STATE OF INDIANA

Board of Tax Review

In the matter of the Petition for Review)
of Assessment, Form 131) Petition No. : 85-009-95-1-4-00007

Parcel No. : 13276103200007

Assessment Year: 1995

Petitioner: Meadowbrook North Apartments (Phase I)
8355 Rockville Road
P.O. Box 34297
Indianapolis, IN 46234

Petitioner Representatives: Vickie L. Norman
Baker & Daniels
300 North Meridian Street, Suite 2700
Indianapolis, IN 46201-1782

Brian K. Poore
Real Estate Tax Consultants, Inc.
8330 Woodfield Crossing Boulevard
Indianapolis, IN 46240

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

1. Whether the grade of the Meadowbrook North Apartments, Phase I should be reduced from a “C” to a “C-1”.
2. Whether the Community Building was priced from the correct schedule.
3. Whether the PAR and Wall Types are correct on buildings listed on cards 7,8,9,10 & 11.
4. Whether the apartment buildings on Cards 7,8 & 9 should be priced from the GCR schedule.
5. Whether economic obsolescence should be considered for the subject.
6. Whether the assessment is in accordance with the Indiana Constitution.

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, Real Estate Tax Consultants, Inc., on behalf of Meadowbrook North I (the Petitioner) filed a Form 131 Petition on May 24, 1996 requesting a review by the State Board. The Wabash County Board of Review (County Board) issued its determination on the underlying Form 130 petition on May 3, 1996.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on October 13, 2000 in Wabash, Indiana before Hearing Officer Patti Kindler. Testimony and exhibits were received into evidence. Vickie L. Norman of Baker & Daniels and Brian K. Poore of Real Estate Tax Consultants, Inc., represented the Petitioner. Ms. Kelly Schenkel represented the Wabash County Assessor’s Office and Ms. Brenda D. Conner represented Noble Township.

4. At the hearing, the subject Form 131 Petition was made part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following items were received into evidence:
Petitioner's Exhibit A-cover letter
Petitioner's Exhibit B-subject 1995 property record card (PRC)
Petitioner's Exhibit C-subject 1989 PRC
Petitioner's Exhibit D-comparable PRCs and determinations of grade
Petitioner's Exhibit E-photographs of the subject property
Petitioner's Exhibit F-selected pages from the Real Property Assessment Manual
Petitioner's Exhibit G -selected copies of the building plans
Petitioner's Exhibit H-copies of 18 State Board determinations
Petitioner's Exhibit I-financial data
Petitioner's Exhibit J-cost approach from Marshall & Swift

Respondent's Exhibit 1-copy of 50 IAC 2.2-11-4.1
Respondent's Exhibit 2-copy of 50 IAC 2.2-11-3(1)(2)(3).

5. The subject property is located at 1289 Meadowbrook Lane, Wabash, Noble Township, Wabash County.

6. The Hearing Officer did not view the subject property.

7. The parties to the appeal agreed that the assessed values under appeal are $62,130 for the land and $611,100 for the improvements.

Issue 1 – Grade

8. Ms. Norman testified that a Grade Factor of "C" is currently applied to the subject property. She further testified that a Grade Factor of "C-1" was applied to the same property in the 1989 reassessment, and was raised to a "C" in the 1995 reassessment. Ms. Norman contends that there have been no changes to

the subject property and a reduction of the Grade Factor back to a "C-1" is warranted for the subject property.

9. Mr. Poore submitted a brief on behalf of the Petitioner; the brief includes Petitioner's Exhibits A-J. Exhibits A-F are relative to the issue of grade under appeal and include the subject property record cards for 1989 and 1995, photos, property record cards and grades from comparables, copies of State Board determinations, and copies of pages from 50 IAC 2.2-10-3 and 50 IAC 2.2-11-3.

10. Mr. Poore testified to the following:

(a) The Petitioner is seeking a "C-1" grade for the all subject apartments and community center.

(b) The subject property was graded a "C-1" in the 1989 reassessment.

(c) The grade was raised to a "C" in the 1995 reassessment even though no changes were made to the subject property.

(d) A grade level chart from Rule 10-Page 6 (Petitioner's Ex. F) was submitted for the purposes of quantifying grade. The subject property was determined by the Petitioner as having three "C" ratings and two "D" ratings for economy materials and quality of workmanship. Subsidized apartments are built to "very minimal standards" which indicates the appropriate "C-1" rating.

(e) Further analysis was made (Petitioner's Ex. D and Ex. A-Pgs 6-9), in which documentation and photographs of eight (8) comparable subsidized apartments located within the State of Indiana were submitted. All eight (8) of the comparable properties had received determinations from County Boards and/or the State Board that established the Grade Factors of "C-1" to "C-2". A comparison table was submitted to demonstrate the similarities in quality and design between the subject property and the comparables used in the Petitioner's grade analysis (Petitioner's Ex. A-Pg 9).

(f) As further evidence in support of the grade issue, copies of eighteen (18) Final Determinations by the State Board of subsidized properties were submitted (Petitioner's Ex. H). All of the eighteen (18) comparable properties submitted were grade "C-1" or "C-2". Sixteen (16) of the eighteen (18)

comparable determinations submitted were lowered by the State Board. Two (2) of the comparable determinations were already graded a "C-1" and were not adjusted for grade.

