

**STATE OF INDIANA  
Board of Tax Review**

AMERICAN BUSINESS FOUNDATION,	)	On Appeal from the Marion County
	)	Property Tax Assessment Board
Petitioner,	)	of Appeals
	)	
v.	)	Petition for Review of Assessment, Form 131
	)	Petition Nos. 49-101-98-1-4-00106
	)	49-101-98-1-4-00102
MARION COUNTY PROPERTY TAX	)	
ASSESSMENT BOARD OF APPEALS	)	Parcel Nos. 1072351
And CENTER TOWNSHIP ASSESSOR,	)	1033993
	)	
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 makes the following findings of fact and conclusions of law.

**Issues**

**Parcel 1072351**

1. Whether the subject parcel should have a negative influence factor applied due to zoning restrictions.

2. Whether obsolescence depreciation (economic and functional) should be applied to the subject structure to account for zoning restrictions, change in use of property, and inefficient floor plan.

**Parcel 1033993**

1. Whether the subject parcel should have a negative influence factor applied due to zoning restrictions.
2. Whether land base rate is in accordance with the Marion County Land Valuation Order (Land Order).

**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, Joseph D. Calderon, attorney, on behalf of American Business Foundation (Petitioner), filed Form 131 petitions requesting a review by the State. The Form 131 petitions were filed on May 25, 2001 for Parcel 1072351 and on January 18, 2000 for Parcel 1033993. The Marion County Property Tax Assessment Board of Appeals (PTABOA) Notification of Final Determinations are dated April 27, 2001 and December 17, 2001, respectively.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on February 6, 2002, for both parcels, before Administrative Law Judge (ALJ) Alyson Kunack. Testimony and exhibits were received into evidence. Joseph Calderon, attorney, represented the Petitioner. Frank Corsaro represented Center Township. No one appeared to represent the PTABOA or Marion County.

4. At the hearing, the subject Form 131 petitions were made a part of the record and labeled Board Exhibits A. The Notices of Hearings on Petitions are labeled Board Exhibits B. In addition, the following exhibits were submitted to the State:

Petitioner Exhibit 1 – Restricted use appraisal report on the subject property by Mitchell Appraisals, Inc.

Petitioner Exhibit 2 – Zoning maps of the subject property

Petitioner Exhibit 3 – Zoning rules for the subject property

Respondent Exhibit 1 – Property record cards (PRCs) for parcels 1072351 and 1033993

Respondent Exhibit 2 – Sketch of subject property

5. At the hearing, the ALJ requested the following additional evidence from Mr. Calderon: a) information pertaining to the 1994 purchase of the subject property by the Petitioner, and b) at Mr. Calderon’s discretion, information pertaining to the income approach to value for the subject property. The ALJ granted Mr. Calderon until February 20, 2002 to submit this additional evidence. The Request for Additional Evidence is entered into the record and labeled as Board Exhibit C. The ALJ did not receive any of the requested additional evidence from Mr. Calderon.
6. The subject parcels are located at 3214 and 3242 Sutherland Avenue, Indianapolis, Center Township, Marion County.
7. At the hearing, the parties agreed that the year under appeal was 1998 and the values under appeal are:  
Parcel 1072351: Land \$28,970 Improvements \$251,700  
Parcel 1033993: Land \$20,800 Improvements \$0
8. The ALJ did not view the subject property.

## ISSUES

### Parcel 1072351

**Issue No. 1 - Whether the subject parcel should have a negative influence factor applied due to zoning restrictions.**

**Issue No. 2 - Whether obsolescence depreciation should be applied to the subject structure due to zoning restrictions, change in use of property, and an inefficient floor plan.**

9. Mr. Calderon testified that the subject property is the former Crossroads Rehabilitation Center. That based on the applicable zoning ordinances for the subject area, the only permissible use of the property is for charitable, philanthropic and not-for-profit (SU-7 designation). Mr. Calderon stated the Department of Metropolitan Development did grant a variance so that the property may also be used for warehousing and manufacturing. *Petitioner Exhibits 2 and 3.*
10. Mr. Calderon further testified, that the Petitioner operates a liquidation company (warehousing) out of the subject building. However, the Petitioner cannot do anything else with the building nor can anything else go into the building that is not used for charitable, philanthropic, or not-for-profit purposes.
11. Mr. Calderon contends that the existing zoning restrictions have an adverse impact on the value of the property and the only way to measure that value was with an appraisal, which indicated a value of \$100,000. Mr. Calderon opined that it would be difficult to determine what the appraised value of \$100,000 would equal in True Tax Value (TTV), however the TTV of the improvements is \$755,000. Mr. Calderon pointed out that there is a significant difference between the appraisal (market value) and the TTV. *Petitioner Exhibit 1.*

