STATE OF INDIANA
Board of Tax Review

LAFAYETTE HOUSING ASSOC., L.P., & LAFAYETTE HOUSING ASSOCIATION II, L.P.,	)	On Appeal from the Tippecanoe County Property Tax Assessment Board of Appeals
Petitioners,	)	
	)	Petition for Review of Assessment, Form 131
v.	)	Petition Nos. 79-032-00-1-4-00001
	)	79-032-00-1-4-00002
TIPPECANOE COUTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS and WEA TOWNSHIP ASSESSOR,	)	79-032-00-1-4-00003
	)	
	)	Parcel Nos. 160140030028
	)	160140030039
	)	160140010602
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 buildings should be assessed as 1/6 frame and 5/6 brick instead of 100% brick.

2. Whether obsolescence depreciation is warranted due to vacancies, rent restrictions, higher operating, maintenance and construction costs.
3. Whether the assessment is contrary to Ind. Code § 6-1.1-2-2 and 50 IAC 2.2.

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, Sandra Bickel of Ice Miller, on behalf of Lafayette Housing Association, L.P. and Lafayette Housing Association II, L.P. (Petitioner), filed three Form 131 petitions requesting a review by the State. The Form 131 petitions were filed on August 14, 2000. The Tippecanoe County Property Tax Assessment Board of Appeals' (PTABOA) final determinations on the underlying Form 130 petitions are dated July 12, 2000.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on June 6, 2001 before Hearing Officer Dalene McMillen. Testimony and exhibits were received into evidence. Ms. Kerry Brewer, Asset Manager for Bradford Place, Ms. Bonnie Mitchell, MAI, GAA, Mitchell Appraisals, Inc. and Ms. Sandra Bickel of Ice Miller represented the Petitioner. Mr. Robert McKee represented Tippecanoe County.

4. Lafayette Housing Association, L.P. is the owner of parcels 160140030028 (Pet. No. 79-032-00-1-4-00002) and 160140030039 (Pet. No. 79-032-00-1-4-0003). These two parcels are collectively known as Bradford Place, Phase I (Phase I). Lafayette Housing Association II, L.P. is the owner of parcel 160140010602 (Pet. No. 79-032-00-1-4-00001). This parcel is known as Bradford Place, Phase II (Phase II). At the hearing, there was no distinction between either of the

Lafayette Housing Association entities. The hearings were held simultaneously and all evidence and testimony presented related to both entities. Accordingly, the State will issue one determination for these appeals.

5. At the hearing, the following documents were made part of the record and labeled State Exhibits:

State Exhibit A – Copy of the 131 petition filed by Ice Miller

State Exhibit B – Form 117, Notice of Hearing on Petition

State Exhibit C – Continuance/Waiver signed by Sandra Bickel on January 24, 2001

State Exhibit D – Request for additional evidence from the Petitioner, dated June 6, 2001

State Exhibit E. – Notice of witnesses and exhibits filed by Sandra Bickel, dated September 8, 2000

State Exhibit F – Amended list of witnesses filed by Sandra Bickel, dated January 12, 2001.

6. In addition, the following documents were submitted by the Petitioner to the State:

Petitioner's Exhibit 1 – Nine exterior photographs of the subject property

Petitioner's Exhibit 2 – Rent roll for Bradford Place Apartments, Phase I (Bradford Phase I), dated March 31, 2000

Petitioner's Exhibit 3 – Rent roll for Bradford Place Apartments, Phase II (Bradford Phase II), dated March 31, 2000

Petitioner's Exhibit 4 – Property status for Bradford Phase I, dated June 6, 2001

Petitioner's Exhibit 5 – Property status for Bradford Phase II, dated June 6, 2001

Petitioner's Exhibit 6 – 2000 Low Income Housing Tax Credit (LIHTC)(tax credits) rent increase potential for Bradford Phase I and II

Petitioner's Exhibit 7 – 2000 Income/Rent guidelines for Bradford Phase I and II

Petitioner's Exhibit 8 – Lafayette Housing Associates L.P. financial statements for Bradford Phase I, dated December 31, 1999

Petitioner's Exhibit 9 – Lafayette Housing Associates, L.P. financial statements for Bradford Phase I, dated March 31, 2000

Petitioner's Exhibit 10 – Lafayette Housing Associates II, L.P. financial statements for Bradford Phase II, dated December 31, 1999

Petitioner's Exhibit 11 – Lafayette Housing Associates II, L.P. financial statements for Bradford Phase II, dated March 31, 2000

Petitioner's Exhibit 12 – Excerpt from LIHTC cost certification for Bradford Phase I and Phase II

Petitioner's Exhibit 13 – Bradford Place broadcast update flyer

Petitioner's Exhibit 14 – Advertisement for Bradford Place Apartments' kid's club carnival

Petitioner's Exhibit 15 – Your family's health advertisement

Petitioner's Exhibit 16 – Bradford Place newsletter

Petitioner's Exhibit 17 – Copy of the rental application for Bradford Place Apartments

Petitioner's Exhibit 18 – Demographics report for Bradford Phase I and II, dated June 6, 2001