(g) The subject property is very similar to the comparables used in the grade comparison with some identical features.

(h) The grade factor for the subject is too high and should be lowered from a "C" to a "C-1".

11. Ms. Norman testified that the subject was correctly assessed in 1989 as a "C-1" Grade. She contends that the Petitioner has clearly shown "disparate treatment" of the subject as a Grade "C" assessed in 1995.

12. Ms. Conner stated that according to guidelines and photographs in the Assessment Manual, the subject property "should be graded a straight "C" (Respondents Exhibit 1 & 2). Ms. Conner stated that she has been in one of the subject apartment units and saw no indication of below quality features.

Issue 2 – Pricing of the Community Building

13. Mr. Poore testified to the following:

(a) The subject Community Building is priced from the wrong schedule according to Rule 11 (Petitioner's Ex. A-Pg 2).

(b) The Community Building has three different type uses and should be priced accordingly.

(c) The three different uses within the Community Building include: an office/recreation area, laundry area, and garage.

(d) The appropriate selection of schedules for the three uses in the Community Building can be found in 50 IAC 2.2-11-5 (Petitioner's Ex. F-Pg 3-9).

(e) The office/recreation room should be priced from the GCR schedule, motel service. The laundry area should be priced from the GCM schedule, general retail. The attached garage should be priced from Rule 7 – Page 75, schedule E.2.

(f) The entire Community Building was priced from the GCM Hotel Service schedule, which is an "excessive base rate."

(g) The attached garage was listed on the property record card under Summary of Improvements, but no price was carried forth at assessment, and the assessment for the garage is listed as zero dollars (Petitioner's Ex. B-Pg 3).

(h) The entire Community Building, including the garage should be depreciated at the same rate of 40% on the PRC. The garage is listed as 30% depreciated on the PRC even though no pricing on the garage was carried forward.

14. Ms. Conner testified that she had reviewed the PRC and agreed that the attached garage pricing was not carried forward. She contended that the error should be corrected.

15. All parties to the appeal agreed during the hearing to stipulate on the garage pricing omission error. No agreement was reached on the issue of the correct depreciation table for the garage and will be determined by the State Board.

Issue 3 – PAR and Wall Types for Some of the Apartment Buildings

16. Mr. Poore testified to the following:

(a) Corrections are necessary for PRCs 7,8,9,10, &11 (Petitioner's Ex. A-Pg 4-5).

(b) The square footage of the buildings on cards 7 & 8 is identical, yet the PRCs report two different square footages for the buildings.

(c) The square footage for the building on card 7 is correct per builder's blueprints, and card 8 should be changed accordingly (Petitioner's Ex. G).

(d) The buildings priced on cards 9-11 are identical, thus pricing on each card should be the same.

(e) The first level perimeter and PAR are miscalculated on cards 7–11.

(f) The PAR for the first level of the apartments on cards 7-11 should be eight (8). The PRC indicates a PAR of ten (10).

(g) The exterior wall finish for cards 7-11 is not 100% brick. The ends of the second levels of the apartments are 24% frame and should reflect an adjustment for the Wall Type variations (Petitioner's Ex. F).

Issue 4 – GCR v. GCM Pricing

17. Mr. Poore testified to the following:
    (a) All the apartment buildings should be priced from the GCR schedule pursuant the Selection of Schedules from the Real Property Assessment Manual, 50 IAC 2.2-11-5 (Petitioner's Ex. F - Pg 3).
    (b) The GCM schedule was used to price both the first and second floors on card 7, and for the second floors on cards 8 and 9. The appropriate GCR schedule was selected to price the remaining PRCs and should be used to price all of the subject apartment buildings.

18. Ms. Conner testified that errors were evident on the PRC and the correct pricing schedule for the subject improvements is the GCR schedule.

19. The parties to the appeal agreed to stipulate on the pricing schedule of the subject apartment buildings. The parties agreed that all apartments should be priced from the GCR schedule and a correction of the said error will result on PRCs 7,8, & 9.

Issue 5 – Economic Obsolescence

20. Mr. Poore testified to the following:
    (a) The Petitioner is requesting 50% economic obsolescence for the subject apartment buildings.
    (b) The subject is a HUD subsidized property for low-income residents.
    (c) The Real Property Manual describes obsolescence, "but gives very little guidance on how to actually quantify it", so it's up to one's judgment to make that decision.

(d) Petitioner's Exhibit H includes eighteen (18) State Board determinations on subsidized properties within the State. All eighteen (18) properties were granted obsolescence ranging from 10% to 35%.

(e) Quotes from two (2) State Board determinations were referenced to describe the basis for granting obsolescence on subsidized HUD apartments (Petitioner's Ex. H – Pg 6 & 31).

(f) The subject HUD property is limited by a number of controls and restrictions mandated by the HUD 236 program.

(g) General characteristics of Government Restricted Projects include: regulatory agreement restrictions, limited tenant market, higher operating costs due to higher turnover, an impacted capitalization rate.

(h) In 1995 the subject property reported an excessive 100% turnover of the ninety-six (96) units. Typical turnover rates of market projects fall in the range of 40% to 60%.

(i) Additional characteristics particular to the HUD 236 Program include a limited return on investment with a maximum profit at 6% of the original equity investment, which is normally fairly low. The Petitioner's accountant indicated that in recent years, they have not even made the allowed 6% return.

