STATE OF INDIANA
Board of Tax Review

UNITY PARK, Petitioner, v. MARION COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS and CENTER TOWNSHIP ASSESSOR, Respondents.	)	On Appeal from the County Property Tax Assessment Board of Appeals Petition for Review of Assessment, Form 131 Petition No. 49-148-01-1-5-00189 etal Parcel No. 1019467 etal

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 subject properties should receive obsolescence.
2. Whether the condition rating assigned to the subject properties is excessive.
3. Whether the assessment is in accordance with the Indiana Constitution, the Indiana Property Tax Assessment Statutes, and the State Board of Tax Commissioners' Regulations.

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, the Petitioner filed Form 131 petitions requesting a review by the State. The Marion County Property Tax Assessments Board of Appeals decisions were issued on August 24, 2001. The Form 131 Petitions were filed on September 21, 2001.

3. Pursuant to Ind. Code § 6-1.1-15-4, hearings were held on February 23, 2002 and on February 27, 2002 before Administrative Law Judge Debra Eads. Testimony and exhibits were submitted into evidence. For the February 20, 2002 portion of the hearing, Larry Stroble and Jennifer Dunfee, attorneys with Barnes & Thornburg represented the Petitioner. Hank Rassel with Don R. Scheidt & Company and Todd Sears and Jerri Bain with the Indianapolis Neighborhood Housing Partnership testified on behalf of the Petitioner. Brian McHenry represented Marion County. Ernest Clark represented Center Township. Andrew Seiwert, attorney for Marion County attended only the February 27, 2002 portion of the hearing. Todd Sears and Ernest Clark did not attend on February 27, 2002.

4. At the hearing, the Form 131 petitions were made a part of the record and labeled as State Exhibits A. The Form 117 Notices of Hearing were labeled as State Exhibits B. In addition, the following exhibits were submitted into evidence:

   Petitioner's Exhibit 1 – binder including the following:
   1 – parcel numbers subject to the appeal
   2 – Unity Park (#191) – Indianapolis Housing Agency (IHA) Section 8 programs request for lease approval
   3 – Unity Park contract extension

4 – Agreement to enter into housing assistance payments contract

5 – Appraisal of Unity Park dated August 1, 2001

6 – Photographs of the respective parcels

7 – Hometowne vicinity map

8 – Hometowne site

9 – Unity Park – site plan

10 – Plat map

11 – Land acquisition schedule

12 – Rent rolls from 3 –1 01 thru 8-1-01

13 – Unity Park vacancy rates from 3-00 thru 3-01

14 – Hometowne Associates, LP Financial Statements for 12-31-97 and 98

15 – Hometowne Associates, LP Financial Statements for 12-31-09 and 99

16 – Hometowne Associates, LP Financial Statements for 12-31-99 and 00

17 – Property assessment of Unity Park dated 5-4-01

18 – Statement of intent between National Equity Fund, Inc. and Indianapolis Neighborhood Housing Partnership, Unity Park Residents Council, and King Park Area Development Corporation

19 – Form 130, Petition to the Property Tax Assessment Board of Appeals for Review of Assessment as of March 1, 2001 assessment date

20 – Current Property Record Cards with respect to the parcels under appeal

21 – Indianapolis Neighborhood Housing Partnership True Tax Value reconciliation of parcels under appeal

22 – Indianapolis Neighborhood Housing Partnership True Tax Value reconciliation

Petitioner's Exhibit 2 – Proposed Findings of Fact and Conclusions of Law

Petitioner's Exhibit 3 – Evidence submitted prior to hearing in accordance with 50 IAC 17-7-1 on October 4, 2001, including the following:

a. Letter from Vickie Norman of Baker & Daniels
b. List of Petition numbers and parcel numbers at issue
c. List of additional evidence
d. Unity Park Vacancy summary
e. Rent Roll from March 2000 to March 2001
f. 1998 and 1997 audit
g. 1999 and 1998 audit
h. 2000 and 1999 audit

i. Site Plan
j. Appraisal done by Don R. Scheidt & Co., Inc., Date of the Report is January 27, 1995. (done prior to construction)
k. Property Assessment done by Criterium- Van Marter Engineers, May 4, 2001
l. Property record cards for subject properties
m. Letter from Hank Rassel to Jerri Bain regarding cap rates, dated June 11, 2001
n. Appraisal done by Don R. Scheidt & Co. Inc., Date of Report is August 1, 2001.

