

**STATE OF INDIANA  
Board of Tax Review**

FOAM FABRICATORS INC.	)	On Appeal from the Floyd County
	)	Board of Review
	)	
Petitioner,	)	
	)	Petition for Review of Assessment, Form 131
v.	)	Petition No. 22-008-95-1-4-00091
	)	Parcel No. 008417007
FLOYD COUNTY BOARD of REVIEW	)	
and NEW ALBANY TOWNSHIP	)	
ASSESSOR,	)	
	)	
Respondents.	)	

**Findings of Fact and Conclusions of Law**

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

**Issues**

1. Whether the subject property should be depreciated using the thirty (30) year life depreciation schedule.
2. Whether additional obsolescence should be applied to the subject property.

## 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, Mr. Michael White, Appraisal Management Research Company, filed a Form 131 petition, on behalf of Foam Fabricators, Ltd. requesting a review by the State. The Form 131 was filed on October 22, The Board of Review notified Foam Fabricators of the final determination on September 30, 1996.
  
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on April 5, 2000 before Hearing Officer Jennifer Bippus. Testimony and exhibits were received into evidence. Mr. Michael White, Appraisal Management Research Company, and Mr. Al King, General Manager, Foam Fabricators Company, represented the Petitioner. Ms. Patricia Badger-Byrd, New Albany Township Assessor, was present for the County.
  
4. At the hearing, the subject Form 131 petition was made part of the record as Board Exhibit A and the Notice of Hearing were listed as Board Ex. B.
  
5. The following exhibits were made part of the record from the Petitioner:  
Petitioner's Ex. A - A brief of issues for subject property submitted by Mr. White.  
Petitioner's Ex. B - A copy of the State Final Determination dated April 15, 1999, along with a property record card, and photos for William T. Kraemer.  
Petitioner's Ex. C & D - A copy of the State Final Determination dated August 30, 1996, along with a property record card, and photos for Dixie Wilcox.  
Petitioner's Ex. E - A copy of the State Final Determination, dated July 13, 1998, along with a property record card, and photos for Seaboard Outdoor Advertising.

Petitioner's Ex. F - A copy of the State Final Determination, dated April 15, 1999, along with a property record card, and photos for Flormar Realty Company.

Petitioner's Ex. G - A section of the proposed Indiana Real Property Manual on determining abnormal functional obsolescence.

Petitioner's Ex. H - Photos of subject property.

6. The subject property is located at 950 Progress Way, New Albany, Indiana, (New Albany Township, Floyd County).
7. The Hearing Officer did not view the property.

#### **Issue No. 1 - Depreciation**

8. Mr. White testified the subject property should be depreciated using the thirty (30) year life depreciation schedule from the Indiana Real Property Manual. Mr. White testified the subject property is a light pre-engineered building and the rate of depreciation should be 35% rather than 25%.
9. Mr. White testified in the prior assessment the subject property had been depreciated using the thirty (30) year life depreciation schedule.
10. Mr. White submitted various State Tax Board Final Determinations on other properties in New Albany township (Petitioner's Ex. B,C,D,E,F). Mr. White testified the other properties are similar in construction and provided property record cards and photos of the properties. Mr. White further testified the State determined these structures to be light pre-engineered and the thirty (30) year life depreciation schedule was applied.
11. Mr. White submitted photos (Petitioner's Ex. H) of the subject property showing the construction of materials and also showing the interior views of the building.

## Issue No. 2 - Obsolescence

12. Mr. White testified 15% obsolescence should be applied to the subject property.
13. Mr. White testified the subject property should receive 15% obsolescence for the following reasons:
  - a. It is very unlikely that a complex originally built in 1977 with a warehouse addition in 1987 is the perfect or optimum building for this manufacturing facility.
  - b. There is limited use or excessive material and product handling costs caused by an irregular or inefficient floor plan (Indiana Real Property Assessment Manual, 50 IAC 2.2 - 10- 7).
  - c. The limited use or excessive material handling is considered to be an incurable obsolescence and cannot be economically corrected.
14. Mr. White testified the following method was used to measure the incurable functional obsolescence present in the subject property:
  - a. The annual operating penalty method was used to measure the obsolescence.
  - b. The method begins by estimating the annual operating penalty for operating out of an inefficient building. The dollar amount of obsolescence is then calculated by multiplying the operating penalty by a present value of \$1 per period factor (also known as annual constant annuity) to arrive at the dollar amount of functional obsolescence. This dollar amount is then converted to a percentage by dividing the dollar amount of obsolescence by AMRC's remainder value.
  - c. The following sources were used to back up the above-mentioned method:
    - Industrial Real Estate, Fourth Edition 1984, Society of Industrial Realtors of the National Association of Realtors, p. 463.
    - Property Taxation, Second Edition, 1993, Institute of Property Taxation, p. 118.

