

**STATE OF INDIANA
Board of Tax Review**

In the matter of the Petition for Review)
of Assessment, Form 131) Petition No.: 10-011-97-1-5-00003

Parcel No.: 14824000

Assessment Year: 1998 (See Finding ¶ 8.)

Petitioner: Paul W. Sparks
 240 N. Oak Street
 Clarksville, IN 47129

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

There are three separate structures on the subject parcel being appealed. They are identified as PO-1, PO-2, and PO-3. PO-1 is a one-story building and is the Petitioner’s residence. PO-2 is a one-story building with an attached garage. This structure is rental property. PO-3 is a one-story building with a finished attic and an attached garage. The Petitioner has multiple issues concerning each structure. The issues will be listed by structure (PO-1, PO-2, and PO-3).

Building PO1:

1. Whether the square footage is correct.
2. Whether the assessor failed to apply 50 IAC 2-2-1-40 Sec. 40 A & D (definition of obsolescence).
3. Whether the assessor disregarded 50 IAC 2.2-1-29 Sec. 29(definition of functional obsolescence).
4. Whether the assessor disregarded 50 IAC 2.2-9-4(D) & (2)(D)(F)(concerns physical depreciation on residential yard and agricultural improvements).
5. Whether the assessor omitted facts on the reassessment form.
6. Whether the assessor disregarded 50 IAC 2.2-6-1 Sec. 1(E)(3) and 50 IAC 2.2-6-1 Sec. 1 E (G)(concerns site characteristics, utilities and neighborhood).
7. Whether the assessment is incorrect because the property does not have sewers.
8. Whether the assessment is incorrect because the neighborhood is static.
9. Whether the assessment is incorrect because there is not a kitchen sink.
10. Whether the square footage of the open frame porch is correct.
11. Whether the amount of crawl space is correct.
12. Whether the crawl space has been priced correctly.

Building PO2:

13. Whether the grade of the structure is correct.
14. Whether the assessor disregarded 50 IAC 2.2-1-40 Sec. 40(A) & (B)(definition of obsolescence).
15. Whether the assessor disregarded 50 IAC 2.2-1-29 Sec. 29 (definition of functional obsolescence).
16. Whether the assessor disregarded 50 IAC 2.2-1-23 Sec. 23 (definition of deterioration).
17. Whether the assessor disregarded 50 IAC 2.2-9-4 (B)1,(C) 2, (B),(D),(E),(F)(concerns the depreciation of residential yard and agricultural improvements).
18. Whether the assessor omitted facts from the assessment form.

19. Whether the assessor disregarded 50 IAC 2.2-6-1 Sec. 1 E (3) (concerns site characteristics).
20. Whether the assessor disregarded 50 IAC 2.2-6-1 Sec. 1 E (1)(G) (concerns the topography of the parcel).
21. Whether the assessment is incorrect because the structure lacks a sewer.
22. Whether the assessment is incorrect because the neighborhood is static.
23. Whether the grade of the pole type home is correct.
24. Whether the assessment should be higher than the comparable.

Building PO3:

25. Whether the assessor complied with 50 IAC 2.2-3-1 Sec. 1(a) (real and personal property guide).
26. Whether the assessor complied with 50 IAC 2.2-1-5, 3 Sec 5, 3. (definition of appraisal).
27. Whether the building has a water heater.
28. Whether the square footage is correct.
29. Whether the grade is correct.
30. Whether the assessor disregarded 50 IAC 2.2-1-40 (definition of obsolescence).
31. Whether the assessor disregarded 50 IAC 2.2-1-29 Sec. 29 (definition of functional obsolescence).
32. Whether the assessor disregarded 50 IAC 2.2-9-4 (F)(1)(C)(D);(2) B, D, E, and F (depreciation of residential yard and agricultural improvements).
33. Whether the assessor failed to note facts on the assessment form.
34. Whether the assessor disregarded Rule 6, page 2 (3) (concerns site characteristics, streets).
35. Whether the assessor disregarded Rule 6, page 2 (C), 1 (G) (concerns topography).
36. Whether the independent utilities have an effect on the assessment.
37. Whether the assessment is incorrect because the neighborhood is static.
38. Whether the assessor disregarded 50 IAC 2.2-4-16 Sec. 16 (2)(concerns influence factors).

39. Whether the assessor violates 50 IAC 2.2-9-2 Sec. (A) (concerns data collection/pricing schedule).
40. Whether the assessment is in error as it violates a March 1997 pamphlet concerning the calculation of property taxes.

