

**STATE OF INDIANA
Board of Tax Review**

WAL MART STORES, INC.,)	On Appeal from the Wayne County Property
)	Tax Assessment Board of Appeals
Petitioner,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition Nos. 89-030-01-1-4-00012
)	89-030-01-1-4-00013
WAYNE COUNTY PROPERTY TAX)	
ASSESSMENT BOARD OF APPEALS)	Parcel Nos. 500322010101629
and WAYNE TOWNSHIP ASSESSOR,)	500322010105029
)	
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

1. Whether obsolescence depreciation is warranted.

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. Thomas L. McDonald of Midwest Governmental Services, on behalf of Wal Mart Stores, Inc. (Petitioner) filed two (2) Form 131 petitions requesting a review by the State. Both Form 131 petitions were filed on August 6, 2001. The Wayne County Property Tax Assessment Board of Appeals' (PTABOA) Notification of Final Assessment Determination on both underlying Form 130 petitions are dated June 29, 2001.
3. The Petitioner submitted a signed and notarized affidavit stating that the notice from the PTABOA was received on July 5, 2001. The Petitioner also stated, and presented a copy of the envelope with a postmark, that the Form 131 was mailed to the Assessor on August 2, 2001. Based on this information these petitions were deemed timely filed.
4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on March 27, 2002 before Hearing Officer Brian McKinney. Testimony and evidence were received into the record. Mr. Thomas L. McDonald and Mr. Douglas DeGlopper, attorney for the Petitioner, represented the Petitioner. Mr. Joseph L. Kaiser, member of the PTABOA, and Ms. Wanda Ronan, Wayne County Assessor, represented the PTABOA. Mr. Michael P. Statzer, Wayne Township Assessor, represented Wayne Township.
5. At the hearing, the subject Form 131 petitions were made a part of the record and labeled as Board Exhibits A. Notices of Hearing on Petition were labeled Board Exhibits B. In addition, the following exhibits were submitted to the State:
 - Petitioner Exhibit A – Response to Notice of Defect
 - Petitioner Exhibit B – Summary of Exhibits
 - Petitioner Exhibit 1 – Summary of Issues and Evidence
 - Petitioner Exhibit 2 – Copy of Summary of Issues submitted at PTABOA hearing
 - Petitioner Exhibit 3 – Copy of Summary of Issues submitted with Form 131
 - Petitioner Exhibit 4 – Copy of cover sheet for Redevelopment Plans
 - Petitioner Exhibit 5 – Copy of Demolition page from Redevelopment Plans
 - Petitioner Exhibit 6 – Copy of New Building plans page from Redevelopment

Plans

Petitioner Exhibit 7 – Internal Memo titled: Demolition of Store
Petitioner Exhibit 8 – Copy of PTABOA determination (Form 115)
Petitioner Exhibit 9 – Copy of PTABOA minutes from hearing
Petitioner Exhibit 10 – Definition of Assessment Date (50 IAC 2.2-1-26)
Petitioner Exhibit 11 – Definition of Obsolescence (50 IAC 2.2-1-40)
Petitioner Exhibit 12 – Definition of Salvage Value (50 IAC 2.2-1-54)
Petitioner Exhibit 13 – Copy of part of 50 IAC 2.2-10-7
Petitioner Exhibit 14 – Qualifications of Mr. McDonald

Respondent Exhibit 1 – Property Record Card (PRC) for Old Store
Respondent Exhibit 2 – PRC for New Store

6. Both parcels that are the subject of this appeal are Wal Mart department stores located at 3601 East Main Street, Richmond, Wayne Township, Wayne County. The property located on parcel #500322010101629 (Petition #89-030-01-1-4-00012) will be referred to as the “Old Store”. The property located on parcel #500322010105029 (Petition #89-030-01-1-4-00013) will be referred to as the “New Store”.
7. At the hearing, both parties agreed that the year under appeal is 2001. The parties also agreed that the assessed values under appeal are:
Old Store – Improvement value \$2,872,800 and no land value assessed
New Store – Improvement value \$5,619,100 with a land value of \$821,200
assessed

Only the improvement value is under appeal.
8. The Hearing Officer did not view the subject properties.

Whether obsolescence depreciation is warranted.

