STATE OF INDIANA
Board of Tax Review

PEDCOR INVESTMENTS-1990-XIII, L.P. & PEDCOR INVESTMENTS-1994-XXI, L.P.,	)	On Appeal from the Johnson County Board of Review
Petitioner,	)	
v.	)	Petition for Review of Assessment, Form 131
	)	Petition Nos. 41-009-95-1-4-00028
JOHNSON COUNTY BOARD OF REVIEW and FRANKLIN TOWNSHIP ASSESSOR,	)	41-009-96-1-4-00005
	)	41-009-97-1-4-00001
	)	Parcel Nos. 5100 15 01 003/04
Respondents.	)	5100 15 01 003/08

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 economic obsolescence is warranted due to restrictions limiting rents and income levels of residents.
2. Whether the land classification is correct (1995 petition only).

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 be considered a finding of fact.

2. Petition # 41-009-95-1-4-00028 was filed by Pedcor Investments-1990-XIII, L.P. This petition is for parcel number 5100 15 01 003/04. This property will be referred to as Phase 1. Petition # 41-009-96-1-4-00005 was filed by Pedcor Investments, LLC. This is for parcel number 5100 15 01 003/08. Petition # 41-009-96-1-4-00001 was filed by Pedcor Investments-1994-XXI, L.P. and is also for parcel number 5100 15 01 003/08.[1]

3. Pursuant to Ind. Code § 6-1.1-15-3, Phillip J. Stoffregen, Executive Vice President of Pedcor Investments, LLC (Pedcor) filed three Form 131 petitions requesting a review by the State. The Form 131 petitions were filed on March 1, 1996, for the 1995 petition; October 21, 1996, for the 1996 petition; and September 24, 1997, for the 1997 petition. The Johnson County Board of Review's (County Board) final determination on the underlying Form 130 petition is dated January 31, 1996 for the 1995 petition; September 24, 1996 for the 1996 petition; and September 17, 1997 for the 1997 petition.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on April 11, 2001, before Hearing Officer Brian McKinney. Testimony and exhibits were received into evidence. Maureen Hougland, Vice President of Pedcor Investments, LLC, represented the Petitioner. Mark Alexander represented the County Board. No one was present to represent the Franklin Township Assessor's Office.

[1] At the hearing, there was no distinction between either of the limited partnerships or Pedcor Investments, LLC. For convenience, all will be referred to as Pedcor.

5. At the hearing, the subject Form 131 petitions were made a part of the record and labeled Board's Exhibit A. Notices of Hearing on Petition were labeled Board's Exhibit B. In addition, the following exhibits were submitted as evidence:

Board's Exhibit C – Withdrawal of issue agreement.

Petitioner's Exhibit A – Brief for Phase 1.
Petitioner's Exhibit A-1 – Financing Information for Phase 1.
Petitioner's Exhibit A-2 – Information on Bonds for Phase 1.
Petitioner's Exhibit B – Brief for Phase 2.
Petitioner's Exhibit B-1 – Financing Information for Phase 2.
Petitioner's Exhibit B-2 – Information on Bonds for Phase 2.
Petitioner's Exhibit C – Median income information for 1995 & 1996.

The Respondent did not present any documentary evidence at the hearing.

6. The subject properties are an apartment complex located on Westview Drive in Franklin, Indiana (Franklin Township, Johnson County).

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

Issue No. 1 – Whether economic obsolescence is warranted due to restrictions limiting rents and income levels of residents.

8. The County Board did not grant any economic obsolescence to the property. The Petitioner contended that Phase 1 should receive 3.49% for 1995, or in the alternative an average of 8.62% until the year 2024. The Petitioner contended that Phase 2 should receive 0.72% in 1996 and 3.89% in 1997, or in the alternative an average of 27.65% until the year 2025.

9. The subject property participates in the Low Income Housing Tax Credit (LIHTC) program defined in §42 of the Internal Revenue Service Code. In Indiana, this program is administered by the Indiana Housing Finance Authority (IHFA).

