

**STATE OF INDIANA
Board of Tax Review**

WARSAW PLACE APARTMENTS, LP)	On Appeal from the Kosciusko County
)	Property Tax Assessment Board of Appeals
Petitioner,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition No. 43-032-98-1-4-00011
)	Parcel No. 004-016-055
KOSCIUSKO 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 apartment buildings are excessive.
2. Whether obsolescence depreciation is warranted.
3. Whether the County Board provided a basis for the determination denying the opportunity for a meaningful review.

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, Mr. M. Drew Miller, Landmark Appraisals, Inc. (Landmark), on behalf of Warsaw Place Apartments, LP (the Petitioner) filed a Form 131 petition requesting a review by the State. The County Board of Review's Final Determination is dated July 2, 1999. The Form 131 petition was filed on August 2, 1999.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was conducted on October 17, 2000 before Hearing Officer Dalene McMillen. Testimony and exhibits were received into evidence. Messrs. M. Drew Miller and John Robison represented the Petitioner. Ms. Darby L. Davis represented Kosciusko County. Ms. Kristy Mayer and Ms. Danelle L. Solina represented Wayne Township.

4. At the hearing, the following documents were made part of the record and labeled as Board Exhibits:
 - Board Exhibit A – A copy of the 131 petition; and
 - Board Exhibit B – Form 117, Notice of Hearing on Petition.

5. In addition the following documents were submitted to the State:
 - Petitioner's Exhibit 1 – An "Assessment Review and Analysis" containing the following; (1) Form 117, Notice of Hearing on Petition; (2) summary of grade issue (one page); (3) cost new & analysis of correct grade; (4) T & B Construction Invoice No. 251; (5) T & B Construction summary of Invoices for Project on Warsaw Place Apartments LP (Warsaw Place);

(6) five page break down of trade item, total and vendor on Warsaw Place; (7) a copy of Rule 11 page 114 “unit finish adjustments”; (8) Marshall Valuation Service comparative cost multipliers, dated July 2000 (two pages); (9) a copy of 50 IAC 2.2-11-3 “GCR” apartment; (10) summary of obsolescence issue (one page); (11) a copy of Warsaw Place’s budget report for December 31, 1998 (one page); (12) a letter from Kutas, Hawes & Wolcott, P.C. to Warsaw Place, dated April 30, 1999 and adjusted Trial Balance Report, dated December 31, 1998 (two pages); (13) seven pages on the rent roll for Warsaw Place; and (14) four photographs of the interior and exterior of the subject property

Petitioner’s Exhibit 2 – A copy of the State Board’s Final Determination on Robert J. and Mary G. Giczewski for March 1, 1995

Petitioner’s Exhibit 3 – A portion of the Tax Court Case of *John L. and June L. Dawkins v. State Board of Tax Commissioners*, Case No. 49T10-9406-TA-00169

Petitioner’s Exhibit 4 – A portion of the Tax Court Case of *Clifford E. Fry v. State Board of Tax Commissioners*, Case No. 45T10-9403-SC-00115.

Respondent’s Exhibit 1 – Proposed Finding submitted by Kosciusko County, a copy of Warsaw Place’s property record card (PRC), two exterior photographs of the subject, advertisement and photograph of Kuder Estates (two pages), a copy of Rule 11 page 61 of the Regulation, a copy of 50 IAC 2.2-11-3 “GCR” apartment model, the PRC and exterior photographs of Pierceton Village Apartments, the PRC and exterior photographs of Robert Rakoci, the PRC and exterior photographs of North Pointe Apartments II, a copy of 50 IAC 2.2-10-7 (f) “obsolescence depreciation”, a copy of a request for additional evidence from Kosciusko County Board to John Robison, dated April 21, 1999, a fax cover sheet from John Robison to Sue Mitchell, dated May 6, 1999, a memo from

John Robison to Kosciusko County Board, dated May 6, 1999, a copy of the power of attorney from Warsaw Place to John Robison, a copy of a letter dated April 30, 1999 from Kutas, Hawes & Wolcott, P.C., Warsaw Place's adjusted Trial Balance Report for December 31, 1998, Owner's contribution statement, dated May 3, 1999, Kuder Estates rent rolls, and five Form 11s' for Angola Place Apartments in Steuben County, dated July 6, 1998.

6. The subject property is an apartment complex located at 1279 Kuder Lane, Warsaw, Indiana 46580, Wayne Township, Kosciusko County.
7. The Hearing Officer did not conduct an on-site inspection of the subject property.