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. Paul Sparks filed a Form 131 petition requesting a review by the State. The Form 131 was filed on July 7, 1998. The Clark County Board of Review's Final determination is dated June 9, 1998.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on January 6, 1999 before Hearing Officer Jennifer Bippus. Testimony and exhibits were received into evidence. Paul Sparks was self-represented. No one was present from the county, the township or the County Board of Review (BOR).
4. At the hearing, the subject Form 131 petition was made part of the record and labeled Board Exhibit A. The Notice of Hearing was labeled Board Exhibit B. In addition, the following exhibits were submitted to the State:
Petitioner's Exhibit A - insurance report
Petitioner's Exhibit B - property record cards (PRCs) of surrounding properties.
5. The subject property is located at 240 North Oak Street, Clarksville, Jeffersonville Township, Clark County.
6. A viewing of the subject property took place on January 19, 1999. Mr. Sparks, the Petitioner, and Robert Lewis, Jeffersonville Township Assessor were present.

7. The Hearing Officer noted the following during the inspection:
 - a. The open frame porch on PO1 is 75 square feet.
 - b. Building PO2 is pole construction with a V bottom.
 - c. Building PO2 is cheaply constructed using old steel cabinets, single pane windows, low-grade hollow core doors, no baseboard trim, low grade linoleum and carpet over plywood.
 - d. Building PO3 does not have a water heater.
 - e. Building PO3 has a finished first floor living area with finished attic.
 - f. The land is rolling and the area floods.

8. When the Petitioner filed the Form 130 and the Form 131 petitions, he petitioned for a review of the 1997 assessment. The Form 130 was filed on April 8, 1998, presumably as a result of the Form 113 sent by the Jeffersonville Township Assessor on February 19, 1998 for the tax year 1998 payable 1999. This petition is valid for the 1998 payable 1999 tax year, not 1997 payable 1998.

Issue 1-Square footage

9. The Petitioner testified that building PO1 is 2,262 square feet. *Sparks Testimony.*

Issue 2-Obsolescence

10. There was no specific discussion of this issue.

Issue 3- Functional Obsolescence

11. The Petitioner testified that 50 IAC 2.2-1-29 applies to his property. Section 29 states: "Functional Obsolescence" means obsolescence caused by factors inherent in the property itself." The property floods several times a year and the application of this rule should remedy the problem. (No specific amount of obsolescence was requested.) *Sparks Testimony.*

Issue 4-Physical Depreciation

12. The Petitioner contends that 50 IAC 2.2-9 (Physical Depreciation) was not applied correctly. *Sparks Testimony.*

Issue 5-Omitted Facts

13. The Petitioner testified that he believed that the assessor omitted facts that prevent a correct assessment. *Sparks Testimony.*

Issue 6-Site Characteristics

14. The Petitioner contends that pursuant to 50 IAC 2.2-6-1, the topography of his land should be listed as swampy. The street is unpaved along the parcels' frontage. *Sparks Testimony.*

Issue 7-Sewer/Septic System

15. The Petitioner stated that this building has a septic system and does not have a sewer system as shown on the PRC. *Sparks Testimony.*

Issue 8-Neighborhood

16. According to the Petitioner, the neighborhood is static.

Issue 9-Plumbing Fixtures

17. The Petitioner contends the kitchen sink was not installed until December 1998. *Sparks Testimony.*

Issue 10-Porch Size

18. The Petitioner testified that the porch is 116 square feet. *Sparks Testimony.*

Issues 11 and 12-Crawl Space Size and Cost

19. The Petitioner testified that the crawl space is under four-fifths of the house; the cost of the crawl was \$4,032. *Sparks Testimony.*

Issue 13- Grade

20. The Petitioner contends that the structure is built with 60% used materials, the grade should be "E". *Sparks Testimony.*

Issue 14-Obsolescence

21. The Petitioner testified that 50 IAC 2.2-1-40 states that obsolescence should be applied to the building due to continuous flooding that damages the structures. *Sparks Testimony.*

Issue 15-Functional Obsolescence

22. The Petitioner contends that 50 IAC 2.2-1 states that functional obsolescence should be applied to the property. *Sparks Testimony.*

Issue 16-Deterioration

23. The Petitioner stated that 50 IAC 2.2-1 states that "Deterioration" means impairment of the structural condition evidenced by the wear and tear caused by physical use and the action of the elements also referred to as "physical depreciation". *Sparks Testimony.*

Issue 17-Depreciation

24. The Petitioner contends that pursuant to 50 IAC 2.2, the amount of physical depreciation is incorrect. Furthermore, the age of the building is incorrect. *Sparks Testimony.*
25. The Hearing Officer requested evidence confirming the date of construction. This information was not submitted.

