REPRESENTATIVE FOR PETITIONER:

Tamatha A. Stevens
Attorney

REPRESENTATIVES FOR RESPONDENT:

Steve Carter
Attorney General of Indiana

Vincent S. Mirkov
Deputy Attorney General

BEFORE THE
INDIANA BOARD OF TAX REVIEW

In the matter of:

AURORA LTD. C/O LOVELESS CONSTRUCTION, RIVER PARK APARTMENTS	)	Petitions for Correction of Error, Form 133s and Petition for Review of Assessment, Form 131
Petitioner,	)	Petition Nos. 15-021-91-3-4-00002R 15-021-92-3-4-00003R 15-021-93-3-4-00004R 15-021-94-3-4-00005R
v.	)	15-021-94-1-4-00001R
	)	County: Dearborn Township: Center Parcel Number 072930101921 Assessment Years: 1991-1994
DEPARTMENT OF LOCAL GOVERNMENT FINANCE	)	
Respondent.	)	

On Remand from the Indiana Tax Court
Cause No. 49T10-9701-TA-103

August 19, 2002

Findings of Fact and Conclusions of Law

1. The State Board of Tax Commissioners (Board) was originally the Respondent in these appeals. However, as of December 31, 2001, the legislature abolished the Board. Public Law 198-2001, § 119(b)(2). Effective January 1, 2002, the legislature created the Department of Local Government Finance (DLGF), Ind. Code § 6-1.1-30-1.1 (West Supp. 2001)(eff. 1-1-02); P.L. 198-2001, § 66, and the Indiana Board of Tax Review (State). Ind. Code § 6-1.5-1-3 (West Supp. 2001)(eff. 1-1-02); P.L. 198-2001, § 95. Pursuant to Indiana Code § 6-1.5-5-8, the DLGF is substituted for the Board in appeals from final determinations of the Board that were issued before January 1, 2002. Ind. Code § 6-1.5-5-8 (West Supp. 2001)(eff. 1-1-02); P.L. 198-2001, § 95. Moreover, the law in effect prior to January 1, 2002 applies to these appeals. Ind. Code § 6-1.5-5-8 (West Supp. 2001)(eff. 1-1-02); P.L. 198-2001, §§ 95, 117. Although, the DLGF has been substituted as the Respondent, the State will be referenced throughout these findings.

Facts and Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-12, Landmark Appraisals, Inc. (Landmark) filed five (5) Form 133 Petitions for Correction of Error, and pursuant to Ind. Code § 6-1.1-15-3, filed one (1) Form 131 Petition for Review of Assessment, on behalf of Aurora Ltd. (Aurora). The Form 133 petitions were filed for the subject parcel, one (1) for each of the following tax years: 1990, 1991, 1992, 1993 and 1994. The Form 131 petition was also filed on the same parcel as the Form 133 petitions but for the tax year 1994.

3. In each of the Form 133 petitions only one (1) issue was raised by Aurora: that the unit finish adjustment price should be reduced to account for the fact that each apartment had a single air conditioner as opposed to central air conditioning. On November 10, 1995, the Dearborn County Board of Review (BOR) denied all of the Form 133 petitions. On November 13, 1995, Aurora requested that the BOR transmit its petitions to the State. It should be noted that the State did not receive the Form 133 petitions from the County until November 17, 1997.

4. On April 17, 1995, Aurora filed a Form 131 petition for the 1994 tax year. Aurora raised the following issues: (1) an excessive amount of its land had been classified as primary; (2) the unit finish adjustment price should be reduced to account for the fact that each apartment had a single unit air conditioner as opposed to central air conditioning; (3) its grade should be reduced to "D+1"; and (4) functional obsolescence should be applied to its office and apartment buildings.

5. On January 29, 1996 the State held a hearing on the Form 131 petition. The State issued its Final Determination for the Form 131 petition on November 22, 1996.