10. Under the terms of this program, the subjects will receive tax credits for 10 years in exchange for renting apartments to individuals whose income is at or below 60% of the median income for the county.

11. Approximately 60% of the apartment units in Phase 1 and 100% of the apartment units in Phase 2 are subject to the LIHTC program agreement. The Petitioner voluntarily chose to enter into the LIHTC program.

12. In 1995, the median income for Indianapolis, Indiana was $44,000; the income limit for a family of four would have been $35,500. (Petitioner Exhibit C). In 1996, the median income increased to $46,600; the income limit for a family of four would have been $37,300. (Petitioner Exhibit C).

13. Pedcor Investments, LLC is the general partner. It was responsible for the development and management of the subject property. The limited partners are the "money men." The limited partners provided cash, in return for the tax credits, to allow Pedcor to secure the mortgage to construct the subject properties. These tax credits are a dollar for dollar credit against federal income tax. The tax credits are generally sold to institutional investors. At the time the tax credits for the subject properties were sold, the average price ranged from $0.55 to $0.59 per $1.00 tax credit. (Petitioner Exhibit B, Tab 7).

14. Pedcor will receive $911,200 in tax credits over a 10-year period on Phase 1 (Petitioner Exhibit A, Tab 11). Pedcor first received the benefit of the tax credits in 1993 and will continue to receive tax credits each year through 2003, assuming it is in compliance with Section 42 of the Internal Revenue Code.

15. Pedcor will receive $1,818,672 in tax credits over a 10-year period on Phase 2 (Petitioner Exhibit B, Tab 11). Pedcor first received the benefit of the tax credits in 1996 and will continue to receive tax credits each year through 2006, assuming it is in compliance with Section 42 of the Internal Revenue Code.

16. Petitioner contends that it is entitled to an obsolescence adjustment because the rent restrictions, required as a condition of eligibility for the LIHTC program, results in a loss of value.

Issue No. 2 – Whether the land classification is correct (1995 petition only).

17. At the hearing, Ms. Hougland withdrew this issue from consideration by the State (Board Exhibit C).

Conclusions of Law

1. The Petitioner is 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. 50 IAC 17-5-3; 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, neither party requested such discretion 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.

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 merely because 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 V*, 702 N.E. 2d at 1040.

Issue No. 1 – Obsolescence Depreciation

Definitions and Burden

18. The County Board did not grant any economic obsolescence to the property. The Petitioner contended that Phase 1 should receive 3.49% for 1995, or in the alternative an average of 8.62% until the year 2024. The Petitioner contended that Phase 2 should receive 0.72% in 1996 and 3.89% in 1997, or in the alternative an average of 27.65% until the year 2025.

19. Obsolescence is can be curable or incurable or conditions may change for the better, or for the worse. In addition, the method of calculating obsolescence may

change, as the rules for assessing property change over the years. Therefore, obsolescence should be reviewed on a year-by-year basis. Accordingly, the average requested by the Petitioner would not be acceptable in these appeals.

20. Depreciation is an essential element in the cost approach to valuing property. Depreciation is the loss in value from any cause except depletion, and includes physical depreciation and functional and external (economic) obsolescence.[2] *International Association of Assessing Officers (IAAO) Property Assessment Valuation*, 153 & 154 (2nd ed. 1996); *Canal Square Limited Partnership v. State Board of Tax Commissioners,* 694 N.E. 2d 801, 806 (Ind. Tax 1998) (citing *Am. Inst. Of Real Estate Appraisers, The Appraisal of Real Estate*, 321 (10th ed. 1992)). 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.

21. Depreciation is a market value concept and the true measure of depreciation is the effect on marketability and sales price. *IAAO Property Assessment Valuation* at 153. The definition of obsolescence in the Regulation, 50 IAC 2.2-10-7, is tied to the one applied by professional appraisers under the cost approach. *Canal Square,* 694 N.E. 2d at 806. Accordingly, depreciation can be documented by using recognized appraisal techniques. *Id.*

22. Economic obsolescence depreciation is defined as "obsolescence caused by factors extraneous to the property." 50 IAC 2.2-1-24.

