ATTORNEY FOR PETITIONER:
DAVID L. PIPPEN
ATTORNEY AT LAW
Indianapolis, IN

ATTORNEYS FOR RESPONDENT:
STEVE CARTER
ATTORNEY GENERAL OF INDIANA
TED J. HOLADAY
DEPUTY ATTORNEY GENERAL
Indianapolis, IN

IN THE
INDIANA TAX COURT

APG, INC.,

Petitioner,

v.

DEPARTMENT OF LOCAL GOVERNMENT FINANCE,[1]

Respondent.

Cause No. 49T10-0101-TA-7

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

NOT FOR PUBLICATION
December 19, 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 Annotated § 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.

APG, Inc. (APG) appeals the final determination of the State Board of Tax Commissioners (State Board) valuing two of its properties for the 1995 tax year. The sole issue for the Court to decide is whether the State Board erred in failing to assign obsolescence depreciation adjustments to APG's improvements.[2]

FACTS AND PROCEDURAL HISTORY

In September 1997, APG timely filed two Petitions for Review of Assessment (Forms 131) with the State Board challenging the 1995 assessment on two of its industrial properties located in Elkhart, Indiana. In its Forms 131, APG claimed, among other things, that each of the properties was entitled to an obsolescence depreciation adjustment. The State Board conducted administrative hearings on APG's Forms 131 on May 13, 2000 and July 19, 2000. On November 28, 2000, the State Board denied APG's request for relief.

On January 4, 2001, APG initiated an original tax appeal. The Court heard the parties' oral arguments on November 1, 2002. Additional facts will be supplied as necessary.

ANALYSIS AND OPINION

Standard of Review

This Court gives great deference to final determinations of the State Board when it acts within the scope of its authority. *Clark v. State Bd. of Tax Comm'rs,* 694 N.E.2d

[2] APG 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 APG's claims and supporting arguments are identical to those previously rejected by the Court, the Court will not address them.

1230, 1233 (Ind. Tax Ct. 1998). Consequently, the Court will reverse a final determination of the State Board only if it is unsupported by substantial evidence, arbitrary, capricious, constitutes an abuse of discretion, or exceeds statutory authority. *Id.*

A taxpayer who seeks to overturn a State Board final determination bears the burden of proving its invalidity. *Id*. In order to meet that burden, the taxpayer must have submitted, during the administrative hearing process, probative evidence regarding the alleged assessment error. *See id.* at 1234. Probative evidence is evidence sufficient to establish a given fact that, if not contradicted, will remain sufficient. *See id.* at 1233. Once the taxpayer demonstrates a prima facie case, the burden shifts to the State Board to support its final determination with substantial evidence. *Id*.

Discussion

Obsolescence, a form of depreciation, is the functional or economic loss of property value expressed as a percentage reduction in the remaining value of an improvement. IND. ADMIN. CODE tit. 50, r. 2.2-10-7(e),(f) (1996). *See also Meridian Towers East & West, LLC v. Washington Township Assessor,* 805 N.E.2d 475, 477-78 (Ind. Tax Ct. 2003). Functional obsolescence is caused by factors internal to the property and is evidenced by conditions within the property itself, whereas economic obsolescence is caused by external factors. 50 IAC 2.2-10-7(e). In the commercial context, a loss in property value represents a reduction in an improvement's income generating ability. *See Miller Structures, Inc. v. State Bd. of Tax Comm'rs*, 748 N.E.2d 943, 953 (Ind. Tax Ct. 2001).

In order to establish a prima facie case for obsolescence, a taxpayer must (1) identify factors that are causing obsolescence, and (2) quantify the amount of obsolescence to which it believes it is entitled. *See Clark,* 694 N.E.2d at 1241. Consequently, the taxpayer must relate the factors (and therefore the quantification) of obsolescence to an actual loss in property value. *See Miller Structures,* 748 N.E.2d at 954. *See also Clark*, 694 N.E.2d. at 1238.

A. APG Property #1

The first property at issue in this case is an industrial facility that was built in 1960. APG contends that, for the 1995 tax year, the property was entitled to a 22% functional obsolescence depreciation adjustment. In support of its contention, APG asserts that

> [t]he subject building was originally constructed in 1960 and has had a lean-to added in 1981. The building materials and outdated construction all create inefficiencies and make this is a less desirable building when compared to a modern structure. An additional cause of obsolescence is the location of the structure relative to the main manufacturing facilities, and the detachment from the main facilities.[3]

(Cert. Admin. R. at 99 (footnote added).) (*See also* Cert. Admin. R. at 190, 205.) APG then presented, among other things, a mathematical calculation showing how it arrived at a 22% obsolescence depreciation adjustment.

APG misses the point. Obsolescence must be tied to an actual loss in property value. *Miller Structures*, 748 N.E.2d at 954. APG failed to offer any evidence indicating how the factors it claims are causing obsolescence in its property translates into an actual loss in value. For example, APG needed to support its allegation that the building materials and outdated construction were causing obsolescence by showing

[3] APG asserts that because of the improvement's detachment from the main facilities, "additional material movement" is required. (Cert. Admin. R. at 205.)

how its income generating ability was impacted due these inefficiencies.[4] Likewise, APG needed to demonstrate how, and how much, its alleged "additional material movement" affected its ability to generate income.

APG has failed to establish a connection between causes of obsolescence, a loss of value in its property, and its subsequent quantification.[5] Accordingly, the State Board's determination that APG was not entitled to an obsolescence depreciation adjustment on this property is AFFIRMED.

B. APG Property #2

APG's challenge on its second property suffers the same fate as its challenge on the first property. Indeed, APG merely presented a laundry list of alleged causes of obsolescence present in its property and stated that it was therefore entitled to a 43% obsolescence depreciation adjustment. (*See* Cert. Admin. R. at 107, 199-200.) APG has presented no evidence, however, regarding how these alleged causes of obsolescence are causing its property to lose money. *See Clark*, 694 N.E.2d at 1238. Because APG has not linked causes of obsolescence with an actual loss in property

---

[4] For example, were there increased production costs because of a flat roof? If so, what were the costs?

[5] It is important to recognize that both prongs require a connection to an actual loss in property value. *See Clark v. State Bd. of Tax Comm'rs,* 694 N.E.2d 1230, 1238 (Ind. Tax Ct. 1998). Thus, the quantification of obsolescence is intrinsically tied to the actual loss of value suffered by the improvement from the alleged causes of obsolescence. *See Miller Structures Inc., v. State Bd. of Tax Comm'rs,* 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001). *See also Heart City Chrysler v. State Bd. of Tax Comm'rs,* 714 N.E.2d 329, 334 (Ind. Tax Ct. 1999) (stating that attempts to quantify obsolescence must correlate to the causes of obsolescence). The administrative record lacks any evidence or explanation on the subject of APG's actual loss of value. Consequently, it is impossible for APG to convert that loss of value into an obsolescence quantification.

value, it cannot quantify obsolescence. Accordingly, the State Board final determination with respect to this property is also AFFIRMED.

CONCLUSION

For the aforementioned reasons, the Court AFFIRMS the final determination of the State Board.