

**STATE OF INDIANA
Board of Tax Review**

UNIVERSAL COOPERATIVES, INC.)	On Appeal from the Elkhart County Property
)	Tax Assessment Board of Appeals
)	
Petitioner,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition No. 20-030-95-1-4-00217
)	Parcel No. 301123200003
ELKHART COUNTY PROPERTY TAX)	
ASSESSMENT BOARD OF APPEALS)	
And ELKHART 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 correct life expectancy table was used.
2. Whether additional obsolescence is warranted.
3. Whether the State has provided instructions for determining the effects that location and use have on the value of real property, and for determining the productivity of earning capacity of the land for the subject property as required in IC 6-1-1-31-6.

4. Whether the valuation method used to determine the assessed value of the subject is uniform and based upon a just valuation as required by Article X, Section 1 of the Indiana Constitution.

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 IC 6-1.1-15-3, Landmark Appraisals, Inc. filed a Form 131 petition on behalf of Universal Cooperatives, Inc. (Universal) requesting a review by the State. The Elkhart County Board of Review's Final Determination was issued on July 7, 1997. The Form 131 petition was filed on July 29, 1997.
3. Pursuant to IC 6-1.1-15-4, a hearing was held on May 23, 2000, before Hearing Officer Ellen Yuhan. Testimony and exhibits were received into evidence. M. Drew Miller of Landmark represented Universal. Rebecca Inbody and Iverson Groves represented the Elkhart Township Assessor's Office.
4. At the hearing, the Form 131 petition was made part of the record and labeled Board's Exhibit A. The Notice of Hearing was labeled Board's Exhibit B. The article "Residential Depreciation" from the Winter 1999-2000 issue of *The Communicator* was labeled Board's Exhibit C (the Petitioner included one page of this article in Petitioner's Exhibit 1; Board's Exhibit C makes the entire article a part of the record).
5. In addition, the Petitioner submitted the following evidence:
Petitioner's Exhibit 1 – includes: (a) Notice of Hearing; (b) Notice of Assessment of Real Property, Form 115, for the subject property; (c) issues and contentions; (d) calculation of obsolescence; (e) page 9 of the Winter 1999-2000 issue of *The Communicator*; (f) copy of section 98, page 15 from the October 1996 Marshall

Valuation Service (MVS) manual; (e) copy of section 98, page 16 from the October 1996 MVS manual; and (f) the subject property record card.

Petitioner's Exhibit 2 - Appraisal report.

Petitioner's Exhibit 3 - Purchase agreement.

Petitioner's Exhibit 4 - Real estate report prepared by Hart Corporation.

Petitioner's Exhibits 5-8 - Exterior photographs of the subject.

Petitioner's Exhibit 9 - 1995 State Final Determination on petition number 29-018-95-1-5-00037, Robert J. and Mary G. Giczewski.

6. The Respondent submitted the following:

Respondent's Exhibit 1 - Property record card for the subject with the Board of Review values.

Respondent's Exhibit 2 - 1995 property record card.

Respondent's Exhibit 3 - Explanation of functional obsolescence with attachments from the *Appraisal of Real Estate*, Eleventh Edition.

Respondent's Exhibit 4 - Rebuttal of the Petitioner's theory, sketch of the subject and a list of similar properties.

7. The property is an industrial facility located at 2600 College Avenue, Goshen, Elkhart Township, Elkhart County.

8. The hearing officer did not view the property.

9. The assessed value for 1995 as determined by the Elkhart County Board of Review is:

Land: \$105,900 Improvements: \$1,265,630 Total: \$1,371,530.

10. Mr. Miller testified that he was a Level II Certified Indiana Assessor-Appraiser. He is a member of the American Society of Appraisers. Landmark Appraisals, Inc. is contracted on a contingency basis. Mr. Miller is a principal of Landmark Appraisals, Inc.

Issue 1 - Whether the correct life expectancy table was used.

