STATE OF INDIANA
Board of Tax Commissioners
Appeals Division

CASSELWOOD APARTMENTS Petitioner, v. ALLEN COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS And ADAMS TOWNSHIP ASSESSOR Respondents.	) On Appeal from the Allen County Property Tax Assessment Board of Appeals)) Petition for Review of Assessment, Form 131) Petition Nos. 02-070-00-1-4-00142; 02-070-00-1-4-00143; 02-070-00-1-4-00144; 02-070-00-1-4-00145; 02-070-00-1-4-00146; 02-070-00-1-4-00147; 02-070-00-1-4-00148; 02-070-00-1-4-00149)) Parcel Nos. 65-2325-0100; 65-2325-0099; 65-0029-0050; 65-2325-0102; 65-2325-0101; 65-0029-0035; 65-0029-0015; 65-0029-0023

Findings of Fact and Conclusions of Law

The Appeals Division (Appeals Division) of the State Board of Tax Commissioners (State Board), having reviewed the facts and evidence, and having considered the issues, now makes the following findings of fact and conclusions of law.

Issue

Whether additional obsolescence depreciation should be applied.

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, Todd Heath of DuCharme, McMillen & Associates, on behalf of Casselwood Apartments (Casselwood) filed petitions requesting a review by the Appeals Division. The Forms 131 were filed on November 14, 2000. The Property Tax Assessment Board of Appeals' (PTABOA) determinations on the underlying Form 130 petitions were mailed on October 19, 2000.

3. Pursuant to Ind. Code s 6-1.1-15-4, a consolidated hearing was held on all petitions on June 26, 2001 before Hearing Officer Joseph Stanford. Testimony and exhibits were received into evidence. Todd Heath and Neal R. Worden represented the Petitioner. Mike Ternet and Kimberly Klerner represented the PTABOA. Carolyn B. Werling and Teresa A. West represented Adams Township.

4. At the hearing, the subject Form 131 petition was made part of the record and labeled Board Ex. A. The Notice of Hearing on Petition is labeled Board Ex. B. In addition, the following items were submitted into evidence:
Petitioner's Ex. 1 – State Board Final Determination for Guest Inn, Petition No. 26-019-99-1-4-00001.
Petitioner's Ex. 2 – Restricted Appraisal Report.
Petitioner's Ex. 3 – Letter from management group of subject property.

5. The subject properties are located on Cheviot Drive, East Paulding Road, Holgate Drive, and Bunt Drive in Fort Wayne, Adams Township, Allen County. The hearing officer did not view the properties. The parties agreed that the assessed values under appeal are the amounts shown on the first page of the subject Forms 131 (Board Ex. A).

Whether additional obsolescence depreciation should be applied

6. The properties currently receive 20% obsolescence depreciation. Casselwood requests that this be increased to 40%.

7. Casselwood contends that an extreme downturn in the area of the properties has caused additional obsolescence. Grocery stores and restaurants have closed, and the city has discontinued bus service to the apartments. Schools in the area have deteriorated. (Testimony of Mr. Heath).

8. In addition to the economic obsolescence described above, Casselwood contends that its properties suffer from functional obsolescence, as apartments are smaller than the norm for the area. The subject's one-bedroom apartments are only 460 square feet. (Id).

9. To measure, or quantify, the obsolescence that it contends exists, Casselwood submitted a Restricted Appraisal Report (Pet. Ex. 2) prepared by Neal R. Worden, an Indiana Certified General Appraiser.

10. Mr. Worden's analysis compares the actual property to a hypothetical property in a better location. He concluded that the rents being charged are in line with the market, but the property suffers from a lack of occupancy.

11. Mr. Worden compares the effective gross income, expenses, and net cash flow of the subject with the hypothetical property. The net cash flow is then capitalized to compute an estimated value of each property. The value of personal property is deducted from the total value before the computation of obsolescence, but the value of land is not.

12. The capitalization rate used by Mr. Worden, 10.5%, was developed through the use of sales of other properties in Elkhart, Fort Wayne, and Indianapolis. The sales took place between 1992 and 1997.

13. Adams Township officials inspected the properties and talked to the property manager. The property manager told the Township that many of the subject's apartments were not occupied because of the need for renovation. (Testimony

of Ms. West). A letter from Cagan Management Group (Pet. Ex. 3) disputes the property manager's claim. Casselwood contends that many apartments were ready to be occupied, but no tenants could be found.

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 Board. 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 Board, however, the Appeals Division of the State Board 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 Board.

2. The Appeals Division 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 Board's decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State Board to review the actions of the PTABOA, but does not require the State Board to review the initial assessment

or undertake reassessment of the property. The State Board 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 Board 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 Board 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 Board 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 Board 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 Board'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 Board is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State Board 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 Board'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 Board'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. Whether additional obsolescence depreciation should be applied

18. Depreciation is a concept in which an estimate must be predicated upon 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.

19. 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.

20. 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).

21. Regarding obsolescence, the petitioner has a two-prong burden of proof: (1) the petitioner has to prove that obsolescence exists, and (2) the petitioner must quantify it. *Clark,* 694 N.E. 2d at 1233.

22. The local assessing officials agree that obsolescence exists, and have applied 20% obsolescence to the subject property. The local officials agree that the subject area has experienced an economic downturn. Therefore, the first prong of Casselwood's burden has been satisfied.

23. There are two methods of measuring external obsolescence: (1) capitalizing the income or rent loss attributable to the negative influence; and (2) comparing comparable sales of similar properties, some exposed to the negative influence and others not. (*International Association of Assessing Officers Property Assessment Valuation, Second Edition,* at 173).

24. In attempting to measure obsolescence on the subject properties, Casselwood has chosen to capitalize the income or rent loss attributable to the negative influence. This method requires Casselwood to substantiate the loss in income to the improvements, sufficiently develop a building capitalization rate, and calculate the loss in value attributable to the improvements.

25. While Casselwood's calculation certainly shows a great deal of market research and analysis, it suffers from a fatal flaw: it fails to account for the value of land in either the obsolescence calculation or the development of the capitalization rate.

26. While Casselwood does deduct the value of personal property in its computation of value, it does not attempt to account for the value of land. The calculation is made, both on the subject and the hypothetical property with the value of land

still included. It is important to remember that obsolescence depreciation is not recognized on land, therefore the land value must be determined and deducted.

27. In addition, land values are included with the properties Casselwood has used to develop a capitalization rate. Therefore, Casselwood has developed an overall rate instead of a building rate. This is particularly important in the capitalization rate analysis, because the units per acre of these properties range from 15.35 to 25.86. This could possibly cause significant differences in overall capitalization rates due only to differences in land values.

28. Casselwood's failure to determine and deduct land values when computing obsolescence and developing a capitalization rate calls into question its determination that 38.8% obsolescence exists on the subject property. Therefore, Casselwood cannot meet its burden of proving that the amount of obsolescence applied to the properties by the local officials, 20%, is incorrect.

29. In addition to the above, the Appeals Division would also question other areas of Casselwood's report. For example, Casselwood makes no statement concerning the verification of the sales used to develop the capitalization rate as arm's-length transactions, if in fact they were verified. Furthermore, some of the sales used occurred in other cities, such as Elkhart and Indianapolis, and occurred as far back as 1992. These sales have not been adjusted for time. Consequently, even if the sales were verified, the Appeals Division would question the comparability and timeliness of the sales.

30. For the reasons set forth, it is determined that, while obsolescence exists on the subject properties, Casselwood has fallen short of adequately quantifying the amount it contends exists, or proving that the amount applied by the local officials is incorrect. Accordingly, there is no change in the assessment as a result of this issue.