STATE OF INDIANA
Board of Tax Review

WABASH INN, INC.	)	On Appeal from the Wabash County
	)	Board of Review
Petitioner,	)	
	)	Petition for Review of Assessment, Form 131
v.	)	Petition No. 85-009-95-1-4-00008
	)	Parcel No. 13276018304002
WABASH COUNTY BOARD OF REVIEW And NOBLE 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 subject building has wood joist framing and should be depreciated from the 30-year life table.

2. Whether obsolescence should be increased to 25%.

3. Whether the motel front desk area and adjoining restaurant should be priced from the General Commercial Residential (GCR) schedule.

4. Whether the subject should be assessed as one building with one perimeter-area-ratio (PAR).

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, Paul Kropp, on behalf of Wabash Inn, Inc. (the Petitioner) filed a petition requesting a review by the State. The Form 131 was filed on August 28, 1996. The County Board of Review's (County Board) Final Determination was mailed on August 21, 1996.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on February 7, 2001 before Hearing Officer Joseph Stanford. Testimony and exhibits were received into evidence. Paul Kropp represented the Petitioner. Kelly Schenkel represented the County Board. Brenda D. Conner represented Noble Township.

4. At the hearing, the subject Form 131 petition was made part of the record and labeled Board Ex. A. The Notice of Hearing on Petition is labeled Board Ex. B. In addition, the following items were received into evidence:
   Petitioner's Ex. 1 – Photographs of subject property.
   Petitioner's Ex. 2 – Copy of 50 IAC 2.2-10-5.
   Petitioner's Ex. 3 – Subject property record card.
   Petitioner's Ex. 4 – Wabash Inn occupancy data, 1994-1995.
   Petitioner's Ex. 5 – State Board Findings of Fact and Conclusions of Law for Omega/Turtle Creek LP, Petition No. 79-156-98-1-4-00009.
   Petitioner's Ex. 6 – 1997 tourism industry statistics.
   Petitioner's Ex. 7 – Traveler information.
   Petitioner's Ex. 8 – Tax Representative Disclosure Statement.

Petitioner's Ex. 9 – Statement that Kropp & Associates' fee is "contingent on the assessed value reduction of the parcel involved."

5. The subject property is located at 1950 South Wabash Street, Wabash, Noble Township, Wabash County. The Hearing Officer did not view the property. The parties agreed that the assessed value under appeal is $16,330 for land and $329,200 for improvements.

A. Issue No. 1 – Whether the subject building has wood joist framing and should be depreciated from the 30-year life table

6. Mr. Kropp testified that when his firm first became involved with the subject property, in 1995, the person who worked with him at the time told him that the building is wood-framed. Mr. Kropp submitted four (4) exterior photographs of the property (Petitioner's Ex. 1).

7. Mr. Kropp testified that the hotel building originally had a flat roof, so the second floor can't be priced as wood-framed. Mr. Kropp contends however, pursuant to 50 IAC 2.2-10-5(b)(3), that the first floor framing is deemed to be the framing that supports the roof. Therefore, he contends that the subject should be depreciated from the 30-year life table.

8. Ms. Noble noted that the subject contains brick, but doesn't know the actual framing. She stated that it is possible the subject has brick facing and a wood frame.

B. Issue No. 2 – Whether obsolescence should be increased to 25%

9. The Petitioner contends that obsolescence exists on the subject property because U.S. 24 has expanded, and the property's location is no longer desirable. Mr. Kropp noted that the local officials granted no obsolescence on the 1989 subject property record card, but applied 10% in 1995. He contends

that obsolescence should be based on occupancy, and that 20-25% is proper. Mr. Kropp testified that in 1995, Wabash Inn was the only hotel in Wabash, other than a five-room Bed and Breakfast. A Holiday Inn Express has been built in town since 1995. He testified that current occupancy levels are lower than in 1994 and 1995.

10. Mr. Kropp submitted occupancy data for the subject property for 1994 and 1995 (Petitioner's Ex. 4). Mr. Kropp testified that he prepared this report himself, based on his examination of hotel records. The report shows a 1994 occupancy average of 45.59%, and a 1995 occupancy average of 41.29%. The two-year average is 43.4%.

11. Mr. Kropp then submitted a State Board Final Determination (Petitioner's Ex. 5, Omega/Turtle Creek LP, Petition No. 79-156-98-1-4-00009) showing that an area average occupancy percentage was compared with the subject occupancy percentage to determine an obsolescence percentage. Since Wabash Inn was the only hotel in Wabash in 1995, Mr. Kropp compared the subject to the national average of 65% (Petitioner's Ex. 6). He concluded that 20-25% obsolescence is appropriate.

