

**STATE OF INDIANA
Board of Tax Review**

Basic American Convalescent Center,)	On Appeal from the Tippecanoe County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petition for Review of Assessment, Form 131
)	Petition No. 79-004-01-1-4-00008
TIPPECANOE COUNTY PROPERTY)	Parcel No. 156056000045
TAX ASSESSMENT BOARD OF)	
APPEALS And FAIRFIELD 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 economic obsolescence of 35% should be applied to the assessment for 2000 and 15% for 2001 based on the 1998 method used by the State.

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 of Kropp & Associates on behalf of Basic American Convalescent Center (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 petition was filed on September 17, 2001. The Tippecanoe County Property Tax Assessment Board of Appeal's (PTABOA) Notification of Final Assessment Determination on the underlying Form 130 is dated August 24, 2001.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on April 30, 2002 before Administrative Law Judge (ALJ), Joan L. Rennick. Testimony and exhibits were received into evidence. Mr. Paul Kropp represented the Petitioner. Mr. Bob McKee, Tippecanoe County Assessor, Mr. Lawrence Lahrman, PTABOA member, Mr. Red Strange, PTABOA member, Mr. David W. Luhman, Tippecanoe County Attorney, Ms. Jan Payne, Fairfield Township Assessor, and Mr. Gary Smith of Appraisal Research, represented Tippecanoe County and Fairfield Township.

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

Petitioner's Exhibit 1 - Assessment History

Petitioner's Exhibit 2 - Obsolescence Analysis

Petitioner's Exhibit 3 – Previous State Final Determination for Omega/Turtle Creek, LP, Petition Number 79-156-98-1-4-00009

Petitioner's Exhibit 4 - Corrected Form 115 for 2001

Petitioner's Exhibit 5 - Statement of Income for 1999

Petitioner's Exhibit 6 - Statement of Income for 2000

Petitioner's Exhibit 7 - Nursing Home Occupancy Statistics for 2001

Petitioner's Exhibit 8 - Property Tax Representative Disclosure

5. The subject property is nursing home located at 1903 Union Street, Lafayette, Fairfield Township, Tippecanoe County.
6. The ALJ did not inspect the subject property.
7. At the hearing, a discussion ensued between the parties of record, which would eventually include the Board of Tax Review and the County Assessor, regarding the year of the appeal. Based on this discussion it was determined the year under appeal for review at this hearing is for the 2001 assessment only. It was also determined and agreed upon by all the parties that the Petitioner, for the 2000 assessment, did not file a Form 131 petition.
8. At the hearing, the parties of record agreed that the assessed values under review for 2001 are:
Land - \$128,900
Improvements - \$1,330,100
Total - \$1,459,000

Issue - Whether economic obsolescence of 35% should be applied to the assessment for 2000 and 15% for 2001 based on the 1998 method used by the State Tax Board.

9. The Petitioner contends that a 30% economic obsolescence factor was established for appeals filed for the 1995, 1996, and 1997 assessment years

based on low occupancy rate and that the occupancy rate continued to decline in 1998. For those previous appeals the Petitioner requested economic and functional obsolescence because several wings of the facility had closed. The PTABOA denied the Petitioner's request for additional obsolescence and the Petitioner subsequently filed an appeal requesting a review of this issue by the State. The State applied an economic obsolescence factor of 35% to the assessment but did not apply functional obsolescence because the occupancy of the closed wings is considered in the economic obsolescence applied.

Petitioner's Exhibit 3.

10. The Petitioner contends that the formula for economic obsolescence is based on the occupancy rate for all nursing homes in the County for the previous two (2) years. In Tippecanoe County the occupancy rate for 1996 was 72.14% and for 1997 was 71.64%, for an average occupancy rate of 71.89 or 72%. The Petitioner's figures for the subject property showed an occupancy rate for 1996 of 39% and for 1997 an occupancy rate of 34%, for a two (2) year average of 36.5 or 37%. *Kropp testimony & Petitioner's Exhibit 3.*
11. The Petitioner concludes that he has demonstrated a two (2) year trend of occupancy that is 35% (72% minus 37%) below the industry average for Tippecanoe County. The economic obsolescence granted to this property should be 35%. *Kropp testimony.*
12. In the appeal under review at this hearing, the property in the above example is the same property under review today. The following data is presented: the 1999 Tippecanoe County Average Occupancy is 73.39% and the subject nursing home occupancy is 44.06% or a difference of 29.33%. The 2000 Tippecanoe County Average statistics were unavailable and the occupancy rate of the subject nursing home in 2000 indicates it is near the average for Tippecanoe County. Using the same formula as found in Findings of Fact ¶10 and 11 $(29.33+0)/2 =$

