

ATTORNEYS FOR PETITIONER:

BRIAN L. HOFFER
RANDY J. SPITAEELS
KINDIG & SLOAT
Nappanee, IN

ATTORNEYS FOR RESPONDENT:

STEVE CARTER
ATTORNEY GENERAL OF INDIANA
ROBERT B. WENTE
DEPUTY ATTORNEY GENERAL
Indianapolis, IN

**IN THE
INDIANA TAX COURT**

WABASH RIVER, LLC,)

Petitioner,)

v.)

Cause No. 71T10-0111-TA-90

DEPARTMENT OF LOCAL)
GOVERNMENT FINANCE,¹)

Respondent.)
)

ON APPEAL FROM A FINAL DETERMINATION OF
THE STATE BOARD OF TAX COMMISSIONERS

NOT FOR PUBLICATION

December 16, 2005

FISHER, J.

¹ The State Board of Tax Commissioners (State Board) was originally the Respondent in this appeal. However, the legislature abolished the State Board as of December 31, 2001. 2001 Ind. Acts 198 § 119(b)(2). Effective January 1, 2002, the legislature created the Department of Local Government Finance (DLGF), see Indiana Code § 6-1.1-30-1.1 (West Supp. 2005-2006)(eff. 1-1-02); 2001 Ind. Acts 198 § 66, and the Indiana Board of Tax Review (Indiana Board). IND. CODE ANN. § 6-1.5-1-3 (West Supp. 2005-2006)(eff. 1-1-02); 2001 Ind. Acts 198 § 95. Pursuant to Indiana Code § 6-1.5-5-8, the DLGF is substituted for the State Board in appeals from final determinations of the State Board that were issued before January 1, 2002. IND. CODE ANN. § 6-1.5-5-8 (West Supp. 2005-2006)(eff. 1-1-02); 2001 Ind. Acts 198 § 95. Nevertheless, the law in effect prior to January 1, 2002 applies to these appeals. A.I.C. § 6-1.5-5-8. See also 2001 Ind. Acts 198 § 117. Although the DLGF has been substituted as the Respondent, this Court will still reference the State Board throughout this opinion.

Wabash River, LLC (Wabash) appeals the final determination of the State Board of Tax Commissioners (State Board) valuing its real property for the 2000 assessment year (year at issue). The issue on appeal is whether additional obsolescence depreciation should be applied to Wabash's property.² For the following reasons, the Court now AFFIRMS the State Board's final determination.

FACTS AND PROCEDURAL HISTORY

Wabash owns real property (subject property) along the Wabash River in Wabash County, Indiana. The original building on the subject property was constructed in 1900, has had several additions, and is irregularly shaped. For the year at issue, the Wabash County Property Tax Assessment Board of Appeals (PTABOA) applied a 30% obsolescence depreciation adjustment to Wabash's improvement.

Wabash timely filed a Petition for Review of Assessment (Form 131) with the State Board, arguing that its property was entitled to a sixty-five percent (65%) obsolescence depreciation adjustment. The State Board held an administrative hearing on Wabash's Form 131 on February 7, 2001. On September 19, 2001, the State Board issued its final determination in which it denied Wabash's request for relief.

On November 2, 2001, Wabash initiated an original tax appeal. The Court heard the parties' oral arguments on January 31, 2003. Additional facts will be supplied as necessary.

² Wabash also raised various state and federal constitutional claims that this Court has declined to reach in previous cases. See, e.g., *Barth, Inc. v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1124, 1127 n.1 (Ind. Tax Ct. 2001). Because Wabash's claims and supporting arguments are identical to those previously rejected by the Court, the Court will not address them.

ANALYSIS AND OPINION

Standard of Review

This Court gives great deference to the final determinations of the State Board when it acts within the scope of its authority. *Hamstra Builders, Inc. v. Dep't of Local Gov't Fin.*, 783 N.E.2d 387, 390 (Ind. Tax Ct. 2003). Thus, this Court will reverse a final determination of the State Board only when its findings are unsupported by substantial evidence, arbitrary, capricious, constitute an abuse of discretion, or exceed statutory authority. *Id.* When appealing to this Court from a State Board final determination, the taxpayer bears the burden of showing that the final determination is invalid. *Id.*

Discussion

“Obsolescence, which is a form of depreciation, is defined as a loss of value and classified as either functional or economic.” *Freudenberg-NOK Gen. P'ship v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1026, 1029 (Ind. Tax Ct. 1999), *review denied*. See also IND. ADMIN CODE tit. 50, r. 2.2-10-7(e) (1996). Functional obsolescence is caused by factors internal to the property and is evidenced by conditions within the property itself. See 50 IAC 2.2-10-7(e). Economic obsolescence is caused by factors external to the property. *Id.*

To receive an adjustment for obsolescence, a taxpayer must: 1) identify the causes of obsolescence present in its improvement; and 2) quantify the amount of obsolescence to which it believes it is entitled. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). For the year at issue, Wabash's improvement received a 30% obsolescence depreciation adjustment. (See Cert. Admin. R. at 12, 24, 29.) Because the PTABOA obviously agreed that causes of obsolescence existed

within Wabash's improvement,³ Wabash bore the burden of presenting evidence at the State Board hearing quantifying the amount of obsolescence to be applied to its improvement.