Petitioner's Exhibit 19 – Restricted use appraisal report for Bradford Phase I prepared by Mitchell Appraisals, Inc., dated September 7, 2000

Petitioner's Exhibit 20 – Restricted use appraisal report for Bradford Phase II prepared by Mitchell Appraisals, Inc., dated September 7, 2000

Petitioner's Exhibit 21 – Tax credits taken by the property by year for Bradford Phase I and II

Petitioner's Exhibit 22 – Article by AARP Research on Low-Income Housing Tax Credits, dated October 3, 2000

Petitioner's Exhibit 23 – Six comparable apartment sales (three-Tippecanoe County, one-Madison County, one-Decatur County, & one-Bartholomew County)

Petitioner's Exhibit 24 – Copy of the PTABOA minutes on the Petitioner's Form 130 hearing

Petitioner's Exhibit 25 – Copy of page five from the appraisal report prepared by Mitchell Appraisals, Inc.

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

8. The subject property is an apartment complex located on 3220 and 3204 South 9th Street in Lafayette, IN (Wea Township, Tippecanoe County).

9. The assessed value of the property as determined by the PTABOA for March 1, 2000 is:

Parcel: 160140030028:		
Land: $39,200	Improvements: $259,030	Total: $298,230
Parcel: 160140030039:		
Land: $13,370	Improvements: $128,570	Total: $141,940
Parcel: 160140010602		
Land: $51,370	Improvements: $477,900	Total: $529,270

10. The Hearing Officer did not inspect the subject property.

11. At the hearing, Ms. Bickel requested additional time to submit a copy of the Land Use Agreement and the summary of operating expenses for conventional

property appraisals (comparable properties). June 11, 2001 was established as the deadline date for the submission of this information.

12. On June 7, 2001, Ms. Mitchell sent a letter and analysis of the average effective gross income of fifty (50) apartment projects in Indiana. The letter and analysis has been entered into the record and labeled Petitioner's Exhibit 26. This information was timely received and accepted as evidence in this appeal.

13. By letter June 20, 2001, Ms. Bickel stated the Petitioner was unable to locate a copy of the land use agreement, however a copy was requested from the Indiana Housing Finance Authority. Ms. Bickel's letter has been entered into the record and labeled Petitioner's Exhibit 27.

14. On July 7, 2001, Ms. Brewer sent a letter and a copy of the Declaration of Land Use Restrictive Covenants for Low Income Housing Tax Credits by Lafayette Housing Associates, dated February 13, 1999. The letter and Declaration of Land Use Restrictive Covenants has been entered into the record and labeled Petitioner's Exhibit 28.

Issue No. 1 – Whether the structures should be assessed as 1/6 frame and 5/6 brick

15. Nine photographs of the exterior of the subject structures were submitted by the Petitioner in an attempt demonstrate that the building is 1/6 vinyl siding and 5/6 brick. The vinyl siding is located on the ends of the building and approximately one foot under the eaves. *Brewer Testimony. Petitioner's Exhibit 1*.

Issue No. 2 – Whether obsolescence depreciation is warranted

16. The subject is an apartment complex with 120 units (apartments), known as Bradford Place Apartments, that is participating in the Low Income Housing Tax Credits (LIHTC) program defined by Section 42 of the IRS Code.[1] In return for tax credits for ten (10) years, the subject must rent to people at or below 60% of the median income for Tippecanoe County. The rents may not be more than 30% of the 60% median income. All of the apartments in the subject are subject to the rent restrictions of the LIHTC program agreement. This program is a voluntary program. *Brewer Testimony. Petitioner's Exhibit 23.*

17. The causes of obsolescence are the restricted rents and the higher vacancy due to a lack of amenities. *Bickel Testimony.*

18. These properties are difficult and more expensive to run than a typical property due to the type of tenants, i.e. single parent families, the elderly and the handicapped. The turnover is between 15% and 20% higher than a market property. *Brewer Testimony*.

19. The average occupancy for Tippecanoe is probably 87% to 92% depending on the type of property. The average for Bradford Place is 85% occupancy. *Brewer Testimony.*

20. There is a compliance procedure each year. The median income for the County is also determined and adjusted if necessary, at that time. If at anytime during the length of the agreement the subject property is not in compliance with the restricted rents, forfeiture of all future tax credits and recapture of any tax credits paid to the subject would result. *Brewer Testimony*.

[1] There are 60 apartments in both Phase I and Phase II for a total of 120 apartments.

21. Buckingham Realty & Development (dba Lafayette Housing) is the general partner. They are responsible for the development and management of the subject property. The limited partner is the "money man". The limited partner provides the equity to finance the development of the housing, in return for the tax credits, to allow Lafayette Housing to secure the mortgage to construct the subject. Lafayette Housing also received a lower interest rate on their construction loan. *Brewer Testimony*.

22. The limited partner receives the tax credits. These tax credits are a dollar for dollar credit against federal income tax and are claimed in equal installments over a ten-year period. The limited partner pays the general partner anywhere from $.0.45 to $.070 per $1.00 tax credit. For the subject property 99% of the tax credits were sold to the limited partner and Buckingham retained 1%. *Brewer Testimony*.