11. The Board of Review depreciated the building from the forty-year life expectancy table. The Petitioner contended that the building should be depreciated from the thirty-year life expectancy table.
12. Mr. Miller testified to the following:
 - (a) The subject improvement is a light, pre-engineered structure and the regulation requires that it be depreciated from the thirty-year life table.
 - (b) Both appraisal reports submitted describe the building as a pre-engineered structure.
 - (c) The building was manufactured by Armco.
 - (d) The issue of light construction is considered in the pricing as a light manufacturing facility.
 - (e) The only way it could be depreciated from the forty-year life table is as a fire-resistant building not described elsewhere; this building is listed elsewhere as a light pre-engineered building.
13. Ms. Inbody testified that in 1995 their computer system automatically depreciated this type of building from the forty-year life table. In an effort to achieve the correct physical depreciation, the Board of Review changed the condition from average to fair instead of changing the depreciation schedule to the more appropriate thirty-year schedule.
14. Mr. Groves testified that he inspected the property approximately one month ago with the current owner. He asked the owner to point out everything that had changed since he purchased it. Mr. Groves judged the building, both now and in 1996, to be consistent with average condition. Mr. Groves contended that, if the depreciation table was changed, then the condition should be changed to average.
15. Mr. Miller testified that he was present at the Board of Review hearing and it was

his understanding that if a change in the depreciation table was necessary, they had to make the change manually. He does not believe the Board changed the condition to adjust for a difference in the depreciation tables; rather, the change was made because Dan Bubb, an advisor to the County, concluded the condition of the subject was fair.

Issue 2 - Whether additional obsolescence is warranted.

16. The Board of Review determined that the building should receive 15% obsolescence depreciation. The Petitioner contended the building should receive 47% obsolescence.

17. Mr. Miller testified to the following:
 - (a) The building was sold to Behlen Manufacturing on September 26, 1996, for \$3,575,000.
 - (b) In an attempt to estimate the amount of depreciation, he used the example shown in the Winter 1999-2000 issue of *The Communicator*, a State publication (Petitioner's Exhibit 1). The method is basically a comparison of the sales price with the reproduction cost.
 - (c) He subtracted the land value shown on the property record card from the sales price; the remainder is the sale price of the improvements.
 - (d) He then factored the remainder value from the property record card to reflect the 15% adjustment made to the 1991 costs by the State.
 - (e) The 100% 1991 remainder value was then factored to the 1996 sale date. To equate the time frames, he used the comparative cost multiplier in the Marshall Swift Valuation manual (MVS).
 - (f) The 1996 remainder value minus the sale price of the improvements equals the dollar amount of obsolescence. This dollar amount is equivalent to 47% obsolescence.
 - (g) The method he used is based on a State determination for Robert J. and Mary G. Giczewski, Petition Number 29-018-95-1-5-00037. In this determination, the State used MVS cost multipliers to adjust the actual

construction costs. A direct comparison was then made with the reproduction cost to determine grade.

- (h) The County officials have already applied obsolescence to the property; the causes are not at issue here, only the amount.
- (i) The sale price is a definite indicator of the loss in value.

18. The Petitioner's obsolescence calculation, as shown in Petitioner's Exhibit 1, is as follows:

Sale price of property, 1996	\$3,575,000
Less land value from the County property record card	<u>339,300</u>
Sale price of improvements	\$3,235,700
Remainder value (reproduction cost - physical depreciation)	\$4,482,550
15% adjustment by State	<u>.85</u>
100% 1991 remainder value	\$5,273,588
Regional Great Lakes (GL) Marshall Cost Index	<u>1.157</u>
1996 remainder value	\$6,101,541
Less sale price of improvements	<u>3,235,700</u>
Loss in value due to obsolescence	\$2,865,841
Divided by the 1996 remainder value	<u>\$6,101,541</u>
Obsolescence depreciation	47%

19. Ms. Inbody testified that the building has had 15% obsolescence applied to it. Ms. Inbody also questioned the land value used in the calculation because it did not agree with the value shown on the property record card.
20. Mr. Miller testified that the land value was for two parcels. The 1996 transaction included a vacant parcel, 30-11-23-200-002, with a land value of \$21,600. He deducted this amount from the sale price in determining the loss in value.
21. Mr. Groves testified to the following:
- (a) There needs to be a reason for obsolescence.