Respondent's Exhibit 1 – Text supporting the County position

Respondent's Exhibit 2 – Brian G. McHenry Resume

Respondent's Exhibit 3 – Indiana Tax Court Case *Pedcor v State Board of Tax Commissioners,* 715 N.E. 2d 432, (Ind. Tax 1999).

Respondent's Exhibit 4 – Physical condition report from Criterium Engineers

Respondent's Exhibit 5 – Rebuttal to Petitioner's Exhibit 2. (Not admitted).

5. At the hearing, Mr. Stroble requested permission to provide proposed findings of fact and conclusions of law. The Administrative Law Judge gave Mr. Stroble two weeks to submit the proposed findings of fact and conclusions of law. These were received in a timely manner on March 13, 2002 and have been labeled Petitioner's Exhibit 2.

6. Mr. McHenry contacted the Administrative Law Judge to determine if the Respondent was also free to submit proposed findings. The Administrative Law Judge indicated that Mr. McHenry could do so. However, Mr. McHenry presented a rebuttal of the Petitioner's proposed findings of fact and conclusions of law. The rebuttal was not the appropriate method for the Respondent to summarize the evidence; therefore, the rebuttal was given no weight in these findings. The rebuttal has been labeled Respondent's Exhibit 5 for identification purposes only.

7. Petitioner's Exhibit 3 is listed for identification purposes only. The evidence submitted was not asked to be admitted at the hearing. Additionally, Exhibits b,

d, e, f, g, h, i, k, l, and n were all included in Petitioner's Exhibit 1, either in identical form or slight different form with same information.[1] The only exhibits not included were a, c, j, and m. Exhibits a and c were a letter regarding the submission of the evidence and a list of the evidence. Exhibit j was an appraisal done prior to construction and is assumed to be superseded by the appraisal done in 2001 (Petitioner's Exhibit 3, n, and Petitioner's Exhibit 1, Tab 5). Finally, exhibit m is a letter regarding capitalization rates done on June 11, 2001. This is assumed to be superseded by the calculation of a capitalization rate done in the August 1, 2001 appraisal.

8. The subject properties are located throughout an area bounded by 25th Street to the north, Central Avenue to the East, 22nd Street to the South and Delaware Street to the west.

9. The Administrative Law Judge did not conduct an on-site inspection of the subject properties.

10. The hearing and these findings relate to a total of thirty (30) non-contiguous properties. The included appeal numbers and their associated parcel numbers are as follows:

Appeal number 49-148-01-1-5-00189 (parcel number 1019467)
Appeal number 49-148-01-1-5-00190 (parcel number 1070522)
Appeal number 49-148-01-1-5-00191 (parcel number 1041275)
Appeal number 49-148-01-1-5-00192 (parcel number 1052824)
Appeal number 49-148-01-1-5-00193 (parcel number 1053213)
Appeal number 49-148-01-1-5-00194 (parcel number 1063456)
Appeal number 49-148-01-1-5-00195 (parcel number 1057411)
Appeal number 49-148-01-1-5-00196 (parcel number 1073231)
Appeal number 49-148-01-1-5-00197 (parcel number 1096314)
Appeal number 49-148-01-1-5-00198 (parcel number 1079474)
Appeal number 49-148-01-1-5-00199 (parcel number 1017647)
Appeal number 49-148-01-1-5-00200 (parcel number 1038658)
Appeal number 49-148-01-1-5-00201 (parcel number 1043152)
Appeal number 49-148-01-1-5-00202 (parcel number 1037733)
Appeal number 49-148-01-1-5-00203 (parcel number 1075401)

[1] The site plan is in somewhat different form as is the list of petition numbers and parcels, and the Rent Roll in Petitioner's Exhibit 1 actually contains more months.