- Chapter 9, pages 8-11, from the proposed manual by the State.

15. Mr. Al King, General Manager of Foam Fabricators Company, testified that a more efficient building would be much wider than the current building to allow the use of conveyors to transport finished goods to the warehouse. Mr. King, further testified the extra wide width would alleviate the congestion that occurs within the current facility.
16. Mr. King testified that at least one (1) employee is utilized moving materials via forklift as a result of the inefficient production flow caused by the inefficient design of the building. Mr. King noted that the average shift is ten (10) hours/day.
17. The following calculation was provided by Mr. White to substantiate the 15% obsolescence requested:

Hourly wage	\$8.00
Times the number of hours worked per day	<u>10.00</u>
Subtotal:	\$80.00
Times the number of days worked per week	<u>5.00</u>
Subtotal:	\$400.00
Times the number of weeks worked per year	<u>52.00</u>
Equals annual operating penalty	\$20,800

The cost of the forklift is \$20,000. The economic life of the forklift is five (5) years; after five (5) years major expensive repairs are usually necessary to maintain the forklift in operating condition. In addition, Foam Fabricators pays \$65/bi-weekly on fuel for the four (4) forklifts. Since only one extra forklift is used due to the inefficient design of the building, the fuel cost for one forklift is \$32.50/week ( $\$65 \times 2 / 4$ ) or \$1,690/year on maintenance for one forklift.

This results in an annual operating penalty for the Forklift of \$6,040:

The calculation is:

Depreciation:	\$4,000
Fuel:	1,690
Maintenance:	<u>350</u>
	\$6,040

Wages	\$20,800
Forklift Costs	<u>6,040</u>
Total Annual Operating Penalty	\$26,840
Less 36% for State and Local Taxes	(\$9,662)

(For income taxes, 34% federal and approximately 2% (\*1) state, which the substitute plant would be required to pay on the additional income)

Equals	\$17,178
Times Present Value Factor of \$1 per period (*2)	<u>6.835588</u>
	\$117,419

(\*1) Although the Indiana State income tax rate is 3.4% on net income, the out of state sales deduction on the state income tax return results in state income tax rate being approximately 2% on average for companies across the state.

(\*2) This factor is based on a return on investment for the industry of 10 3/4% and a time period of thirteen (13) years. The time period, thirteen (13) years, was arrived at by taking the effective age of the building, seventeen (17) years (effective age of 1978 minus the base year 1995) from the economic life of thirty (30) years. The industry rate of return was calculated by using The Capital Asset Pricing Model (CAPM) as demonstrated below:

$$R_f + B_i (R_m - R_f) = R_i$$

$$.0641 + 1.0 (.107 - .0641) = .107$$

Where

$R_f = .0641$ , Risk Free Rate (1 year Treasury Bill as of assessment date)

$B_i = 1.0$ , Beta (standardized measure of systematic risk)

$R_m = .107$ , Market Rate (Average rate of return from the U.S. Stock Market  
From 1925 -1996)

$R_i = .105$ , Return on investment for this industry

The calculated obsolescence percentage is as follows:

Obsolescence measured in dollars	\$117,419
Divided by AMRC's remainder value	<u>\$702,860</u>
Equals obsolescence percentage	0.167
Rounded to:	0.15 or 15%

18. Mr. White testified there is currently 1% obsolescence applied to the subject property. Ms. Badger-Byrd testified she does not know why this was applied, and testified it may be a computer error. The Hearing Officer requested that additional evidence be submitted to both the Petitioner and the State on the application of the 1% obsolescence by April 17, 2000.

### **Conclusions of Law**

1. The Petitioner is statutorily 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. Ind. Code §§ 6-1.1-15-1, -2.1, and -4. See also the Forms 130 and 131 petitions. 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. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).

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.

#### **D. Issue No. 1 - Depreciation**

18. The Petitioner opined the subject property is a light pre-engineered structure and should be depreciated from the thirty (30) year life depreciation schedule. The Petitioner provided photos showing both interior and exterior portions of the building. The photos clearly show a pre-engineered structure, with minimal finish.
19. The Petitioner provided similar properties (Petitioner's Ex. B,C,D,E,F) in the same township that have been priced using the thirty (30) year life depreciation schedule. The Petitioner also provided property record cards, whereby the base price and schedule used reflect the subject property. Photos of each comparable property were also provided and the properties are quite similar in construction.
20. 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).
21. 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.
22. The Petitioner provided several other properties with the same components where the thirty (30) year life depreciation schedule was used. The Petitioner further provided photos of the subject property, both interior and exterior, whereby the components of the structure are of metal pre-engineered construction. The Township did not comment at the hearing.
23. 50 IAC 2.2-11-7 Commercial and depreciation tables, provides that the thirty (30) year depreciation schedule should 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.

