STATE OF INDIANA
Board of Tax Review

VILLAGE HOUSING PARTNERS II, L.P. and VILLAGE HOUSING PARTNERS VIII, L.P.	)	On Appeal from the Noble County Property Tax Assessment Board of Appeals
Petitioner,	)	
	)	Petition for Review of Assessment, Form 131
	)	Petition No. 57-008-95-1-4-00029A and
v.	)	57-008-95-1-4-00029B
	)	
	)	Parcel No. 07122002200 and
	)	07122002400
NOBLE COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS And WAYNE TOWNSHIP ASSESSOR	)	
Respondents.	)	

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issues

1. Whether the grade of the structures is correct (for petition #57-008-95-1-4-00029B only).
2. Whether clubhouse eight-foot wall height should be adjusted (for petition #57-008-95-1-4-00029B only).
3. Whether economic obsolescence depreciation is warranted due to vacancies, rent restrictions, market acceptability, and higher operating costs.

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. Pursuant to Ind. Code § 6-1.1-15-3, Ms. Sandra Bickel of Ice, Miller, Donadio & Ryan filed a Form 131 petition on behalf of Village Housing Partners II, L.P. and Village Housing Partners VIII, L.P. (Petitioner or Village Housing). The Petitioner received the County Board's determination on the underlying Form 130 petition on September 23, 1996. The Form 131 was filed on October 21, 1996.

3. Pursuant to Ind. Code § 6-1.1-15-4, a consolidated hearing was held on September 19, 2001, before Hearing Officer Dalene McMillen. Testimony and exhibits were received into evidence. Ms. Sandra Bickel, Ms. Maureen Hougland and Ms. Bonnie Mitchell represented the Petitioner. Ms. Kim Miller represented the Noble County Assessor's Office (County Board).

4. At the hearing, the following documents were made part of the record and labeled as Board's Exhibits:

Board's Ex. A – A copy of the 131 petition.

Board's Ex. B – Form 117, Notice of Hearing on Petition.

Board's Ex. C – Stipulation agreement on the parcel numbers and assessed values, dated September 19, 2001.

Board's Ex. D – Letter dated October 18, 1996 from Sandra Bickel to Anita Huff, Noble County Auditor on filing of the 131 petitions.

Board's Ex. E – Request for additional evidence from the Petitioner, dated September 19, 2001 (for petition #57-008-95-1-4-00029B only).

Board's Ex. F – Withdrawal agreement dated September 19, 2001, for the issue of grade (for petition #57-008-95-1-4-00029B).

5. At the hearing, the following documents were submitted by the Petitioner to the State Board:

Petitioner's Ex. 1 – Three photographs of the subject property.

Petitioner's Ex. 2 – Certification of rent rolls for Deerfield Apartments Phase II.

Petitioner's Ex. 3 – Certification of rent rolls for Deerfield Apartments Phase I.

Petitioner's Ex. 4 – Statements of year end operations for 1995, 1996, 1997, 1998, 1999, and 2000 for Village Housing II, L.P.

Petitioner's Ex. 5 – Statements of year end operations for 1995, 1996, 1997, 1998, 1999, and 2000 for Village Housing VIII, L.P.

Petitioner's Ex. 6 – Application for loan disbursement for Village Housing II, L.P., dated May 12, 1993.

Petitioner's Ex. 7 – Application for loan disbursement for Village Housing VIII, L.P., dated January 13, 1994.

Petitioner's Ex. 8 – Declaration of Extended Low-Income Housing Commitment for Village Housing II, L.P., dated December 15, 1993.

Petitioner's Ex. 9 – Declaration of Extended Low-Income Housing Commitment for Village Housing VIII, L.P., dated November 21, 1994.

Petitioner's Ex. 10 – Fax cover sheet, dated September 10, 2001, from United Fidelity Bank to Sandra Bickel regarding tax credits for Deerfield Apartments Phase I and II.

Petitioner's Ex. 11 – Rent history for Deerfield Apartments Phase I and II.

Petitioner's Ex. 12 – Deerfield Apartments Phase I and II income and rent guidelines, dated February 11, 1996.

Petitioner's Ex. 13 – The 2000 year Low-Income Housing Tax Credit Program 60% Rent Schedule for 43 counties in Indiana.

Petitioner's Ex. 14 – Appraisal on the proposed Deerfield Apartments Phase II, dated October 5, 1993, prepared by Don R. Scheidt & Co., Inc.

Petitioner's Ex. 15 – Appraisal on the proposed Deerfield Apartments Phase I, dated January 19, 1993, prepared by Don R. Scheidt & Co., Inc.

