

**STATE OF INDIANA
Board of Tax Review**

THEODORE SMITH,)	On Appeal from the St. Joseph County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petition for Review of Assessment, Form 131
)	Petition No. 71-002-00-1-4-00210
ST. JOSEPH COUNTY PROPERTY)	Parcel No. 23-1040-223605
TAX ASSESSMENT BOARD OF)	
APPEALS and CENTER TOWNSHIP)	
ASSESSOR,)	
)	
Respondents)	

Findings of Fact and Conclusions of Law

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

Issue

Whether economic obsolescence depreciation should be applied to the subject property?

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. Theodore Smith filed a Form 131 petition requesting a review by the Appeals Division. The Form 131 petition was filed on April 24, 2001. The St. Joseph County Property Tax Board of Appeal's (PTABOA) Notification of Final Assessment Determination on the underlying Form 130 petition was issued on March 28, 2001.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on July 19, 2001 before Hearing Officer Patti Kindler. Testimony and exhibits were received into evidence. Mr. Smith, President and Ms. Alice Edington, Vice President and Counsel represented the Petitioner. Mr. Danny Hawkins and Mr. Ronald Dolezan, Real Estate Appraisers also were present on behalf of the Petitioner. Mr. Kevin Klaybor represented the St. Joseph County PTABOA. Mr. Ralph J. Wolfe and Ms. Phyl Olinger represented Center Township.

4. At the hearing, the subject Form 131 petition was made a part of the record and labeled Board Exhibit A. Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following exhibits were submitted to the State:
Petitioner's Exhibit 1 – Taxpayer's Grounds for Appeal, Sections 2 and 3
Petitioner's Exhibit 2 – External obsolescence defined, comparable rents with
map
Petitioner's Exhibit 3 – Limited Appraisal Restricted Report, dated 3/21/01
Petitioner's Exhibit 4 – Copies of evidence submitted by Petitioner at St. Joseph County PTABOA hearing, including: Taxpayer's Grounds for Appeal, Projected Operating Statement, comparable rentals, sales contract, promissory note, legal description,

and appraisal definitions

Petitioner's Exhibit 5 – Letter dated February 9, 2001 faxed to PTABOA with
census reports for businesses for South Bend

Petitioner's Exhibit 6 – Minutes and Findings and Conclusions from PTABOA
hearings

Respondent's Exhibit 1 – Copy of subject property record card (PRC)

5. The assessed values of the subject property as determined by the PTABOA and agreed to by the parties to the appeal are:
Land: \$101,100 Improvements: \$467,930 Total: \$569,030.
6. The subject property is assessed as a general retail building located at 1911 Ireland Road, South Bend, Center Township, St. Joseph County.
7. The Hearing Officer did not view the subject property.

Whether economic obsolescence depreciation should be applied to the subject property.

8. The Petitioner purchased the vacant supermarket property, which had been on the market for several years, for \$770,000 on June 30, 1997 as a potential investment property. *Smith Testimony & Petitioner's Exhibit 4.*
9. After the property was purchased, the Petitioner did approximately \$170,000 in improvements to divide the large building into three (3) lease units, making the total investment in the property \$940,000. According to the PRC true tax value of the subject's land and improvements for 2000 is \$1,707,100. *Petitioner's Exhibit 1 & Respondent's Exhibit 1.*
10. At the time of the purchase, the subject property was receiving 35% economic

obsolescence depreciation. The Township had applied the obsolescence in 1997 because the property was vacant. *Smith and Wolfe testimony & Respondent's Exhibit 1.*

11. In the tax year 2000, when the property was fully occupied, the Township removed the 35% obsolescence factor and issued a Form 11 to the Petitioner. This change in the assessment prompted the current appeal. *Respondent's Exhibit 1 & Board Exhibit A.*
12. Petitioner contends that the Township did not properly understand the definition of economic obsolescence and erroneously applied it in the past for vacancy, although it should have been applied for the subject's location in a declining retail neighborhood. *Edington testimony & Petitioner's Exhibit 1.*
13. Petitioner contends that the removal of the 35% obsolescence factor by the Township for the reason that the building is now occupied was inappropriate since occupancy of the building should not be a factor in allowing economic obsolescence. *Edington testimony & Petitioner's Exhibit 1.*
14. Petitioner contends that economic obsolescence of 35% is warranted because the property is in a declining retail neighborhood resulting in low lease rates for the subject property. Economic obsolescence is evident in the subject's neighborhood based on the subject purchase price and appraised value compared to the true tax value, the large number of vacant businesses nearby, U.S. Census Bureau report, and the high ratio of taxes to rent per square foot. *Smith testimony & Petitioner's Exhibit 1.*
15. Respondent contends that the subject neighborhood is not declining. There are several new retail facilities locating there. *Wolfe Testimony.*

Conclusions of Law

1. Under the law applicable to these proceedings, 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 (Statutes were amended in 2001 but amendments do not apply). 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 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.

