STATE OF INDIANA
Board of Tax Review

NHP AHP ARLINGTON PARK LP	)	On Appeal from the County Property
	)	Tax Assessment Board of Appeals
	)	
Petitioner,	)	
	)	Petition for Review of Assessment,
	)	Form 131
v.	)	Petition No. 53-004-99-1-4-00002
	)	Parcel No. 012-21450-02
MONROE COUNTY PROPERTY TAX	)	
ASSESSMENT BOARD OF APPEALS	)	
And BLOOMINGTON TOWNSHIP	)	
ASSESSOR	)	
	)	
Respondents.	)	

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 buildings constructed in 1997 and 1998, with an assessment date of March 1, 1999, should receive 5% physical depreciation.

2. Whether the subject property should receive 10% obsolescence depreciation due to rent restrictions.

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 IC 6-1.1-15-3, Landman and Beatty, on behalf of NHP AHP Arlington Park LP (the Petitioner) filed a Form 131 petition requesting a review by the State. The Form 131 was filed on October 28, 1999. The County Property Tax Assessment Board of Appeals' (PTABOA) final determination on the underlying Form 130 petition is dated September 29, 1999.

3. Pursuant to IC 6-1.1-15-4, a hearing was held on March 14, 2001 before Hearing Officer Jennifer Bippus. Testimony and exhibits were received into evidence. Mr. James Beatty and Ms. Sheila Murray represented the Petitioner. Ms. Judith Sharp, Monroe County Assessor, represented the County.

4. At the hearing, the subject Form 131 petition was made part of the record and labeled State Exhibit A. The Notice of Hearing was labeled State Exhibit B and The Continuance/Waiver was labeled State Exhibit C. In addition, the following exhibits were made part of the record:
Petitioner's Exhibit A - Copy of AIMCO Statement of Operations – Detail for the Period ended December 1999.

5. The subject property is located at 1320 West Arlington Park, Bloomington, Bloomington Township, Monroe County. The Hearing Officer did not view the property.

Issue 1 - Whether the buildings constructed in 1997 and 1998, with an assessment date of March 1, 1999, should receive 5% physical depreciation.

6. Physical depreciation is not given to all properties at the time of their assessment, but only at reassessment time. This is unequal treatment; depreciation dates are not systematically cut off in the Marshall Swift evaluation method. The reassessment was set for 1999 and since this is the year the property was assessed, the 5% should apply. The property owner should not have to wait until a new reassessment to receive any depreciation. *Murray Testimony*.

Issue 2 - Whether the subject property should receive 10% obsolescence depreciation due to rent restrictions.

7. Based on the Statement of Operations - Detail for the period ended December 1999, the following formula was used to acquire a rate of economic vacancy:

$697,677	Market Rent
- 53,199	Total Vacancy Loss
- 24,753	Total Bad Debt Expense
$619,725	

$619,725 / 697,677 = 11.2% vacancy.

The attachment to State Exhibit A shows the rent with restrictions at $703,140 and the all market rent at $763,440, which reflects approximately 8% vacancy. The 11% vacancy tends to be on the high side

in Bloomington, because of the nature of the town, so they are requesting 5% obsolescence to offset the restrictions, as well as the vacancy. The restricted rent is due to the property falling under Section 42 and income restrictions apply to the rent prices shown in State Exhibit A. *Murray Testimony. Petitioner's Exhibit A. State Exhibit A.*

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. Issue 1 - Whether the buildings constructed in 1997 and 1998, with an assessment date of 3/1/99, should receive 5% physical depreciation.

18. The Petitioner testified that equal treatment should be given to all property owners in regard to physical depreciation. The Petitioner opined that since the subject property was assessed as of March 1, 1999, 5% depreciation should be applied because this would have been the regular year of reassessment had there not been a delay. If the reassessment had occurred on schedule, the property would have received 5% physical depreciation and the Petitioner contends it is not fair to withhold the depreciation just because of the delay. The Petitioner stated that if Marshall and Swift methodology were used, the property would receive depreciation immediately at the time of assessment.

19. The plain language of 50 IAC 2.2-1-21 states that, "Real property improvements constructed after March 1, 1995, shall not receive a physical depreciation allowance." This applies to all real property improvements, not just the Petitioner's, so the Petitioner is, in fact, being treated equitably.

20. Furthermore, the Petitioner's unsubstantiated conclusion concerning "unequal treatment" does not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.