Petitioner's Ex. 16 – Summary of income, expenses, and obsolescence for 1995, 1996, 1997, 1998, 1999, and 2000 for Village Housing II, L.P., prepared by Sandra Bickel.

Petitioner's Ex. 17 – Summary of income, expenses and obsolescence for 1995, 1996, 1997, 1998, 1999, and 2000 for Village Housing VIII, L.P., prepared by Sandra Bickel.

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

7. The apartment complex, operating as Deerfield Apartments, is located on Deerfield Lane in Kendallville, Albion Township, Noble County.

8. The Hearing Officer did not conduct an on-site inspection of the subject property.

9. Subsequent to the hearing, Ms. Bickel and Ms. Miller stipulated that on June 3, 1996, (after the County Board appeal hearing and prior to the State appeal hearing) the original parcel #07122002200 was divided into two parcels: #07122002200 (assessed value land – $14, 770 and assessed value improvements - $301, 930) and #07122002400 (assessed value land - $19,470 and assessed value improvements - $317, 670). The stipulation to the facts regarding this division of the original parcel has been entered into the record and labeled Board's Ex. C.

10. At the hearing, Ms. Bickel requested the opportunity to submit evidence of comparable clubhouse properties that are being assessed as General Commercial Mercantile (GCM) apartments, as well as a Tax Court case concerning a clubhouse priced from the GCM schedule. Ms. Bickel was given until September 24, 2001, to submit the additional evidence. The request for additional evidence has been entered into the record and labeled as Board's Ex. E.

11. Neither the Petitioner nor the Petitioner's representative submitted the additional evidence.

Issue No. 1 – Grade (Petition #57-008-95-1-4-00029B)

12. This issue was withdrawn. The County representative did not object to the withdrawal of this issue.

Issue No. 2 – Clubhouse Wall Height
(Petition #57-008-95-1-4-00029B)

13. The subject is a clubhouse for the apartment complex that is currently being assessed from the General Commercial Retail (GCR) motel service pricing schedule. The clubhouse has an eight-foot wall height.

14. The GCR motel service model in the Regulation indicates an exterior wall height of twelve-feet. The Petitioner contended that either a negative adjustment should be made to account for the four-foot difference in the wall height of the subject structure or the clubhouse should be priced from the GCM apartment schedule with an adjustment for the wall height.

Issue No. 3 – Obsolescence Depreciation

15. The subject is an apartment complex with 80 units (apartments) that is participating in the Low Income Housing Tax Credits (LIHTC) program defined by Section 42 of the Internal Revenue Code. For a period of 30 years, the Petitioner must rent to tenants earning at or below 60% of the median income in Noble County. In return, the apartment complex receives tax credits for 10 years from the Indiana Housing Finance Authority (IHFA).

16. The subject properties are not currently receiving any obsolescence adjustment.

17. 100% of Phase I and II are subject to the LIHTC program agreement. This program is a voluntary program that the Petitioner chose to enter.

18. There is a compliance procedure each year. The median income for the County is also determined annually, and adjusted (if necessary) at that time. If at

anytime during the agreement the subject is not in compliance with the restricted rents, a forfeiture of all future tax credits and the recapture of any tax credits paid to the subject would result.

19. Sarah S. Gibson prepared the appraisal reports (Petitioner's Ex. 14 & Ex. 15) (Reports) on February 10, 1993, and October 14, 1993. Ms. Gibson is an Indiana Certified General Appraiser and is an employee of Don R. Scheidt & Co., Inc.

20. According to the Reports: "The function of this appraisal report is to advise Mr. Ed Newton, Evansville Federal Savings Bank, as to the estimated prospective market value of the subject improvements for financing purposes." It also advises the client as to the estimated 'investment or economic value' of the proposed improvements. (Petitioner's Ex. 14, p. 6; Petitioner's Ex. 15, page 6).

21. The cost to construct the subject improvements was $2,903,101 for Phase I and $1,609,823 for Phase II. (Hougland testimony). The subject properties will receive $3,784,854 in tax credits over the 10-year period (Addendum K of Petitioner's Ex. 14).

22. Village Housing is the general partner. It is responsible for the development and management of the subject properties. The limited partners are the "money men". The limited partners provided the cash, in return for the tax credits, to Village Housing to secure the mortgage to construct the subject properties.

23. The limited partners receive tax credits that are a dollar for dollar credit against its federal income tax liability. The limited partners paid the general partner $0.52 and $0.53 per $1.00 tax credit. (Hougland testimony). For the subject properties, 99% of the tax credits were sold to the limited partners.