- (b) The Petitioner has not given a specific reason for the loss in value.
 - (c) The Petitioner's method of quantifying the obsolescence does not comply with any recognized methods for measuring functional obsolescence.
 - (d) When market data is commingled with other accounting systems, many conclusions may be obtained.
 - (e) The Petitioner's theory is flawed.
 - (f) The Petitioner has failed to offer any verifiable support for data used either at the Board of Review hearing or at this hearing.
 - (g) The building sketch (Respondent's Exhibit 4) shows the building to have a common configuration, typical ceiling height, and a cost that is in the typical range if one uses a reproduction cost from MVS.
 - (h) The Petitioner's cost is several million dollars higher than what the assessor developed.
 - (i) This is a simple inexpensive building, a type that is commonly built. The commonality is illustrated by the buildings listed on page three (Respondent's Exhibit 4), which are large buildings of the Class S type, with the same height and in the same price range. If everyone is building this type of building, there is no foundation for functional loss.
 - (j) The land value is established from the market; however, there is a seven-year gap between the time the market data was gathered to the time of the sale.
22. Mr. Miller testified that the causes of obsolescence were not at issue; they were discussed at the Board of Review hearing. Some of the reasons that were discussed were the excessive wall height, excess capacity, and market acceptability. The issue now is the amount of obsolescence.
23. Mr. Groves asked if the values in the appraisals had any relevance. Mr. Miller replied that the only relevance for this hearing was the description of the building and they do give some indication of value. Mr. Miller did not use those value conclusions in his calculation. Mr. Groves testified that he did not find the value conclusions in the appraisals to be reasonable.

24. Mr. Miller testified that he takes exception to the comment made that everyone is building this type of building. The building may be similar to other structures, but not many people build 366,000 square foot buildings. This makes the building somewhat of a white elephant due to its size. Mr. Miller stated that he understood Mr. Groves' concern as to mixing accounting systems, but there are flaws in the manual. Some things are not addressed, so it is necessary to go outside the manual.
25. Mr. Miller testified that the analysis he prepared assumed no change in the physical depreciation. If the physical depreciation is changed, the obsolescence factor will decrease.

Issue 3 - Whether the State has provided instructions for determining the effects that location and use have on the value of real property, and for determining the productivity of earning capacity of the land for the subject property as required in IC 6-1-1-31-6.

26. No evidence or testimony was submitted concerning this issue.

Issue 4 - Whether the valuation method used to determine the assessed value of the subject is uniform and based upon a just valuation as required by Article X, Section 1 of the Indiana Constitution.

27. No evidence or testimony was submitted concerning this issue.

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. Witness Compensation

18. The State's position is that it 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. *Wirth v. State Board of Tax Commissioners*, 613 N.E. 2d 874 (Ind. Tax 1993); *Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230, 1241, n. 17 (Ind. Tax 1998).

E. Issue 1 - Whether the correct life expectancy table was used.

19. The Board of Review depreciated the building from the forty-year life expectancy table. The Petitioner contended that the building should be depreciated from the thirty-year life expectancy table.
20. Physical depreciation "refers to the loss of value caused by physical deterioration." 50 IAC 2.2-1-20.
21. Physical depreciation "is determined by the combination of age and condition. Each type of building has a life expectancy that is determined by the building components and the use of the building. By applying these factors, the correct physical depreciation can be applied to the building. The following tables are used to depreciate commercial and industrial buildings:
- (1) The thirty (30) year life expectancy table.
 - (2) The forty (40) year life expectancy table.

- (3) The fifty (50) year life expectancy table.
 - (4) The sixty (60) year life expectancy table.” 50 IAC 2.2-10-7(c).
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- 22. The commercial and industrial depreciation tables are included in 50 IAC 2.2-11-7. The thirty-year life expectancy table is to be used for “wood joist offices, wood joist manufacturing facilities, low-cost motels, light pre-engineered buildings and all wood joist construction other than apartments.” The forty-year life expectancy table is to be used for “wood joist apartments, medical facilities, parking garages, [and] all fire-resistant buildings not listed elsewhere.”
 - 23. The Petitioner presented two appraisals in which the subject building was described as pre-engineered. The Petitioner also submitted four exterior photographs of the subject.
 - 24. Ms. Inbody testified that, in 1995, the Township’s computer system automatically depreciated this type of building from the forty-year life table. In an effort to achieve the correct physical depreciation, the Board of Review changed the condition from average to fair instead of changing the depreciation schedule to the more appropriate thirty-year schedule.
 - 25. The undisputed testimony of both parties therefore indicated that the building should be depreciated using the thirty-year life expectancy table.
 - 26. For the above reasons, the State determines that the building should be depreciated from the thirty-year life expectancy table.
 - 27. The local officials contended that, if the depreciation schedule is changed, the condition of the building should also be changed. The parties disagreed on the reason for the Board of Review change reducing the condition of the building.
 - 28. The condition of the building, however, was not an issue on the Form 131 petition and therefore will not be addressed in this determination.

