolescence depreciation. (*Respondent's Ex. 1*)

Issue No. 3 – Condition Rating

21. The Petitioner stated that the nine photographs submitted demonstrate that the condition of the building is fair rather than average. (Petitioner’s Ex. 1 & Miller’s testimony).

Issue No. 4 – Whether the County Board

Provided a basis for their Determination (Form 115)

Issue No. 5 – The Effect Location and Use Have on Real Property

Issue No. 6 – The Valuation Method Used is in Violation

of the Indiana Constitution

22. The Petitioner did not develop this issue at the hearing or include it in its Brief, Petitioner’s Ex. 1.

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 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. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.

9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).
10. Taxpayers are expected to make factual presentations to the State 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 even though the taxpayer demonstrates flaws in it).

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

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property's market value will fail.
16. Although the Courts have declared the cost tables and certain subjective elements of the State'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 are the mainstay of evidence submitted in support of Sun Metal's claims in this appeal. The State Board considers this evidence, but the contingency fee arrangement between Sun Metal and Landmark calls into question the credibility of it. (The validity of this evidence is also questioned for other reasons as set forth in the 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 success in litigation affected by the evidence.'" At this point, the State Board 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).

C. Issue No. 1 – Grade
Regulatory and Case Law

19. “Grade is defined as the classification of an improvement based on certain construction specifications and quality of materials and workmanship.” 50 IAC 2.2-1-30.
20. 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.
21. The determination of the proper grade requires assessors to make a variety of subjective judgments regarding variations in the quality of materials and workmanship and the quality of style and design. *Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d 1058, 1064 (Ind. Tax 1993). For assessing officials and taxpayers alike, however, the Manual provides indicators for establishing grade. The text of the Manual (see 50 IAC 2.2-10-3), models and graded photographs (50 IAC 2.2-11-4.1), assist assessors in the selection of the proper grade factor.
22. The major grade classifications are “A” through “E”. 50 IAC 2.2-10-3. The cost schedules (base prices) in the Regulation reflect the “C” grade standards of quality and design. The following grade factors (or multipliers) are assigned to each major grade classification:
- | | |
|-----------|------|
| “A” grade | 160% |
| “B” grade | 120% |
| “C” grade | 100% |
| “D” grade | 80% |

“E” grade 40%
50 IAC 2.2-7-6 (e).

23. Intermediate grade levels ranging from A+10 through E-1 are also provided for in the Regulation to adequately account for quality and design features between major grade classifications. 50 IAC 2.2-10-3 (c).
24. The determination of the proper grade factor requires assessors to make a variety of subjective judgments regarding variations in the quality of materials and workmanship and the quality of style and design. *Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d 1058, 1064 (Ind. Tax 1993). The selected represents a composite judgment of the overall quality and design. *Mahan*, 622 N.E. 2d at 1064; 50 IAC 2.2-7 (f).

Administration of the Existing System
And the Request for Cost information

25. The Tax Court invalidated subjective elements of the Regulation, e.g., grade, holding that the Regulation did not contain ascertainable standards. *Town of St. John III* at 388. Nevertheless, the Indiana Supreme Court and the Tax Court did not throw out the whole system immediately. *Town of St. John V*, 702 N.E. 2d at 1043; *Town of St. John III*, at 398 & 99; *Whitley*, 704 N.E. 2d at 1121. Instead, the property tax system is now administered in accordance with the current, true tax value system and existing law. *Id.*
26. The taxpayer has the responsibility to provide probative and meaningful evidence to support a claim that the assigned grade factor is incorrect. *Bernacchi v. State Board of Tax Commissioners*, 727 N.E. 2d 1133 (Ind. Tax 2000); *Hoogenboom-*

Nofziger v. State Board of Tax Commissioners, 715 N.E. 2d 1018 (Ind. Tax 1999); *Whitley, supra*.

27. True tax value does not equal market value. Ind. Code § 6-1.1-31-6. True tax value does not attempt to determine the actual market value for which a property would sell if it were offered on the open market. Nevertheless, true tax value's *method* for valuing structures is the same as one of the well-accepted methods for determining fair market value – reproduction cost. IAAO Property Assessment Valuation, 127 (2nd ed. 1996). Common appraisal techniques are permissible in assessing property under the current property tax system even when such techniques are rooted in market value. *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801 (Ind. Tax 1998).
28. The cost tables in the Regulation are at the heart of true tax value's method for determining values. The cost schedules effective for the 1995 general reassessment reflect 1991 reproduction costs based on market information derived from Marshall Valuation Services price tables. 50 IAC 2.2, Forward at i; *Town of St. John III* at 373, n. 5.
29. The State Board uses cost information provided by taxpayers as a tool for quantifying grade level by comparing adjusted cost to the cost schedule in the Regulation. See Garcia Remand Findings and Conclusions, petition no. 71-026-93-1-5-00021 (State Board of Tax Commissioners July 22, 1998). In general terms, the taxpayer's cost information is trended up or down to arrive at a comparison between the adjusted construction cost of the home under appeal and construction cost in the Regulation.