12. Regarding the obsolescence issue, Mr. Calderon contends that because of the use restrictions and an unusual building with functional inefficiencies (as set forth in the appraisal report) a significant amount of obsolescence should be applied to the subject property.
13. Mr. Calderon testified that comparison sales were considered and this evidence concluded that the square foot price of the subject building should be \$1.50 - \$1.75. Therefore, according to the appraisal, if the building is what generates the value, then the land value is next to nothing due to the zoning classification.  
*Petitioner Exhibit 1.*
14. Mr. Calderon stated that there are factors set forth in the appraisal that the appraiser took into consideration when he (the appraiser) determined his value, such as poor physical condition, environmental issues, leased HVAC system, zoning, and a portion of the property being in a flood plain or flood way.  
*Petitioner Exhibit 1.*
15. Mr. Corsaro asked Mr. Calderon if the Petitioner paid \$75,000 for the property when they purchased it and whether a closing statement existed. Mr. Calderon responded that the \$75,000 was correct and that he could obtain a closing statement if the ALJ requested it. Mr. Corsaro asked why the income approach to value was not used within the appraisal. Mr. Calderon responded that the income approach was not used because the use was the same and it is not really an income property. Mr. Calderon added that if the ALJ would deem this information relevant, as back up to the appraisal report, he would obtain it. When asked by Mr. Corsaro whether the day care center still was there, Mr. Calderon could not answer one way or the other.
16. The ALJ requested information from the Petitioner regarding the 1994 sale of the subject property and left it up to the discretion of Mr. Calderon to submit the income approach within two (2) weeks of the date of the hearing.

**Parcel 1033993**

**Issue No. 1 - Whether the subject parcel should have a negative influence factor applied due to zoning restrictions.**

**Issue No. 2 - Whether land base rate is in accordance with the Marion County Land Valuation Order (Land Order).**

17. Mr. Calderon testified that this parcel is zoned both SU-7 and D-5 but could not determine where each zone started or ended. Mr. Calderon testified that a D-5 designation is for single family or two family dwelling districts and SU-7 is a special use district for charitable, philanthropic, and not-for-profit institution. Mr. Calderon contends that although the use of the subject parcel is clearly commercial, it is a non-conforming use and therefore an influence factor should be applied. *Petitioner Exhibits 2 and 3.*
18. Mr. Calderon opined that the appraisal shows the entire property is worth \$100,000 generated mainly by the value of the building, and that one would have to conclude that in the appraiser's mind the ground value was nominal because of the actual use of the property. Mr. Calderon reiterated the permitted uses of a D-5 and SU-7 designation and stated that both designations according to the Regulation are indicators for a negative influence factor.
19. Mr. Corsaro submitted an aerial and PRC for the subject parcel. Mr. Corsaro stated the property was assessed as per the Manual. That the subject structure is a two-story building with a basement, built in 1956, previously owned by Crossroads Rehabilitation and purchased by the Petitioner in 1994. Mr. Corsaro further stated that when Crossroads owned the property it was tax exempt.
20. Mr. Corsaro added that the Petitioner has not paid taxes on parcel #1072351 in the seven (7) years that they have owned it. Presently the Petitioner owes \$433,679, but has paid the taxes on parcel #1033993. The amount owed does

not include PTABOA adjustments in the amount of \$96,300 for 1998, 1999, and 2000.

### **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. 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.

**Issue No. 1 - Whether the subject property should have a negative influence factor applied due to zoning restrictions.**

Parcels 1072351 and 1033993

18. The Petitioner maintains that the subject parcels should have a negative influence factor applied to account for zoning restrictions.
19. 50 IAC 2.2-4-10(a)(9) defines an influence factor as “a condition peculiar to the lot that dictates an adjustment to the extended value to account for variations from the norm.” Examples of influence factors are topography; under-improved; excess frontage; shape or size; misimprovement; restrictions; and other influences not listed elsewhere. See also 50 IAC 2.2-4-17(c)(8).
20. In the case at bar, the Petitioner maintains that the current zoning (SU-7 and D-5) of the subject properties restricts the use in such a manner as to reduce their value. One (1) of the properties under review is zoned for charitable, philanthropic or not-for-profit use (SU-7), and the other is in a residentially zoned area (D-5).
21. While zoning restrictions may be grounds for the application of an influence factor, in order for the Petitioner to prevail in an appeal for the application of a negative influence factor, the Petitioner must present both “probative evidence that would support an application of a negative influence factor and a quantification of that influence factor at the administrative level”. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999). The Petitioner must show the negative effect that the zoning has on the subject parcel’s value, and then quantify that negative effect.

22. The Petitioner presented three (3) pieces of evidence regarding the subject properties. Two (2) of the three (3) exhibits (Petitioner Exhibits 2 & 3) consist of zoning maps of the subject area and a list of the Special Use Zoning Districts with their permitted uses. These exhibits simply show and explain zoning districts within the area of the subject parcels and what the zoning designations stand for.
23. The third piece of evidence, a restricted use appraisal report by Mitchell Appraisals, Inc. (Petitioner Exhibit 1), has limited probative value for several reasons. The report states that the intended use is “for internal decisions concerning the disposition of the subject property,” i.e. for purposes of evaluating a possible sale of the property. As such, the information contained within has little bearing on any tax related issues. Also, the petitions under review are for the assessment of the properties as of March 1, 1998, whereas the report is dated for April of 2000. The report includes in its evaluation not just the two (2) parcels under appeal, but four (4) additional parcels as well.
24. The information, which is the basis for the appraisal evaluation, is insufficient. While there is mention of numerous (50+) comparable properties, almost no details are provided about those properties or any real analysis made to support the conclusions presented.
25. Assuming *arguendo* that the Petitioner had met his burden in proving the need for an influence factor, the Petitioner however, failed in his burden to quantify the amount of an influence factor he was seeking. The Petitioner did not present any evidence or quantification of the amount of an influence factor deemed necessary.
26. 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).