24. The Petitioner provided a calculation indicating that, for Phase I, the obsolescence depreciation percentage is 49% and for Phase II the obsolescence depreciation percentage is 48%. (Petitioner's Ex. 16 & Ex. 17).

25. The Petitioner asserted the tax credits should not be considered in the calculation of obsolescence because the tax credits are an equity enhancement tool and they create investor value, not market value, for the property. Obsolescence is a market value concept and tax credits are not appropriate to consider. The tax credits are not a measure of property wealth. (Mitchell 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. 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.

Issue No. 1 – Grade (#57-008-95-1-4-00029B)

18. This issue was withdrawn.

Issue No. 2 – Clubhouse Wall Height
(#57-008-95-1-4-00029B)

19. The structure is a clubhouse with an eight-foot wall height. The building is currently being priced from the GCR motel service schedule.

20. The Petitioner asserted that the GCR motel service model includes a twelve-foot wall height, therefore the subject should receive a four-foot negative wall height adjustment; alternately, the Petitioner contended that the clubhouse should be priced from the GCM apartment model, which includes a ten-foot wall height.

21. The model for the GCR motel service is found in 50 IAC 2.2-11-3(9). The model for the GCM apartment model is found in 50 IAC 2.2-11-1(2).

22. The Selection of Schedules alphabetical listing indicates that an apartment clubhouse will be priced from the GCR motel service model. 50 IAC 2.2-11-5(a)(2)(C).

23. A Petitioner, however, may present probative evidence that a different model better describes the features of the structure. "…[T]he actual use of the property is not a determinative factor in selecting the appropriate model, but merely a

starting point. As a result, the model that most closely resembles the subject improvement with respect to physical features is to be used, regardless of the model's name." *Herb v. State Board of Tax Commissioners,* 656 N.E. 2d. 890, 893 (Ind. Tax 1995)).

24. The Petitioner presented no evidence to demonstrate that the physical features of the building more closely resemble the GCM apartment model. The Petitioner's unsupported conclusions concerning the selection of the appropriate model do not constitute probative evidence. *Whitley,* 704 N.E. 2d at 1119.

25. Ms. Bickel further contended that, if the GCR motel model best describes the structure, a wall height adjustment is appropriate.

26. The Regulation (50 IAC 2.2) limits the types of adjustments that may be made to the base cost to account for differences between the model and the building being assessed. 50 IAC 2.2-10-6.1 and 50 IAC 2.2-11-6, Schedules A through E.

27. An adjustment to account for variations in wall height between the model and the property being assessed is specifically identified in the GCM, General Commercial Industrial (GCI), and General Commercial Kit (GCK) schedules. No such adjustment, however, is identified in the GCR schedule. "This leads to the conclusion that the regulations were drafted with the intent to specifically delineate which cost schedules required the application of [an adjustment]." *Garcia v. State Board of Tax Commissioners*, 694 N. 794, 800 (Ind. Tax 1998).

28. Because the wall height adjustment is included in some cost schedules, but is not included in the GCR schedule, the adjustment sought by the Petitioner is not available. *Id.*

29. For all reasons set forth above, the Petitioner's request for a wall height adjustment is denied. Accordingly, no change is made in the assessment as a result of this issue.

Issue No. 3 – Obsolescence Depreciation

Definitions and Burden

30. The subject properties are not currently receiving an obsolescence depreciation adjustment. The Petitioner argued that the property has experienced economic (external) obsolescence depreciation. The Petitioner contended that Phase I has experienced 49% obsolescence and Phase II has experienced 48% obsolescence. Alternatively, the Petitioner has requested a minimum of 20% obsolescence, based on information contained in the appraisal reports.

31. 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.

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

32. 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 directly to that 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.*

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

34. "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).

35. 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.

36. 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).

37. 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 (Ind. Tax 1998).

Causes of Obsolescence

38. "[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).

39. "Where there is no cause of obsolescence, there is no obsolescence to quantify." *Id.*, citing *Lake County Trust v. State Board of Tax Commissioners,* 694 N.E. 2d 1253, 1257 (Ind. Tax 1998).

40. 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.

41. The Petitioner was well aware, prior to construction of the apartments, that "the costs to build far exceed the potential income for the development." (Petitioner's Ex. 14, page 24). Merely showing that the apartments have not been profitable is not probative evidence of economic obsolescence. Instead, the Petitioner must demonstrate that the apartments have experienced a loss of value in the

marketplace. "Without a loss of value, there can be no economic obsolescence." *Pedcor Investments-1990-XIII, L.P. v. State Board of Tax Commissioners*, 715 N. E. 2d 432, 438 (Ind. Tax 1999).