Issue No. 1 – Grade

8. Warsaw Place is seeking a reduction in grade from "C" to "D-1" (70%).
9. Petitioner submitted a copy of 50 IAC 2.2-11-2, the GCR-Apartment model and testified that the subject apartments are three-story buildings constructed with a very basic design, economy materials and workmanship, minimal overhangs, vinyl sliding windows, lack of interior window trim and ceiling lights and a ceiling height of 8 feet. *Miller Testimony. Petitioner's Exhibit 1(2) and 1(9).*
10. In an attempt to quantify grade the Petitioner relied upon the Giczewski Final Determination (#29-018-95-1-5-00037) issued by the State. An analysis was submitted of actual construction cost of the subject structure compared to the reproduction cost as shown on the property record card. The grade factor was calculated as follows:

1997 Construction Cost New:	\$4,235,717
Minus items not assessable as real estate	<u>- 703,417</u>

Adjusted Cost of Apartments	
10/97 multiplier 1.096 divided by	
1/91 multiplier 1.353 (Marshall Valuation Services)	
factor to 100% 1991 cost	<u>.81</u>
100% 1991 cost new	\$2,861,162
less 15% discount	<u>.85</u>
adjusted cost new to equal TTV	\$2,431,988

Reproduction cost of apartments per	
County PRC @ "C" grade	\$3,595,600
Less adjusted cost new	<u>-2,431,988</u>
Excessive assessment due to grade	1,163,612
Divided by	<u>3,595,600</u>
	.32

"C" grade	100%
minus excessive	<u>-30%</u>
equals a grade factor of	70%

Miller Testimony & Petitioner's Exhibits 1(3)(4)(5)(6)(8) and 2.

11. The items deducted as non-assessable in the actual cost analysis were appliances, excavation, asphalt, signs, maintenance building and tap fees. *Petitioner's Exhibit 1(3).*

12. Respondent testified that after reviewing the parcel and 50 IAC 2.2-11-3 and -4, the grade is correct for a GCR priced stick built apartment. The subject has two-foot overhangs, average features, and many cuts resulting in more cost. To

support their position they submitted three comparable properties with “C” grades, to show apartments in the county have been assessed uniformly. *Davis Testimony. Respondent’s Exhibit 1, pages 16-29.*

Issue No. 2 – Obsolescence

13. The subject is an apartment complex with 144 units (apartments). The subject property is not receiving any obsolescence currently.
14. Respondent testified that two of the four apartment buildings were still under construction as of March 1, 1998, the assessment date at issue. The two buildings that were incomplete were only assessed as 75% complete for the year of 1998. *Mayer Testimony.*
15. Petitioner testified that the 1998 rental income totaled only \$371,755.22, but the 144 apartment units were constructed to generate an annual gross income of \$871,555, therefore indicating a substantial loss to the owner. The \$499,800 loss ($\$871,555 - 371,755$) translates to obsolescence depreciation to be applied to the remainder value of \$499,800 divided by \$3,712,500 equals 13% obsolescence. *Miller Testimony. Petitioner’s Exhibit 1(10)(11).*
16. The Petitioner testified that as of April 1999 the subject had a vacancy rate of approximately 16%.
17. Petitioner testified that because the property was not generating enough income, the owner contributed \$221,500 to assist with the day-to-day operations of the subject property for 1998. The income and expense statements for December 31, 1998 reflect that only 42% of the potential income was collected. *Robison Testimony. Respondent’s Exhibit 1, pages 37 and 38. Petitioner’s Exhibit 1(12).*

**Issue No. 3 – Whether the County Board
provided a basis for their Determination (Form 115)**

18. The Petitioner did not develop this issue at the hearing or include it in the Assessment Review and Analysis.

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. Issue 1-Grade

18. “Grade is defined as the classification of an improvement based on certain construction specifications and quality of materials and workmanship.” 50 IAC 2.2-1-30.
19. Grade is used in the cost approach to account for deviations from the norm or “C” grade. The quality and design of a building are the most significant variables in establishing grade. 50 IAC 2.2-10-3.
20. The determination of the proper grade requires assessors to make a variety of subjective judgments regarding variations in the quality of materials and workmanship and the quality of style and design. *Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d 1058, 1064 (Ind. Tax 1993). For assessing officials and taxpayers alike, however, the Manual provides indicators for establishing grade. The text of the Manual (see 50 IAC 2.2-10-3), models and graded photographs (50 IAC 2.2-11-4.1), assist assessors in the selection of the proper grade factor.
21. Simple teachings of *Town of St. John V* bear repeating. The Indiana Supreme court recognizes that Indiana’s real estate property tax system is a mass appraisal system, and holds that taxpayers can not “expect the full achievement of absolute and precise exactitude” regarding property tax assessments. *Town of St. John V*, 702 N.E. 2d at 1040.
22. Characteristics of “C” grade buildings are described in 50 IAC 2.2-10-3 (a)(3) and states: “C” grade buildings are moderately attractive and constructed with average quality materials and workmanship. These buildings have minimal to moderate architectural treatment and conform with the base specifications used

to develop the pricing schedules. They have average quality interior finish with adequate built-ins, standard quality fixtures and mechanical features.