F. Issue 2 - Whether additional obsolescence is warranted.

29. The Board of Review determined that the building should receive 15% obsolescence depreciation. The Petitioner contended the building should receive 47% obsolescence.
30. Functional obsolescence depreciation is defined as “obsolescence caused by factors inherent in the property itself.” 50 IAC 2.2-1-29.
31. “Functional obsolescence may be caused by, but is not limited to, the following:
(A) Limited use or excessive material and product handling costs caused by an irregular or inefficient floor plan.
(B) Inadequate or unsuited utility space.
(C) Excessive or deficient load capacity.”
50 IAC 2.2-10-7(e)(1).
32. Economic obsolescence depreciation is defined as “obsolescence caused by factors extraneous to the property.” 50 IAC 2.2-1-24.
33. “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).

34. 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.
35. 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.
36. 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).
37. Depreciation is a market value concept and the true measure of depreciation is the effect on marketability and sales price. International Association of Assessing Officers (IAAO) Property Assessment Valuation, 153 (2nd ed. 1996). 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 Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801, 806 (Ind. Tax 1998). Accordingly, depreciation can be documented by using recognized appraisal techniques. *Id.*
38. 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).
39. As discussed, the property record card indicates that the BOR applied 15% obsolescence depreciation to the structure. Because the parties agree that some

level of obsolescence is present in the building, the first prong of the two-prong test articulated in *Clark* is satisfied.

40. In an attempt to quantify obsolescence, the Petitioner offered the following calculation (Petitioner's Exhibit 1):

Sale price of property, 1996	\$3,575,000
Less land value from the County property record cards	<u>339,300</u>
Sale price of improvements	\$3,235,700
Remainder value (reproduction cost - physical depreciation)	\$4,482,550
15% adjustment by State	<u>.85</u>
100% 1991 remainder value	\$5,273,588
Regional (GL) Marshall Cost Index	<u>1.157</u>
1996 remainder value	\$6,101,541
Less sale price of improvements	<u>3,235,700</u>
Loss in value due to obsolescence	\$2,865,841
Divided by the 1996 remainder value	<u>\$6,101,541</u>
Obsolescence depreciation	47%

41. The Petitioner points to an issue of *The Communicator*, a State publication, as proof that its calculation is an acceptable method of quantifying obsolescence. However, the Petitioner provided only one page (page 9) of the entire article. When read in its entirety, the article containing this methodology presented merely an overview of future continuing education classes concerning the development of residential depreciation schedules. The calculation in *The Communicator* was not presented as a method of measuring obsolescence in individual properties.

42. Further, even the single page of this article presented by the Petitioner states the calculation “is to account for loss in value (depreciation) to the reproduction cost new of improvements (RCN) from all the causes listed above [physical

depreciation, functional obsolescence, and external obsolescence] with one percentage (depreciation allowance).” (Petitioner’s Exhibit 1).

43. The calculation clearly presents a measure of depreciation from all causes, including physical depreciation. The plain language of *The Communicator* article therefore directly contradicts any assertion that an amount derived from this calculation is a measure of obsolescence.
44. Several additional flaws in the Petitioner’s calculation are readily apparent.
45. The sale of both the improvements and land, for \$3,575,000, occurred on September 26, 1996 (Petitioner’s Exhibit 3). The Petitioner subtracted the true tax value of the land (as indicated on the property record cards) from this total sales price in an attempt to determine the value of the improvements alone.
46. These property record card values represent the value of the land in 1991, not 1996. See 50 IAC 2.2-4-2(b). The Petitioner may not use the 1996 market value of both land and improvements, subtract 1991 land values (no evidence of the 1996 market value of the land was presented), and claim the difference represents the 1996 value of the improvements alone.
47. Additionally, despite the extended time period of more than 1 1/2 years between the March 1995 assessment date and the September 1996 sale date, the Petitioner’s analysis contains no time of sale adjustment to reflect any differences in the market conditions, as required by generally accepted standards of appraisal and assessment. “Adjustments are usually made for market conditions (time of sale), location, and physical characteristics.” IAAO Property Assessment Valuation, 105 (2nd ed. 1996).
48. The Petitioner’s calculation also attempted to adjust the remainder values of the improvements, taken from the 1995 property record card, to 1996 values.