(j) Another characteristic of the 236 Program is rent restrictions and controls over pay off of the mortgage. Maximum rents set by HUD is analogous to "rent controls".

(k) Under the initial 236 Program, the owner could pay the mortgage off after twenty years and convert the HUD restricted project to a conventional market project. However, there would be significant conversion costs since the HUD projects lack today's amenities desired in conventional projects (i.e. pool, tennis courts, dishwashers, exercise room, etc). Experience indicates the cost of conversion can range from $5,000 to $10,000 per unit, another justification that subsidized properties are below the standard and shouldn't be assessed or valued on the same basis of unrestricted properties.

(l) The 1986 Federal Tax Reform Act removed tax incentives that further impacted the economic feasibility of subsidized project.

(m) Included in Petitioner's Exhibit I, Obsolescence Supporting Documents, is:

(1) Summary of the Subject's Income and Expenses; (2) a Profit and Loss Statement for 1992-1994; (3) a Mortgage Amortization Schedule; (4) a Rent Schedule; (5) a Rent Comparability Study; (6) Historical Mortgage Rates; (7) The Korpacz Real Estate Investor Survey; and (8) The RERC – Real Estate Report.

(n) To quantify obsolescence two recognized approaches were employed. The Capitalization of Rent Loss indicates economic obsolescence for the subject property to be 31%. The second method used to determine obsolescence is from a comparison of the Income Approach and the Cost Approach to Value. This method indicated economic obsolescence to be 52% (Petitioner's Exhibit A – Pg 13-19).

21. In conclusion, Mr. Poore testified:

(a) The Real Property Assessment Manual provides that obsolescence should be considered in evaluating the amount of depreciation to be allowed for income producing properties. The Tax Court has ruled that typical appraisal methods can be applied.

(b) A recent 1995 State Board determination on Countryview Estates in Lafayette determined it to have 20% obsolescence. Countryview Estates is also a HUD 236 Subsidized project. The basic causes of obsolescence between the subject property and Countryview Estates are the same. Therefore, obsolescence should be recognized and granted on the subject property.

(c) The State Board determinations only indicate a range of percentages of obsolescence granted and selecting a percentage from this range would be arbitrary. Therefore, this data was given minimal weight by the Petitioner.

(d) The percentage indicated from the capitalization of the rent loss is the second best method developed in this report. A rate of 31% was developed from this approach.

(e) The best approach was identified by the Tax Court in the *Canal Square* tax court case. This method of comparing an Income Approach to a Cost Approach is the most reliable method and should account for all market factors at work against the property. This approach to value was given the

most consideration in the determination by the Petitioners of a percentage of obsolescence for the subject property.

(f) The Petitioner has chosen the *Canal Square* tax court case as the best indicator of percentage of obsolescence for the subject improvements and therefore request 50% economic obsolescence for the subject.

22. Ms. Conner testified that she did not agree with the request for obsolescence for the subject property. Ms. Conner contended that the subject improvements are fully utilized, are in a good location, and have school bus transportation to area schools. Ms. Conner said that she is not certain of the subject's rate of turnover for the apartments units. Mrs. Conner testified that she is aware that there have been waiting lists of people wanting to rent the subject apartments.

Issue 5 – Constitutionality of the Assessment

23. Ms. Norman stated that the constitutionality of the assessment would be addressed as part of the prior four issues and would not be separately developed.

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. 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. "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 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 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. The taxpayer's burden in the State'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 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 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'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. Grade

18. "Grade" means the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.

19. Grade is used in the cost approach to account for variations from the norm or "C" grade. The quality and design of a building are the most significant variables in establishing grade. 50 IAC 2.2-10-3.

20. The determination of the proper grade requires assessors to make a variety of subjective judgments regarding variations in the quality of materials and workmanship and the quality of style and design. *Mahan v. State Board of Tax Commissioners,* 622 N.E. 2d 1058, 1064 (Ind. Tax 1993). For assessing officials and taxpayers alike, however, the Manual provides indicators for establishing grade. The text of the Manual (see 50 IAC 2.2-10-3), models and graded photographs (50 IAC 2.2-11-4), assist assessors in the selection of the proper grade factor.

21. The major grade classifications are A through E. 50 IAC 2.2-10-3. The cost schedules (base prices) in the Manual reflect the "C" grade standards of quality and design. The following factors (or multipliers) are assigned to each major grade classification:

"A" grade	160%
"B" grade	120%
"C" grade	100%
"D" grade	80%
"E" grade	40%

22. Intermediate grade levels ranging from A+10 through E-4 are also provided for in the Manual to adequately account for quality and design features between major grade classifications (50 IAC 2.2-10-3(c)).

23. The Petitioner asserts that the appropriate grade and design factor for the subject property is "C-1". This conclusion is based upon the following:
(a) The subject property was graded a "C-1" prior to the 1995 reassessment.
(b) A grade and design chart prepared by Mr. Poore.

(c) The grade and design factor of “C-1” or “C-2” was applied to eight (8) comparable subsidized properties, all of which was the result of determinations by the County Board or State Board.

(d) Copies of prior State Board determinations of comparable subsidized properties that were determined to have a grade and design factor of “C-1” or lower.

(e) Exhibits submitted along with the Petitioner’s photographs that identified the similarities and common features between the subject and the comparables referred to in the determinations.