Appeal number 49-148-01-1-5-00204 (parcel number 1088006)
Appeal number 49-148-01-1-5-00205 (parcel number 1035396)
Appeal number 49-148-01-1-5-00206 (parcel number 1047498)
Appeal number 49-148-01-1-5-00207 (parcel number 1023199)
Appeal number 49-148-01-1-5-00208 (parcel number 1077784)
Appeal number 49-148-01-1-5-00209 (parcel number 1060322)
Appeal number 49-148-01-1-5-00210 (parcel number 1049434)
Appeal number 49-148-01-1-5-00211 (parcel number 1049433)
Appeal number 49-148-01-1-5-00212 (parcel number 1035504)
Appeal number 49-148-01-1-5-00213 (parcel number 1069190)
Appeal number 49-148-01-1-5-00214 (parcel number 1006308)
Appeal number 49-148-01-1-5-00215 (parcel number 1040093)
Appeal number 49-148-01-1-5-00216 (parcel number 1068105)
Appeal number 49-148-01-1-5-00404 (parcel number 1037958)
Appeal number 49-148-01-1-5-00408 (parcel number 1062892)

Issue No. 1 - Obsolescence

The Property

11. The Property is owned by Hometowne Associates, L.P., d/b/a Unity Park. Hometowne Associates' general partner is Unity Housing, Inc. The limited partner of Hometowne Associates is the National Equity Fund. Petitioner's Exhibit 2, ¶'s 7, 8, & 10.[2]

12. Unity Housing, Inc. is owned by Indianapolis Neighborhood Housing Partnership (INHP), King Park Area Development Corporation (King Park), and the Unity Residents' Council (Residents' Council). Petitioner's Exhibit 2, ¶ 10.

13. Unity Park consists of 30 parcels located on Delaware, Central, and New Jersey Streets, roughly between 21st and 25th Streets. Unity Park is a scattered site housing development. A scattered site housing development consists of parcels that generally are non-contiguous. Scattered site housing is a relatively new concept, beginning in the late 1980s. Petitioner's Exhibit 2, ¶ 14.

[2] References to Petitioner's Exhibit 2 are to the proposed findings of fact submitted by the Petitioner. ¶ means the paragraph number within those findings of fact.

14. Unity Park was constructed in 1994 and 1995. The project contains 60 units in 30 buildings. Petitioner's Exhibit 2, ¶ 18.

15. Unity Park functions as a single project. A single contract with the Department of Housing and Urban Development (HUD) applies to all 60 units and prohibits the sale of any individual unit. Every year the Property is audited by a CPA firm for financial purposes. The Property is covered by a single financing agreement. All of the parcels were acquired and the units were constructed around the same time. A single management company manages the Property and is responsible for leasing and maintaining all 60 units. Uniform maintenance and lawn care is provided to all of the units. Petitioner's Exhibit 2, ¶ 20.

The HUD Agreement

16. Unity Park entered into agreements with HUD to provide Section 8 housing. Petitioner's Exhibit 2, ¶ 24.

17. The Indianapolis Housing Agency (IHA) serves as HUD's agent within Indianapolis and is responsible for disbursing the HUD subsidies. IHA is also responsible for monitoring Unity Park for physical compliance with HUD regulations. Petitioner's Exhibit 2, ¶ 25.

18. A HUD contract specifies the amount of rent that may be charged to tenants. Under the HUD contract with Unity Park, HUD subsidizes a portion of the rent charged to Unity Park tenants. The HUD contract requires that 100% of the units in Unity Park to be rented to persons with low-income as defined by HUD each year. Petitioner's Exhibit 2, ¶ 26.

19. The allowable rent at Unity Park under the current HUD contract is $523 per month for two-bedroom units, $660 per month for three-bedroom units, and $735 per month for four-bedroom units. The HUD Section 8 regulations provide that the tenants are responsible for paying 30% of their income in rent. Any

remaining amount of rent is paid by HUD. If a tenant is unemployed, the tenant is required to pay a minimum of $25 per month, and HUD pays the remaining portion of the rent. Petitioner's Exhibit 2, ¶ 27.