9. Construction began on the New Store in July of 2000 and was certified ready for occupation in February 2001. The Old Store remained open and in use until March 13, 2001. The New Store opened on March 14, 2001. Beginning on March 14, 2001, the Old Store was demolished. The Old Store was completely removed by April 1, 2001. The Old Store was approximately 10 years old when it was demolished.
10. The Petitioner is asking for obsolescence depreciation be applied to both stores. The Petitioner requested 95% obsolescence be applied for the Old Store and 15% on the New Store. The County PRC reflects that no obsolescence depreciation has been applied to either structure.
11. The Petitioner testified that since neither store was used for a full year, obsolescence depreciation is warranted. The Petitioner testified that the New Store was not used the first 2½ months of the year, which represents 20% of the year. Accordingly, the Petitioner requested an obsolescence depreciation adjustment of 15% be applied to the New Store.
12. The Petitioner went on to say that the Old Store's value was minimal. The Petitioner opined that the Old Store only had salvage value due to the construction of the New Store. The Petitioner stated that the Old Store warranted a 95% obsolescence depreciation adjustment.
13. The Respondent testified that both buildings had value on March 1, 2001, which is the assessment date. The Old Store was still being used and the New Store was being stocked in anticipation of being used. The Respondent further testified that the New Store was 99% complete, with minor touch-ups occurring during this time. The Respondent stated that in their opinion no obsolescence depreciation was warranted for either building.

14. The Petitioner alleged that a Bob Evans restaurant was built in Richmond in a similar manner. The new Bob Evans restaurant was built between March 1, 2000 and March 1, 2001 and will not have taxes due until 2002. The Petitioner testified that had the New Store (Wal Mart) opened prior to March 1, 2001 and the Old Store (Wal Mart) demolished, they would not have been taxed for two (2) buildings.
15. The Petitioner opined that in their eyes, they used one (1) building the entire year. From January 1, 2001 until March 13, 2001 they used the Old Store. From March 14, 2001 through the end of the year they used the New Store. That to be taxed for a full year on both properties would be unfair.¹
16. The Petitioner further testified that on March 1, 2001 the fate of the Old Store was set. The New Store was complete and being stocked. The Old Store was slated for demolition, and was demolished prior to April 1, 2001. The Petitioner believes the only value the Old Store had on March 1, 2001 was salvage value and this is the reason they are requesting 95% obsolescence.

Conclusions of Law

1. The Petitioner is limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 130 petition. 50 IAC 17-5-3. See also the Forms 130 and 131 petitions authorized under Ind. Code §§ 6-1.1-15-1, -2.1, and -4. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v.*

¹ The Petitioner also stated another option would be to assess the New Store as storage or warehouse because as of March 1, 2001 that is all the building was used for. This issue was not raised on the Form 131 petition and will not be addressed in this appeal (See Conclusion of Law ¶ 1).

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

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

A. Indiana’s Property Tax System

3. Indiana’s real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.
4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and

equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.

6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State’s decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. See 50 IAC 17-6-3. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.

9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.
10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
11. One manner for the taxpayer to meet its burden in the State's administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V*, 702 N.E. 2d at 1040.
12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer

must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not “triggered” if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State’s final determination merely because the taxpayer demonstrates flaws in it).

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

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property’s market value will fail.
16. Although the Courts have declared the cost tables and certain subjective elements of the State’s regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.
17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

Whether obsolescence depreciation is warranted.

1. The Concept of Depreciation and Obsolescence

18. 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.² *International Association of Assessing Officers (IAAO) Property Assessment Valuation*, 153 & 154 (2nd ed. 1996); *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801, 806 (Ind. Tax 1998) (citing *Am. Inst. Of Real Estate Appraisers, The Appraisal of Real Estate*, 321 (10th ed. 1992)).
19. 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.
20. Depreciation is a market value concept and the true measure of depreciation is the effect on marketability and sales price. IAAO Property Assessment Valuation at 153. The definition of obsolescence in the Regulation 50 IAC 2.2-10-7 is tied to the one applied by professional appraisers under the cost approach. *Canal Square*, 694 N.E. 2d at 806. Accordingly, depreciation can be documented by using recognized appraisal techniques. *Id.*
21. Economic obsolescence depreciation is defined as “obsolescence caused by factors extraneous to the property.” 50 IAC 2.2-1-24.
22. “Economic obsolescence may be caused by, but is not limited to, the following:
(A) Location of the building is inappropriate for the neighborhood.
(B) Inoperative or inadequate zoning ordinances or deed restrictions.

² Depletion is the loss in value of property due to consumption of oil, gas, precious metals, and timber.

- (C) Noncompliance with current building code requirements.
 - (D) Decreased market acceptability of the product for which the property was constructed or is currently used.
 - (E) Termination of the need of the property due to actual or probable changes in economic or social conditions.
 - (F) Hazards, such as danger from floods, toxic waste, or other special hazards.”
- 50 IAC 2.2-10-7(e)(2).

23. Functional obsolescence depreciation is defined as “obsolescence caused by factors inherent in the property itself.” 50 IAC 2.2-1-29.

24. “Functional obsolescence may be caused by, but is not limited to, the following:

- (A) Limited use or excessive material and product handling costs caused by an irregular or inefficient floor plan.
- (B) Inadequate or unsuited utility space.
- (C) Excessive or deficient load capacity.”