23. "Economic obsolescence may be caused by, but is not limited to, the following:
(A) Location of the building is inappropriate for the neighborhood.
(B) Inoperative or inadequate zoning ordinances or deed restrictions.
(C) Noncompliance with current building code requirements.

[2] Depletion is the loss in value of property due to consumption of oil, gas, precious metals, and timber.

(D) Decreased market acceptability of the product for which the property was constructed or is currently used.
(E) Termination of the need of the property due to actual or probable changes in economic or social conditions.
(F) Hazards, such as danger from floods, toxic waste, or other special hazards." 50 IAC 2.2-10-7 (e)(2).

24. The elements of 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.

25. 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).

26. Regarding obsolescence, the taxpayer has a two-prong burden of proof: (1) the taxpayer has to prove the 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).

Causes of Obsolescence

27. "[I]n advocating for an obsolescence adjustment, a taxpayer must first provide the State Board with probative evidence sufficient to establish a prima facie case as to the causes of obsolescence." *Champlin Realty Company v. State Board of Tax Commissioners,* 745 N.E. 2d 928, 932 (Ind. Tax 2001).

28. The identification of causes of obsolescence requires more than randomly naming factors. "Rather, the taxpayer must explain how the purported causes of

obsolescence cause the subject improvements to suffer losses in value." *Champlin,* 745 N.E. 2d at 936.

29. The Petitioner claimed that obsolescence is inherent in the property because it participates in the LIHTC program which imposes deed restrictions on the property that result in a loss of rental income. Petitioner further argues that the loss of value arising from the rent restrictions is greater than the enhancement in value derived from the LIHTC program benefits, thereby meeting the test laid out in *Pedcor Investments-1990-XIII, L.P. v. State Board of Tax Commissioners*, 715 N.E. 2d 432, 438 (Ind. Tax 1999) ("*Pedcor*").

30. Deed restrictions may be considered an external factor causing obsolescence because the pertinent factor "is not the deed restrictions *per se* but rather the marketplace's reaction to them. As times change, a deed restriction that at one time enhanced the value of a particular property may make that property less valuable as a result of changing *external* circumstances." *Pedcor* at 437. Therefore, Petitioner must establish that the market's reaction to the deed restrictions has changed due to external circumstances.

31. In addition, *Pedcor* holds that the State may take into consideration what if any benefits the Petitioner gained in exchange for the deed restrictions in its evaluation of obsolescence. Then, as now, the Petitioner entered into these deed restrictions in exchange for valuable federal tax credits. *See Pedcor* at 437. Petitioner must demonstrate that the market's reaction to this exchange – i.e. the combined effect of the deed restrictions (i.e. the loss of rental income) and the benefits of the LIHTC – has changed.

32. The Petitioner voluntarily signed the Declaration of Extended Low-Income Housing Commitment (Declaration) (Petitioner Exhibit A & B, tab 2) in return for tax credits. These tax credits were in turn used to attract investments from the limited partners. Participation in the LIHTC program was therefore an agreement among the general partner, the limited partners and the IHFA. In fact, it was the

Petitioner who sought out these agreements with the IHFA and the limited partners.

33. The mere fact that Petitioner entered into the deed restrictions voluntarily does not preclude Petitioner from ever receiving obsolescence. *See Pedcor* at 437. However, on the facts before us, it is clear that Pedcor was well aware of the restrictions placed upon it by entering into the LIHTC program and equally aware of the benefits to be gained. Petitioner has entered into many similar transactions throughout the country. See Petitioner Exhibit A & B (tab 14)-- Certificate of Phillip Stoffregen. Therefore, at the time Petitioner entered into the transaction, it understood (or should have understood) that the rents they received for the next thirty years would be below market rate. They weighed that burden against the tax benefits gained over the following ten-year period and went forward. This is a compelling indication that Pedcor believed the tax credits were sufficient compensation for the rent reductions to make the transaction more attractive than a conventionally financed market-based housing project.