(f) A Comparison Table submitted by the Petitioner to demonstrate the similarities in quality and design between the subject and the comparables.

(g) Testimony that the subject property was shown disparate treatment from other similar properties that were graded “C-1” to “C-2”.

24. 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.

25. The Petitioner has identified similarly situated comparable properties and has established disparate treatment. In doing so, the burden then shifted to the Respondents to present evidence to contradict the Petitioner’s evidence and justify its decision with substantial evidence.

26. The County officials did not present sufficient evidence or testimony to contradict the facts established by the Petitioner. Conclusory statements that the grade factor for the subject is appropriate, as well as copied pages from the Real Property Assessment Manual are not enough to contradict the evidence presented by the Petitioner.

27. For the reasons set forth above, the County has failed to meet its burden in this matter. Therefore, the State Board will reduce the grade factor from "C" to "C-1". A change in the assessment is made as a result of this issue.

E. Pricing of the Community Building

28. The Petitioner has raised three (3) specific issues regarding the area assessed as a community building. Those issues are as follows:

a. Whether the community building was priced from the correct schedule.
b. Whether the three uses within the community building should each be priced from a separate schedule.
c. Whether the depreciation on the attached garage was correct.

The Appeals Division will address each of these issues separately.

Whether the Community Building was priced from the correct schedule.

29. Mr. Poore contended that the community building should not be priced from the GCM schedule for hotel service, which is an "excessive rate". Mr. Poore opined that the office/recreation area (1,275 S.F.) of the community building should be priced from the GCR schedule, "motel service", and only the laundry area (891 S.F.) should be priced from the GCM schedule.

30. Pursuant to 50 IAC 2.2-11-5, the appropriate pricing schedule for the community building is GCR motel service. Rule 11 Page 52, Item (2)-(I) indicates that both apartment *service* areas and clubhouses should be priced from the GCR service schedule. 50 IAC 2.2-11.5 clearly lists the proper schedule to be used in computing the reproduction cost. No subjective judgment is involved in making this determination.

31. The County Board submitted no testimony or evidence to rebut the Petitioner's claims that the subject property was inappropriately priced. The correct schedule for the entire community building is the GCR service schedule. Therefore, there is a change in the assessment as a result of this issue.

Whether the Three Uses Within the Community Building Should be Priced Separately

32. The Petitioner contends that the community building should be assessed from three different schedules to account for three different uses. The Petitioner submitted documentation suggesting that the Office/Recreation area should be priced from GCR-motel Service, the laundry area should be priced as GCM-retail, and the attached garage should be priced from the residential schedule (Rule 7, Page 75, Schedule E.2).

33. Further documentation taken from the Real Property Assessment Manual was submitted by the Petitioner indicating an example from the Real Property Assessment Manual, which indicates that two different uses in the same building could be priced per use by indicating a percentage amount to each use and pricing accordingly. However, the example submitted indicates two different use types within the same specific GCI pricing schedule. (Petitioner's Ex. F – Pg 1).

34. Pursuant to 50 IAC 2.2-10-6.1(2), from the Real Property Assessment Manual, "Use Type" represents the model that *best* describes the structure." Assessment officials should "locate and use the model that *best represents* the structure being assessed." "A guide for selecting the correct model is included in 50 IAC 2.2-11." According to this statute, base prices are to be derived from the schedule (GCR, GCI, GCM, or GCK) that best describes the overall use of the improvements. Adjustments for use-type can then be applied from within the appropriate Selection of Schedules as indicated in the example submitted by the Petitioners.

35. The Petitioner has suggested the use of two different schedules for the community building. The appropriate schedule according to the guide included in 50 IAC 2.2-11, is the GCR – motel service schedule for the finished laundry service area and the community area. The base rate for a one-story building with a PAR of 9 and brick exterior walls priced from the GCR schedule is $44.70. No adjustments for wall height for the community building are required in the GCR schedule.

36. The Petitioner submitted interior and exterior photographs of the community center building. In examining the photographs, it is clear that the community center is a finished one-story brick building with an office, meeting room, and finished laundry area that should be priced entirely from the GCR Schedule.

37. The County officials did not offer testimony regarding the pricing of the community building.

38. There is a change in the assessment as a result of this issue.

Garage Assessment

39. The attached garage pricing was not carried forward to the 1995 assessment due to a computer error and therefore the assessed value of the garage was zero.

40. Both the Petitioner and the Respondents agreed to stipulate that the omitted garage pricing should be corrected and the garage should be added back on to the subject assessment.

41. Mr. Poore testified that the attached garage should be depreciated from the same schedule as the community building, which indicates 40% depreciation.

42. The attached brick garage was priced from the residential E.2 schedule and added to the assessment card as a special feature and is depreciated at the

same rate as the subject community center. There is a change in the assessment as a result of this issue.

F. Pricing of the Apartments on Cards 7, 8, 9, 10 & 11

43. The Petitioner has raised four specific issues regarding the apartments assessed on Property Record Cards #7, 8, 9, 10 & 11.

a. Whether all the subject buildings should be priced from the GCR schedule.
b. Whether the square footage is incorrect for the building priced on property record card #8.
c. Whether the first level perimeter and PAR are correct on cards #7, 8, 9, 10, & 11.
d. Whether an adjustment is required for exterior wall finish for cards #7, 8, 9, 10, & 11.