30. Had the actual construction cost information been provided, the State Board would have used an adjusted cost calculation in this appeal just like it has done in other appeals.
31. The Tax Court demands quantification techniques for grade application and the State Board reasonably decides that adjusted cost calculations are the best way to answer that demand.
32. Using an adjusted cost calculation for the structure under appeal may or may not have supported Petitioner's challenge in this appeal. Notions as to what such a calculation would have revealed constitute mere speculation and do not, in any way, shape the decision made in these Findings and Conclusions.

Discussion of Petitioner's Evidence

33. The Petitioner testified that the appropriate grade and design factor for the subject structure is "D-1". The conclusion is based upon features lacking from the subject property that are present in the model.
34. There are two methods to adjust an improvement's assessment for deviations from the model. The first is to adjust the grade of the subject. "Where possible, this type of an adjustment should be avoided because it requires an assessing official's subjective judgment." *Clark v. State Board of Tax Commissioners*, 742 N.E. 2d 46, 49 (Ind. Tax. 2001) (*Clark II*). *See also Whitley*.
35. "Under some circumstances, an improvement's deviation from the model used to assess it may be accounted for via a grade adjustment." However, the evidence presented must explain how and to what extent the subject deviates from the model, why those deviations deserve an adjustment, and why a subjective (as

opposed to objective) adjustment is appropriate. *Quality Farm and Fleet, Inc. v. State Board of Tax Commissioners*, 2001 WL 419066 (Ind. Tax 2001).

36. The second, and preferred method, “is to use separate schedules that show the cost of certain components and features present in the model.
37. The Petitioner must identify the model used to assess the improvement. The Petitioner must also demonstrate whether the current grade does not already account for lower construction cost due to these features. *Miller Structures v. State Board of Tax Commissioners*, 2001 WL 422991 (Ind. Tax 2001). Accordingly, the Petitioner must show how the subject deviates from the model, and quantify how the alleged deviations affect the subject assessment.
38. Petitioner’s representative used other “methods” of “quantifying” grade – their “GCK model vs. GCI model analysis” and their “light manufacturing base price (per County) vs. the adjusted light manufacturing based price with adjustments for lack of partitioning, heat and steel sash windows”. Both “methods” are flawed and do not constitute probative evidence of error.
39. The Petitioner attempted to quantify the grade by comparing the cost difference between a building being priced from the “GCK” cost schedule and a building being priced using the “GCI” cost schedule in the Regulation. The Petitioner testified that the subject building was more representative of the pre-engineered “GCK” structure, however the Petitioner failed to provide any evidence or documentation to substantiate that the subject structure is incorrectly classified by the County or that the subject structure is in fact a pre-engineered structure. The second method of subtracting items from the light manufacturing base price is inconclusive as the Petitioner failed to complete the calculation by accounting for the construction material that was used in place of the steel sash windows.

Further the “methods” used does not develop a case for the Petitioner, but are conclusory statements. Conclusory statements are not probative evidence. *CDI, Inc. v. State Board of Tax Commissioners*, 725 N.E. 2d 1015, 1019 (Ind. Tax 2000).

40. In their attempt for a grade reduction, the Petitioner presented exterior and interior photographs of the structure under appeal. The Petitioner’s contention that the photographs demonstrate components of the structure that necessitates a grade reduction is a conclusion that is unsupported by factual evidence.
41. Lastly, identifying comparable properties and demonstrating that the property under appeal has been treated differently for property tax purposes can show error in assessment.
42. The Petitioner did not credibly identify properties that are similarly situated to the property under appeal and did not credibly establish disparate tax treatment between the subject property and other similarly situated.
43. When a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State Board can properly refuse to consider the evidence. *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)).
44. For all reasons set forth above, the Petitioner failed to meet his burden of proof in this appeal. Accordingly, no change is made in the assessment as a result of this issue.