34. In spite of the logic that supports that Petitioner's decision to enter into the Declaration and develop the project, Petitioner, in seeking obsolescence, now argues that combined effect of deed restrictions and tax credits create an economic loss. Petitioner has submitted financial information, rent projections, rental market information and valuations of the LIHTC into evidence that, taken together, purport to show that the burden of the lost rents outweighs the benefits of the tax credits. See Petitioner's Exhibit A & B (7-13). However, Petitioner's burden is to demonstrate that a change in the market reaction occurred to the deed restrictions and/or the tax credits between the signing of the Declaration and the assessment date. That they have failed to do. For example, Petitioner did not demonstrate that the market rate for comparable housing had changed significantly, that the restrictions on the contract rents had changed or deviated from their reasonable projections, or that the overall value of LIHTC had been

reduced.[3] The Petitioner has failed to show any negative market reaction to the bargain it originally struck.

35. Furthermore, Petitioner was, or should have been, able to balance the long-term benefit of the tax credits and long- term burden of rent restrictions. Certainly Petitioner was capable of making those projections and gathering that market information; the evidence offered at the hearing proves their understanding of the relevant market factors. When they looked at those factors when they decided to proceed with a low-income housing project rather than a property that would rent at market rates. They have not met their burden to prove how those factors have changed to their disadvantage for the assessments under appeal.[4] Having failed to demonstrate any factors that changed in the market reaction to the LIHTC program, Pedcor has failed to demonstrate any loss in the value of the property as a result of deed restrictions. "Without a loss of value, there can be no economic obsolescence." *Pedcor* at 438.

36. The Petitioner has failed to demonstrate that participation in the LIHTC program created a loss in value to the property. The Petitioner therefore did not meet the first prong of the two-prong test articulated in *Clark.*

Quantification of Obsolescence

37. Even if the State accepted the existence of obsolescence, the Petitioner must still quantify the amount of obsolescence requested.

[3] Of course, the amount of tax credit available is reduced each year as this asset is transferred to the party who bargained for it. But there was no argument made that anticipated value of tax credits per year has changed either through a change in the market value of these credits (e.g. approximately 55 cents on the dollar) or through Petitioner's loss of eligibility for the Program.

[4] Even assuming that Petitioner made an imprudent business decision at the time of entering into the Declaration, an imprudent decision is not sufficient reason to reduce a taxpayer's assessed property value. *See Pedcor at 437, citing Lake County Trust No. 1163 v. State Bd. Of Tax Commissioners,* 694 N.E.2d 1253, 1258-9 (Ind. Tax).

38. "There are two methods of measuring external [economic] obsolescence: (1) capitalizing the income or rent loss attributable to the negative influence; and (2) comparing comparable sales of similar properties, some exposed to the negative influence and others not." *IAAO Property Assessment Valuation*, 173 (2nd ed. 1996).

39. "The capitalization of income method: capitalizes the income of 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*. at 183.

40. "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*.

Application of the Income Capitalization Method

41. The Petitioner attempted to quantify its claim for obsolescence using the following methodology:

> (a) Petitioner calculated the difference in rent between rent-restricted units and market units and, after adjusting for vacancy and management expenses, claimed this difference in rental income was a dollar amount of economic obsolescence. (Petitioner's Exhibit 1, tab 12).
>
> (b) Petitioner next computed a proposed fair market value of the property by adding the year under appeal audited income (adjusted for reserves) to the difference in rental income to obtain an "adjusted 'market rate' NOI [net operating income]."

(c) The adjusted market rate NOI was then multipled by a capitalization rate of 10.00% to obtain a purported fair market value.

(d) The proposed dollar amount of economic obsolescence was then divided by the purported fair market value to determine a percentage of obsolescence.

42. Although Petitioner characterizes the above analysis as an income capitalization approach, it does not follow the methodology required under IAAO standards. The IAAO approach follows these basic steps:

1. Estimate potential gross income.
2. Deduct for vacancy and collection loss.
3. Add miscellaneous income to get the effective gross income.
4. Determine operating expense.
5. Deduct operating expenses from the effective gross income to determine net operating income before discount, recapture, and taxes.
6. Select the proper capitalization rate.
7. Determine the appropriate capitalization procedure to be used.
8. Capitalize the net operating income into an estimated property value."

