

**STATE OF INDIANA
Board of Tax Review**

TRAVIS INVESTMENT'S, d/b/a)	On Appeal from the Marshall County
STONERIDGE APARTMENTS,)	Property Tax Assessment Board of Appeals
)	
Petitioner,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition No. 50-002-01-1-4-00001
)	Parcel No. 0130182600
MARSHALL COUNTY PROPERTY TAX))	
ASSESSMENT BOARD OF APPEALS))	
and BOURBON 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 economic obsolescence depreciation should be applied to the subject property.

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 Indiana Code § 6-1.1-15-3, Edwin Dewald of Dewald Property Tax Services, on behalf of Travis Investments D/B/A Stoneridge Apartments (Petitioner) filed a Form 131 petition requesting a review by the State. The Form 131 petition was filed on September 10, 2001. The Kosciusko County Board of Review's (County Board) final determination on the underlying Form 130 was issued on August 13, 2001.

3. Pursuant to Indiana Code § 6-1.1-15-4, a hearing was held on January 10, 2002, before Hearing Officer Jennifer Bippus. Testimony and exhibits were received into evidence. Edwin DeWald represented the Petitioner. Phillip Johns, Certified General Real Property Appraiser of The Value Company, appeared as a witness for the Petitioner. Michael Boys, Marshall County Assessor and the following PTABOA members/staff represented the County: Lyle Samuelson, Susan Toumey, Jerry Ross and Edwin Bisch. Max Watkins, Township Trustee-Assessor, represented Bourbon Township.

4. At the hearing, the Form 131 petition was made part of the record and labeled as Board Exhibit A, the Notice of Hearing was labeled as Board Exhibit B, and the Disclosure Statement was listed as Board Exhibit C. In addition, the following exhibits were submitted to the State:
Petitioner's Exhibit A - The occupancy rate of Stoneridge Apartments for 1997 thru 2001, provided by Sterling Management Ltd;
Petitioner's Exhibit B - A copy of the Indiana Statewide Housing Market Study prepared for the Indiana Housing Finance Authority and the Indiana Equity Fund, Inc;

Petitioner's Exhibit C - A copy of the Consultation Report prepared by Phillip Johns for Edwin DeWald, DeWald Property Tax Services, dated June 28, 2001;

Petitioner's Exhibit D - A copy of the Consultation Report prepared by Phillip Johns for Edwin DeWald, Dewald Property Tax Service, dated June 20, 2001;

Petitioner's Exhibit E - A copy of the letter provided to the county as additional evidence by Edwin DeWald, dated June 29, 2001;

Petitioner's Exhibit F - A copy of the letter sent to Michael Boys from Edwin DeWald, dated June 30, 2001;

Petitioner's Exhibit G - A copy of the PTABOA written findings and the minutes from the PTABOA hearing;

Respondent's Exhibit A - A copy of the response submitted by Ed Bisch and the Marshall County PTABOA for the 131 Petition;

Respondent's Exhibit B - A copy of the property record card for the subject property;

Respondent's Exhibit C - A copy of the Form 115;

Respondent's Exhibit D - A copy of the hearing script used by the Marshall County PTABOA;

Respondent's Exhibit E - A copy of the discussion and analysis from the court case *Canal Square*;

Respondent's Exhibit F - A copy of pages 10 & 13 from the consultation report submitted by the Petitioner as evidence;

Respondent's Exhibit G - A copy of a letter from the Petitioner to Mr. Boys, dated June 30, 2001; and

Respondent's Exhibit H - A copy of a letter from the PTABOA to the Petitioner, dated June 21, 2001 requesting additional evidence.

5. The property is an apartment complex located at 601 South Bourbon, Bourbon, Indiana (Bourbon Township, Marshall County).

6. The Hearing Officer did not view the property.
7. The assessed value as determined by the Marshall County PTABOA is:
Land: \$13,800 Improvements: \$319,000 Totals: \$332,800
8. Mr. DeWald testified that he is compensated on a commission basis. Mr. DeWald testified that in order to be objective, he employed Mr. Johns as an independent fee appraiser. Mr. Johns' qualifications are included in Petitioner's Exhibit C.
9. The Form 130 appeal was filed with the Marshall County PTABOA requesting 20% obsolescence. At the PTABOA hearing, an appraisal was submitted as evidence changing the requested obsolescence to 59%. At the hearing, the PTABOA requested as additional evidence a complete appraisal for the subject property using no less than five (5) years of income and expense data. The Petitioner provided the additional evidence in a timely manner, submitting a new consultation report from Phillip Johns dated, June 28, 2001. The new evidence requested 50% obsolescence, but the Petitioner was still willing to compromise with the County and accept 20% obsolescence. *Dewald and Bisch Testimony.*
10. The PTABOA agreed that obsolescence was warranted and applied 14% economic obsolescence to the subject property, now the Petitioner believes this is insufficient. After consulting an independent appraiser, Phillip Johns, it is determined that 50% obsolescence should be applied. *Petitioner's Ex. C, DeWald Testimony.*
11. At the request of Ed DeWald, Phillip Johns inspected the subject property and submitted a consultation report using The Encyclopedia of Real Estate Appraising, 3rd Edition, page 77, as a guideline. Generally, two methods are used to quantify economic obsolescence: Sales Comparison Approach and Income Loss Method. In this case, the Sales Method is not feasible because there are few sales in this type of property. Low-income apartment housing

rarely transfers ownership and in most situations there is not enough data to use the conventional sales method because the sale of the property is not usually your standard sale and not reasonable. The Income Loss Method is incorporated in the appraisal submitted as evidence and compares what income the property could generate currently v. what income the property would generate at an optimum point. The two incomes, optimal v. actual, is compared and the difference between the two is capitalized into a value estimate. The value estimate is the dollar loss of economic obsolescence. *Johns Testimony, Petitioner's Ex. C.*