20. The contract rents for Unity Park are above the market rents for the area. Petitioner's Exhibit 2, ¶ 42.

Section 42 Tax Credits

21. Pursuant to the Tax Reform Act of 1986, a developer can design a project and submit the proposed project to a state agency. In Indiana, the agency is the Indiana Housing Finance Authority (IHFA). The developer submits an application to that agency for approval of a certain dollar amount of tax credits under Section 42 of the Internal Revenue Code (Section 42 Credit). The State has a limited amount of Section 42 Credits that it is permitted to allocate each year. The developer then solicits limited partners to provide cash or equity to facilitate the construction or rehabilitation of the property. In exchange for the contributions, the partners receive Section 42 Credits in proportion to their ownership interest in the limited partnership. Petitioner's Exhibit 2, ¶ 28.

22. The Petitioner testified that the section 42 program did not impose any further restrictions on Unity Park beyond the restrictions separately imposed as a result of the HUD contract. The Petitioner also argued that the Section 42 Credits did not further change the operation or management of the Property and did not separately alter either the revenue or expense stream associated with the Property. *Sears Testimony.*

23. The Petitioner also presented evidence and testimony that the subject will receive a total of approximately $5.3 million in tax credits over ten years as a result of participation in the section 42 program. Petitioner's Exhibit 1, Tab 6, page 7.

Property Tax Abatement

24. Unity Park was granted a six-year property tax abatement in 1996. As of March 1, 2001, Unity Park was in its sixth and final year of the tax abatement. Petitioner's Exhibit 2, ¶ 19.

Causes of Obsolescence

25. The Petitioner claims that the rental income is not high enough to offset the operating expenses (insurance, administrative fees, etc.) of the project and that Unity Park could not collect for damages in excess of the security deposit. The Petitioner also testified that the four-bedroom units tend to be vacant, and this is an additional cause of obsolescence.

26. For the year under appeal, 5 of the 6 vacant units were four-bedroom units. There was evidence presented indicating that there were a total of 12 four-bedroom units.

27. Each of the duplex units are assessed from the residential schedule. There was no argument presented indicating the Petitioner believed this to be the incorrect schedule.

28. The Respondent testified that the subject properties should not be given the same obsolescence consideration given to commercial multi-unit properties.

29. For the purposes of this appeal, the subject will be viewed as a single entity consisting of 60 apartment units. All 60 units are owned and operated as a single entity for commercial purposes. They are all under the same influences with regard to the market, and the restrictions imposed by section 8 and section 42.

The Appraisal

30. In support of its argument, the Petitioner presented an appraisal done by Sabra A. Sullivan, Senior Appraiser, Don R. Scheidt & Co., Inc. and reviewed by Hank Rassel, MAI, Executive Vice President, Don R. Scheidt & Co., Inc. The appraiser inspected the properties. The review appraiser did not inspect the properties. The effective date of the appraisal is August 1, 2001.

31. According to the appraisal, "in accordance with prior agreement between the client and the appraiser, this report is the result of a limited appraisal process in that certain allowable departures from specific guidelines of the Uniform Standards of Professional Appraisal Practice (USPAP) were invoked. The intended user of this report is warned that the reliability of the value conclusion provided may be impacted to the degree there is a departure from specific guidelines of USPAP." Petitioner Exhibit 1, Tab 5, page 5.

32. The appraisal also states: "This report was prepared for the benefit of our client, the Indianapolis Neighborhood Housing Partnership, represented by Ms. Jerri B. Bain (the intended user). The intended use of this appraisal report is to advise our clients as to the Market Value of the subject property for investment decision purposes." Petitioner Exhibit 1, Tab 5, page 6.