IAAO Property Assessment Valuation at 204.

42. Petitioner includes in their income capitalization approach the step of dividing a reduced rental income by the fair market value of a property. This hybrid approach is not a generally accepted method of computing economic obsolescence. [5]

[5] Petitioner also fails to follow the first step in the income approach, i.e. to estimate the potential gross income for the property in question. Because it appears that this information can be derived from the materials with relative ease, it is unclear why Petitioner omitted this step. Nevertheless, the State is not required to perform this calculation on behalf of Petitioner. *See Canal Realty v. SBTC* 744 N.E.2d 597,602 (Ind. Tax Ct. 2001).

Need for Comparable Properties

43. The Petitioner failed to identify any comparable properties to determine either the potential gross income or the economic rent of the market units, as required by generally accepted standards of assessment and appraisal practice.

44. "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* at 211.

45. The Petitioner's calculation is based on vacancy and collection losses actually experienced by the property under appeal, rather than those determined by a study of comparable properties, as required by generally accepted standards of assessment and appraisal practice. In other words, Petitioner is asking the State to use the non-rent restricted units of the subject property as a comparable property to the rent-restricted units of the same property.

46. Generally accepted assessment and appraisal standards require that the subject property be compared to something other than itself. Although it may appear an attractive alternative to standard appraisal methodology to adopt Petitioner's "internal comparability" approach, we must reject it. Choosing to follow the generally accepted appraisal and assessment standards in the instant case is far from an arbitrary or overly technical decision. A building that rents to the general public at market rates is a different property than one that rents all or a significant portion of its units in a rent-subsidized market. These differences may affect the income capitalization approach at many of the required analytical steps: For example:

> (a) The implications for vacancy figures are very different. A below-market property will be easier to fully let than the same property at higher rents. If less than half of a property's units are available for

rent at market rates (as is the case with the subject property), it may be much easier to achieve full occupancy than if it were a fully market rate apartment complex.

(b) A market rent property will have different expense items. Marketing costs may be much higher as it seeks to attract tenants who have more housing options. More amenities may be required to compete for such tenants and there may be greater fluctuations in occupancy rates, collections and rents.

(c) The capitalization rate will be affected by the level of risk of the investment. Participation in the LIHTC program has a significant impact on the risk analysis and on the return on the initial investment of the partners.

Of course, as Petitioner argues, the fact that much of the property is rented at below market rates may mean that the property is less attractive to traditional tenants or that the operating expenses for the subject property are higher due to the reporting requirements imposed by the LIHTC program. However, it is Petitioner's burden to present the comparative income and expense data to support those arguments. They have not done so.

47. The audited financial statements provided by Petitioner (see Petitioner's Exhibit A & B, tab 10) appear to be prepared for income tax purposes or, in any event, were not prepared expressly for Petitioner's income capitalization analysis. " [A]ll of the income and expenses shown by an accountant on an operating statement prepared for income tax purposes cannot be used in the income approach to value without careful analysis." *Id.* at 214. This distinction is not merely a technical one. Certain items are appropriate for inclusion as expenses for income tax purposes that are not appropriate for calculating NOI for property assessment and appraisal purposes. (See further discussion in paragraph 50, below).

48. Furthermore, without income and expense statements from comparable properties, there is no reasonable way to determine, assuming that a decline in value exists, that the decreased value is a result of truly external factors rather than poor management decisions. "In analyzing the operating expenses for a property, the operating statements from comparable properties must be reviewed…" *Id.* at 215.

Selection of the Capitalization Rate

49. Petitioner has provided no explanation for the selection of the capitalization rate, other than to put forth the conclusory statement that such a rate is "standard for the industry. " The understanding and proper selection of rates used in the income approach are necessary if valid estimates of value are to be made. A small difference in the capitalization rate will result in estimates differing by thousands of dollars." *Id.* at 233.