23. The major grade classifications are A through E 50 IAC 2.2-10-3. The cost schedules (base prices) in the Manual reflect the “C” grade standards of quality and design. The following factors (or multipliers) are assigned to each major grade classification:

A grade	160%
B grade	120%
C grade	100%
D grade	80%
E grade	40%

24. Because structures sometimes fall between major classifications or at intermediate grade levels a method of interpolation is built into the system. 50 IAC 2.2-10-3 (c)

(1) Plus or minus two (+/-2) indicates the grade falls halfway between the assigned grade immediately above or below it.

(2) Plus or minus one (+/-1) indicates that the grade falls slightly above or below the assigned grade classification, or at a point approximately twenty-five percent (25%) of the interval between the assigned grade classification and the grade immediately above or below it.

25. The Petitioner’s argument is that the negative deviations from the features and quality defined in the model require consideration for a grade substantially lower than a “C”. These deviations are the minimal overhangs, the vinyl sliding windows, the lack of interior window trim, the lack of ceiling lights and the eight-foot wall height.

26. The Petitioner submitted a copy of the GCR-Apartment model. Nowhere in the model does it specify what size of overhang is considered standard. It does not state that the windows be of any particular material. It does not specify that there be interior window trim or specify a location for the lighting. It does, however, state that the interior wall height should be eight feet. In other words, the Petitioner has not shown that the subject deviates from the model.
27. However, the Petitioner contends that the building value should not exceed the cost of construction. The Petitioner testified the structure was constructed in 1997 at a cost of \$4,235,717.
28. The Petitioner's representative attempts to quantify a reduction in grade by trending the cost of the subject structure based on Marshall Valuation Services and equating the cost to a grade factor for the subject structure. The Petitioner's calculation is outlined in Finding #11 and Petitioner's Exhibit 1(3).
29. To determine the accuracy of the calculation submitted by the Petitioner, the State must examine the documentation submitted. The Petitioner submitted an invoice and summary of invoices from T & B Construction showing a construction cost of \$4,235,717 and a final draw date of January 1, 2000. However, the Petitioner also submitted five pages showing a breakdown of the cost of construction on the subject property in the amount of \$4,087,625. Contained within both costs are discrepancies, such as the cost of the maintenance building shows on the summary as \$15,937 but in the breakdown it totals \$19,337, the cost of painting on the summary is \$95,769 but the breakdown totals \$96,039 and the summary shows tap fees in the amount of \$30,800 but the breakdown does not show the tap fees. The Petitioner's evidence contradicts itself; therefore it is not found to be reliable.

30. The Petitioner failed to present adequate documentation to verify the construction cost or to substantiate the allegations of incorrect grade.
31. The Petitioner could have argued a grade change based on comparable properties. In this argument, the Petitioner would be arguing comparisons between his property and other similar properties.
32. 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.
33. The Petitioner's representatives did not identify any similarly situated properties or establish disparate treatment between the contested property and other similarly situated properties. No evidence was presented to show the statute or regulations were not properly applied to individual assessments. The Petitioner did not make a prima facie case on the evidence presented.
34. For all reasons set forth above, the Petitioner failed to meet the burden in this appeal. Accordingly, no change is made in the assessment as a result of this issue.

E. Issue 2-Obsolescence

Definitions and Burden

35. The Petitioner contended that the property should receive 13% obsolescence depreciation. The subject property is currently not receiving any obsolescence depreciation.
36. 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.
37. 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.*

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

38. Economic obsolescence depreciation is defined as “obsolescence caused by factors extraneous to the property.” 50 IAC 2.2-1-24.
39. “Economic obsolescence may be caused by, but is 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).
40. 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.
41. 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.
42. It is incumbent on the taxpayer to establish a link between the evidence and the loss of value due 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).

43. 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).

Causes of Obsolescence

44. “[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).
45. 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.
46. “Without a loss of value, there can be no economic obsolescence.” *Pedcor*, 715 N.E. 2d at 438.
47. The Petitioner contends that the property suffers a loss in value due to the loss in revenue for 1997 and 1998. Poor financial performance, however, may be the result of factors not related to obsolescence depreciation, including poor management, staffing difficulties, or unsound business decisions. The Petitioner bears the burden to establish that financial losses are the result of obsolescence depreciation rather than some other cause.