42. The Petitioner claimed obsolescence is inherent in the property because it participates in the LIHTC program. The Petitioner argued that participation in this program results in a loss in value because of deed restrictions, market acceptability, and below market rents.

43. Village Housing first contended that deed restrictions create a loss in value.

44. The Petitioner voluntarily signed the Declaration of Extended Low-Income Housing Commitment (Declaration) (Petitioner's Ex. 8 & Ex. 9) 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.

45. Village Housing was well aware of the restrictions placed upon it by entering into the LIHTC program. The Petitioner failed to show any change in these restrictions, or demonstrate any change in the market reaction to these restrictions, during the time frame between the signing of the Declaration and the assessment date. Having failed to demonstrate any change in the market reaction to the LIHTC program, Village Housing has failed to demonstrate any loss in the value of the property as a result of deed restrictions.

46. Village Housing next argued that obsolescence is the result of poor market acceptability for the apartments.

47. The Petitioner contended, “We have a lot of three bedrooms here which would normally be families that we’re not getting people in because they can live in a single family home and not share walls with someone else for the same or less price.” (Hougland testimony).

48. However, prior to construction of the apartments, the Petitioner’s appraiser advised that the “most significant factor in Kendallville which may be holding down rents is the availability of affordable single family housing.” (Petitioner’s Ex. 14, page 24).

49. Additionally, the Reports advised “Residents in Kendallville report that there is a pent-up demand for apartments for young professionals such as teachers and engineers who work at the Kendallville East Industrial Park.” (Petitioner’s Ex. 14, page 27; Petitioner’s Ex. 15, page 25).

50. Village Housing was well aware of the market demand for apartments in the Kendallville area prior to the construction of the units. Village Housing was also aware that the demographic group most in need of apartment housing was young professionals, who likely would not qualify for the low-income requirements.

51. The Petitioner failed to demonstrate any change in this market between the completion date of the apartments and the assessment date. Having failed to establish that the rental market has changed, Village Housing has again failed to demonstrate any loss in value of the property.

52. The Petitioner also argued that obsolescence is the result of below market rents.

53. However, the Petitioner's own evidence indicated that, although it was permitted to charge $352.25 monthly rent for a one-bedroom apartment, the Petitioner charged only $320 monthly rent. Similarly, the Petitioner was permitted to charge $417.50 monthly rent for a two-bedroom apartment. The Petitioner, however, charged only $385 monthly rent. (Petitioner's Ex. 12).

54. Further, reducing the LIHTC program to its essence, IHFA is in fact compensating the Petitioner to charge below-market rents. The payment is in the form of tax credits, which are used as dollar for dollar write-offs on the federal income tax return.

55. The Petitioner has therefore failed to demonstrate that the below-market rents are the cause of obsolescence.

56. Additionally, the Petitioner's own evidence suggested a cause of poor financial performance other than obsolescence.

57. "The presence of unprofessional management is most likely as large of a contributor to the obsolescence as the availability of affordable housing." (Petitioner's Ex. 14, page 24).

58. "Absolutely, we had some very bad management awhile back." (Hougland testimony).

59. Bad management is not a cause of economic obsolescence and does not indicate that the property has experienced a loss of value.

60. 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

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

62. "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).

63. "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.

64. "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.

65. First, the Petitioner used figures from the Reports in an attempt to support a claim of 20% obsolescence.

66. The Reports explain the quantification of obsolescence in the following manner: "To develop an estimate of an appropriate adjustment for external obsolescence, the appraiser looks at the difference between the current market rent for a one bedroom unit and the rent that the market could support based on the 30% income rule [in which 30% of an individual's income is used to acquire shelter]. The variance between $375 a month [the appraiser's determination of local 1993 market rent] and $450 a month [30% of the maximum income permitted for Section 42 housing] is 20.0%. A twenty percent adjustment for external obsolescence is considered reasonable and will be applied in the Cost Approach." (Petitioner's Ex. 14, pages 24-25).

67. As discussed, merely comparing rents is not a generally recognized method of measuring economic obsolescence. IAAO Property Assessment Valuation at 173.

68. Further, the Reports were done prior to construction. The figures used in the Reports are based on hypothetical projections and estimates and, in fact, vary from the actual data reported by the Petitioner. (Petitioner's Ex. 16 and 17). For these reasons, the figures in the Reports are not considered reliable for the quantification of obsolescence.