Whether the subject buildings should be priced from the GCR Schedule

44. The Petitioner contends that all the apartment buildings listed on property record cards #7,8, & 9 should be priced from the GCR schedule. The Petitioner testified that some of the apartments were priced using the appropriate GCR schedule. Both stories listed on property record card #7 as well as the second floors of property record cards #8 and #9 are priced from the GCM schedule.

45. Regulation 17 will specifically address the manner in which an objective issue should be assessed. Rather than relying on a *Town of St. John* analysis, the specific section of the manual should govern the resolution of the issue.

46. Pursuant to 50 IAC 2.2-11-5, the appropriate pricing schedule for the subject two-story apartments is GCR apartment unit - Commercial flats one (1) through (3) stories. This regulation specifically states that the GCM schedule is for Commercial flats with four (4) or more stories.

47. The Petitioner and the County officials agreed to stipulate on this issue. The County agreed that an error did occur in the pricing of the subject apartment units. The County agreed that the GCR pricing schedule is appropriate for the buildings listed on cards #7, #8, and #9. Therefore, there is a change in the assessment as a result of this issue.

Whether the square footage is incorrect for the building priced on card #8

48. The Petitioner contends that the buildings on property record cards #7 & #8 are identical. The Petitioner submitted a copy of the blueprints for the subject buildings, which indicates that the buildings are the same size (Petitioner's Ex. G). The building on property record card #7 is priced with the correct square footage. The building on property record card #8 is incorrectly measured according to the submitted blueprints and should be amended. The Petitioner's request on this issue will in fact increase the assessment since the building on the property record card #8 indicates less square footage than the building on property record card #7, which is correctly measured.

49. The County officials did not dispute the Petitioner's evidence on this issue. The County officials agreed that errors in square footage should be corrected.

50. The square footage on property record card #8 will be corrected and there is a change in the assessment made as a result of this issue.

Whether the first level perimeter and PAR are correct on cards 7, 8, 9, 10 & 11

51. The Petitioner contends that the first level perimeter and PAR are not correct for the buildings listed on property record cards #7-11. The indicated PAR determined by assessing officials for the first floor buildings listed on cards #7-10 was ten (10). Petitioner's Exhibit F includes calculations for the first level perimeter indicating that the PAR for the first floors should be eight (8).

52. Regulation 17 will specifically address the manner in which an objective issue should be assessed. Rather than relying on a Town of St. John analysis, the specific section of the manual should govern the resolution of the issue.

53. Perimeter Area Ratio is determined by dividing the total linear feet in the effective perimeter of the building by the corresponding area, multiplying that quotient by one hundred (100), and rounding to the nearest whole number. 50 IAC 2.2-10-6 (a)(4). This requires a simple measurement and mathematical calculation, with no subjective judgment involved.

54. In assessing the first floor of the subject buildings on property record cards 7 & 8, the exterior walls are 30' + 197' + 30' + 11' + 3' + 24' + 3' + 11' + 3' + 105' + 3' + 11' + 3' + 24' + 3' + 11'. The sum of the perimeter is 472'. 472' divided by the square footage (6,081) indicates a PAR of .0776, rounded to .08 x 100 = 8.

55. In assessing the first floor of the subject buildings on property record cards #9,10, & 11, the exterior walls are 27' + 151' + 27' + 13' + 3' + 10' + 3' + 105' + 3' + 10' + 3' + 13'. The sum of the perimeter is 368'. 368' divided by the square footage (4,767) indicates a PAR of .0771, rounded to .08 x 100 = 8.

56. The County officials did not dispute the Petitioner's calculations on the PAR issue. The calculations for a PAR of ten (10) for the first floors of the subject property determined by assessment officials were found to be incorrect. The correct PAR for the first floors of the subject is eight (8). There is a change to the assessment as a result of this issue.

Whether an adjustment is required for exterior wall finish for cards 7-11

57. The Petitioner contends that the exterior wall finish for cards #7, 8, 9, 10, & 11 is not all brick, and should be adjusted accordingly. The Petitioner testified that the second floor of the subject buildings listed on the above property record cards is frame and should be adjusted indicating 24% frame and 76% brick. Petitioner's

Exhibit E includes photographs of the buildings considered under this issue. The photographs indicate wood siding on the second floor sides of the apartment buildings listed on cards #7-11.

58. Regulation 17 will specifically address the manner in which an objective issue should be assessed. Rather than relying on a *Town of St. John* analysis, the specific section of the manual should govern the resolution of the issue.

59. The Real Property Assessment Manual indicates that if a building is constructed with two (2) or more types of framing materials, compute the perimeter area ratio for the building as a whole, select the square foot price, add or deduct the adjusted framing cost to the selected square foot price of the building, and apply a multiplier to the interior framing construction codes involved. 50 IAC 2.2-10-2(i).

60. The perimeter of the second floor apartments listed on cards #9, 10, & 11 is 276 linear feet. The second floor has wood frame ends, which equal 66 linear feet. The remaining framing is brick. To determine the percentage of wood frame walls divide the linear feet of wood frame by the total linear feet of the overall building (66/276 = 24%). The walls are 24% frame and 76% brick.

61. The County officials did not disagree with the Petitioner on this issue. The Petitioner provided sufficient evidence to prove their claim. Therefore, a change in the assessment will be made as a result of this issue.