Whether economic obsolescence depreciation should be applied to the subject property.

a. The Concept of Depreciation and Obsolescence

17. Depreciation is an essential element in the cost approach to valuing property. Depreciation is the loss in value from any cause except depletion, and includes physical depreciation and functional and external (economic) obsolescence. IAAO Property Assessment Valuation, 153 & 154 (Second Edition, 1996); *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801, 806 (citing Am. Inst. of Real Estate Appraisers, *The Appraisal of Real Estate*, 321 (Tenth Edition, 1992)).
18. 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.

19. 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 (Ind. Tax 1998). Accordingly, depreciation can be documented by using recognized appraisal techniques. *Id.*
20. The elements of functional and economic obsolescence can be documented using recognized appraisal techniques. *Id.* These standardized techniques enable a knowledgeable person to associate cause and effect to value pertaining to a specific property.
21. In the case at bar, the Petitioner requests the application of economic (external) obsolescence depreciation. However, in the Petitioner's calculations in Petitioner's Exhibit 1, the Petitioner shows functional and economic obsolescence of 35%.
22. Economic or external obsolescence is the loss in value as a result of an impairment in utility and desirability caused by factors external to the property and is generally deemed to be incurable. Economic obsolescence can be caused by a variety of factors such as changes in the highest and best use of a property due to market shifts or governmental actions, restrictions on income, zoning, neighborhood decline, lack of property demand, and national economic conditions. IAAO Property Assessment Valuation at 154 & 155.
23. 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.

Burden Regarding the Obsolescence Claim

24. It is incumbent on the taxpayer to establish a link between the evidence and the loss of value due to obsolescence. After all, the taxpayer is the one who best knows his business and it is the taxpayer who seeks to have the assessed value of his property reduced. *Rotation Products Corp. v. Department of State Revenue*, 690 N.E. 2d 795, 798 (Ind. Tax 1998).
25. Regarding obsolescence, the taxpayer has a two-prong burden of proof: (1) the taxpayer has to prove 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).
26. “[I]n advocating for an obsolescence adjustment, a taxpayer must first provide the State Board with probative evidence sufficient to establish a prima facie case as to the causes of obsolescence.” *Champlin Realty Company v. State Board of Tax Commissioners*, 745 N.E. 2d 928, 932 (Ind. Tax 2001).
27. The identification of causes of obsolescence requires more than randomly naming factors. “Rather, the taxpayer must explain how the purported causes of obsolescence cause the subject improvements to suffer losses in value.” *Champlin*, 745 N.E. 2d at 936.
28. “Without a loss of value, there can be no economic obsolescence.” *Pedcor v. State Board of Tax Commissioners*, 715 N.E. 2d 432, 438 (Ind. Tax 1999).
29. “Where there is no cause of obsolescence, there is not obsolescence to quantify.” *Id.*, citing *Lake County Trust v. State Board of Tax Commissioners*, 694 N.E. 2d 1253, 1257 (Ind. Tax 1998).

c. Causes of Obsolescence

30. The Petitioner contends that economic obsolescence is warranted for the following reasons:
 - a. Misapplication of obsolescence due to vacancy by the Township and the subsequent removal of the amount applied;
 - b. The need for the correct application of obsolescence due to a declining neighborhood;
 - c. The sales price and appraised value not equaling the true tax value;
 - d. The large number of vacant businesses in the same area as the subject property;
 - e. The U.S. Census Bureau report; and
 - f. The high ratio of taxes to rent per square foot.

31. Before applying the evidence to reduce the contested assessment, the State must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.

d. The Evidence Submitted

32. Prior to the subject property being purchased by the Petitioner in June 1997, the Township had applied an obsolescence factor to the subject property of 25% in 1996 and 35% in 1997 and 10% to the paving. The obsolescence factor was applied to the subject property due to vacancy.

