

**STATE OF INDIANA
Board of Tax Review**

JAMES K. and JACQUELINE JOHNSTON)	On Appeal from the Vanderburgh County Property Tax Assessment Board of Appeals
)	
Petitioners,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition Nos. 82-020-96-1-4-00007 and 82-020-97-1-4-00015
)	Parcel No. 1201034077007
VANDERBURGH COUNTY)	
PROPERTY 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:

Issues

1. Whether the grade of the subject property is correct.
2. Whether the condition of the subject property is correct.
3. Whether economic obsolescence depreciation is warranted.

4. Whether functional 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 Indiana Code § 6-1.1-15-3, Mr. Mark Samila of Kahn, Dees, Donovan & Kahn, LLP, on behalf of James and Jacqueline Johnston, filed two Form 131 petitions requesting a review by the State. The Form 131 petitions were filed on November 14, 1997. The County Board of Review's (BOR) Assessment Determinations on the underlying Form 130 petitions were issued on October 17, 1997.
3. Pursuant to Indiana Code § 6-1.1-15-4, a hearing was held on May 17, 2001, before Hearing Officer Jennifer Bippus. Testimony and exhibits were received into evidence. Mr. Samila represented the Petitioners. Mr. Stephen Parker, Ms. Jackie Johnston, Mr. Kent Lautner, and Mr. Jerry Brandenberger were present as witnesses for the Petitioners. Ms. Tammy Elkins represented the Vanderburgh County Assessor's Office. Ms. Susie Magis and Ms. Rebecca Galey represented the Center Township Assessor's Office.
4. The subject Form 131 petition was made part of the record and labeled as Board's Exhibit A. In addition, the following exhibits were submitted:
Board's Exhibit B - Notice of Hearing on Petition for May 17, 1997.
Board's Exhibit C - The Withdrawal of Issue Agreement signed by the Taxpayer's Representative.
5. The County officials requested additional time to review and send a brief on the new evidence presented by the Petitioners. Mr. Samila, in turn, requested additional time to respond to the County's brief. Both parties responded in a

timely manner. The County's brief is listed as Respondent's Exhibit F. The Petitioners' brief is listed as Petitioners' Exhibit D.

6. At the hearing, the Petitioners submitted the following documents:

Petitioners' Exhibit A - A copy of the Power of Attorney for Kahn, Dees, Donovan & Kahn, LLP.

Petitioners' Exhibit B - A binder including a summary of the subject case and the following information:

1. A plat of the subject property.
2. Property record card of the subject property.
3. Photographs of the subject property.
4. A report from Hanson Testing and Engineering of a subsurface exploration and geotechnical engineering evaluation of the subject property.
5. A copy of the estimate from ARC Construction Co. Inc. for the repairs to the subject property.
6. A copy of the appraisal performed by Stephen Parker for the subject property.

Petitioners' Exhibit C - A copy of Schedule E from the Johnstons' Form 1040, Federal Income Tax Return.

7. At the hearing, the Respondent submitted the following documents:

Respondent's Exhibit A - A copy of the responses to the issues of the subject property.

Respondent's Exhibit B - A copy of the minutes from the BOR meeting dated October 2, 1997.

Respondent's Exhibit C - A copy of the Form 130 with the subject property record cards attached.

Respondent's Exhibit D - A copy of the plat map of the subject area.

Respondent's Exhibit E - Photographs of the subject property.

8. The subject property, Northwoods Apartments, is located at 3900 North Fulton Avenue, Evansville, Indiana. (Center Township, Vanderburgh County).

9. The assessed value determined by the PTABOA for 1996 is:

Land: \$24,600 Improvements: \$384,170 Total: \$408,770

The assessed value determined by the PTABOA for 1997 is:

Land: \$24,600 Improvements: \$472,970 Total: \$497,570

10. The Hearing Officer did not view the subject property.

Issue No. 1 - Whether the grade of the subject property is correct.

Issue No. 2 - Whether the condition of the subject property is correct.

Issue No. 3 - Whether economic obsolescence is warranted.

11. The Petitioners withdrew the issues of grade, condition and economic obsolescence. A copy of the signed withdrawal is included in the record as Board's Exhibit C.

Issue No. 4 - Whether functional obsolescence depreciation is warranted.