6. Pursuant to Ind. Code § 6-1.1-15-5 and Ind. Code § 6-1.1-15-4(e), Aurora sued the State in the Indiana Tax Court (Tax Court) on both its 131 petition and its 133 petitions on January 6, 1997.

7. On July 19, 2002 the Tax Court made the following determinations:
   a. That Aurora failed to file the Form 133 petition for the 1990 tax year within the three-year period allowed by statute. See Ind. Code § 6-1.1-26-1(2);
   b. That while Aurora should have waited until April 1998 – one year after the inaction of the State – to appeal on its 133 Petitions to the Tax Court, dismissal of Aurora's appeals would simply result in Aurora refiling its appeals and reappearing before the Tax Court thus resulting in an inefficient use of the Tax Court's time and resources. The Tax Court as a result denied the State's motion to dismiss and will review Aurora's claim from its 133 Petitions; and

c. Remanded back to the State only the issue of w*hether the unit finish adjustment price should be reduced to account for the fact that each apartment had a single air conditioner as opposed to central air conditioning,* for further review consistent with the opinion of the Tax Court.

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Jurisdictional Framework

8. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.

9. The State is authorized to issue this final determination of corrected assessment pursuant to Ind. Code § 6-1.1-15-8.

Indiana's Property Tax System

10. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.

11. Indiana has established a mass assessment system through statutes and regulations designed to assess property according to what is termed "True Tax Value". See Ind. Code § 6-1.1-31, and 50 Ind. Admin. Code 2.2.

12. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).

13. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property's market value. See *Town of St. John V,* 702 N.E. 2d.

14. The Indiana Supreme Court has said that the Indiana Constitution "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", nor does it "mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant", but that the proper inquiry in tax appeals is "whether the system prescribed by statute and regulation was properly applied to individual assessments." See *Town of St. John V,* 702 N.E. 2d.

15. Although the Supreme Court in the *St. John* case did declare the cost tables and certain subjective elements of the State's regulations constitutionally infirm, it went on to make clear that assessment and appeals must continue to be determined under the existing rules until new regulations are in effect.

16. New assessment regulations have been promulgated, but are not effective for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3

State Review and Petitioner's Burden

17. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley products, Inc. v. State Board of Tax Comm'rs,* 704 N.E. 2d 1113 (Ind. Tax 1998).

18. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley*, 704 N.E. 2d 1113 (Ind. Tax 1998) and *Herb v. State Board of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]

19. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Board of Tax Comm'rs,* 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]

20. The petitioner must sufficiently explain the connection between the evidence and the

petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Board of Tax Comm'rs,* 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by the detailed factual evidence.]

21. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is valid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Board of Tax Comm'rs v. Indianapolis Racquet Club, Inc.,* 743 N.E. 2d 247, 253 (Ind. Tax 2001), and *Blackbird Farms Apartments, LP v. DLGF,* 765 N.E. 2d 711 (Ind. Tax 2002).

22. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case' and, by a 'preponderance of the evidence' proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Board of Tax Comm'rs,* 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Board of Tax Comm'rs,* 689 N.E. 2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material evidence (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of the Issue

Whether the unit finish adjustment price should be reduced to account for the fact that each apartment had a single air conditioner as opposed to central air conditioning.

23. The Tax Court in its ruling, stated that Aurora had met its burden by showing that the assessment of the improvements for central air conditioning was an objective error and can be corrected via the filing of a Form 133 petition. In addition, the Tax Court stated that Aurora did not have central air conditioning; therefore the State should not have included the cost for air conditioning when determining the unit finish adjustment of Aurora's apartments. Accordingly, a change in the assessment is made as a result of this ruling.

Summary of State's Final Determination

24. Unit Finish Adjustment - Change the unit finish adjustment on Aurora's apartments to indicate that the apartments lack central air conditioning for the tax years 1991-1993 (Form 133 Petitions) and for tax year 1994 (Form 131 Petition).

The Indiana Board of Tax Review issues this Final Determination of the above captioned matter on the date first written above.

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Chairman, Indiana Board of Tax Review