12. The Petitioner, in calculating the economic obsolescence that should be applied to the subject property, used the income and expenses for the subject property from 1997 thru 2000. The Petitioner testified it is important to use multiple year data to average atypical and typical expenses. Using the income and expenses of the subject property and an average of four years occupancy and four years average unit occupancy, the actual income with the optimal income (as if the subject were 95% occupied) can be compared. The actual income divided by the potential income resulted in 50.39% economic obsolescence for the subject property (rounded to 50%). *Johns Testimony, Petitioner's Ex. C (page 14).*
13. The cover letter, submitted with the additional evidence on June 30, 2001, after the original PTABOA hearing, stated that 20% obsolescence would still be agreeable with the Petitioner. The Respondent testified that the Petitioner, over a period of time has requested three (3) different amounts of economic obsolescence: 20%, 59% and 50%. *Bisch Testimony.*
16. The PTABOA stated the 14% calculation is the correct amount of economic obsolescence. The County stayed within the stated evidence from the PTABOA hearing and used the vacancy rate provided by the Petitioner to obtain the 14%. In the appraisal the Petitioner shows 19.38% as the average unit occupancy. This is a four (4) year average. The PTABOA requested a five (5) year average, but accepted the four (4) year average. The PTABOA used the 19.38% provided

and subtracted the 5% typical vacancy for this type property. The end result is 14%. *Bisch Testimony, Ross Testimony, Petitioner's Ex. A.*

17. The Respondent testified that the method used by the appraiser to obtain 50% obsolescence is not a reliable approach to showing a loss on the subject property. Using the income and expenses there is more of a loss than would be typical. Four years of income and expenses were averaged, but there was a large spike in expenses for the year 2000 and this could be due to some type of atypical expense for that year. The discrepancy in the expenses could also show a discrepancy in the obsolescence percentage. *Ross Testimony.*

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, 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.
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*, 702 N.E. 2d at 1040.

Issue - Whether economic obsolescence depreciation should be applied to the subject property.

18. The subject property is currently receiving a 14% obsolescence adjustment as applied by the PTABOA. The Petitioner is requesting 20%, and presented a calculation attempting to support 50%.
19. 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.¹ *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.

20. 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.*
21. Economic obsolescence (or economic depreciation) is defined as “obsolescence caused by factors extraneous to the property.” 50 IAC 2.2-1-24.
22. “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.
 - (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).
23. The elements of functional and economic obsolescence can be documented using recognized appraisal techniques. These standardized techniques enable a

¹ Depletion is the loss in value of property due to consumption of oil, gas, precious metals, and timber.
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knowledgeable person to associate cause and effect to value pertaining to a specific property.

24. 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).
25. 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).
26. The subject property is currently receiving an obsolescence adjustment; therefore, the first prong of the two-prong test has been met. The Petitioner must only quantify the amount of obsolescence sought.
27. Taxpayer's 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 1999).
28. "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).
29. "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.

30. "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.*
31. Mr. Johns' method using the capitalization of income is flawed. Mr. Johns does not carry the method far enough. A full appraisal using the income approach should contain the following information: Description of Comparable Sales and Rentals, Units of Comparison Analysis, Elements of Comparison Analysis, Development of Gross Monthly Rent, Development of Gross Rent Multiplier, and Summary of Income Approach.
32. "*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).
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." *Id.* at 211.
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 for the subject property." *Id.*

35. Mr. Johns' calculations provides an analysis of typical vacancy loss rates for comparable apartment units with rent restrictions at 95%. However, Mr. Johns stated in his consultation report that he only used the actual effective income for the year 2000 since it reflects the most recent year's vacancy rates. Mr. Johns states that to use the average income of all four years would be to include the higher occupancies experienced during those previous years, and would falsely inflate the income. On the other hand, Mr. Johns used the independent expenses from a four (4) year average because of unusual spikes in expenses that may have occurred in a single year. Once again for actual dependent expenses, Mr. Johns used only the year 2000. Mr. Johns comes to the final opinion that the percentage of economic obsolescence is 50%.
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. Mr. Johns provided no analysis of typical collection loss rates for comparable apartment units in his analysis.
38. As stated above (¶ 30), Mr. Johns' consultation is flawed and varied from the acceptable appraisal techniques. Mr. Johns first argued at the PTABOA meeting for 59% obsolescence based on calculations of two years income and expenses. He next argues that the units experience 50% obsolescence based on income and expenses of four (4) years and in the case of dependent expenses one (1) year.
39. Further, Mr. Johns states in his report that the purpose of the assignment is to "provide consultation". He also states, "the report is not an appraisal to be used by the client, or any other party, which will provide an estimate of the market value of the subject property". Also, throughout Mr. Johns' testimony he states that the conclusions are based on his "opinion". Little, if any weight, in

determining the obsolescence of the subject property can be given to the consultation report presented by Mr. Johns.

40. In addition, Mr. DeWald ignores all of Mr. Johns' calculations in the case and continues to state that the Petitioner would consider 20% obsolescence as reasonable.
41. 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 rent 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 used by the Petitioner's consultant 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*, 715 N.E. 2d 432.
42. For all the reasons above, the Petitioner failed to meet its 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.

Chairman, Indiana Board of Tax Review