12. The Petitioners contended the following:

(a) Northwoods Apartments has experienced a loss in value due to functional obsolescence. The deficiency of the property has caused a loss in value for the taxpayer. (Petitioner's Ex. B).

(b) In *Canal Square Limited partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801 (Ind. Tax 1998), the Tax Court finds that the State Board's regulation ties its definition of obsolescence directly to that applied by professional appraisers under the cost approach. (Petitioners' Ex. B).

(c) The Johnstons have established that Northwoods Apartments suffers from functional obsolescence. This functional obsolescence is attributable to

soil that is not suitable to support the foundations and slab loads of the buildings. This has led to massive settling of the foundations. The method of stabilization that provides the least cost and greatest likelihood of success is through the use of mini-piles or piers. The cost to cure the problem is very substantial and may not solve the whole problem. (Petitioners' Ex. B).

13. Mr. Lautner testified that a geotechnical engineering investigation was conducted at the subject property to determine the subsurface conditions of the land. The purpose of the study was to determine the cause of settlement near the buildings and parking areas. The study consisted of several soil borings conducted in accordance with ASTM standards, strength tests, groundwater level observations, laboratory moisture content analysis, gathering data from geologic publications and visual observations. The tests show that the soil is very soft with decayed trees at depths from one foot to six feet. Before the construction of the buildings the land was filled with cut trees and the decayed trees cause pockets that lead to collapse of the soil. At least 80% of the property will be affected by these poor soil conditions and the soil will continue to worsen over time. (Lautner testimony, Petitioners' Ex. B(4)).
14. Mr. Brandenberger submitted an estimate on the cost to cure using "Atlas Piers" (mini piles). The piles are drilled to firm soil then rigidly attached to the footing. The estimate to conduct this procedure is \$936,000 for all twelve (12) units. (Brandenberger testimony, Petitioners' Ex. B (5)).
15. D. Stephen Parker, of Bartlett and Associates, Inc., introduced an appraisal of the subject property. Using data from Marshall & Swift Valuation Services to arrive at a cost estimate of the existing improvements, the following calculations were provided purporting to quantify the amount of requested obsolescence:

Cost of existing Improvements	\$1,981,540
Less estimated physical depreciation of all buildings	<u>30%</u>
Estimated Physical Depreciation By Appraiser observation	\$ 594,462
Indicated value after physical depreciation	\$1,387,078
Cost to Cure Functional Obsolescence	<u>\$ 936,000</u>
Indicated True Tax Value of Improvements	\$ 451,078

This represents a 67.5% functional obsolescence of the subject property.
(Parker testimony).

16. Mr. Parker contended that the subject property is not saleable. It has a stigma similar to an environmentally impacted property. A purchaser would not purchase the property at any value due to no warranty to cure the problem. The property could not be financed under the current conditions. (Parker testimony).
17. The County officials responded on June 1, 2001, with a Respondent's Brief contending that the Petitioners do not mention at any time if the subject property suffers from vacancy or lost income due to the functional problems. After reviewing the evidence presented at the hearing on May 17, 2001, which was not presented at the original BOR hearing on October 2, 1997, the County officials agree the subject property suffers a diminished value, but that the 67.5% requested by the Petitioners is not warranted. Respondent's Ex. F.
18. The Petitioners sent a Reply Brief on June 14, 2001 summarizing again the original evidence provided at the hearing held May 17, 2001, and still requesting the 67.5% obsolescence. Petitioners' Ex. D.

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. 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.

Issue No. 1 - Whether the grade of the subject property is correct.

Issue No. 2 - Whether the condition of the subject property is correct.

Issue No. 3 - Whether economic obsolescence is warranted.

18. The issues of grade, condition, and economic obsolescence were withdrawn at the hearing. A signed withdrawal agreement is included in the record as Board's Exhibit C.

Issue No. 4 - Whether functional obsolescence depreciation is warranted.

19. The Petitioners contended that the subject improvements should receive 67.5% functional obsolescence depreciation. The County officials awarded 5% functional obsolescence to twelve of the buildings due to flooding (Respondent's Exhibit A).¹ The final building constructed in 1996 did not receive the 5% functional obsolescence.

¹ The State notes that flooding is typically a cause of external obsolescence. 50 IAC 2.2-10-7(e)(2).

20. Depreciation is a “loss in value from all causes. It may be further classified as follows:
 - (1) Physical, which refers to the loss of value caused by physical deterioration.
 - (2) Functional.
 - (3) Economic.” 50 IAC 2.2-1-20.