G. Whether economic obsolescence should be considered for the subject

1.The concept of depreciation and obsolescence

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

63. 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.

64. Recognition of obsolescence beyond physical depreciation is a profession that requires supportable evidence. This recognition of cause and effect may be supported by use of some of the following techniques and methods: (1) the paired data analysis, (2) a capitalization of rent loss, (3) the breakdown method, (4) the market extraction method, and (5) the age-life method. Even when fully prepared to the requirements acceptable in professional appraisal standards and ethics, these techniques and methods are considered support approaches in justifying and documenting obsolescence.

65. The use of any singular technique or method identified above without the use of other approaches to value would be considered unethical and incomplete.

66. As stated in an excerpt from *The Appraisal of Real Estate*, Eleventh Edition, published by the Appraisal Institute of America: The breakdown method is the most comprehensive and detailed way to measure depreciation. When used in conjunction with market extraction and age-life methods, the breakdown method desegregates a total depreciation estimate into its component parts. Furthermore, there are five primary techniques used to calculate the different types of depreciation in the breakdown method. These include estimation of cost to cure, application of an age-life ratio, application of the functional obsolescence procedure, analysis of paired data, and capitalization of rent loss. Cost to cure is a measure of both curable physical deterioration and curable functional obsolescence. An age-life ratio is used to measure curable physical deterioration and incurable physical deterioration for both short-lived and long-lived

components. The functional obsolescence procedure may be used to estimate all types of functional obsolescence. Analysis of paired data and capitalization of rent loss may be used to estimate incurable functional obsolescence caused by deficiencies as well as external obsolescence.

67. As also stated in *The Appraisal of Real Estate*, Eleventh Edition: External factors frequently affect both the land and building components of a property's value. In addition, when market data are studied to develop an estimate of external obsolescence, it is important to isolate the effect of the obsolescence on land value from the effect on the value of the improvements. The two primary methods of measuring external obsolescence are paired data analysis and the capitalization of rent loss. Paired data analysis is a useful technique when market evidence is available.

68. *The Appraisal of Real Estate*, Eleventh Edition, provides that physical deterioration is caused by wear and tear from regular use, the impact of the elements, and the effect of normal aging. Careful maintenance can slow the process of deterioration and neglect can accelerate it. Physical deterioration may be curable or incurable. The three main physical components of a building are items of deferred maintenance, short-lived components, and long-lived components. All physical components in a building fall into one of these three categories.

69. *The Appraisal of Real Estate*, Eleventh Edition, states that a flaw in the structure, materials, or design of the improvement causes functional obsolescence. It is attributable to defects within the property, as opposed to external obsolescence, which is caused by external factors. Functional obsolescence may be curable or incurable. Functional obsolescence can be caused by a deficiency, which means that the subject property is below standard in respect to market norms. It can also be caused by a superadequacy, which means that the subject property exceeds market norms. There are five types of functional obsolescence: curable functional obsolescence caused by a deficiency requiring an addition

(installation) of a new item, curable functional obsolescence caused by a deficiency requiring the substitution (replacement) of an existing item ("curable defect"), curable functional obsolescence caused by a superadequacy which is economically feasible to cure, incurable functional obsolescence caused by a deficiency, and incurable functional obsolescence caused by a superadequacy.

70. According to *The Appraisal of Real Estate*, Eleventh Edition, external obsolescence is a loss in value caused by factors outside of the subject property. This can be an economic factor, such as an oversupplied market or very expensive financing, or a locational factor, such as poor siting or proximity to a negative environmental influence. External obsolescence is generally incurable on the date of the value estimate, but this does not mean that it is permanent. External influences can affect both the site and the improvements. When this is the case, the loss in value attributable to the externality may have to be allocated between the site and the improvements.

71. *The Appraisal of Real Estate*, Eighth Edition, provides that an appraiser can use either of two methods to measure external obsolescence, namely, (1) capitalizing the rent loss attributable to the negative influence, or (2) comparing sales of similar properties, some of which are subject to negative influence and some that are not. If pertinent sales data are abundant, the second method is preferable to the first.

72. *The Appraisal of Real Estate*, Eighth Edition, provides that external influences can cause a loss in value to any property. In the cost approach, the total loss in value due to such influences is allocated between the land and the improvements. Only the portion of the loss that is applicable to improvements is deducted from the current reproduction or replacement cost as external obsolescence. The effect of external influences on land value is calculated in the land valuation.

2. Burden regarding the obsolescence claim

73. 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).

74. 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).

3. The evidence submitted

75. The subject property is a HUD 236 project apartment complex with a community building, a beauty shop, and thirteen multi-unit apartment buildings. The Petitioner is requesting economic obsolescence due to the number of controls and government restrictions that influence HUD properties.

76. The bulk of the testimony offered by the Petitioner is contained in an obsolescence study prepared by Mr. Poore (Petitioner's Ex. A Pg 10-19). Mr. Poore submitted this study to reflect his conclusions concerning obsolescence depreciation present on March 1, 1995. Mr. Poore concluded that economic obsolescence depreciation was present on the assessment date.

77. Mr. Poore identified several possible causes of economic obsolescence associated with the Petitioner's participation in the HUD program and quantified the amount of economic obsolescence for the subject property using three approaches:

    1) Data of former State Board determinations on low-income subsidized apartments indicating a range of obsolescence from 10%-35%.