69. The Petitioner also attempted to quantify obsolescence with a capitalization of income approach (Petitioner's Ex. 16).

70. Ms. Bickel described the source of the numbers used in Village Housing's calculation as follows: "the bottom half [of Petitioner's Ex. 16, page 2] is coming from the appraisal, that is what he is projecting, the top half is coming from the audited financial statements, the last column is the average of all six years."

71. The net operating income (NOI) from the audited financial statements (contained in the top half of Petitioner's Ex. 16, page 2) was then capitalized at a rate of 10% (this capitalized amount was entered on page 1 of Petitioner's Ex. 16). Land value was subtracted from this figure, leaving a purported remainder value for improvements. This remainder was added to the available tax credits to produce the so-called income value.

72. The income value was then subtracted from the actual cost of the improvements. The difference, divided by the cost value, was alleged to be the amount of economic obsolescence.

73. The Petitioner's calculation is flawed.

74. Eight basic steps are used in the income approach:

    a. Estimate potential gross income. Potential gross income is annual economic rent for the property at 100% 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.
    b. Deduct for vacancy and collection loss.
    c. Add miscellaneous income to get the effective gross income.
    d. Determine operating expense.
    e. Deduct operating expenses from the effective gross income to determine net operating income before discount, recapture, and taxes.
    f. Select the proper capitalization rate.

g. Determine the appropriate capitalization procedure to be used.

h. Capitalize the net operating income into an estimated property value.

IAAO Property Assessment Valuation at 204.

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

76. "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.

77. 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.

78. Similarly, the expenses identified in the Petitioner's calculation are taken from the audited financial statements of the apartments.

79. "All 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.

80. "In analyzing the operating expenses for a property, the operating statements from comparable properties must be reviewed…" Id at 215.

81. Using the audited financial statements of Village Housing to determine expenses, rather than reviewing expenses incurred by comparable properties, therefore does not conform to generally accepted standards of assessment and appraisal practice.

82. Because the potential gross income and the expenses were not determined in accordance with generally accepted standards, the NOI derived from these numbers must also necessarily be in error.

83. Further, the Petitioner provided no explanation for the selection of a 10% capitalization rate.

84. "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.

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

86. Finally, the Petitioner failed to accurately address the manner in which the tax credits from the LIHTC program compensate for lower rent. 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*, 715 N. E. 2d at 437.

87. Regarding the tax credits, the following exchange occurred between the hearing officer and Ms. Mitchell:

Hearing Officer: "So you did not add back in the credits that went to the investors?"

Ms. Mitchell: "Correct, just what the property did receive, since we value the property adding in the credits that went to the property."

88. Adding only a portion of the tax credits to the calculation, however, is an incorrect method of accounting for the incentives of participating in the LIHTC program.

89. "In Pedcor's view, the Court may not consider the effect of the federal tax incentives because these benefits ultimately go to Pedcor's partners, not Pedcor itself. This argument is wholly unmeritorious. The deed restrictions create financial benefits, and these benefits cannot be ignored simply because they pass through to the partners." *Pedcor*, 715 N. E. 2d at 438. (Footnote omitted).

90. The case law is clear: all of the tax credits must be added to the rental income, not merely the portion of the tax credits that did not pass through to the partners. The benefit that the property received was from the full amount of the tax credits.

91. Additionally, as discussed, the amounts of obsolescence claimed in the Petitioner's calculations (49% for Phase I and 48% for Phase II) vary significantly from the amount of obsolescence proposed by the appraiser's calculations in the Reports (20%). Such wide discrepancies, with no explanation or reconciliation, further undermine the credibility of each calculation purporting to quantify obsolescence.

92. For the reasons above, the Petitioner's method of quantifying obsolescence is flawed. The State is under no obligation to give, and does not give, this calculation any weight.

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

94. 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.

Summary of Final Determination

Determination of ISSUE 1: *Whether the grade of the structures is correct (for petition #57-008-95-1-4-00029B only).*

95. This issue was withdrawn. There is no change in the assessment as a result of this issue.

Determination of ISSUE 2: *Whether clubhouse eight-foot wall height should be adjusted (for petition #57-008-95-1-4-00029B only).*

96. The Petitioner failed to meet its burden in this appeal. There is no change in the assessment as a result of this issue.

Determination of ISSUE 3: *Whether economic obsolescence depreciation is warranted due to vacancies, rent restrictions, market acceptability, and higher operating costs.*

97. The Petitioner failed to meet its burden in this appeal. 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.

_____

Commissioner, Indiana Board of Tax Review