D. Issue No. 2 – Obsolescence

The concept of depreciation and obsolescence

45. 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.
46. The elements of functional and economic obsolescence can be documented using recognized appraisal techniques. *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801 (Ind. Tax 1998). These standardized techniques enable a knowledgeable person to associate cause and effect to value pertaining to a specific property. *Id.*
47. Recognition of obsolescence beyond physical depreciation is a profession that requires supportable evidence. This recognition of cause and effect may be supported by use of some of the following techniques and methods: (1) the paired data analysis, (2) a capitalization of rent loss, (3) the breakdown method, (4) the market extraction method, and (5) the age-life method. Even when fully prepared to the requirements acceptable in professional appraisal standards and ethics, these techniques and methods are considered support approaches in justifying and documenting obsolescence.
48. The use of any singular technique or method identified above without the use of other approaches to value would be considered unethical and incomplete.
49. As stated in an excerpt from *The Appraisal of Real Estate*, Eleventh Edition, published by the Appraisal Institute of America: the breakdown method is the most comprehensive and detailed way to measure depreciation. When used in

conjunction with market extraction and age-life methods, the breakdown method desegregates a total depreciation estimate into its component parts.

Furthermore, there are five primary techniques used to calculate the different types of depreciation in the breakdown method. These include estimation of cost to cure, application of an age-life ratio, application of the functional obsolescence procedure, analysis of paired data, and capitalization of rent loss. Cost to cure is a measure of both curable physical deterioration and curable functional obsolescence. An age-life ratio is used to measure curable physical deterioration and incurable physical deterioration for both short-lived and long-lived components. The functional obsolescence procedure may be used to estimate all types of functional obsolescence. Analysis of paired data and capitalization of rent loss may be used to estimate incurable functional obsolescence caused by a deficiency as well as external obsolescence.

50. As also stated in *The Appraisal of Real Estate*, Eleventh Edition: External factors frequently affect both the land and building components of a property's value. In addition, when market data are studied to develop an estimate of external obsolescence, it is important to isolate the effect of the obsolescence on land value from the effect on the value of the improvements. The two primary methods of measuring external obsolescence are paired data analysis and the capitalization of rent loss. Paired data analysis is a useful technique when market evidence is available.

51. *The Appraisal of Real Estate*, Eleventh Edition, provides that physical deterioration is caused by wear and tear from regular use, the impact of the elements, and the effect of normal aging. Careful maintenance can slow the process of deterioration and neglect can accelerate it. Physical deterioration may be curable or incurable. The three main physical components of a building are items of deferred maintenance, short-lived components, and long-lived

components. All physical components in a building fall into one of these three categories.

52. *The Appraisal of Real Estate*, Eleventh Edition, states that a flaw in the structure, materials, or design of the improvement causes functional obsolescence. It is attributable to defects within the property, as opposed to external obsolescence, which is caused by external factors. Functional obsolescence may be curable or incurable. Functional obsolescence can be caused by a deficiency, which means that the subject property is below standard in respect to market norms. It can also be caused by a superadequacy, which means that the subject property exceeds market norms. There are five types of functional obsolescence: curable functional obsolescence caused by a deficiency requiring an addition (installation) of a new item, curable functional obsolescence caused by a deficiency requiring the substitution (replacement) of an existing item ("curable defect"), curable functional obsolescence caused by a superadequacy which is economically feasible to cure, incurable functional obsolescence caused by a deficiency, and incurable functional obsolescence caused by a superadequacy.
53. According to *The Appraisal of Real Estate*, Eleventh Edition, external obsolescence is a loss in value caused by factors outside of the subject property. This can be an economic factor, such as an oversupplied market or very expensive financing, or a locational factor, such as poor sitting or proximity to a negative environmental influence. External obsolescence is generally incurable on the date of the value estimate, but this does not mean that it is permanent. External influences can affect both the site and the improvements. When this is the case, the loss in value attributable to the externality may have to be allocated between the site and the improvements.

54. *The Appraisal of Real Estate*, Eighth Edition, provides that an appraiser can use either of two methods to measure external obsolescence, namely, (1) capitalizing the rent loss attributable to the negative influence, or (2) comparing sales of similar properties, some of which are subject to negative influence and some that are not. If pertinent sales data are abundant, the second method is preferable to the first.
55. *The Appraisal of Real Estate*, Eighth Edition, provides that external influences can cause a loss in value to any property. In the cost approach, the total loss in value due to such influences is allocated between the land and the improvements. Only the portion of the loss that is applicable to improvements is deducted from the current reproduction or replacement cost as external obsolescence. The effect of external influences on land value is calculated in the land valuation.

Burden regarding the obsolescence claim

56. 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).
57. Regarding obsolescence, the taxpayer has a two-prong burden of proof: (1) the taxpayer has to prove that obsolescence exists, and (2) the taxpayer must quantify it. *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1233 (Ind. Tax 1998).