49. No explanation was offered, however, to explain why all the data concerning the value of the improvements was converted to 1996 values, when the year under appeal is 1995.
50. In the absence of any explanation or adjustments to value to account for these differences in the sale and assessment dates, there is no foundation to establish a correlation between the 1996 sales price offered by the Petitioner and the March 1, 1995, assessment date.
51. In further support of its position, the Petitioner asserted a calculation similar to its own was deemed probative in a State Final Determination for Petition Number 20-018-95-1-5-00037, filed by Robert J. and Mary G. Giczewski (Petitioner's Exhibit 9).
52. However, a close reading of the Giczewskis' Final Determination indicates that the calculation involved the determination of a dwelling's grade. Obsolescence was not an issue in the Giczewskis' appeal and the calculation in that Final Determination does not purport to quantify obsolescence.
53. For all the reasons above, the State is under no obligation to give, and does not give, the Petitioner's obsolescence calculation any weight.
54. Finally, the State notes that the Petitioner submitted appraisals from two different independent appraisers. The appraisal dated December 1, 1988, found that "under the premise of continued use, the real property was assumed to suffer little, if any, from these two forms of depreciation [functional and external obsolescence]. (Petitioner's Exhibit 2, page 27). Similarly, the appraisal dated February 4, 1991, found the property to be an "excellent quality facility" and concluded, "The building is ideal for manufacturing and assembly." (Petitioner's Exhibit 4, first page of the evaluation). Although the State recognizes that both of these appraisals pre-date the March 1, 1995, assessment date, the Petitioner presented no explanation of the circumstances by which an "ideal" building

suffering “little, if any” obsolescence has become a structure now purportedly experiencing significant (47%) obsolescence. In the absence of such an explanation to reconcile these varying opinions, even more doubt is cast on the credibility of the Petitioner’s proposed quantification of obsolescence. “The Court will ordinarily expect that a taxpayer will come forward with a large amount of evidence relating to the issue raised by the taxpayer.” *Whitley*, 704 N.E. 2d at 1121, n. 16.

55. The Petitioner has failed to quantify its claim for 47% obsolescence, as required by the second prong of the two-prong test articulated in *Clark*.
56. For all the reasons above, the Petitioner failed to meet its burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

G. Issue 3 - Whether the State has provided instructions for determining the effects that location and use have on the value of real property, and for determining the productivity of earning capacity of the land for the subject property as required in IC 6-1-1-31-6.

57. The Petitioner did not address this issue at the hearing.
58. Since no evidence was offered in support of this issue, the Petitioner failed to meet its burden. This issue will not be discussed or further analyzed in these findings.

H. Issue 4 - Whether the valuation method used to determine the assessed value of the subject is uniform and based upon a just valuation as required by Article X, Section 1 of the Indiana Constitution.

59. The Petitioner did not address this issue at the hearing.

60. Since no evidence was offered in support of this issue, the Petitioner failed to meet its burden. This issue will not be discussed or further analyzed in these findings.

Summary of Final Determination

ISSUE 1 - *Whether the correct life expectancy table was used.*

61. The Petitioner met its burden on this issue. The building should be depreciated using the thirty-year life expectancy table.

ISSUE 2 - *Whether additional obsolescence is warranted.*

62. The Petitioner failed to meet its burden on this issue. No change is to be made in the assessment as a result of this issue.

ISSUE 3 - *Whether the State has provided instructions for determining the effects that location and use have on the value of real property, and for determining the productivity of earning capacity of the land for the subject property as required in IC 6-1-1-31-6.*

63. The Petitioner failed to meet its burden on this issue. No change is to be made in the assessment as a result of this issue.

ISSUE 4 - *Whether the valuation method used to determine the assessed value of the subject is uniform and based upon a just valuation as required by Article X, Section 1 of the Indiana Constitution.*

64. The Petitioner failed to meet its burden on this issue. No change is to be 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.

Chairman, Indiana Board of Tax Review