STATE OF INDIANA
Board of Tax Review

WILLIAMS REALTY FOUR,	)	On Appeal from the Marion County
	)	Property Tax Assessment Board
Petitioner,	)	of Appeals
	)	
v.	)	Petition for Review of Assessment, Form 131
	)	Petition No. 49-600-01-1-4-00273
MARION COUNTY PROPERTY TAX	)	Parcel No. 6016728
ASSESSMENT BOARD OF APPEALS	)	
And PIKE TOWNSHIP ASSESSOR,	)	
	)	
Respondents.	)	

Findings of Fact and Conclusions of Law

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

Issue

Whether the subject property should receive obsolescence depreciation.

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 Marion County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on October 19, 2001. The Form 131 Petition was filed on November 16, 2001.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on February 20, 2002 before Hearing Officer Debra Eads. Testimony was given and exhibits were submitted. Frank Kelly, Jeff Wuensch, Marilyn Meighen and Lana Bousman of Nexus Group represented the Petitioner. Kevin Fasick represented Marion County. Janis Wilson and Wayne Grabman represented Pike Township.

4. At the hearing, the Form 131 petition was made a part of the record and labeled as Board's Exhibit A. The Form 117 Notice of Hearing was labeled as Board's Exhibit B. In addition, the following exhibits were submitted into evidence:

Petitioner's Exhibit 1 – Text in support of Petitioner position
Petitioner's Exhibit 2 – Two (2) plat maps of subject area
Petitioner's Exhibit 3 – April 2001 rent roll for Crooked Creek Center (subject)
Petitioner's Exhibit 4 – Rental info for Crooked Creek Shoppes
Petitioner's Exhibit 5 – Memo from Edward Okun concerning subject property rental rates
Petitioner's Exhibit 6 – Petitioner calculation of requested obsolescence

Respondent's Exhibit 1 – Pike Township memo in support of Respondent position
Respondent's Exhibit 2 – CAD drawing of subject area
Respondent's Exhibit 3 – Aerial photo with property boundaries of subject area
Respondent's Exhibit 4 – Site drawing of property to the north of subject
Respondent's Exhibit 5 – Two (2) photographs of property to the north of subject
Respondent's Exhibit 6 – Two (2) photographs of subject property
Respondent's Exhibit 7 – Three (3) photographs of subject property
Respondent's Exhibit 8 – Three (3) photographs of subject property

Respondent's Exhibit 9 – Two (2) photographs of property to the north of subject
Respondent's Exhibit 10 – Memo to Pike Township from Edward Okun
Respondent's Exhibit 11 – Marion County Memo in support of Respondent position
Respondent's Exhibit 12 – Subject property record card

5. The property, a strip mall, is located at 7804 N. Michigan Road, Indianapolis, Pike Township, Marion County, Indiana.

6. The Administrative Law Judge did not conduct an on-site inspection of the property.

Obsolescence

7. Mr. Kelly testified to the following:
   a. The visibility of the subject property is impacted by the presence of an outlot at the corner of Michigan Road and 79th Street.
   b. The low visibility negatively impacts the rents charged to the shopping center tenants by the Petitioner.
   c. The average rent paid by the tenants of the subject property is $10.80 per square foot (Petitioner's Exhibit 3) and the "target" rent for a shopping center that is under construction and located across 79th Street from the subject is $13.50 per square foot.
   d. A publication of the Institute of Real Estate Management (per Mr. Kelly, this publication is "in the possession of the Board") lists the average annual rental rate for "strip mall type facilities" as $12.00 per square foot.[1]

[1] The Petitioner is reminded that (unless approved by the State) all evidence must be presented at the hearing. "The Court [and the State] refuses to perform [the Petitioner's] work for it." *CDI, Inc. v. State Board of Tax Commissioners*, 725 N.E. 2d 1015, 1020 (Ind. Tax 2000). However, the failure to present this document has not affected the outcome of this appeal.

e. The calculation of obsolescence using below average rents is an acceptable method of calculating a loss of value.
f. The subject property has some characteristics of a rear lot, this fact is conveyed in the lower rental rates of the subject property.
g. By virtue of the often used vacancy schedule guide for obsolescence, the Marion County PTABOA has indicated a willingness to apply obsolescence and the Petitioner feels that lower than average rental rates is as compelling a reason of obsolescence as vacancy and should be accepted as a means of quantifying obsolescence.
h. The Petitioner used the purported average rental rate for the area of $12.00 per square and the average for the subject property of $10.80 per square foot to arrive at $1.20 per square as a loss of potential income.
i. The "Petitioners debt rate and other capitalization rates on similar properties by appraisers" might "suggest a capitalization rate of 9%"; the Petitioner used 10% "which would accrue to less cumulative obsolescence in this case".
j. The Petitioner calculated an external obsolescence of $ 600,000 and used the current improvement assessed value of $ 1,433,700 to arrive at an obsolescence of 41.8%.