33. Also, the appraisal admits this appraisal did not utilize the Sales Comparison Approach to Value. The appraisal continues by stating: "Therefore, the appraisal process involved a departure from Standards Rule 1-4(a and b)." Petitioner Exhibit 1, Tab 5, page 6.

34. Mr. Rassel testified that the cost approach and the income approach were used to arrive at a final value for the subject properties. The sales comparison approach was not used due to the absence of comparable sales in the market.

35. The Appraisal uses the income approach to arrive at an estimate of market value. The Appraisal then estimates the cost new of the subject. The Petitioner then opines the difference between the two (Cost Approach minus the Income Approach) is obsolescence.

36. The Petitioner also presented "comparables" for use in determining operating expenses. However, all of these comparables were confidential. Likewise, all the alleged comparables were conventional properties.[3]

37. Mr. Rassel testified that the Marshall Swift Valuation Guide was used to determine the replacement cost new of the subject properties. The replacement cost new was then adjusted for soft costs and developer profit to arrive a total project cost of $4,560,299.[4] The $4,560,299 amount was then reduced by $3,935,048 in total depreciation (determined through the use of the income approach) to arrive at a depreciated value of subject improvements of $635,251. The market value of the subject, as determined by the appraiser, is arrived at by adding the land value of $115,000 to the depreciated value of the subject improvements of $635,251. The appraiser's market value of the subject as reported in the appraisal (Petitioner Exhibit 1, tab 5, page 38) is $ 750,251.

38. Upon questioning by Mr. Stroble, Mr. Rassel stated that the causes of obsolescence for the subject project are due the fact that the rental revenue (as determined by the HUD rental rates) is not high enough to offset the operating expenses of the project and the fact that the four bedroom units tend to be vacant.

39. Mr. Rassel testified that while information was limited regarding market rents in the subject area, the subject project receives rents that are higher than supported

[3] By conventional property, the State assumes the Petitioner meant market rate multi-unit apartment complexes. No evidence was presented to indicate otherwise.
[4] Soft Costs are explained on P. 37 of Petitioner Exhibit 1, Tab 5.

by the market for the two and three bedroom units. Market data was unavailable for four bedroom units, per Mr. Rassel.

40. Mr. Rassel further testified that the capitalization rate used in the income approach was determined through examination of three (3) sources. First, investor surveys, which are published in various publications subscribed to by the appraiser; second, a sample of comparable sales (traditional apartment complexes and "a couple" of duplex sales) in the area; and third, the band of investment method. Ultimately, the appraiser settled on a capitalization rate of 13%.

41. In an effort to estimate the remaining value of the Section 42 tax credits associated with the subject project, Mr. Rassel reconciled two (2) methods (Petitioner's Exhibit 1; tab 5, page 8) and arrived at a present value of the Section 42 tax credits of $2,100,000.

42. Mr. McHenry questioned Mr. Rassel as to whether a sale of any duplex in the subject area could be considered a comparable sale to the subject project. Mr. Rassel replied in the negative because HUD restrictions prevent the sale of any portion of the subject project, therefore, to be considered comparable a property must be a multi-unit scattered property project.

43. Upon questioning by the Administrative Law Judge, Mr. Rassel stated that when determining the capitalization rate for use in the band of investment method no adjustment was made due to the reduction in risk as a result of the presence of the Section 42 tax credits.

44. Mr. Rassel replied, in answer to a question by the Administrative Law Judge, that sales of multi-unit properties were considered comparable for purposes of establishing a capitalization rate, but were not considered comparable for use in a valuation based on the comparable sales approach. Mr. Rassel further stated that the purported comparable properties used to establish a capitalization rate

did not have Section 42 tax credits associated with them, nor were they Section 8 HUD projects.

45. Upon questioning by Mr. Stroble, Mr. Rassel replied that the situation described in ¶ 43 falls within accepted appraisal practices.

46. Mr. McHenry testified that several items directly related to poor workmanship or quality of product (exterior paint, for example) nor upgrades sought by the owner (range hoods that vent to the outside, for example) should be subsidized by the taxpayers of Marion County through a property tax reduction to the subject property.