- 14.665 or 15%) determines the obsolescence to be applied to the subject structure is 15%. *Kropp testimony.*
13. The Petitioner stated he appealed another Tippecanoe County nursing home in August of 2001 using the same formula and that facility received 10% economic obsolescence depreciation. The Petitioner opines that the subject property is receiving disparate treatment when compared to the Lafayette Medical Investors and is at least entitled to the 10% economic obsolescence that has been granted to the other nursing home. However, the Petitioner concludes that he has made his case for 15% economic obsolescence on the subject property. *Kropp testimony.*
 14. Petitioner's Exhibit 4 is a corrected Form 115 issued on September 20, 2001 by the PTABOA granting the application of 10% economic obsolescence for 2000-2001 year to the subject property.
 15. The Petitioner stated that PTABOA members at the PTABOA hearing commented that more financial data should be presented. In turn the Petitioner brought to the State hearing income statements for 1999 and 2000 for the subject property. The statements submitted are additional evidence not presented at the PTABOA hearing. The Respondents raised no objections concerning the submission of this additional evidence.
 16. The Respondent stated that economic obsolescence, in the appraisal field, is from a force outside the property and vacancy does not meet that definition. Poor management of the subject property should not be rewarded with tax breaks. *Strange testimony.*
 17. The Respondent advised that because an occupancy rate is below the "average" it has nothing to do with the value of the property. *Smith testimony.*

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.

D. Whether economic obsolescence of 35% should be applied to the assessment for 2000 and 15% for 2001 based on the 1998 method used by the State Tax Board.

18. As stated in Findings of Fact ¶17, the parties agreed that the year under appeal is 2001. The only testimony and evidence to be reviewed will be that pertaining to that year.

1. The concept of depreciation and obsolescence

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. *International Association of Assessing Officials (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)*).

20. 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.
21. 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.*
22. Economic obsolescence depreciation is defined as “obsolescence caused by factors extraneous to the property.” 50 IAC 2.2-1-24.
23. Functional obsolescence depreciation is defined as “obsolescence caused by factors inherent in the property itself.” 50 IAC 2.2-1-29.
24. 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.
25. There are five recognized methods used to measure depreciation, including obsolescence; namely: (1) sales comparison method, (2) the capitalization of income method, (3) the economic age-life method, (4) the modified economic age-life method, and (5) the observed condition method.

26. It is the Petitioner's contention that the subject structure suffers from economic obsolescence due to vacancy.

2. Burden regarding the obsolescence claim.

27. "[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).
28. 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.
29. "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).
30. "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).
31. It is incumbent on the taxpayer to establish a link between the evidence and the loss of value 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).

32. 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).

3. Evidence submitted

33. In support of the claim for obsolescence, the Petitioner presented income statements for 1999 and 2000, a document entitled “Nursing Home Occupancy Statistics”, a second document entitled “Life Care Centers of America – Indiana Census Report, and a State Final Determination (Petition Number 79-156-98-1-4-00009).
34. Before applying the evidence to reduce the contested assessment, the State must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.

4. Evaluation of the evidence

35. In the case at bar, the Petitioner has requested 15% economic obsolescence based on the difference between the purported 1999 Tippecanoe County Average Occupancy rate of 72% and the subject nursing homes occupancy rate of 44.06% ($72\% - 44.06\% = 27.94\%/2 = 14\%$ rounded to 15%).
36. Occupancy rates, even if the subject’s rates are lower than a documented local average, are not enough to prove or quantify obsolescence. Many other factors besides obsolescence can be responsible for the low occupancy rates.
37. 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 (2) 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 that are not. *IAAO Property Assessment Valuation, Second Edition* at 173.

38. The Petitioner submitted evidence that the State previously allowed the method of computing obsolescence (using vacancy rates) that it has proposed. However, in the cited determination (Petitioner's Exhibit 3) the existence of economic obsolescence was not at issue. Nor is the State's or the County's position in a single proceeding sufficient to either establish a pattern of treatment or to provide acceptable comparable properties for analysis.
39. Furthermore, the Indiana Tax Court has ruled that recognized appraisal methods must be used to compute obsolescence and the Petitioner's proposed method is not an accepted appraisal technique. Even assuming the State erred in previously allowing an unacceptable appraisal technique on their part, 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 (Ind. Tax 1988).
40. Because the Petitioner failed to use a recognized appraisal technique to quantify its obsolescence request by showing a loss in value of the subject structure, it has failed to meet its burden of proof concerning this issue. Therefore, there is no change in the assessment as a result of this issue.

SUMMARY OF STATE DETERMINATIONS

Issue – Application of obsolescence due to vacancy for tax year 2001 - Denied.

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 12th day of June, 2002.

Chairman, Indiana Board of Tax Review