33. After the Petitioner purchased the property, the Township removed the obsolescence factor once the subject property was fully occupied. The Petitioner opines the Township does not understand the definition of obsolescence and applied obsolescence for the wrong reason (vacancy). The Petitioner contends that vacancy is not a cause for economic obsolescence.

34. Though the Petitioner states the Township applied the obsolescence factor for the *wrong reason* and does not *understand the definition of obsolescence*, the

Petitioner requests the same 35% obsolescence be reinstated but for a different cause (declining neighborhood). One finds it curious how the same amount of obsolescence wrongly applied, would then be the same amount for an entirely different reason (cause).

35. As stated in Conclusions of Law ¶23, external obsolescence is caused by a variety of factors, one of which is lack of property demand. A high vacancy rate may reflect a lack of property demand.
36. The Petitioner submits a U.S. Census Bureau report (Petitioner's Exhibit 5) for the time periods of 1994 and 1997. The Petitioner testified that these reports were the most recent available from the Census Bureau. It should be noted that the year under appeal is 2000 and not 1994 or 1997.
37. This report looks at three (3) areas (categories) of statistical information under the title Zip Code Business Patterns. The three (3) categories reviewed are:
 - a. Number of Establishments by employment-size class by zip codes for South Bend, Indiana for 1994 and 1997;
 - b. Number of Establishments by employment-size class by zip code 46545 for Mishawaka, Indiana for 1994 and 1997; and
 - c. Number of Establishments by employment-size class - Retail Trade - for zip codes 46614 (South Bend) and 46545 (Mishawaka), for 1994 and 1997.
38. By presenting this information and comparing the number of businesses and then the number of retail businesses in the subject area (South Bend) to Mishawaka, the Petitioner attempts to support their contention of a declining neighborhood within the subject's area and the need for the application of obsolescence to the subject property.
39. However, the Petitioner failed to explain why Mishawaka was selected as a comparable to the South Bend zip code area 46614. The Petitioner also failed to

explain how the two (2) areas were in fact comparable, what characteristics were used for comparison and why this information (Zip Code Business Patterns) would be deemed credible for this type of comparison.

40. Additionally, the Petitioner does not explain why areas within South Bend outside of the 46614 zip code, would not be considered more comparable to the subject. For example, if the Petitioner's form of comparison is used for other areas within South Bend for the total number of businesses between 1994 and 1997, the results are as follows:
 - a. For the subject 46614 zip code it shows an increase of 3.6%;
 - b. For zip code 46601 it shows an increase of 5.4%;
 - c. For zip code 46619 it shows an increase of 5.9%;
 - d. For zip code 46628 it shows an increase of 7.6%; and
 - e. For zip code 46635 it shows an increase of 9.7%.

41. The Petitioner shows an increase in the number of businesses in the subject's area of 3.6% and an increase in the same area of 10% (actually 9.6%) for retail trade businesses and compares this to 24.4% and 31.1% respectively for Mishawaka. The Petitioner then concludes that these numbers clearly show a decline in the subject's neighborhood.

42. The only thing the numbers show is a larger percentage of growth in Mishawaka and a smaller percentage of growth in the South Bend zip code area of 46614. One would agree that the growth in the subject area is modest, but growth nevertheless.

43. In conjunction with the theory of a declining neighborhood the Petitioner testified to the number of vacant businesses (21) in the subject area (Petitioner's Exhibits 1 and 5). A review of the Petitioner's list shows that 14 of the businesses are located or associated with a mall. Two (2) of the listed businesses belonged to

Montgomery Wards a nationwide business concern that closed all their stores across the country.