47. Mr. Stroble summarized the position of the Petitioner through a discussion of Petitioner's Exhibit 1 Tab 22. Mr. Stroble stated that the Canal Square decision of the Indiana Tax Court (*Canal Square v. State Board of Tax Commissioners,* 694 N.E. 2d 801 (Ind. Tax 1998) states that real world evidence must be used to quantify obsolescence and then that calculated obsolescence percentage can be applied to the True Tax Value determined by use of the Indiana Real Property Assessment Manual.

Issue No. 2 – Condition

48. Mr. Stroble withdrew the Condition issue and signed a Withdrawal Agreement at the hearing.

Issue No. 3 – Constitutionality of the Assessment

33. The Constitutionality issue was not separately addressed but rather was discussed concurrently with the Obsolescence issue.

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. See also the Forms 130 and 131 petitions authorized under Ind. Code §§ 6-1.1-15-1, -2.1, and –4. 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. See 50 IAC 17-6-3. "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. One manner for the taxpayer to meet its burden in the State's administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners,* 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). 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.

D. Obsolescence

Definitions and Burden

18. The subject property is not currently receiving an obsolescence depreciation adjustment. The Petitioner argued that the property has obsolescence depreciation in the amount of 84.4 percent, or in the alternative 31.3 percent if the alleged remaining value of the tax credits are considered.

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.[5] *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

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

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. 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.

22. 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).

23. 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).

24. There are five (5) recognized methods used to measure depreciation, including obsolescence; namely: (1) the sales comparison method, (2) the capitalization of income method, (3) the economic age-life method, (4) the modified economic age-life, and (5) the observed condition (breakdown) method. IAAO Property

Assessment Valuation at 156; IAAO Property Appraisal and Assessment Administration at 223.

Causes of Obsolescence

25. "[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).

26. 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.

27. The Respondent did not acknowledge that obsolescence is appropriate for the subject properties. In fact, the Respondent testified that the subject properties should be considered individual residential properties and not be considered as a multi-tenant commercial property for calculation of obsolescence.

28. The Petitioner contended that due to the ownership, management and maintenance of the subject properties under one umbrella, the subject properties are in fact a multi-tenant complex and obsolescence should be calculated utilizing the method customarily employed for commercial projects.

29. The Board accepts the Petitioner's premise that even with the scattered nature of the individual parcels, the subject properties are owned and operated as a single commercial concern and therefore could be subject to collective obsolescence. However, this fact alone does not meet the burden of proof regarding the presence of obsolescence.

30. The Petitioner claims that there is functional obsolescence because the four bedroom units are difficult to rent, and represent an overadequacy. The Petitioner also claims the inability to pursue former tenants for damages due to IHA restrictions is a cause of economic obsolescence. Finally, the Petitioner claims excess operating expenses, insurance costs, maintenance costs, and property taxes cause economic obsolescence as well. Statements made by the Petitioner are insufficient to support the presence of obsolescence.

31. The content of the appraisal report does not appear to support the conclusion of 84% obsolescence. The Petitioner presented evidence and testimony that the contract rents are above the market rents for the area and the government pays part of the rents. In addition to above market rents, the subject received over $5 million in tax credits, and a six-year tax abatement.

32. The property is renting to low-income individuals, with cumulative rents above market once the HUD contract is considered and receiving millions in tax credits on top of that. Furthermore, the subject property is experiencing a vacancy rate that is less than the area average. In fact, if there were no restrictions on the subject properties the owners would be receiving less rent and no tax credits.

33. In this situation, the Petitioner has not shown how the restrictions imposed cause a loss of value in the property. If anything, the Petitioner has shown that without the restrictions, the property would be less valuable.

34. The Petitioner did not present any evidence regarding the causes of the excess vacancy in the four-bedroom units; therefore, the Petitioner has not shown obsolescence exists in the four-bedroom units.

35. For all the reasons above, the Petitioner did not show how the alleged causes of obsolescence cause the property to suffer from a loss of value. See Conclusions of Law ¶ 26. Therefore, the Petitioner did not meet the first prong of the two-

prong burden articulated in *Clark*. Accordingly, there is no change in the assessment as a result of this issue.