21. For the above reasons, the Petitioner has failed to meet the burden concerning this issue. Accordingly, no change is made to the assessment as a result of this issue.

E. Issue 2 - Whether the subject property should receive 5% obsolescence depreciation due to rent restrictions.

22. 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.

23. 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 the effect to value pertaining to a specific property.

24. Estimating the value loss from accrued depreciation is one of the most controversial aspects of the appraisal process. "There are five methods used to measure accrued depreciation, two indirect and three direct. Each has advantages and disadvantages and has a different degree of reliability. Direct methods involve measuring the depreciation of the subject property, whereas indirect methods use sales of comparable properties and income loss from rental properties to measure depreciation. The methods are categorized as follows:

Indirect methods

1. sales comparison method
2. capitalization of income method

Direct methods

1. economic age-life method
2. modified economic age-life method
3. observed condition (breakdown) method

IAAO Property Assessment Valuation, 155-156 (2nd ed. 1996).

25. "The *sales comparison method*: estimates cost new of subject property; comparable properties are found and site values deducted; contributory improvement values remain; contributory improvement values are deducted from cost for each sale property, yielding measure of accrued depreciation; accrued depreciation figure is converted to percentage and applied to subject property." *Id* at 183.

26. "The *capitalization of income method*: capitalizes the income of the subject property into an estimate of value, with site value deducted; indicated improvement value is compared with estimated cost new to provide indication of improvement value remaining." *Id.*

27. "The *economic age-life method*: is based on straight-line depreciation and is limited because depreciation of real property rarely occurs in a straight line. The method may be applicable for short-lived items." *Id* at 184.

28. "The *modified economic age-life method*: recognizes the effect of curable items of both physical deterioration and functional obsolescence. Depreciation amounts for these items are deducted from cost new. The remaining amount is then depreciated using the age-life method. This is the indicated amount of depreciation for the subject property." *Id*.

29. "The *observed condition (breakdown) method*: breaks down depreciation into all its components. Although it is the most complete method, it is rarely used because it is so labor-intensive." *Id*.

30. The Petitioner's method of merely presenting an "economic vacancy" therefore does not conform to any generally recognized method of measuring obsolescence depreciation.

31. *Potential gross income* is annual economic rent for the property at 100 percent occupancy. *Economic rent* is the annual rent that is justified for the property on the basis of a careful study of comparable properties in the area." IAAO Property Assessment Valuation, 204 (2nd ed. 1996).

32. The Petitioner failed to submit any evidence establishing rents for comparable properties in the area.

33. Effective gross income is potential gross income less vacancy and collection loss, plus appropriate miscellaneous income. To determine effective gross income, each of the following factors must be considered: vacancy loss, collection loss, and miscellaneous income." IAAO Property Assessment Valuation, 211 (2nd ed. 1996).

34. "The vacancy factor for any particular property must be determined by a study of other comparable properties and an analysis of their rental histories, as well as the recent history of vacancies in the subject property." *Id*.

35. The Petitioner's calculation provided no analysis of typical vacancy loss rates for comparable apartment units.

36. "Collection loss is simply the loss that results from the failure of tenants to pay the rent. The two major factors to consider in collection loss are the comparison with comparable properties and the tenants in the subject property." *Id* at 212.

37. Again, the Petitioner provided no analysis of typical collection loss rates for comparable apartment units.

38. Even the Petitioner acknowledges the flaws in the calculations. The first argument is that the units experience 11% vacancy. The next is that the units experience 8% vacancy. Finally, the calculations are ignored and the State is urged to accept an arbitrarily selected 5% amount of obsolescence depreciation.

39. In summary, the Petitioner has failed to establish that the subject property has performed more poorly than any other comparable apartment complex as a result of these restrictions. The Petitioner has therefore failed to prove that these rent 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, the calculations offered by the Petitioner 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. Finally, the Petitioner failed to discuss the benefits of participation in the program that may counteract any losses incurred. The Petitioner has therefore 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 program restrictions, as required by *Pedcor.*

40. Taxpayers receiving incentives for participating in low-income housing programs must also establish that these incentives do not make up for any loss in rental income incurred as a result of program restrictions. *Pedcor Investments v. State Board of Tax Commissioners*, 715 N.E. 2d 432 (Ind. Tax Court 1999).

41. 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.

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.

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Chairman, Indiana Board of Tax Review