The evidence submitted

58. The Petitioner contended that the property should receive an additional 21% obsolescence depreciation. The subject property is currently receiving 25% obsolescence depreciation.
59. In support of the claim for obsolescence, the Petitioner opined that the property suffers a loss in value due to various causes of obsolescence depreciation. The causes of functional obsolescence are: (a) inefficient floor plan, (b) mixed building materials, (c) numerous additions to the building, (d) corrosion, and (e) varying rooflines. (Miller's testimony)
60. Mr. Miller presented an obsolescence analysis that quantified the functional obsolescence by developing a replacement cost per square foot from the "GCK" schedules in the Regulation with no obsolescence and comparing it to reproduction cost taken from the property record card converted to a square foot value; this comparison resulted in a 46% functional obsolescence factor.

The reliability and probity of the evidence

61. Before applying the evidence to reduce the contested assessment, the State Board must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.
62. Under *GTE North, Inc., supra, and Thornton Telephone Company v. State Board of Tax Commissioners*, 629 N.E. 2d 962,965 (Ind. Tax 1994), the State Board may give due consideration to the reliability of studies presented by a taxpayer, but must provide an explanation if it finds the studies unreliable. Included in this requirement is the prescription by the Tax Court in *GTE North* that the State

Board defines what standards it will use to define whether a study or mode of analysis is "recognized" or "accepted". *GTE North, Inc.*, 629 N.E. 2d at 888.

63. The United States Supreme Court has defined how a study or analysis becomes recognized or accepted. In *Daubert v. Merrill Dow Pharmaceuticals*, 113 S. Ct. 2786 (1993), the Court addressed whether scientific evidence has sufficient indicia of reliability to allow its admission under the Federal Rules of Evidence. Although the State Board is accorded broad discretion to consider such evidence as it deems pertinent (see IC 4-22-5-1), and therefore it is not expressly subject to formal rules of evidence, the State Board finds the analysis of relevancy presented in *Daubert*, which was cited with approval by the Indiana Supreme Court in *Steward v. State*, 652 N.E. 2d 490 (Ind. 1995), particularly instructive to the State Board in determining what relevancy to accord petitioner's calculations for purposes of weighing its evidentiary value.

64. In *Daubert*, the Court held that to be relevant, "[p]roposed testimony must be supported by appropriate validation - i.e. 'good grounds', based on what is known". 113 St. Ct at 2795. In order to determine whether scientific or technical evidence is based on good grounds, a court or administrative agency must determine "whether it can be (and has been) tested. 'Scientific methodology today is based on generating hypotheses and testing them to see if they can be falsified; indeed, this methodology is what distinguishes science from other fields of human inquiry'." *Id.* At 2796 (citing Green, *Expert Witnesses and Sufficiency of Evidence in Toxic Substances Litigation: The Legacy of Agent Orange and Bendectin Litigation*, 86 NW. U. L. Rev. 643, 645 (1992)). The Court went on to state the "[a]nother pertinent consideration is whether the theory or technique has been subjected to peer review and publication...submission to the scrutiny of the scientific community is a component of 'good science', in part because it increases the likelihood that substantive flaws in methodology will be detected."

Id. at 2797. Furthermore, the general acceptance of a particular theory can be important in weighing its relevance. *Id.*

65. In addition to the general requirements for relevancy discussed above, both the United States Supreme Court and the Supreme Court of Indiana have recognized that scientific evidence can be reliable for one purpose and not another, and that to be relevant to a particular inquiry, the proponent of the evidence must establish a valid scientific connection between the theory and the specific facts of the case. *Daubert*, 113 S. Ct. at 2796; *Steward*, 652 N. E. 2d at 498.
66. The State Board believes that the Petitioner's evidence is meant to be offered as scientific evidence within the meaning of that term as defined by *Daubert* and *Steward*. Statistical analysis in the realms of finance and economics is a sophisticated inquiry and well-regarded studies satisfy the requirements of "good science" as described in *Daubert*. A number of federal courts, which have considered this issue since *Daubert*, have agreed. See *F.D.I.C. v. Suna Associates*, 80 F. 3d 681,687 (2nd Cir. 1996) (valuation of land); *Frymire-Brinati v. KPM Peat Marwick*, 2F. 3d 183, 186088 (7th Cir. 1993) (accounting and finance); *Joy v. Bell Helicopter Textron, Inc.*, 999 F. 2d 549, 569-70 (D.C. Cir. 1993) (economics); *Kurnez v. Honda North America, Inc.*, 166 F.R.D. 386,388 (D.C. Mich. 1996) (same).
67. Because of the informality of the State Board's proceedings it would be impractical to require exhaustive determinations regarding the admissibility of evidence at the time of administrative hearings. Further, it would be unduly burdensome and time-consuming for the State Board to require taxpayers and local taxing officials alike to participate in such determinations at the hearings.