21. “Accrued depreciation is measured as of the appraisal date and applies only to improvements, not to land.” International Association of Assessing Officers (IAAO) Property Assessment Valuation, 153 (2nd ed. 1996).

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

23. "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).

24. “Functional obsolescence is the loss of value in a property improvement due to changes in style, taste, technology, needs, and demands. Functional obsolescence exists where a property suffers from poor or inappropriate architecture, lack of modern equipment, wasteful floor plans, inappropriate room sizes, inadequate heating or cooling capacity, and so on.” IAAO Property Assessment Valuation, 154-155 (2nd ed. 1996).

25. 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.

26. The elements of functional 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.
27. 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).
28. 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).
29. The Petitioners summarized their argument as follows:
“The Johnstons have established that Northwoods Apartments suffers from functional obsolescence. **This functional obsolescence is attributable to soil that is not suitable to support the foundations and slab loads of the buildings.**” (Petitioners’ Exhibit B, page 2) (Emphasis added).
30. In support of their position, the Johnstons submitted a geotechnical engineering investigation prepared by Kent Lautner, President of Hanson Testing and Engineering, Inc. The purpose of this investigation was “to determine the subsurface conditions” of the property. (Petitioners’ Exhibit B, tab 4, page 1).
31. Mr. Lautner concluded: “...**very soft soil with vegetation was encountered...Soil with strength consistencies as soft as these is not suitable** to support foundation and slab loads without experiencing unacceptable settlement.” (Petitioners’ Exhibit B, tab 4, page 5) (Emphasis added).

32. Mr. Lautner's report continued: "If the concrete pavement is replaced, **the subgrade soils should be chemically stabilized** with hydrated lime or cement. Areas where clay soil types are within 12 inches below the pavement, lime should be used. **Where silty soils are encountered, cement should be used.** This process is accomplished by thoroughly mixing approximately 5 to 8% by weight of lime or cement into the soil and then re-compacted the mixture to insure proper compaction. **The chemical reaction between the lime or cement and soil will create a firm base to support the pavement.**" Id. (Emphasis added).
33. The Johnstons also furnished an appraisal prepared by D. Stephen Parker.
34. Mr. Parker's appraisal asserted: "Significant physical depreciation was observed due to **functional obsolescence inherent in the site preparation.**" (Petitioners' Exhibit B, tab 6, the first unnumbered page) (Emphasis added).
35. Mr. Parker's appraisal observed: "It is difficult to determine an effective age since the subject buildings are suffering from **structural damage due to soil conditions** under the subject buildings." (Petitioners' Exhibit B, tab 6, the fifth unnumbered page) (Emphasis added).
36. The appraisal continued: "The Hansen analysis only drilled at three sites and **found defects in soil condition** that appears [sic] to permeate the entire apartment site. It appears that when the apartments were constructed that **the site was not properly prepared.** The discovery of **decayed wood and collapsing pockets of soft dirt or wet caves caused the physical problems** such as cracks in foundation, window and window casement replacement, door and door casement replacement. Balconies have been removed due to rot and some have simply started to drop or fall off the building. Large holes have appeared in the asphalt where **the ground has settled.** Three buildings show evidence of **cracking that can be attributed to the poor site preparation.** **This defect, poor site preparation, is a functional obsolescence, which**

causes severe physical depreciation.” (Petitioners’ Exhibit B, tab 6, the sixth unnumbered page) (Emphasis added).

37. Mr. Parker concluded: “It is the opinion of the appraiser that approximately 30% physical depreciation for all buildings as they exist today and \$936,000 in **functional obsolescence exists due to design flaws in the site preparation.**” (Petitioners’ Exhibit B, tab 6, the eleventh unnumbered page) (Emphasis added).
38. The Petitioners’ witnesses are therefore in complete accord that the deficiencies of the property are caused by poor site preparation. However, poor site preparation of the land is not a cause of functional obsolescence, defined as “obsolescence caused by factors inherent in the property itself.” 50 IAC 2.2-1-29. These factors may include “changes in style, taste, technology, needs, and demands” caused by items such as “poor or inappropriate architecture, lack of modern equipment, wasteful floor plans, inappropriate room sizes, inadequate heating or cooling capacity, and so on.” IAAO Property Assessment Valuation, 154-155 (2nd ed. 1996).
39. As discussed, Mr. Parker’s appraisal contended that “[s]ignificant physical depreciation was observed...” in the property (Petitioners’ Exhibit B, tab 6, the first unnumbered page). The Petitioners identified several features of the buildings, such as cracked walls, misaligned stairways, and cracked concrete and paved parking areas, which have been damaged as a result of the poor soil preparation. However, the Johnstons’ own witnesses agreed that these damaged features are results, rather than the cause, of the deficiencies in the property. Physical depreciation is not functional obsolescence. 50 IAC 2.2-1-20.
40. As determined by the Petitioners’ witnesses, the cause of the deficiencies is the poor site preparation rather than a defective feature present within the structures. By definition, there is no functional obsolescence in the buildings because the deficiency is external to the improvements.