8. Ms. Wilson testified to the following:
a. The amount of the subject property with frontage on Michigan Road or frontage on 79th Street as well as the presence of large signs that indicate the tenants located by the entrances results in sufficient visibility to motorists for the subject property.
b. A primary tenant (Ace Hardware) of the subject property is owned and operated by one of the owners of the real estate, and the rent rate paid by the tenant is (as reflected on Petitioner's Exhibit 3) $10.00 per square foot.

9. Mr. Fasick testified to the following:
a. The PTABOA disregarded much of the Petitioner evidence as hearsay, conjecture, opinion and/or unsubstantiated claims.

b. A range of rental rates of $7.00 to $24.00 per square foot for the subject property raises doubts as to the criteria used by the owner to determine rent rates.
c. The Marion County PTABOA will not apply obsolescence unless the obsolescence is sufficiently supported by verifiable evidence.
d. The Petitioner failed to substantiate a loss of value at the PTABOA hearing.

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 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. "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. 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 even though 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 – Obsolescence Depreciation

Definitions and Burden

18. The subject property is not currently receiving an obsolescence depreciation adjustment. The Petitioner argued that the property has experienced economic (external) obsolescence depreciation in the amount of 41.8 percent (Petitioner's Exhibit 6).

19. 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.

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

1992)). 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. "'Obsolescence' means a diminishing of a property's desirability and usefulness brought about by either functional inadequacies or overadequacies inherent in the property itself, or adverse economic factors external to the property." 50 IAC 2.2-1-40.

22. Economic obsolescence (external obsolescence) is defined as "obsolescence caused by factors extraneous to the property." 50 IAC 2.2-1-24.

23. "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.
(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).

24. The elements of 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.

25. "Without a loss of value, there can be no economic obsolescence." *Pedcor Investments-1990-XIII, L.P. v. State Board of Tax Commissioners*, 715 N.E. 2d 432, 438 (Ind. Tax 1999) (citing *Clark*, 694 N.E. 2d 1230, 1238).

26. 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).

27. Regarding obsolescence, the taxpayer has a two-prong burden of proof: (1) the taxpayer has to prove the 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).

Causes of Obsolescence

28. "[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).

29. 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.

30. The Petitioner's claim is summarized as follows: " The petitioner seeks an external (economic) obsolescence adjustment to the improvement to compensate for the lower rental rates, due in part to the reduced visibility of the petitioner's building and the greater distance from the major connecting streets as compared to neighboring competitor facilities." (Petitioner's Exhibit 1, page 2).

31. The Petitioner testified that, regardless of the visibility issue, lower than average rents are sufficient to establish a loss of value due to economic obsolescence.[3]

32. To prove the existence of economic obsolescence, the burden is on the Petitioner to establish that some change has occurred (extraneous to the property) which diminished the property's desirability and usefulness, creating a loss of value of the property in the marketplace.

33. However, the Petitioner has failed to identify any change in factors extraneous to the property, or in the reaction of the market to the property. For example, the building is the same distance from the road today as when it was built. The Petitioner presented no evidence to establish that the property allegedly creating the reduced visibility was constructed after the building under appeal. Finally, the Petitioner presented no evidence that the real estate market values the property less today than at any time in the past. Repeating, "[w]ithout a loss of value, there can be no economic obsolescence." *Pedcor*, 715 N.E. 2d at 438.

34. Instead, in support of its position, the Petitioner presented evidence that its property commands less rent than other purported comparable properties. The Petitioner contended that it is able to charge only $10.80 per square foot; a nearby strip mall has a rental rate of $13.50 per square foot, while a mall that was under construction on the assessment date rents for $14.00 per square foot. The Petitioner further contended that the median rental rate for Indianapolis area shopping centers is $12.00 per square foot. "The petitioner emphasizes that the

[3] Petitioner's Exhibit 1 also contains a discussion of front lot/real lot pricing. No explanation was given as to why this concept of land valuation is relevant to a claim of obsolescence, which applies only to improvements.

key piece of data is the average rental rate; some variability of leasing rates is to be expected." (Petitioner's Exhibit 1).

35. The IAAO, however, disagrees with this contention. The average rental rate is not the "key piece of data" in determining whether properties are truly comparable.

36. "In comparing one rental property with another, the following factors are considered: (1) effective date of lease, (2) location of property, (3) physical characteristics of property, and (4) terms of the lease. By analyzing these factors thoroughly, the comparability of the rental properties can be determined. Because the income approach depends upon an accurate estimate of economic rent, the leases covering the subject property, as well as those covering comparables in the area, must be carefully analyzed." IAAO Property Assessment Valuation, 206-207 (2nd ed. 1996).