27. For all the reasons set forth above, the State finds that the Petitioner did not establish the negative effect of its zoning or quantify any effect. No change in the assessments is made as a result of this issue.

**Issue No. 2 - Whether obsolescence depreciation should be applied to the subject structure due to zoning restrictions, change in use of property, and an inefficient floor plan.**

Parcel 1072351

28. 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 (2<sup>nd</sup> 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 (10<sup>th</sup> ed. 1992)).
29. 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.
30. The definition of obsolescence in the Regulation, 50 IAC 2.2-10-7, is tied directly to that 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.*

31. Functional obsolescence depreciation is defined as “obsolescence caused by factors inherent in the property itself.” 50 IAC 2.2-1-29.
32. Economic obsolescence depreciation is defined as “obsolescence caused by factors extraneous to the property.” 50 IAC 2.2-1-24.
33. 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 (Ind. Tax 1998).
34. 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).
35. 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).
36. The Petitioner contends that the subject structure should have obsolescence depreciation applied due to zoning restrictions, change in property use, and an inefficient floor plan.
37. The evidence submitted by the Petitioner is of little probative value or contributes little to the Petitioner’s cause (See Conclusions of Law ¶¶ 22-25). Although a list of possible causes of obsolescence was given, both in testimony and in Petitioner Exhibit 1, no supporting documentation was provided to show what conditions actually existed. Without such supporting documentation, all that

remains are conclusory statements made by the Petitioner regarding possible causes of obsolescence. This is insufficient to meet the necessary burden to prove the existence of obsolescence.

38. At no time does the Petitioner attempt to make any correlation between these alleged causes of obsolescence and the amount it seeks. The Petitioner fails to explain how the alleged causes of obsolescence lead to a loss of value to the subject structure. Instead, the Petitioner merely makes statements as to why it feels that obsolescence is applicable.
39. The identification of causes of obsolescence requires more than randomly naming names. “Rather, the taxpayer must explain how the purported causes of obsolescence cause the subject improvements to suffer losses in value.” *Champlin Realty Company v. State Board of Tax Commissioners*, 745 N.E. 2d at 936 (Ind. Tax 2001).
40. Conclusory statements that obsolescence should be applied to the subject building because the Petitioner feels it is appropriate, do not constitute a sufficient and accepted method for quantifying obsolescence depreciation. Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119 (Ind. Tax 1998).
41. Taxpayer representatives must offer probative evidence of an alleged assessment error. Allegations of error, conclusory statements, and mere references to regulations do not constitute probative evidence. *Bernacchi v. State Board of Tax Commissioners*, 727 N.E. 2d 1133, 1135-37 (Ind. Tax 2000) and *Hoogenboom-Nofziger v. State Board of Tax Commissioners*, 715 N.E. 2d 1018 (Ind. Tax 1999).

42. For all the reasons set forth above, The Petitioner failed to offer probative evidence of the existence of obsolescence, and failed to quantify any amount of obsolescence depreciation sought. No change in the assessment is made as a result of this issue.

**Issue No. 3 - Whether land base rate is in accordance with the Marion County Land Valuation Order (Land Order).**

Parcel 1033993

43. On the Form 131 petition the Petitioner states that the subject parcel is not priced in accordance with the Land Order, and that the parcel should be priced using residential front foot pricing.
44. However, at the hearing the Petitioner failed to present any testimony or evidence regarding this issue. The evidence presented on this issue is the same evidence that was presented on Issues 1 and 2 above and lends nothing to the Petitioner's case.
45. Taxpayer representatives must offer probative evidence of an alleged assessment error. Allegations of error, conclusory statements, and mere references to regulations do not constitute probative evidence. *Bernacchi v. State Board of Tax Commissioners*, 727 N.E. 2d 1133, 1135-37 (Ind. Tax 2000) and *Hoogenboom-Nofziger v. State Board of Tax Commissioners*, 715 N.E. 2d 1018 (Ind. Tax 1999).
46. Having failed to present any probative evidence or testimony that pertained to the issue of the land base rate, the Petitioner failed to show that the land value attributed by the local assessing officials was incorrect. As a result, there is no change in the assessment as a result of this issue.



## SUMMARY OF DETERMINATIONS

### Parcel #1072351

Issue #1: Whether the subject parcel should have a negative influence factor applied due to zoning restrictions. No change.

Issue #2: Whether economic and functional obsolescence depreciation should be applied to the subject structure to account for zoning restrictions, change in use of the property, and inefficient floor plan. No change.

### Parcel #1033993

Issue #1: Whether the subject parcel should have a negative influence factor applied due to zoning restrictions. No change.

Issue #2: Whether the land base rate is in accordance with the Marion County Land Valuation Order. No Change.

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