50 IAC 2.2-10-7(e)(1).

25. The elements of functional and economic obsolescence can be documented using recognized appraisal techniques. These standardized techniques enable a knowledgeable person to associate cause and effect to value pertaining to a specific property. *Canal Square v. State Board of Tax Commissioners*, 694 N.E. 2d 801 (Ind. Tax 1998).

26. “There are five methods used to measure accrued depreciation, two indirect and three direct. Each has advantages and disadvantages and has a different degree of reliability. Direct methods involve measuring the depreciation of the subject property, whereas indirect methods use sales of comparable properties and income loss from rental properties to measure depreciation. The methods are categorized as follows:

Indirect methods

1. sales comparison method

2. capitalization of income method

Direct methods

1. economic age-life method
2. modified economic age-life method
3. observed condition (breakdown) method”

IAAO Property Assessment Valuation, 155-156 (2nd ed. 1996).

27. “The *sales comparison method*: estimates cost new of subject property; comparable properties are found and site values deducted; contributory improvement values remain; contributory improvement values are deducted from cost for each sale property, yielding measure of accrued depreciation; accrued depreciation figure is converted to percentage and applied to subject property.” *Id* at 183.
28. “The *capitalization of income method*: capitalizes the income of subject property into an estimate of value, with site value deducted; indicated improvement value is compared with estimated cost new to provide indication of improvement value remaining.” *Id*.
29. “The *economic age-life method*: is based on straight-line depreciation and is limited because depreciation of real property rarely occurs in a straight line. The method may be applicable for short-lived items.” *Id* at 184.
30. “The *modified economic age-life method*: recognizes the effect of curable items of both physical deterioration and functional obsolescence. Depreciation amounts for these items are deducted from cost new. The remaining amount is then depreciated using the age-life method. This is the indicated amount of depreciation for the subject property.” *Id*.
31. “The *observed condition (breakdown) method*: breaks down depreciation into all its components. Although it is the most complete method, it is rarely used because it is so labor-intensive.” *Id*.

2. Burden Regarding the Obsolescence Claim

32. “[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).
33. 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.
34. “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).
35. “In the commercial context, a loss of value usually represents a decrease in the improvement’s income generating ability.” *Loveless Construction v. State Board of Tax Commissioners*, 695 N.E. 2d 1045, 1047 (Ind. Tax 1998). *See also Damon Corp. v. State Board of Tax Commissioners*, 738 N.E. 2d 1108, (Ind. Tax 2000).
36. 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) (*Clark*).

3. Causes of obsolescence

37. It is the Petitioner’s contention that obsolescence depreciation is applicable to the two (2) structures under review for the following reasons:

- a. With the construction of the New Store and the scheduling of the Old Store to be demolished, the Old Store only had salvage value thus greatly reducing the value of the Old Store;
 - b. Market forces and consumer demand dictated the need for the New Store to be built and that the Old Store had outlived its useful life; and
 - c. Since the Old Store was not used the first 2½ months of the year and the New Store was then used the next 9½ months of the year that only one (1) building in essence was used for the entire year. That it is “clearly unfair” to charge building taxes for the entire year when the building was rendered useless, demolished and existed for only the first three (3) months of 2001 (Old Store).
38. It should be noted that at different stages of the appeal process the Petitioner requested different amounts of obsolescence to be applied to the New Store:
- a. At the PTABOA hearing asked for 95% be applied to the Old Store with no specific request for the New Store (Petitioner’s Exhibit 2);
 - b. Attached to the Form 131 petition, under Taxpayer’s Grounds for Appeal, asked for 95% be applied to the Old Store and 25% be applied to the New Store; and
 - c. At the IBTR hearing asked for 95% to be applied to the Old Store and 15% to be applied to the New Store (Summary of Issues and Evidence – Petitioner’s Exhibit 1).

4. Quantification of Obsolescence

39. As stated in Conclusions of Law ¶36, the Petitioner must first prove that obsolescence exists, and then the Petitioner must quantify the amount of obsolescence they seek.
40. The Petitioner’s evidence is primarily rhetorical and conclusory by nature. The Petitioner made the following statements:

- a. "With a new building to replace the now obsolete building, evidence of obsolescence applicable to the old building could not be more clear."
 - b. "It is clearly unfair to charge a building taxes for an entire year of 2001 when that building was rendered useless, demolished and existed for only the first three months of 2001. Likewise it is not fair to charge a new building for a full year of taxes when that building was not complete and operational until mid March of 2001."
 - c. "Competition and changing consumer demand dictated the old Wal-Mart store had exceeded its economic life and needed to be replaced with a new modern "consumer friendly" building."
 - d. "Though only ten (10) years old, the old store had exceeded its economic life. With the evidence of "hind sight" evidence of obsolescence is clearly revealed in demolition of the old and building of the new . . ."
 - e. "Certainly, only one building was being used during 2001. Therefore, only one of the buildings should be subject to full taxation as of March 1, 2001."
 - f. "It is clear that the old building had very little if any value as of March 1, 2001."
 - g. "A fair, just, and equal assessment in this case calls for common sense considerations."
 - h. "Certainly, the former discount store in this case was worth no more than "salvage value" as of March 1, 2001."
 - i. "In view of its planned and ultimate demolition, the old store should have the maximum 95% obsolescence as of March 1, 2001."
 - j. Obsolescence is also appropriate for the new building in recognition of the time it was not ready and available for business during 2001."
41. At no time does the Petitioner attempt to make any correlation between these alleged causes of obsolescence and the amount he seeks. The Petitioner fails to explain how the alleged causes of obsolescence lead to a loss of value in either of the subject structures. Instead, the Petitioner merely makes statements as to why he feels that obsolescence is applicable and how the properties should be assessed.

42. 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).
43. Assuming *arguendo* that the Petitioner had met the first prong of the two-prong burden, the Petitioner would still be required to quantify the amount of obsolescence sought. The Petitioner never attempted to explain how the 95% obsolescence requested for the Old Store was determined. The Petitioner merely stated its opinion that the store had minimal or salvage value, and that the property deserves a 95% obsolescence adjustment. Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
44. The Petitioner did not make use of any of the acceptable methods of quantifying the obsolescence selected for the Old Store. In fact, the Petitioner made no attempt to quantify the value of the Old Store.
45. However, the Petitioner did attempt to quantify the 15% requested for the New Store at the State hearing. The Petitioner testified that the store was open March through December of 2001. The Petitioner then testified that the 2½ months the store was not open is 20% of the year but is only requesting 15% obsolescence.
46. The Petitioner seems to be arguing that this 2½ month vacant period resulted in a loss of value. A similar argument was made in the *Pedcor* case. The Tax Court stated in *Pedcor*, “However, when the construction of the apartment complex began, there was no rental income. As a result, from the date of the beginning of construction until the assessment date, the apartment complex did not suffer a loss of income generating ability. Rather, its income generating ability remained static. Therefore, the vacancy of the apartment complex was not evidence of the apartment complex suffering a loss of value.” *Pedcor*, at 440.

47. Here, the income generating ability of the New Store remained static until open. Therefore, the fact the New Store was not open was not evidence of the New Store having suffered a loss in value.
48. In addition, obsolescence is generally not applied to a building under construction (New Store) because its useful life has not yet begun. The Tax Court has stated that an “interpretation of the regulations to allow for an obsolescence adjustment merely because a building is vacant while it is under construction would lead to palpably absurd results.” *Pedcor*, 715 N.E. 2d at 439-40.
49. Also, as stated in Conclusions of Law ¶ 38, the Petitioner had requested differing amounts of obsolescence to be applied to the New Store. At the PTABOA hearing no specific amount was requested; on the Form 131 petition 25% was requested; and at the State hearing 15% was requested.
50. If the amount requested by the Petitioner at the State hearing is the only amount under review in this appeal, the Petitioner never explains why a 15% obsolescence factor was requested when the building (per the Petitioner) was not used for 20% of the year. The Petitioner makes no attempt to reconcile these numbers or explain why 15% was selected. Instead, the Petitioner merely requests 15%.
51. Again, the Petitioner did not use any acceptable method of quantification. Therefore, the Petitioner to not meet the burden of proof as articulated in *Clark*.
52. Lastly, it is the opinion of the Petitioner that since the Old Store was used for 2½ months and the New Store for 9½ months during the 2001 year (collectively a “single” structure being used) that only “one building” should be subject to full taxation. The Petitioner does not argue that the two (2) structures did not exist on March 1, 2001, the date of the assessment.

53. Ind. Code § 6-1.1-1-2 states in part, under Assessment date defined - “Assessment date” means: March 1 for all tangible property, except mobile homes.” Ind. Code § 6-1.1-2-1 states under Property subject to tax, “Except as otherwise provided by law, all tangible property which is within the jurisdiction of this state on the assessment date of a year is subject to assessment and taxation for that year.”
54. All parties are in agreement that the two (2) structures existed as of the assessment date of March 1. Had the Old Store been razed prior to March 1, then the Petitioner could have argued that as of the assessment date the structure failed to exist and therefore no assessment should be made.
55. For all the reasons set forth above, the Petitioner failed to show how the causes of obsolescence correlated to a loss in value and failed to quantify the amount of obsolescence requested. Accordingly, there is no change in the assessment for either structure 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