

**STATE OF INDIANA
Board of Tax Review**

CTS CORPORATION,)	On Appeal from the Elkhart County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petition for Review of Assessment, Form 131
)	Petition No. 20-012-99-1-4-00036
ELKHART COUNTY PROPERTY TAX)	Parcel No. 25-06-06-203-002
ASSESSMENT BOARD OF APPEALS)	
And CONCORD 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

1. Whether obsolescence depreciation is warranted for the subject property.¹

¹ The Petitioner listed four (4) issues on the Form 131 petition. At the hearing, the Petitioner agreed that all four (4) issues refer to the application of obsolescence. Therefore, for the purposes of this appeal, the four (4) issues have been restated into one (1) obsolescence issue.

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, the Petitioner filed a petition requesting a review by the State. The Elkhart County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on the underlying Form 13 on May 26, 2000. The Form 131 Petition was filed on June 26, 2000.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on October 19, 2001 before Hearing Officer Debra Eads. Testimony was given and exhibits were submitted into evidence. Richard Archer of Ernst & Young and Milan Vuchenich and Cheryl Losee of CTS Corporation represented the Petitioner. Veronica Williams and Eugene Inbody represented Elkhart County. Richard Schlueter and Robert Brewer represented Concord Township.

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

Petitioner's Exhibit 1 – Brief for the State hearing containing property overview and property history, discussion of the issues and conclusion and:

1. 50 IAC 4.2-10-7(e) and (f)
2. Submitted separately as Petitioner's Exhibit 2
3. Photographs
4. Diagram showing various building additions
5. Petition to the Elkhart County BOR for review of assessment, Form 130 C-I, 1992 and Notice of Assessment of real property by Elkhart County BOR, Form 115

6. Assessor's 1992 property record card (PRC) showing obsolescence depreciation
7. Assessor's 1995 PRC showing obsolescence depreciation
8. Calculation of obsolescence percentage
9. Petitioner's corrected PRC
10. PRC – 1127 Myrtle
11. PRC – 1120 N. Main Street
12. PRC – 1119 N. Main
13. Petition to the Elkhart County PTABOA, Form 130 – 1999
14. Petition to the STB for review of assessment, Form 131 – 1999
15. Notice of Hearing on Petition, Form 117
16. *Canal Square Limited Partnership v. State Board of Tax Commissioners*, #49T10-9608-TA-00095 (April 24, 1998)
17. *Ronald D. Clark v. State Board of Tax Commissioners*, # 49T10-0-9701-TA-00065 (April 24, 1998)
18. *Loveless Construction Co. V. State Board of Tax Commissioners*, #49T10-9701-TA-00065 (June 15, 1998)
19. Submitted separately as Petitioner's Exhibit 3

Petitioner's Exhibit 2 – Brief for Elkhart County PTABOA hearing containing property overview and property history, discussion of the issue and conclusion and:

1. Calculation of obsolescence percentage
2. Petitioner's calculation of the assessed value
3. Diagram showing various building additions
4. Petition to the Elkhart County PTABOA for review of assessment, Form 130 – 1999
5. Petition to the Elkhart County BOR for review of assessment, Form 130 – 1992 and Notice of Assessment of real property by Elkhart County BOR, Form 115
6. Notice of Elkhart County PTABOA hearing on petition, Form 114
7. Assessor's 1995 PRC showing obsolescence depreciation

8. Assessor's 1992 PRC showing obsolescence depreciation
9. Photographs
10. Referenced Tax Court Cases

Petitioner's Exhibit 3 – Appraisal of subject property by RM Stone Commercial

Petitioner's Exhibit 4 – Four (4) exterior photos of 1127 Myrtle

Petitioner's Exhibit 5 – Four (4) exterior photos of 1120 N Main Street

Petitioner's Exhibit 6 – Five (5) exterior photos of 1119 N. Main

Respondent's Exhibit 1 – (a) Form 130 petition; (b) Form 115; (c) Proposed Findings & Conclusions; (d) Exhibits submitted by CTS Corporation; (e) Exhibits submitted by the PTABOA; and (f) Copies of property record cards.

5. The subject property is located at 1142 W. Beardsley Avenue, Elkhart, Concord Township, Elkhart County. The Hearing Officer did not conduct an on-site inspection of the property.