2) The impact of rent loss was quantified by comparing the restricted rents of the subject to “estimated” unrestricted market rents and the capitalization of that value loss. The value impact was then applied to the depreciated cost new of the subject improvements from Marshall & Swift to reflect a percentage of obsolescence. This approach indicated a loss applicable to obsolescence of 31%.

3) The comparison of the value of the improvements as determined by using the Income Approach with the value of the improvements as determined by using the Cost Approach. This approach to value indicated a loss attributable to obsolescence of 52%.

4. The reliability and probity of the evidence

78. Before applying the evidence to reduce the contested assessment, the State Board must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.

79. Under *GTE North, Inc., supra, and Thornton Telephone Company v. State Board of Tax Commissioners*, 629 N.E. 2d 962,965 (Ind. Tax 1994), the State Board may give due consideration to the reliability of studies presented by a taxpayer, but must provide an explanation if it finds the studies unreliable. Included in this requirement is the prescription by the Tax Court in *GTE North* that the State Board defines what standards it will use to define whether a study or mode of analysis is "recognized" or "accepted". *GTE North, Inc*., 629 N.E. 2d at 888.

80. The United States Supreme Court has defined how a study or analysis becomes recognized or accepted. In *Daubert v. Merrill Dow Pharmaceuticals*, 113 S. Ct. 2786 (1993), the Court addressed whether scientific evidence has sufficient indicia of reliability to allow its admission under the Federal Rules of Evidence. Although the State Board is afforded broad discretion to consider such evidence as it deems pertinent (see Ind. Code § 4-22-5-1), and therefore it is not expressly subject to formal rules of evidence, the State Board finds the analysis of

relevancy presented in *Daubert*, which was cited with approval by the Indiana Supreme Court in *Steward v. State*, 652 N.E. 2d 490 (Ind. 1995), particularly instructive to the State Board in determining what relevancy to accord petitioner's calculations for purposes of weighing its evidentiary value.

81. In Daubert, the Court held that to be relevant, "[p]roposed testimony must be supported by appropriate validation - i.e. 'good grounds', based on what is known". 113 St. Ct at 2795. In order to determine whether scientific or technical evidence is based on good grounds, a court or administrative agency must determine "whether it can be (and has been) tested. 'Scientific methodology today is based on generating hypotheses and testing them to see if they can be falsified; indeed, this methodology is what distinguishes science from other fields of human inquiry'." *Id*. At 2796 (citing Green, *Expert Witnesses and Sufficiency of Evidence in Toxic Substances Litigation: The Legacy of Agent Orange and Bendectin Litigation*, 86 Nw. U. L. Rev. 643, 645 (1992). The Court went on to state the "[a]nother pertinent consideration is whether the theory or technique has been subjected to peer review and publication...submission to the scrutiny of the scientific community is a component of 'good science', in part because it increases the likelihood that substantive flaws in methodology will be detected." *Id.* at 2797. Furthermore, the general acceptance of a particular theory can be important in weighing its relevance. *Id*.

82. In addition to the general requirements for relevancy discussed above, both the United States Supreme Court and the Supreme Court of Indiana have recognized that scientific evidence can be reliable for one purpose and not another, and that to be relevant to a particular inquiry, the proponent of the evidence must establish a valid scientific connection between the theory and the specific facts of the case. *Daubert*, 113 S. Ct. at 2796; *Steward*, 652 N. E. 2d at 498.

83. The State Board believes that the Petitioner's evidence is meant to be offered as scientific evidence within the meaning of that term as defined by *Daubert* and

Steward. Statistical analysis in the realms of finance and economics is a sophisticated inquiry and well-regarded studies satisfy the requirements of "good science" as described in *Daubert*. A number of federal courts, which have considered this issue since *Daubert*, have agreed. See *F.D.I.C. v. Suna Associates*, 80 F. 3d 681,687 (2nd Cir. 1996) (valuation of land); *Frymire-Brinati v. KPM Peat Marwick*, 2F. 3d 183, 186088 (7th Cir. 1993) (accounting and finance); *Joy v. Bell Helicopter Textron, Inc.*, 999 F. 2d 549, 569-70 (D.C. Cir. 1993) (economics); *Kurnez v. Honda North America, Inc.*, 166 F.R.D. 386,388 (D.C. Mich. 1996) (same).

84. Because of the informality of the State Board's proceedings it would be impractical to require exhaustive determinations regarding the admissibility of evidence at the time of administrative hearings. Further, it would be unduly burdensome and time-consuming for the State Board to require taxpayers and local taxing officials alike to participate in such determinations at the hearings. Therefore, the State Board's general position is to admit the evidence proffered, and to consider the issue of relevancy in the weighing of the evidence.

85. In addition to the factors applied by the courts to establish reliability, the State Board will consider a number of additional factors to determine the relevancy of evidence regarding obsolescence. The first factor is whether the alleged maladies of the property actually lead to a loss of value as required by 50 IAC 2.2-10-7(e). Evidence of such loss of value may be based on the assessor's observations of the property, statistical evidence establishing a correlation between the faults of the property and its value, or from anecdotal evidence if sufficiently reliable. In many cases there will be causes of obsolescence that cannot be easily seen by the assessor. In these cases, it is incumbent on the taxpayer to establish a link between the evidence and the loss of value. For statistical evidence this may be established by providing sufficient evidence of correlation of the evidence to value. For anecdotal evidence establishing reliability is more difficult. Statements by the taxpayer or consultant regarding the

value of the property are inherently unreliable unless they can be confirmed either by other statements or by the opinions of impartial observers.