36. This case is similar to *Pedcor Investments- 1990 XIII, L.P. v. State Board of Tax Commissioners,* 715 N.E. 2d 432 (Ind. Tax 1999) in that the value of the tax credits and abatement should be included in the calculation. So to the extent that Petitioner is arguing that additional costs (insurance, administrative expenses, excess damages, etc.) have created a burden, the value of the above market rents and tax credits appear to outweigh this increased burden.[6] Furthermore, the Petitioner has not quantified or evaluated those additional costs or made any attempt to weigh these costs against the benefits.

37. The Petitioner has not performed the weighing of the benefits against the increased burdens. This is different from valuing the tax credits for the market value approach found in the appraisal. The weighing should focus on the value of the benefits (over market rents and tax credits, etc.) against the increased burdens (insurance, administrative expenses, excess damages, etc.). No such weighing was done in this appeal.

Quantification of Obsolescence

38. Assuming arguendo the Petitioner had met the first prong of the two-prong burden articulated in *Clark*, the Petitioner must still quantify the amount of obsolescence. The Petitioner attempts to support an obsolescence depreciation amount of 84% for the subject properties, if the present value of the Section 42 tax credits is disregarded, and 31% if the Section 42 tax credits are included. The method of quantification for the requested obsolescence hinges on a market value appraisal of the subject properties (Petitioner Exhibit 1, tab 5).

[6] The value of the tax abatement has not been included in the valuation analysis.

39. The appraisal utilizes the cost approach and the income approach in order to arrive at a market value for the subject property. The Petitioner contends that the percentage adjustment made in order to reconcile the replacement cost new of the improvements with the value determined by the income approach determines the appropriate amount of obsolescence to be applied to the property.

40. As the ultimate value calculated by the Petitioner hinges on the income approach, a further examination of the methodology used is appropriate.

41. Further, the calculation is flawed for use in an ad valorem valuation for the following reasons:

    a. When totaling the expenses of a property for purposes of an ad valorem valuation, the property taxes are not to be included;
    b. The cost approach calculation (Petitioner Exhibit 1, tab 5, page 38) indicates that the total replacement cost new of the subject improvements is $ 4,560,299 while the Total Tax Credit Award of the Section 42 tax credits (page 7) is indicated as $5,300,800; therefore any risk associated with the project has been reduced or eliminated. The amount of risk premium in the band of investment determination of the income capitalization rate therefore comes under suspicion; and
    c. Other attempts to support the selection of 13% as the appropriate income capitalization rate are not successful. The appraisal did not utilize the sales comparison approach due to a lack of comparable sales, but then included a calculation for an income capitalization rate based on estimated sales prices of two (2) real estate sales.

42. Due to the lack of support included in the appraisal for the selected income capitalization rate as well as the questionable expense total, the value determined by use of the income approach does not overcome Petitioner's burden.

43. Since the valuation determined by the cost approach utilizes the value determined in the income approach, the cost approach calculation is also unpersuasive.

44. For the reasons stated above, the Petitioner has failed to meet its burden in the quantification of obsolescence. Accordingly, no change is made to the assessment as a result of the obsolescence issue.

E. Condition

45. The Petitioner withdrew the condition issue. No change is made to the assessment as a result of the condition issue.

F. Constitutionality of the Assessment

46. The Constitutionality issue was not separately addressed, but rather was argued in conjunction with the obsolescence issue. No change is made to the assessment as a result of the Constitutionality issue.

Summary of Issues:

Issue No. 1 –Whether the subject property should receive obsolescence. No Change.

Issue No. 2 – Whether the condition rating assigned to the subject properties is excessive. No Change. (Withdrawn by Petitioner).

Issue No. 3 -- Whether the assessment is in accordance with the Indiana Constitution, the Indiana Property Tax Assessment Statutes, and the State Board of Tax Commissioners' Regulations. No Change.

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