Issue 18-Omitted Facts

26. The Petitioner testified that the assessor omitted facts that prevent a correct assessment. *Sparks Testimony.*

Issues 19 and 20-Site Characteristics

27. The Petitioner testified that 50 IAC 2.2 pertains to "site" characteristics. The subject property does not have a "paved frontage" and the area is swampy. *Sparks Testimony.*

Issue 21-Sewer/Septic System

28. The Petitioner contends that the property has a septic system, not a sewer system. *Sparks Testimony.*

Issue 22-Neighborhood

29. The petitioner testified that the area is static. *Sparks Testimony.*

Issue 23-Grade (Pole building)

30. The Petitioner stated that the building is pole type construction and the grade should be lowered. *Sparks Testimony.*

Issue 24-Comparable Properties

31. The Petitioner testified that the assessment of his property is higher than the assessments of the surrounding properties. *Sparks Testimony & Petitioner's Exhibit B.*
32. The Hearing Officer requested that Mr. Sparks provide PRCs of the surrounding properties that he is using as comparables. The Hearing Officer explained to Mr. Sparks that his assessment might seem higher than his neighbors, because his property has three (3) buildings assessed on a single parcel and the comparable properties may have a single structure on a parcel.

Issue 25-Personal Property

33. The Petitioner contends that 50 IAC 2.2-3-1(a) pertains to the use of the property and whether property should be classified as real or personal property. He uses this garage to produce cabinetry and therefore, the whole garage should be assessed as personal property. *Sparks Testimony.*

Issue 27-Water Heater

34. The Petitioner testified that the garage does not have a water heater. *Sparks Testimony.*

Issue 28-Attic Size

35. The Petitioner testified that the attic is 314 square feet. *Sparks Testimony.*

Issue 29-Grade

36. The Petitioner testified that the building is constructed with used materials and the grade should be listed as "E". *Sparks Testimony.*

Issue 30-Obsolescence

37. The Petitioner contends that 50 IAC 2.2-1-40 pertains to obsolescence; obsolescence should be applied to his property due to flooding. *Sparks Testimony.*

Issue 31-Functional Obsolescence

38. The Petitioner testified that 50 IAC 2.2-1-29 pertains to functional obsolescence; functional obsolescence should be applied to his property due to flooding. *Sparks Testimony.*

Issue 32-Depreciation

39. The Petitioner testified that 50 IAC 2.2 pertains to obsolescence; due to the constant flooding it is difficult to rent the property. *Sparks Testimony.*

Issue 33-Omitted Facts

40. The Petitioner testified that the assessor omitted facts that prevent a correct assessment. *Sparks Testimony.*

Issues 34 and 35-Site Characteristics

41. The Petitioner contends that the area is swampy. *Sparks Testimony.*

Issue 36-Utilities

42. The petitioner testified that 50 IAC 2.2-4-16(2) discusses different buildings using the same utilities. All three units use the same utility system. *Sparks Testimony.*

Issue 37-Neighborhood

43. The Petitioner testified that the neighborhood is static. *Sparks Testimony.*

Issue 38-Influence Factor

44. This issue was not specifically addressed at the hearing.

Issue 39-Pricing Schedule

45. The Petitioner testified that 50 IAC 2.2-9-2(a) states that property should be assessed according to the purpose for which it was originally constructed. His building is a garage and "Once a garage, always a garage." The upper level of the garage has been converted into living area. *Sparks Testimony.*

Issue 40-Error in Assessment

46. The Petitioner testified that his assessment is in error because the Indiana assessment regulation has not been followed. *Sparks 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. Issue 1-Square Footage

18. The building was measured by the Hearing Officer at the on site inspection and the square footage is determined to be correct. No change is made as a result of this issue.

E. Issue 2-Obsolescence

19. This issue was not specifically addressed in the testimony offered by the Petitioner. Accordingly, there is no change to the assessment as a result of this issue.

F. Issue 3-Functional Obsolescence

20. Pursuant to 50 IAC 2.2, residential dwelling units receive obsolescence depreciation only if extraordinary circumstances exist. While Mr. Sparks' property floods almost yearly, the flooding has seldom damaged housing unit PO1. Property PO1 is located on higher ground and the floodwaters seldom reach this area.
21. 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).
22. 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).