5. Evaluation of the evidence

86. A close review of Mr. Poore's approaches to the valuation of obsolescence depreciation for the subject property indicates several flaws.

87. The first method used by Mr. Poore was a document listing previous State Board determinations of other subsidized projects. Mr. Poore testified that this document indicates that the State Board has recognized that obsolescence exists on the listed low-income properties. However, Mr. Poore does not provide sufficient evidence to prove that these properties are comparable with the subject. Of the eighteen (1) properties only three (3) were shown to have comparable features; these properties were used as comparables in substantiating the grade reduction. The other fifteen were not shown to be similar to the subject in size, age and condition, number of units, amenities, or construction type. All but three determinations included in the report were made prior to the 1995 reassessment. Merely submitting prior State Board determinations is not sufficient in providing the evidence that obsolescence exists in the subject property. This is particularly true when an explanation and/or calculation for the obsolescence application is either absent or vague.

88. The second method employed by Mr. Poore to measure obsolescence for the subject property was through the comparison of the restricted rents of the subject to the estimate of unrestricted market rents developed by an outside appraiser. Mr. Poore testified that once the rents were quantified, they would then be capitalized to indicate the value loss impact against the subject property. The capitalized percentage would then be applied to the depreciated cost new from Marshall & Swift Valuation Service to reflect an applicable percentage of obsolescence. The indicated percentage of obsolescence determined by Mr. Poore using this method of quantification is 31%.

89. The third method detailed by Mr. Poore was to develop values for the subject property using the Income Approach and the Cost Approach, using real dollars. The value indication of the Income Approach is subtracted from the value indication from the Cost Approach and then the remainder is divided by the Cost Approach to derive a percentage of obsolescence. The indicated percentage of obsolescence determined by Mr. Poore using this method of quantification is 52%.

90. Both methods outlined in ¶'s 88 and 89 are flawed because of Mr. Poore's selection of the condition for the subject property. In his testimony regarding the requested grade reduction, Mr. Poore contends the subject property is below average quality. Mr. Poore testified that the subject was constructed with *economy* materials and *fair* workmanship. Mr. Poore testified that the subject property was built to "very minimal government standards", yet Mr. Poore chose to use the "Average" quality schedule from Marshall & Swift in lieu of the "Fair" quality schedule.

91. The Marshall & Swift Cost Manual clearly states in Section 12, page 7 that the *fair* townhouse is typical of row houses built to minimum FMHA, FHA and VA standards. Designs are simple, sash and doors are few and low cost, roof lines are plain. Yet Mr. Poore chose to ignore this guideline in the Marshall & Swift Cost Manual for his obsolescence analysis. Mr. Poore used the average quality schedule from Marshall & Swift to develop the cost new of the subject improvements for the consideration of obsolescence.

92. Mr. Poore's credibility is questionable. On one hand, Mr. Poore indicated the subject property deserved a grade reduction for the use of economy materials and fair workmanship during construction. And on the other hand, Mr. Poore labeled the subject as average quality construction in order to develop a stronger case for economic obsolescence.

93. Mr. Poore cannot label the subject property fair for one study and then label the same property as average for another study. The Marshall & Swift Commercial Cost Manual clearly states that fair quality townhouses are typical of the mass-produced housing built to minimum government FMHA, FHA, and VA standards.

94. The State Board must question the validity of evidence when the evidence in itself is contradicting. Because of these flaws, the State Board is under no obligation to give, and does not give, the calculations of obsolescence any weight.

95. Ms. Conner testified that she did not agree with the request for obsolescence for the subject property. Ms. Conner contended that she is aware that there is a waiting list to rent the subject apartments. The County officials offered no other evidence or testimony in regards to the obsolescence issue.

96. In summary, Mr. Poore has listed several possible causes of economic obsolescence associated with the Petitioner's participation in the HUD program. Mr. Poore, however, failed to establish that the subject property has performed more poorly than any other comparable apartment complex as a result of these restrictions. Mr. Poore has therefore failed to prove that these HUD restrictions have an adverse effect on the property's value, as required by the first prong of the two-prong test articulated in Clark. As discussed all three approaches to determining obsolescence by Mr. Poore are flawed and fail to quantify any amount of obsolescence depreciation for the subject property as required by the second prong of the two-prong test.

97. Finally, a thorough review of the exhibits submitted by Mr. Poore indicates that the Petitioner receives financial benefits from participation in the HUD program, including favorable financing terms, higher occupancy rates, and low interest rates, which it would not have received but for its participation in the program. These benefits could counteract any losses incurred by participation in the HUD program. Mr. Poore has failed to establish that these incentives do not make up

for any loss of rental income that may have been incurred as a result of the HUD program restrictions.

98. For all the reasons above, the Petitioner failed to meet the burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

H. Conclusions Regarding the Constitutionality of The Assessment

99. For the reasons stated under the Conclusions of Law part C, the issue concerning the constitutionality of the tax system is denied.

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