Obsolescence

6. The two-story configuration of the subject building results in numerous inefficiencies in the production process, such as excessive product handling. The proximity of the supports, the floor weight load limitations, and the manually operated elevators make production movement difficult. The low ceiling limits equipment usage. The location of loading docks on a narrow street requires excessive maneuvering by truck drivers. Permission by the neighboring business must be granted to access the overhead door equipment for movement of large equipment. The proximity to a railroad is no longer necessary due to the use of truck shipping. The subject building is land locked thereby restricting expansion and limiting on-site parking. *Vuchenich Testimony*. Obsolescence had been applied in previous years to the subject property but was removed in 1999 without changes having been made to the improvements. Three (3) properties

comparable to the subject and located in Elkhart County have been granted obsolescence. *Losee Testimony*. Nothing on the property record cards for the comparables indicates the reason for obsolescence. The Petitioner considers them comparable because they are loft manufacturing facilities. *Archer Testimony. Petitioner's Exhibits 1(10)(11)(12), 4, 5, and 6.*

7. In order to quantify the obsolescence of the subject structure, the “real world” value of the building, determined by utilizing the sales comparison method, was compared with the “real world” reproduction cost of the building, which was determined by using Marshall Swift Valuation Service. The difference between these two (2) values expressed as a percentage represents the obsolescence of the subject structure. The appraisal indicates a value for the property of \$1,330,000, or \$4.25 per square foot. The obsolescence percentage was calculated using a reproduction cost new of \$4.00 and \$5.00 per square foot. The average of these two calculations is 48%, which is the obsolescence amount requested by the Petitioner. *Archer Testimony. Petitioner's Exhibit 3.*
8. The County objected to the introduction of new evidence (i.e. the appraisal and the testimony of Mr. Vuchenich). Ms. Williams indicated that the PTABOA decision could not be based on evidence that was not presented. She further indicated that additional evidence was requested by the PTABOA and that evidence was never received from the Petitioner. Mr. Inbody questioned the use of \$4.00 - \$5.00 per square foot as a reproduction cost when that amount was not supported by any documentation.
9. The only new evidence was the independent appraisal and that the appraisal was offered only in support of the Petitioner's contentions. *Archer Testimony.*

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 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.

Obsolescence

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 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.
20. 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).
21. 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).

22. There are five (5) 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, and (5) the observed condition (breakdown) method. IAAO Property Assessment Valuation at 156; IAAO Property Appraisal and Assessment Administration at 223.
23. Obsolescence depreciation was applied in 1992 as a result of a Form 130 petition to the Elkhart County Board. During the 1995 general reassessment, 15% obsolescence was applied to the first floor and 50% to the second floor. The Concord Township Assessor removed all obsolescence in 1999. This implies that there is some disagreement as to the existence of obsolescence.
24. “[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).
25. “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).
26. 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.

27. “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).
28. “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).
29. The Petitioner identifies possible causes of obsolescence, however the Petitioner never explains how the purported causes of obsolescence cause the subject property to suffer a loss in value. The Petitioner did not meet the first prong of the two-prong test. Assuming arguendo, the Petitioner did prove the existence of obsolescence; it is still necessary to quantify the obsolescence.
30. The “real world” value compared to the “real world” replacement cost new method for quantification of obsolescence is not one of the five (5) recognized methods to quantify obsolescence. Even assuming that this method was appropriate, several problems exist in the calculations.
31. In the text of the Petitioner’s argument, the depreciated cost new was calculated at \$2,300,000, but when the calculation for obsolescence was made (Petitioner’s Exhibit 1, tab 8) the value \$2,600,000 was used. Also, the per square foot amount of \$4.00-\$5.00 used by the Petitioner (and purportedly culled from “discussions with local brokers and appraisers”) in calculating the estimated market value was not substantiated in any meaningful way as being the appropriate per square foot rate.
32. With the “real world” depreciated cost new and the “real world” value under suspicion, any calculation using these two (2) amounts cannot carry weight in determining obsolescence.

33. The appraisal submitted by the Petitioner (and under objection by the County) to support the quantification of obsolescence used the sales comparison method in an effort to quantify the appropriate obsolescence depreciation for the subject property. The properties used by the appraiser as comparables clearly do not meet the definition of comparable due to the significant differences between the sale properties and the subject property. These differences resulted in adjustments to the sale price by the appraiser of 16.4% to 37.3%; this did not even include an adjustment for the time differences of the sales. Adjustments of that size do not support the sale properties as being “comparable” to the subject. Even if regarded as comparable, no testimony or evidence was submitted to indicate that the causes or degree of obsolescence in the sale properties would be the same as purported causes of obsolescence in the subject property.
34. No land sales were included to support the \$200, 000 land value used in the appraisal. The date of value shown in the appraisal is October 8, 2001; the appealed assessment date is March 1, 1999. In fact, one of the comparables was sold after the date of value. No date was shown for the Marshall Swift Valuation Service used.
35. The Petitioner also indicated that several other properties in Elkhart County have received obsolescence, but failed to establish if the specific circumstances of those properties (and the accompanying obsolescence) should in any way apply to the subject property.
36. The Respondent’s objection to newly introduced testimony and evidence was duly noted, however, the additional evidence did not effect the determination so the objection was rendered moot.

37. The Petitioner failed to meet the burden of proof regarding quantification of obsolescence. Accordingly, no change is made to the assessment as a result of the obsolescence 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