48. The Petitioner argues that the subject lost 42% of its income in 1998 due to vacancy. However, this is not a very strong argument in this case. The subject improvements are new. As of March 1, 1998 two of the four buildings were still under construction.
49. The Tax Court has held that just because a building was vacant while under construction is not enough to warrant an obsolescence adjustment. “However, when the construction of the apartment complex began, there was no rental income. As a result, from the date of the beginning of construction until the assessment date, the apartment complex did not suffer a loss of income generating ability. Rather, its income generating ability remained static.” *Pedcor v. State Board of Tax Commissioners*, 715 N.E. 2d 432, 440 (Ind. Tax 1999).
50. “Furthermore, adopting Pedcor's interpretation of the regulations to allow for an obsolescence adjustment merely because a building is vacant while it is under construction would lead to palpably absurd results.” *Id.* As a result, the Petitioner’s argument for obsolescence due to the loss income because of vacancy must be rejected. As a result, the Petitioner did not meet the first prong of the two-prong test identified in *Clark*.

Quantification of Obsolescence

51. Assuming that the Petitioner had identified a cause of obsolescence, the Petition must still quantify the amount of obsolescence. In an attempt to quantify obsolescence depreciation, the Petitioner offered income and expense statements for December 31, 1998.

52. Simply using data from financial statements to measure obsolescence does not conform to generally accepted standards of assessment and appraisal practice.
53. “One point should be emphasized: the income and expenses that are proper and acceptable for income tax purposes are not the same as those that are appropriate for the income approach. Only the reasonable and typical expenses necessary support and maintain the income-producing capacity of the property should be allowed. This is important, because the investor is interested in both short-term and long-term profits, even though the taxable income for income tax purposes for any given period may or may not be related to the real estate value in question.” *IAAO Property Assessment Valuation*, 204 (2nd ed. 1996).
54. “The basic steps in the income approach are as follows:
1. Estimate potential gross income.
 2. Deduct for vacancy and collection loss.
 3. Add miscellaneous income to get effective gross income.
 4. Determine operating expenses.
 5. Deduct operating expenses from the effective gross income to determine net operating income before discount, recapture, and taxes.
 6. Select the proper capitalization rate.
 7. Determine the appropriate capitalization procedure to be used.
 8. Capitalize the net operating income into an estimate property value.” *Id.*

55. “The first step in the income approach to value is to estimate the potential gross income for the property in question. *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.” *Id.*

56. As discussed, the Petitioner’s calculations are based on the gross income of the property under appeal. They contain no analysis of potential gross income or economic rent based upon a “careful study of comparable properties in the area”, as required by generally accepted standards of assessment and appraisal practice.
57. “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.
58. The Petitioner did not present a vacancy factor “determined by a study of other comparable properties and an analysis of their rental histories”, as required by generally accepted standards of assessment and appraisal practice.
59. The net operating income is determined by deducting operating expenses from the effective gross income. “Determining *operating expenses* requires a thorough analysis of typical expenses by property use type to determined proper and improper expenses.” *Id.* at 227.
60. The Petitioner presented the actual expenses incurred by the property under appeal. They contained no identification of expenses determined by “a thorough analysis of typical expenses” for apartment complexes, as required by generally accepted standards of assessment and appraisal practice.
61. The Petitioner did not present any capitalization rate.
62. “Direct capitalization of improved property can be done ...The overall rate, however, must developed from sales of improved properties that are highly comparable to the subject property. An important point to remember is that in all

cases, the subject property must be comparable in all respects to the sale properties; if it is not the overall rate will be affected.” *IAAO Property Assessment Valuation*, 277-278 (2nd ed. 1996).

63. “If considerable sales data of this nature [comparable properties] were consistently available, appropriate overall rates could be developed for all types of properties, and other methods of capitalization would be of little importance. Unfortunately, such reliable, verified sales data usually are not plentiful. Caution should be exercised in using this capitalization method. The comparability of the sale properties to the subject property must be analyzed internally, and there must be very similar land-to-improvement ratios in the sale properties and the subject properties.” *Id.* at 248.
64. In determining whether properties are truly comparable, “Factors and trends that affect value, as well as the influences of supply and demand, should be considered. The greatest comparability is obtained when the properties being compared are influenced by the same economic trends and environmental (physical), economic, governmental, and social factors. There may not be any comparability when one property is heavily influenced by one set of factors and another property is significantly affected by dissimilar factors.” *Id.* at 103.
65. “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 estimate differing by thousands of dollars.” *IAAO Property Assessment Valuation*, 233 (2nd ed. 1996).
66. The Petitioner did not explain or demonstrate his calculation used to arrive at 13% obsolescence depreciation, therefore the State is not under obligation and does not give his request for obsolescence any weight. The Petitioner failed to

quantify the amount claimed for obsolescence depreciation, as required by the second prong of the two-prong test articulated in *Clark*.

67. For all the reasons set forth above, the Petitioner failed to meet the burden on this issue. Accordingly, no change is made in the assessment as a result of this issue.

**F. Issue No. 3 – Whether the County Board
provided a basis for their Determination (Form 115)**

68. This issue was not developed. No change in the assessment is made 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