44. Although Petitioner points to those businesses that have closed for one reason or another within the subject's area, the Petitioner fails to present a list of those new businesses that have moved into this area, despite evidence that the area was experiencing a positive growth rate. The Petitioner also failed to discuss or make a list of those businesses that closed in the Mishawaka area for comparison.
45. Within the Limited Appraisal Restricted Report (Petitioner's Exhibit 3), the appraiser makes the following statements:
 - a. "The general South Bend area has been rather stable over the years, and the subject is in a some what desirable area".
 - b. "In summary, overall marketability is still considered average."
 - c. "...the location on Ireland Raod is not as desireable as some other parts of South Bend; hence some *minor* external obsolescence is estimated. "
(emphasis added)
46. The Petitioner submitted a Limited Appraisal Restricted Report (Petitioner's Exhibit 3) as evidence of value for the subject property. From this appraisal the Petitioner compares the determined value to that of the true tax value. The Petitioner then applies the requested 35% obsolescence to the true tax value to bring it closer to the appraised value.
47. Ind. Code § 6-1.1-31-6(c) states, "With respect to the assessment of real property, true tax value does not mean fair market value. True tax value is the value determined under the rules of the state board of tax commissioners." 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.

48. A review of the appraisal shows a number of flaws or factors requiring additional explanation. Some of those concerns are:
 - a. There is no explanation as to how the cap rate was determined;¹
 - b. There is no explanation as to how the vacancy rate was determined.
 - c. The appraisal is a limited restricted appraisal with no back-up information presented for review;
 - d. The cost and sales approaches to value were not included at the request of the Petitioner;
 - e. There is no highest and best use analysis done of the land or improvement;.
 - f. The appraisal is not signed.

49. It should be noted that capitalization rates are critical in the valuation process, and must be supported. Small changes in capitalization rates make significant changes in value. Because of significant changes in value, capitalization rates should not be talked about in generalities or averages. They are specific to the risk of investment, the duration of the income stream and the shape of the income stream in the foreseeable future.

50. The Petitioner states that recent comparable sales indicate a range in the overall capitalization rate of 9% to 12% (Petitioner's Exhibit 4). The Petitioner then uses a capitalization rate of 12% without any explanation as to why 12% is correct.

51. If the same formula is used as shown by the Petitioner in Petitioner's Exhibit 1:

¹ In fact, the Appraisal states, on page 20 " Sales data was not adequate to develop an overall capitalization rate."

\$112,717.68 divided by .12 = \$939,314 (Property value Income Method), but the capitalization rate is changed to 9%, the calculation would then give a property value of \$1,252,418.60.

52. Rather than using a recognized method to correctly quantify obsolescence depreciation, the Petitioner merely requested that the 35% obsolescence removed from the subject property be reinstated, and then develops a mathematical calculation around that 35% figure to arrive at a suggested true tax value.

53. The Petitioner's calculations are as follows (Petitioner's Exhibit 1):

Improvement TTV from revised PRC	\$981,384
Less Physical Depreciation from PRC (10%)	<u>x 90%</u>
Equals	\$883,246
Less requested obsolescence of 35%	<u>x 65%</u>
Equals	\$574,110
Plus depreciated paving figure	+ 72,900
Plus land value from PRC	<u>+303,000</u>
Equals total TTV	\$950,310
Divided by 3 to equal AV	\$316,770

54. When the Petitioner was asked by the hearing Officer as to how the requested 35% obsolescence factor was quantified, the Petitioner responded that the appraisal "speaks for itself". The Petitioner stated comparable rents could be put to a mathematical equation but by taking an average, 35% seems "very fair".

55. The Petitioner, by attempting to insert their requested percentage of depreciation instead of determining what that depreciation should actually be by using one of the five (5) approved methods listed in Conclusions of Law ¶24, failed to present an approved method of quantifying obsolescence.

56. In addition, the submitted limited income appraised value cannot be considered in this appeal as a basis for the quantification of obsolescence. Whereas some calculations, such as certain expenses may be derived from the restricted income appraisal, the subject's actual income figures are not considered. Because the depreciation is derived from the market, the proper calculation must be based on *potential gross income*, which is determined by "a careful study of comparable properties in the area." IAAO Property Assessment Valuation at 204.
57. As stated in Conclusions of Law ¶¶25 and 26, the taxpayer must establish a link between the evidence presented and the loss of value due to obsolescence and the taxpayer must prove that obsolescence exists and quantify the amount they seek.
58. Assuming *arguendo*, the Petitioner was successful in showing the existence of obsolescence; the Petitioner could not then request the reinstatement of an obsolescence factor but must be able to measure/calculate the amount they feel is warranted.
59. For all the reasons set forth above, the Petitioner did not meet their burden in this appeal. Accordingly, there is no change in the assessment as a result of this issue.

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

Chairman, Indiana Board of Tax Review