24. The Petitioner has met his burden of proof and, in the absence of any conflicting evidence, it is determined that the subject structure is a pre-engineered building falling under 50 IAC 2.2 - 11-7. The depreciation applied should be 35%. A change is made to the assessment for this issue.

**E. Issue No. 2 - Obsolescence**

25. The Petitioner opined the subject property should receive 15% obsolescence because of excessive material handling costs as a result of inefficient design.
26. 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 (a).
27. The elements of functional and economic obsolescence can be documented using recognized appraisal techniques. *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801 (Ind. Tax 1998). These standardized techniques enable a knowledgeable person to associate cause and effect to value pertaining to a specific property.
28. The Petitioner requested 15% obsolescence for the inefficient production flow caused by the inefficient design of the building. The Petitioner opines the problem is considered to be incurable functional obsolescence.
29. The Petitioner provided the annual operating penalty method to measure this incurable functional obsolescence in the subject property (Petitioner's Ex. A and Findings of Fact). The method used consists of the following:

Wages	\$20,800
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Forklift Costs	6,040
Total Annual Operating Penalty	\$26,840
Less 36% for State and Local Taxes	(\$9,662)
(For income taxes, 34% federal and approximately 2% (*1) state, which the substitute plant would be required to pay on the additional income)	
Equals	\$17,178
Times Present Value Factor of \$1 per period (*2)	6.835588
	\$ 117,419

(\*1) Although the Indiana State income tax rate is 3.4% on net income the out of state sales deduction on the state income tax return results in state income tax rate being approximately 2% on average for companies across the state.

(\*2) This factor is based on return on investment for the industry of 10 3/4% and a time period of 13 years. The time period, 13 years, was arrived at by taking the effective age of 1978 minus the base year 1995) from the economic life of 30 years. The industry rate of return was calculated by using The Capital Asset Pricing Model (CAPM) as demonstrated below:

$$R_f + B_i (R_m - R_f) = R_i$$

$$.0641 + 1.0 (.107 - .0641) = .107$$

Where

$R_f = .0641$ , Risk Free Rate (1 year Treasury Bill as of assessment date)

$B_i = 1.0$ , Beta (standardized measure of systematic risk)

$R_m = .107$ , Market Rate (Average rate of return from the U.S. Stock Market from 1925 -1996)

$R_i = .105$ , Return on investment for this industry

Obsolescence measured in dollars	\$117,419
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Divided by AMRC's remainder value	\$702,860
Equals obsolescence percentage	0.167
Rounded to:	.15

30. While the Petitioner has provided the above information, the Petitioner has not used any of the recognizable methods of functional obsolescence. Manpower and forklift costs alone do not account for functional obsolescence. There are several methods to use in order to establish the correct amount of obsolescence a property should receive, if any. The following are methods that apply to functional obsolescence:

a) Functional Curable

- Deficiency Normal or Needing An Addition
- Deficiency Modernization
- Deficiency Modernization and Replacement
- Functional Curable Superadequacy

b) Incurable Functional Obsolescence

- Incurable Deficiency (Item is not there)
- Incurable Deficiency (Item is there, but not desired by market)
- Incurable Superadequacy

c) Indirect Measures of Functional Obsolescence

- Matched Pairs
- Capitalization of Rent Loss

31. The above measures all require several components in order to determine the end result, not just manpower costs, or extra forklift costs. The evidence submitted is lacking all of the details needed to make a sound judgment of obsolescence.

32. 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).

33. 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).
34. It also bears repeating, that 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, (Ind. Tax 1994).
35. In this case, the State has difficulty accepting the reliability of the obsolescence calculation submitted in support of the Petitioner's obsolescence claim. The evidence submitted by the Petitioner does not fall under the realm of any of the acceptable methods of determining the value or obsolescence to be applied to a property. Without validated and supported data, the State is under no obligation to give, and does not give the calculation any weight.
36. For all of the above stated reasons, additional obsolescence depreciation is not granted for the appeal year March 1, 1995.

#### **Additional Finding - Obsolescence**

37. Ms. Badger-Byrd, New Albany Township Assessor, was not able to substantiate why the 1% obsolescence was applied to the subject property. Ms. Badger-Byrd did opine during the hearing that she thought the obsolescence might be a computer glitch. The Petitioner also did not know why the 1% obsolescence was



applied. Without any back up information, the 1% obsolescence is removed and there is a change to the assessment.

### **Summary of Final Determination**

Determination of ISSUE 1: *Whether the subject property should be depreciated using the 30 year life depreciation schedule*

1. The Petitioner met their burden, by a preponderance of the evidence, and the Respondent did not present any evidence to rebut. Accordingly, the building should be depreciated from the 30 year life table.

Determination of ISSUE 2: *Whether additional obsolescence should be applied to the subject property.*

2. The Petitioner did not meet their burden in this appeal. Accordingly, there is no change 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