23. The Petitioner failed to prove the existence of obsolescence. Accordingly, the Petitioner did not meet the first prong of the two-prong burden of proof. There is no change in the assessment as a result of this issue.
24. The Petitioner also failed to produce any evidence to quantify that the application of obsolescence is warranted. Accordingly, even if the Petitioner had shown the existence of obsolescence, no adjustment would be appropriate because the Petitioner did not attempt to quantify the amount of obsolescence. There is no change is made as a result of this issue.

G. Issue 4-Physical Depreciation

25. The Petitioner failed to submit evidence to show that the year of construction is listed incorrectly. No change is made as a result of this issue.

H. Issue 5-Omitted Facts

26. After reviewing the property record cards for Mr. Sparks' property, and conducting an on site inspection, it does not appear that anything has been omitted. In addition, the petitioner failed to submit any evidence concerning any omissions. No change is made as a result of this issue.

I. Issues 6, 7, and 8-Site Characteristics, Sewer, Neighborhood

27. Inspection determined the land is rolling, but not swampy. When flooded, the land could appear to be swampy. The property has a septic system. The neighborhood classification is listed as improving. The Petitioner failed to submit evidence that would determine whether the neighborhood classification is in error. Although the street leading to Mr. Sparks' home is paved, the drive to the housing areas is not paved. The property record cards were changed to show the terrain is rolling and the presence of a septic system.

J. Issue 9-Plumbing Fixtures

28. The Petitioner did not submit any evidence to determine when the kitchen sink was installed. No change is made to the assessment as a result of this issue.

K. Issue 10-Porch Size

29. As a result of the on site inspection, it is determined the porch measures 75 square feet. A change is made as a result of this issue.

L. Issues 11 and 12-Crawl Space Size and Cost

30. As a result of the on site inspection of the property, it is determined there is 1,474 square feet of crawl space. There is no change made to the assessment as a result of this issue.
31. The Petitioner did not present any evidence indicating the actual cost of the crawl space. Accordingly, there is no change to the assessment as a result.

M. Issue 13-Grade

32. Inspection of the second housing unit, PO2, verified the structure is constructed with used materials. The building is determined to be pole-type construction. Due to the quality of the trim, cabinets, lighting, plumbing fixtures, windows, doors, used materials, and over-all design the grade is best described as D. A change is made as a result of this issue.

N. Issues 14 and 15-Obsolescence and Functional Obsolescence

33. According to 50 IAC 2.2-7 residential dwelling units receive obsolescence only if extraordinary circumstances exist. While Mr. Sparks' property floods almost every year, the flooding has only affected the housing units to the point of

property damage very few times. In extreme times, such as 1997, the township assessor applied 30% obsolescence to Building PO2 due to the flooding. Once the damage was repaired the assessor removed the obsolescence.

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 failed to prove the existence of obsolescence. Accordingly, the Petitioner did not meet the first prong of the two-prong burden of proof. There is no change in the assessment as a result of this issue.
37. The Petitioner failed to quantify any obsolescence factor. Accordingly, the Petitioner did meet the second prong of the two-prong burden. There is no change to the assessment as a result of this issue.

O. Issues 16 and 17-Deterioration and Depreciation

38. The physical depreciation on the home is correct. The petitioner did not submit any evidence to verify the year of construction. *Clark v. State Board of Tax Commissioners* 694 N. E. 2d 1230 (Ind. Tax 1998).

P. Issue 18-Omitted Facts

39. After reviewing the property record cards for Mr. Sparks' property, and conducting an on site inspection, it does not appear that anything has been omitted. In addition, the Petitioner failed to submit any evidence concerning any omissions. Accordingly, there is no change to the assessment as a result of this issue.

Q. Issues 19, 20, 21, and 22-Site Characteristics, Sewer, Neighborhood

40. Inspection determined the land is rolling, but not swampy. When flooded the land could appear to be swampy. The property has a septic system. The neighborhood classification is listed as improving. The Petitioner failed to submit evidence that would determine whether the neighborhood classification is in error. Although the street leading to Mr. Sparks' home is paved, the drive to the housing areas is not paved. The property record cards were changed to show the terrain is rolling and the presence of a septic system.

R. Issue 23-Grade (Pole Building)

41. Pursuant to 50 IAC 2.2-7-11, Schedule A.1, when determining replacement on pole type construction, the difference in cost as compared with conventional construction should be reflected in the quality grade. The factor should be lowered by a full grade. In other words, a "C" would be a "D" and a "D" in pole construction, would be an "E".
42. Conclusion of Law ¶ 29 shows that the quality of the structure was determined to be best described as a "D" grade. Therefore, the grade for pole type construction would be "E". A change is made as a result of this issue.