Therefore, the State Board's general position is to admit the evidence proffered, and to consider the issue of relevancy in the weighing of the evidence.

68. In addition to the factors applied by the courts to establish reliability, the State Board will consider a number of additional factors to determine the relevancy of evidence regarding obsolescence. The first factor is whether the alleged maladies of the property actually lead to a loss of value as required by 50 IAC 2.2-10-7(e). Evidence of such loss of value may be based on the assessor's observations of the property, statistical evidence establishing a correlation between the faults of the property and its value, or from anecdotal evidence if sufficiently reliable. In many cases there will be causes of obsolescence that cannot be easily seen by the assessor. In these cases, it is incumbent on the taxpayer to establish a link between the evidence and the loss of value. For statistical evidence this may be established by providing sufficient evidence of correlation of the evidence to value. For anecdotal evidence establishing reliability is more difficult. Statements by the taxpayer or consultant regarding the value of the property are inherently unreliable unless they can be confirmed either by other statements or by the opinions of impartial observers.

Evaluation of the evidence

69. The obsolescence analysis prepared by Mr. Miller is based on the comparison between the subject and a replacement facility of modern design. The calculation is not based on validated and supported data. In calculating the percentage of obsolescence due functional obsolescence, the Petitioner has taken the difference between the reproduction cost square footage of the existing building and replacement cost square footage of the replacement building and expressed this difference as a percentage, 46%. The Petitioner then attempts to

equate this percentage of difference to a loss in value, or obsolescence, of 46%. This methodology is incorrect.

70. Testimony offered by Mr. Miller has not provided sufficient evidence to allow the State Board to determine the “replacement building”. Sufficient evidence would have included a drawing, accompanied by a narrative, showing how the product would flow, and how this would cure the functional obsolescence. From this drawing, the Petitioner should have calculated the cost new of the “ideal building” and compared it to the cost new of the existing facility to determine the dollar amount of obsolescence. The Petitioner does not provide enough evidence to calculate functional obsolescence using the correct methodology.
71. The requirement to prove that obsolescence exists is greater than merely copying definitions from textbooks and 50 IAC 2.2. Mr. Miller presented no evidence of any comparable properties to establish that the property under appeal has experienced any diminished value. The unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
72. The Petitioner has failed to present probative evidence to establish a prima facie case.
73. For all reasons set forth above, the State Board denies the request for an additional 21% obsolescence. No change is made in the assessment as a result of this issue.

E. Issue No. 3 – Condition Rating

74. Condition is a judgment of the physical condition of the item relative to its age. Average condition indicates the structure is an average condition relative to its

age, or the condition in which it would normally be expected. Fair condition indicates the structure is somewhat worse than would normally be expected. 50 IAC 2.2-10-5 (d)(8).

75. The estimate of depreciation is an essential element in the cost approach. An estimate must be predicated on an understanding of the nature, components, and theory of depreciation, as well as practical concepts for estimating its extent in improvements being valued. Physical depreciation is evidenced by wear and tear, dry rot, cracks or structural defects. 50 IAC 2.2-10-7 (a).
76. Condition, the degree of wear and tear displayed by a building, is determined relative to the age of the building. Condition measures the remaining usefulness of the building based on its age. 50 IAC 2.2-10-7 (b).
77. Mr. Miller testified that the photographs submitted demonstrate that the building is in fair condition. (Petitioner's Ex. 1)
78. It is unclear why or how the photographs (Petitioner's Ex. 1) demonstrate below average condition relative to age. It was the Petitioner's responsibility to "link" these photographs with such an explanation and the Petitioner did not do so.
79. Taxpayers are expected to make detailed factual presentations to the State Board regarding alleged errors in assessment. *Id.* "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)).
80. 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).

81. For all reason set forth above the Petitioner failed to present a prima facie case for lowering the condition from average to fair. Accordingly, no change is made in the assessment as a result of this issue.

F. Issue No. 4 – Whether the County Board

Provided a basis for their Determination (Form 115)

Issue No. 5 – The Effect Location and Use Have on Real Property

**Issue No. 6 – The Valuation Method Used is in Violation
of the Indiana Constitution**

82. These issues were not developed. No change in the assessment is made as a result of 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.

Chairman, Indiana Board of Tax Review