To support its claim for 65% obsolescence depreciation, Wabash presented the following calculations: (1) the sale price of the property in May 1999 (\$300,000)⁴ less the true tax value of the land (\$46,900) equals the sales price of the improvement (\$253,100); (2) the true tax value of the improvement (i.e., reproduction cost of the improvement minus physical depreciation) (\$727,990) less the sales price of the improvement (\$253,100) equals the obsolescence loss in value (\$474,890); (3) the obsolescence loss in value (\$474,890) divided by the true tax value of the improvement (\$727,990) equals the percent of obsolescence depreciation (65%). (Cert. Admin. R. at 48, 60; Pet'r Br. at 2.) Wabash's quantification, however, is erroneous.

The difference between the true tax value of the property and sales price of the property (market value) does not demonstrate a loss in value because the two numbers are not comparable. *See State Bd. of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1034, 1038 (Ind. 1998) (holding that "true tax value" is not exclusively or necessarily

³ By awarding the initial 30% obsolescence adjustment, the PTABOA agreed that obsolescence was present in Wabash's improvements. Therefore, quantification of obsolescence, not the identification of causes thereof, is the issue here. *See Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099, 1102 (Ind. Tax Ct. 1999) (stating that the fact that parties agree on causes of obsolescence "obviates [the taxpayer's] burden of offering probative evidence showing that the subject improvements experience obsolescence"), *review denied*.

⁴ Wabash asserts that the price that it paid for the property (\$300,000) was the property's fair market value. (Pet'r Br. at 2 (arguing that the purchase of the property was a transaction between a willing buyer and willing seller).) While the State Board claims Wabash did not support this assertion with evidence, the Court need not resolve the issue because the basis of its decision today rests on other grounds. For purposes of this opinion, therefore, the Court will regard the sale price as fair market value.

identical to fair market value). Indeed, a property's true tax value is the value determined under the rules of the State Board, not the forces of the market. See IND. CODE ANN. § 6-1.1-31-6 (c) (West 2000) (amended 2002) (“[t]rue tax value does not mean fair market value”). Consequently, the difference between the true tax value of Wabash's property and the price Wabash paid for the property, two unrelated numbers, does not demonstrate that there has been a loss in value of the subject improvement. *Cf. Loveless Constr. Co. v. State Bd. of Tax Comm'rs*, 695 N.E.2d 1045, 1050 (Ind. Tax Ct. 1998) (stating that the obsolescence of an improvement is tied to the loss of the improvement's income generating ability; income generating ability is measured in real dollars, not true tax value dollars), *review denied*. Thus, Wabash has not presented probative evidence quantifying obsolescence. Therefore, a prima facie case has not been established entitling Wabash to additional obsolescence.⁵

⁵ The Court notes Wabash's disagreement with the *Clark* standard. (See Pet'r Br. at 4-7 (arguing that the lack of ascertainable standards in the regulations prevents taxpayers from presenting required evidence to challenge an assessment; therefore, the *Clark* standard is unfair).) See also *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998) (stating that the Court will not consider taxpayer complaints concerning obsolescence “unless the taxpayer has identified the causes of the alleged obsolescence and presented probative evidence that would support a quantification of obsolescence at the administrative level”). The Court, however, addressed this issue in the very same opinion announcing the standard. See *id.* at 1242 n.18. Specifically, the Court stated:

those familiar with the [t]rue [t]ax [v]alue system will wonder how one is supposed to quantify obsolescence because the regulations provide no specific guidance on how obsolescence is to be quantified. However, the regulations ‘tie the definition of obsolescence directly to that applied by professional appraisers under the cost approach[.]’ Therefore, using generally recognized appraisal methods for quantifying obsolescence is a permissible means of [doing so.]

Id. (internal citation omitted).

CONCLUSION

Because Wabash failed to make a prima facie case concerning the quantification of obsolescence, the State Board's duty to support its quantification with substantial evidence was not triggered. Thus, the Court **AFFIRMS** the State Board's final determination.