S. Issue 24-Comparable Properties

43. In assessing property each individual parcel is unique. For example, the square footages may differ, the number of plumbing fixtures may vary, or there could be various exterior and interior features that will cause differences in assessments.
44. The Petitioner provided property record cards of surrounding properties. The properties are not comparable to the subject property. All the parcels submitted have one dwelling, not three like the subject. Furthermore, the parcels are much smaller parcels.
45. The Petitioner did not identify how the properties compared with the subject. It is the responsibility of the Petitioner to explain the similarities between the comparables and the subject building or buildings. Without an adequate explanation of why the assessments should be similar, no change is made as a result of this issue.

T. Issue 25-Personal Property

46. 50 IAC 2.2-3-1(a) states that the use of a "unit of machinery, equipment, or structure determines its classification as real or personal property. If the unit is directly used for manufacturing, or a process of manufacturing, it is considered personal property. If the unit is a land or building improvement, it is considered real property." The subject property is a building and pursuant to the regulation must be assessed as real property. No change is made as a result of this issue.

U. Issue 27-Water Heater

47. The inspection of the property verified that Building PO3 does not have a hot water heater. Accordingly, there is a change made to the assessment as a result of this issue.

V. Issue 28-Attic Size

48. The inspection of PO3 found 408 square feet of garage and 200 square feet of living area on the first floor. There is 608 square feet of finished attic. 50 IAC 2.2-7-8.1(a)(4) gives the methodology for valuing a finished attic. The local officials have priced the attic in accordance with the Regulation. Accordingly, there is no change to the assessment as a result of this issue.

W. Issue 29-Grade

49. The Petitioner did not submit any evidence or testimony indicating the current grade of D applied by the local officials is incorrect. Accordingly, there is no change to the assessment as a result of this issue.

X. Issues 30, 31, and 32 -- Obsolescence

50. According to 50 IAC 2.2-7 residential dwelling units receive obsolescence only if extraordinary circumstances exist. While Mr. Sparks' property floods almost every year, the flooding has only affected the housing units to the point of property damage very few times. In extreme times, such as 1997, the township assessor applied 30% obsolescence to Building PO3 due to the flooding. Once the damage was repaired the assessor removed the obsolescence.
51. 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).
52. 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).

53. The Petitioner failed to prove the existence of obsolescence. Accordingly, the Petitioner did not meet the first prong of the two-prong burden of proof. There is no change in the assessment as a result of this issue.
54. The Petitioner failed to quantify an obsolescence factor. Accordingly, the Petitioner did not meet the second prong of the two-prong burden. There is no change to the assessment as a result of these issues.

Y. Issue 33-Omitted Facts

55. After reviewing the property record cards for Mr. Sparks' property, and after conducting an on site inspection, it does not appear that anything has been omitted. In addition the Petitioner failed to submit any evidence concerning any omissions. No change is made as a result of this issue.

Z. Issues 34, 35, 36 and 37-Site Characteristics, Utilities, Neighborhood

56. Inspection determined the land is rolling, but not swampy. When flooded the land could appear to be swampy. The property has a septic system. The neighborhood classification is listed as improving. The Petitioner failed to submit evidence that would determine whether the neighborhood classification is in error. Although the street leading to Mr. Sparks' home is paved; the drive to the housing areas is not paved. The property record cards were changed to show the terrain is rolling and the presence of a septic system.
57. 50 IAC 2.2-4-16 allows for a deduction if more than one homesite is charged to a property that has a single septic or sewage system. It is determined that PO1, PO2 and PO3 use the same septic or sewage system. However, a deduction can only be made to account for the depreciated dollar cost of the installation of

water services to the land. The county was to include the depreciated dollar cost of adding water service when they determined the homesite prices to be used in their county. The Clark County Land Order indicates that the county did not include an amount to account for the addition of the water service. Therefore, since the county failed to include the cost of adding water to a homesite, no amount can be deducted for the lack of water service. No change is made as a result of this issue.

AA. Issue 38-Influence Factor

58. This issue was not specifically addressed. The Petitioner did not submit any evidence or testimony showing that the negative 50% influence factor applied was incorrect. No change is made as a result.

BB. Issue 39-Pricing Schedule

59. The first level of the structure has 200 square feet of living area and 408 square feet of garage. There is 608 square feet of finished attic area on the second level. The subject building has been priced as living area, finished attic, and garage. The local officials have correctly assessed the structure. No change is made as a result of this issue.

CC. Issue 40-Error in Assessment

60. After all of the pertinent changes are made, it is determined the Petitioner's assessment is in compliance with 50 IAC 2.2.

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