50. To the extent there is evidence relevant to the capitalization rate in the record, that evidence tends to support the application of a low capitalization rate. For example, Ms. Hoagland, appearing on behalf of the Petitioner, testified that Pedcor did not have a financial risk.[6] Also, Petitioner has included property taxes in the NOI calculation (See Petitioner's Exhibit A & B, tab 10). Because those tax figures are a very significant expense item, this may have a significant effect on the selection of the capitalization rate.[7] Again, removing the effective tax rate component from the calculation of the capitalization rate would ordinarily result in a lower overall cap rate. The State does not mean to suggest that the proposed capitalization rate is or should be lower than the proposed rate, merely that Petitioner has failed to present an adequate explanation for selecting this

[6] Ms. Hoagland did testify that the transaction created a risk to the company's reputation and credit standing, without offering further explanation or quantification of such potential risks.

[7] See p. 4 of tab 10 in Petitioner Exhibit A and p. 5 of tab 10 in Petitioner Exhibit B. On the statement of income and loss, Petitioner lists Property taxes. Generally, property taxes are omitted from the expense statements when the valuation for property tax purposes is at issue and that expense item is dealt with as a component of the cap rate.

rate. Without an explanation or justification of this crucial factor, Petitioner's income analysis and ultimately the calculation of economic obsolescence is not supportable.

51. The Petitioner's unsubstantiated conclusions concerning the capitalization rate do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119

Balancing the Tax Incentives against the Rent Reductions

52. 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*, at 437.

53. Pedcor argues that the loss of rental income is greater than the value of the tax credits. To support its argument, Pedcor provided a calculation in which the value of the remaining tax credits was subtracted from the present value of the rent loss. This balance equaled the difference in rental income between restricted and market units, previously discussed.

54. The process Pedcor uses to quantify the difference between the cost of the rent restrictions and the benefit of the tax credit also raises many unanswered questions. Pedcor appears to be projecting the potential long-term impact of the rent restrictions, rather than any current loss of value. Based on Pedcor's own calculations, the value of the tax credit for the year in question is greater than the loss of rents. "Without a loss of value, there can be no economic obsolescence." *Pedcor at 438*.

55. Even assuming that Petitioner's projections over the thirty year life of the rent restrictions are a suitable and a reasonably accurate measure of Pedcor's economic loss, we question the accuracy of Petitioner's measurement of the value of the income tax credits.

56. In weighing the loss of rents (discounted for present value) against the value of the tax credits, Petitioner does not include the value of the tax credits issued in 1993 and 1994 or the rental loss for those years for Phase 1. Because the entire value of the tax credits was, or should have been, considered at the time Petitioner decided to move forward with low-income rather than market rate housing, the entire sequence of tax credits (and corresponding rental losses) should be considered in the evaluation of obsolescence. Because the value of the tax credits is compressed into a ten-year period, in contrast to the thirty-year term of restricted rents, Petitioner's equation undervalues the tax benefits compared to the rental losses.

57. Additionally, the record is not clear as to the actual value Petitioner received for the tax credits. Petitioner presented some evidence that the market price of the LIHTC is between $0.55 and $0.59 on the dollar during the relevant time frame (See Petitioner's Exhibit A & B, tab 7). Although the amount Pedcor may have sold the tax credits for may be within the range Petitioner specified, there is no evidence that this was, in fact, the sale price of the credits.

58. Therefore, we do not find Petitioner's method of quantifying the relative value of the tax credits against the rental losses – the underpinning of Petitioner's economic obsolescence argument-- reliable.

59. The Petitioner therefore did not meet the second prong of the two-prong test articulated in *Clark.*

60. For all reasons set forth above, the Petitioner did not meet its burden of proof in this appeal. Accordingly, no change is made in the assessment as a result of this issue.

Issue No. 2 – Whether the land classification is correct (1995 petition only).

61. At the hearing, Ms. Hougland withdrew this issue from consideration by the State (Board Exhibit C). Accordingly, there is no change in 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.

_____

Chairman, Indiana Board of Tax Review