12. Ms. Noble contends that 10% obsolescence is adequate. She contends that no comparison should be made to the Holiday Inn Express, because it did not exist in 1995, and the market has changed since then. Ms. Noble contends that Wabash Inn did a pretty good business in 1995, but also believes that occupancy percentage should play a role in determining obsolescence.

C. Issue No. 3 – Whether the motel front desk area and adjoining restaurant should be priced from the GCR schedule

13. Mr. Kropp stated that the front desk and restaurant area is currently priced as General Commercial Mercantile (GCM) Dining. This is different than the 1989 pricing, which was GCR Motel Service. Mr. Kropp contends that the 1989 pricing

was correct.

14. Ms. Noble agreed with Mr. Kropp concerning this issue.

D. Issue No. 4 – Whether the subject should be assessed as one building with one PAR

15. Mr. Kropp stated that in 1989, the subject property was assessed as one building with a PAR of 5. Now it is assessed as three (3) separate buildings, and the PAR is 6.

16. Mr. Kropp opines that either way of calculating the PAR is correct. He testified that there are separate four-wall buildings, but only one roof. However, a PAR of 5 would benefit the Petitioner.

17. Ms. Noble agrees that the PAR could be calculated either way. She also testified that the buildings are separate, with a roof connecting them. She opines that since the buildings are separate, the PAR should be calculated separately.

Conclusions of Law

1. The Petitioner is limited to the issues raised on the Form 130 petition filed with the County Board or issues that are raised as a result of the County Board'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 County Board. Ind. Code §§ 6-1.1-15-1 and –2.1.

If the taxpayer, township assessor, or certain members of the County Board disagree with the County Board'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 County Board 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 Board 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 County Board, 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 County Board, 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.

D. Witness Compensation

18. The State's position is that is has the right to make general inquiry regarding, and to consider, the method by which a witness is compensated. Information about the witness's fee can be relevant and necessary in order to evaluate the potential partiality of the witness. A contingent fee arrangement may be considered to

inherently affect the objectivity of a witness. The State believes it appropriate to consider the potential of such an arrangement to improperly motivate the witness and adversely affect the reliability of the testimony. It is for these reasons that the State will consider the method of witness compensation in the process of determining the credibility and weight to be given to testimony of a witness whose fee is contingent on the outcome of the issues that he or she is testifying about. This position is supported by the discussion in the case of *Wirth v. State Board of Tax Commissioners*, 613 N.E. 2d 874 (Ind. Tax 1993).

19. At the hearing, Mr. Kropp presented a written statement disclosing that Kropp & Associates is paid on a contingent fee basis. (Petitioner's Ex. 9).

E. Issue No. 1 – Whether the subject building has wood joist framing and should be depreciated from the 30-year life table

20. Adjustments are made to the base price of a building based on its framing type. In addition, the framing type may determine which life expectancy table a building is depreciated from. The four types of framing are wood joist, fire resistant, reinforced concrete, and fireproof steel. 50 IAC 2.2-10-5(b)(3).

21. The local assessing officials have priced and depreciated the subject property as fire resistant. The Petitioner claims the first floor pricing and depreciation should be based on wood joist framing.

22. Mr. Kropp has merely given a statement that the subject is of wood joist construction. Mr. Kropp's testimony was that he was told of the construction by a former co-worker. He did not testify that he examined the building himself to determine the construction type. Mr. Kropp submitted no photographic evidence showing the framing, but only photographs of the exterior. As a result, he falls far short of meeting his burden of proof concerning this issue.

23. For the reasons set forth, there is no change in either the pricing or depreciation of the subject property as a result of this issue.

F. Issue No. 2 – Whether obsolescence should be increased to 25%

24. 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. *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* (10th ed. 1992)).

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. 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.*

27. Economic obsolescence depreciation is defined as “obsolescence caused by factors extraneous to the property.” 50 IAC 2.2-1-24.

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

29. 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*, 694 N.E. 2d 801.

30. 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 comparables properties and income loss from rental properties to measure depreciation. The methods are categorized as follows: Indirect methods 1) Sales comparison method and 2) capitalization of income method; Direct methods 1) economic age-life method, 2) modified economic age-life method, and 3) the observed condition (breakdown) method. IAAO Property Assessment Valuation, 155-156 (2nd ed. 1996).

31. "[I]n advocating for an obsolescence adjustment, a taxpayer must first provide the State 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).

32. 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 loses in value." *Champlin*, 745 N.E. 2d at 936.

33. "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).

34. "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).

35. 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).

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

37. In this case, the Petitioner has compared the subject's occupancy rate with the national occupancy rate, and contends that the difference between the two is equal to the percentage of obsolescence. The method used by the Petitioner to compute obsolescence, however, is not a recognized appraisal technique.

38. Occupancy rates alone, even if the subject's rates are lower than a documented local average, are not enough to prove or quantify obsolescence. Many factors besides obsolescence can be responsible for low occupancy rates.