37. Additionally, "[w]hen the square-foot unit is used with an office building or a shopping center, care must be exercised in the comparison process, because some leases refer to gross leasable area and others are negotiated on the basis of net leasable area. The *gross leasable area* (GLA) includes common areas such as halls, restrooms, and vestibules. The *net leasable area* (NLA) includes only the floor area occupied by the tenant…When leases are compared, the assessor must know whether rent is based on GLA or NLA and what method was used to determine the NLA." Id at 210.

38. Despite this emphasis by the IAAO on the importance of carefully analyzing lease terms, the Petitioner failed to present any comparison of the leases of the subject property and the purported comparables.

39. Merely characterizing properties as comparable is insufficient for appeal purposes. The Petitioner is required to present probative evidence that the purported comparable properties it offers are, in fact, comparable to the subject

property. *Canal Realty-Indy Castor v. State Board of Tax Commissioners*, 744 N.E. 2d 597 (Ind. Tax 2001). No such foundation was presented. For example, the Petitioner presented no discussion as to the manner in which a strip mall under construction on the assessment date is comparable to the strip mall under appeal, which was constructed in 1987 (Respondent's Exhibit 12, Property record card). Further, the Petitioner offered no comparison of lease terms, common physical characteristics, or amenities among the properties.

40. The Petitioner's conclusory statements concerning the comparability of the properties do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.

41. Having failed to establish the comparability of the properties, the Petitioner has failed to establish that the property under appeal commands less than market rents. Having failed to demonstrate any extraneous factors that changed the market reaction to the property, the Petitioner has failed to demonstrate any loss in the value of the property as a result of its location. As discussed, "[w]ithout a loss of value, there can be no economic obsolescence." *Pedcor* at 438.

42. The Petitioner therefore did not meet the first prong of the two-prong test articulated in *Clark.*

Quantification of Obsolescence

43. Even if the State accepted the existence of obsolescence, the Petitioner must still quantify the amount of obsolescence requested.

44. "There are two methods of measuring external [economic] obsolescence: (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." IAAO Property Assessment Valuation, 173 (2nd ed. 1996).

45. “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 at 183.

46. “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.

Application of the Income Capitalization Method

47. The Petitioner attempted to quantify its claim for obsolescence using the following methodology:

(a) The Petitioner calculated the annual difference in rent between the median rental rate for Indianapolis and the rent of the property under appeal.

(b) The annual difference in rent was then multiplied by a capitalization rate of 10% to obtain a purported dollar amount of external obsolescence.

(c) The proposed dollar amount of economic obsolescence was then divided by the current assessed value of the improvements to determine a percentage of obsolescence.

48. Although the Petitioner characterizes the above analysis as an income capitalization approach, it does not follow the methodology required under IAAO standards:
“The basic steps in the income approach are as follows:

1. Estimate potential gross income.
2. Deduct for vacancy and collection loss.
3. Add miscellaneous income to get effective gross income.
4. Determine operating expenses.
5. Deduct operating expenses from the effective gross income to determine net operating income before discount, recapture, and taxes.
6. Select the proper capitalization rate.
7. Determine the appropriate capitalization procedure to be used.
8. Capitalize the net operating income into an estimated property value." IAAO Property Assessment Valuation, 204 (2nd ed. 1996).

49. As discussed, the Petitioner failed to identify any comparable properties to determine either the potential gross income or the economic rent of the property, as required by generally accepted standards of assessment and appraisal practice.

50. "The vacancy factor for any particular property must be determined by a study of other comparable properties and an analysis of their rental histories, as well as the recent history of vacancies in the subject property." Id at 211.

51. The Petitioner's calculation contains no amount for vacancy and collection losses, as required by generally accepted standards of assessment and appraisal practice.

52. Further, the Petitioner has provided no explanation for the selection of the capitalization rate, other than to contend that it is "applicable" (Petitioner's Exhibit 1, page 4). Indeed, even the 9% rate indicated by the Petitioner was changed in the calculation to 10% with no explanation.

53. "The understanding and proper selection of rates used in the income approach are necessary if valid estimates of value are to be made. A small difference in the capitalization rate will result in estimates differing by thousands of dollars." IAAO Property Assessment Valuation, 233 (2nd ed. 1996). Without an explanation or justification of this crucial factor, the Petitioner's income analysis and ultimately the calculation of economic obsolescence are not supportable.

54. The Petitioner's unsubstantiated conclusions concerning the capitalization rate do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.

55. For all the reasons above, the Petitioner's attempt to quantify its claim for economic obsolescence does not conform to generally accepted standards of assessment and appraisal practice. The Petitioner therefore did not meet the second prong of the two-prong test articulated in *Clark.*

56. For all reasons set forth above, the Petitioner did not meet its burden of proof in this appeal. Accordingly, no change is made in the assessment as a result of this issue.

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

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Chairman, Indiana Board of Tax Review