41. The Johnstons have therefore failed to establish that additional functional obsolescence is present in the building, as required by the first prong of the two-prong test articulated in *Clark*.
42. The Petitioners' calculation purporting to quantify functional obsolescence is also flawed.
43. The Petitioners requested 67.5% functional obsolescence, based on the Cost to cure method of quantifying functional obsolescence.
44. Cost to cure is defined as "the cost of repairing a condition". IAAO Property Assessment Valuation, 182 (2nd ed. 1996). "Curable functional obsolescence for modernization is measured as the cost of the existing items in the cost new estimate less the physical deterioration of the existing fixtures and salvage value, if any, plus the cost to remove the old fixtures and the added cost to install the new fixtures." *Id* at 185.
45. Mr. Parker's appraisal concluded that 67.5% functional obsolescence was present (Petitioners' Exhibit B, tab 6, the eleventh unnumbered page). The appraisal included the following calculation:

Cost of Existing Improvements	\$1,981,540
Less Estimated Physical Depreciation of all Buildings	<u>-30%</u>
Estimated Physical Depreciation by Appraiser observation	\$ 594,462
Indicated value after physical depreciation	\$1,387,078
Cost to Cure Functional Obsolescence	<u>\$ 936,000</u>
Indicated True Tax Value of Improvements	\$ 451,078

46. The Cost to Cure figure (\$936,000)² was derived from an estimate provided by Jeryl Brandenberger of ARC Construction Co., Inc. (Petitioners' Exhibit B, tab 5).
47. However, Mr. Brandenberger's estimate indicates that he "would consider this a 'ball park or budget' estimate. There are several unknowns that would prohibit me from making a firm quote. I don't know the footing sizes, underground utility locations, underground soil conditions except at 3 locations etc." Id.
48. Mr. Brandenberger's estimate is therefore based on only partial data. Although Mr. Brandenberger testified at the administrative hearing, he failed to explain the reason he did not obtain all information necessary to provide a firm quote. Additionally, the Petitioners' representatives failed to explain the reason that only one estimate was obtained in an attempt to establish a claimed cost to cure.
49. Further, Mr. Brandenberger's quote included expenses for the "complete excavation and backfill to bottom of footing for each pier." Id.
50. As discussed, "Accrued depreciation [including obsolescence] is measured as of the appraisal date and applies only to improvements, not to land." IAAO Property Assessment Valuation, 153 (2nd ed. 1996). It is inappropriate to include site preparation costs, such as excavation, in a calculation purporting to quantify functional obsolescence in improvements. The Petitioners' calculation therefore fails to conform to generally accepted standards of assessment and appraisal practice.
51. Summarizing, the purported quantification of functional obsolescence involves only estimates of costs based on incomplete data. The functional obsolescence calculation further includes site preparation costs, contrary to generally accepted

² Despite claiming that the property suffers from more than 67% functional obsolescence, the record does not indicate that any of the recommended repairs have, in fact, been made. The Petitioners did, however, construct an additional apartment building on the site in 1997.

appraisal standards. Although claiming the deficiencies have created a significant loss of value (more than 67% obsolescence), the record does not indicate that the Petitioners have actually incurred any of the purported \$936,000 costs allegedly necessary to cure the property's defects. Instead, the Petitioners elected to build yet another apartment building on the same site.

52. The Petitioners have failed to quantify obsolescence as required by the second prong of *Clark's* two-prong test.
53. For all of the reasons above, the Petitioners failed to meet their burden in this appeal. Accordingly, no change is made to 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