39. As stated above, obsolescence is a measure of a loss in value to the property. A loss in value cannot be measured solely by an analysis of occupancy rates. There are two recognized appraisal methods of measuring the type of external obsolescence claimed by the Petitioner: (1) capitalizing the income or rent loss attributable to the negative influence; and (2) comparing comparable sales of similar properties, some exposed to the negative influence and others not. *Property Assessment Valuation, Second Edition (International Association of Assessing Officers)* at 173.

40. Wabash Inn submitted evidence that the State Board previously allowed the method of computing obsolescence that it has proposed. As previously stated, however, the Indiana Tax Court has ruled that recognized appraisal methods must be used to compute obsolescence. Wabash Inn's proposed method is not an accepted appraisal technique, and the State Board erred in previously allowing it. Administrative agencies should not be trapped in their mistakes and forced to continue their errors. See *State Board of Tax Commissioners v. Fraternal Order of Eagles, Lodge No. 255,* 521 N.E. 2d 678, 681 (Ind. Tax 1988).

41. Since Wabash Inn failed to use a recognized appraisal technique to quantify its obsolescence request, it has failed to meet its burden of proof concerning this issue. Therefore, the State Board is entitled to presume that the local assessment, in which 10% obsolescence was applied to the property, is correct. There is no change in the assessment as a result of this issue.

G. Issue No. 3 – Whether the motel front desk area and adjoining restaurant should be priced from the GCR schedule

42. Both parties agree that the building containing the front desk and the restaurant should be priced as GCR Motel Service.

43. The State Board considers this to be a decision between the parties and accepts the agreement. In doing so, the State Board does not decide the propriety of the agreement, either explicitly or implicitly. A change in the assessment is made as a result of this issue.

H. Issue No. 4 – Whether the subject should be assessed as one building with one PAR

44. The perimeter-area-ratio (PAR) is determined by dividing the total linear feet in the effective perimeter by the corresponding area, multiplying by one hundred (100), and rounding to the nearest whole number. 50 IAC 2.2-10-6(a)(4).

Schedules using the perimeter-area-ratio convert the vertical cost of a structure into a dollar amount per square foot. 50 IAC 2.2-10-2(e).

45. In the case at bar, the Petitioner contends that the subject should be assessed with one common PAR, instead of the current method of separate PARs for the three separate buildings. This change would lower the PAR from 6 for all buildings to a common PAR of 5.

46. The calculation of PAR for a property requires separate calculations for separate buildings. 50 IAC 2.2-10-2(f). Clearly, even though connecting roofs exist, the property contains three separate four-wall buildings. Therefore, it is logical to conclude that three separate PAR calculations should be made, just as the local officials have done.

47. If one were to conclude, however, that the property contains only one building with separate sections, 50 IAC 2.2-10-2(h) discusses only one method to calculate the PAR this type of building. "When this occurs, compute a PAR for the building, select the correct square foot price for each use type, and then apply a percentage multiplier based on the actual square footage of each individual section or use type."

48. Case law, however, has deemed a second method to be acceptable. In *Wareco Enterprises v. State Board of Tax Commissioners,* 689 N.E. 2d 1299 (Ind. Tax 1997), the Court states, "[t]he 'section method' by which some assessors calculate the PAR is an alternative method aimed at simplifying the calculations…". In this case, the St. Joseph County Board of Review used the "section method" to calculate PAR. The Tax Court remanded the issue to the State Board, ordering it to "recalculate the PAR using the County Board's methodology in order to determine whether it was done correctly." In issuing this decision, the Tax Court validated the use of the "section method" to calculate PAR, even of only one building with separate sections exists.

49. Even if one were to conclude that the subject is one building, the "section method" has been used to calculate PAR. This method is valid, regardless of whether the property is considered to have one building or three buildings. The State Board declines to disturb a valid assessment just because a change would be beneficial to the Petitioner. Therefore, there is no change in the assessment as a result of this issue.

Summary of State Determinations

Issue No. 1 – Whether the subject building has wood joist framing and should be depreciated from the 30-year life table

50. The Petitioner failed to meet his burden of proof. No change is made as a result of this issue.

Issue No. 2 – Whether obsolescence should be increased to 25%

51. The Petitioner failed to meet his burden of proof. No change is made as a result of this issue.

Issue No. 3 – Whether the motel front desk area and adjoining restaurant should be priced from the GCR schedule

52. The parties agreed that the building containing the front desk and the restaurant should be priced as GCR Motel Service. A change is made as a result of this issue.

Issue No. 4 – Whether the subject should be assessed as one building with one PAR

53. The Petitioner failed to meet his burden of proof. No change is made 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.

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Chairman, Indiana Board of Tax Review