23. Ms. Bonnie Mitchell, Mitchell Appraisals, Inc completed the appraisal reports on September 7, 2000. Ms. Mitchell is an Indiana Certified General Appraiser. Calculations based on a comparison of the actual construction cost with values derived from the sales approach and the income approach and, accounting for the remaining tax credits, indicate a 46% obsolescence factor should be applied to Phase I and a 40% obsolescence factor should be applied to Phase II. *Petitioner's Exhibit 19* (Phase I) *Petitioner's Exhibit 20* (Phase II).

24. The Petitioner believes the tax credits should not be considered because tax credits are an equity enhancement tool and they create investor value, not market value. Obsolescence is a market value concept and tax credits are not appropriate to consider. They are not a measure of property wealth. *Mitchell Testimony.*

Issue No. 3 – Whether the assessment is contrary to Ind. Code § 6-1.1-2-2 and 50 IAC 2.2

25. The Petitioner did not specifically address this issue at the hearing or in their evidence.

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 No. 1 – Whether the structure should be assessed as 1/6 frame and 5/6 brick

18. The subject property consists of three apartment buildings; each building is two stories with nine-foot wall heights on each floor.

19. 50 IAC 2.2-11-3(2) Model: GCR- Apartment states for Walls, Type 2, "Face brick on a concrete block back-up for a 9' Wall height."

20. 50 IAC 2.2-10-6.1 defines wall height as the floor-to-floor or the floor-to-roof height that is the most typical of that use. 50 IAC 2.2-16-4.1 illustrates that on a multistory building the story height is the floor-to-floor measurement.

21. 50 IAC 2.2-16-2(39)(A) defines a gable as the triangular portion of the wall between the slopes of a double sloping roof.

22. The Petitioner attempts to support the contention of the building being 1/6 vinyl siding and 5/6 brick by submitting nine exterior photographs of the subject property.

23. The pictures show that a portion of the vinyl is, in fact, the gable, which on the one-story section of the building is not included in the floor-to-roof height and would not be considered in the building's exterior wall finish.

24. Without further explanation, stating that the subject is 1/6 vinyl and 5/6 brick is merely a conclusory statement. Admittedly, the photographs do show some vinyl, but no calculations or measurements were offered to substantiate the allegation that 1/6 of the building is vinyl-sided. The Petitioner's conclusions do not constitute probative evidence. *Whitley,* 704 N.E. 2d at 1119

25. The Petitioner did not present facts that demonstrated that the system prescribed by statute and regulations was not properly applied to the assessment against the subject property. *See Town of St. John V.*

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

E. Issue No. 2 – Obsolescence Depreciation

Definitions and Burden

27. The subject property is not currently receiving an obsolescence adjustment. The Petitioner attempts to support a 46% obsolescence adjustment for Phase I and 40% obsolescence adjustment for Phase II.

28. Depreciation is an essential element in the cost approach to valuing property. Depreciation is the loss in value from any cause except depletion, and includes physical depreciation and functional and external (economic) obsolescence.[2] 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 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.

[2] Depletion is the loss in value of property due to consumption of oil, gas, precious metals, and timber. IAAO Property Assessment Valuation, 153 (2nd ed. 1996).

29. 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.*

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

31. "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).

32. Functional obsolescence depreciation is defined as "obsolescence caused by factors inherent in the property itself." 50 IAC 2.2-1-29.

33. "Functional obsolescence may be caused by, but is not limited to, the following:
(A) Limited use or excessive material and product handling costs caused by an irregular or inefficient floor plan.
(B) Inadequate or unsuited utility space.

(C) Excessive or deficient load capacity."
50 IAC 2.2-10-7(e)(1).

34. 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.

35. 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).

36. Regarding obsolescence, the taxpayer has a two-prong burden of proof: (1) the taxpayer has to prove the obsolescence exists, and (2) the taxpayer must quantify it. *Clark v. State Board of Tax Commissioners,* 694 N.E. 2d 1230, 1233 (Ind. Tax 1998).

Causes of Obsolescence

37. "[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).

38. 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.

39. The Petitioner is arguing for obsolescence because of three factors. (1) loss of income due to rent restrictions (sometimes referred to as deed restrictions); (2) excess vacancy due to lack of amenities; and (3) loss of income due to higher than normal operating expenses and construction costs. At the hearing, the Petitioner generally mentioned all three factors, but did not break down the obsolescence alleged to each factor. Each cause will be addressed individually.

Rent Restriction

40. Deed restrictions may be considered an external factor causing obsolescence because the pertinent factor "is not the deed restrictions *per se* but rather the marketplace's reaction to them. As times change, a deed restriction that at one time enhanced the value of a particular property may make that property less valuable as a result of changing *external* circumstances." *Pedcor Investments-1990- XIII, L.P. v. State Board of Tax Commissioners,* 715 N.E. 2d 432 at 437 (Ind. Tax 1999) (*Pedcor).*

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

42. The Petitioner voluntarily signed the Declaration of Land Use Restrictive Covenants For Low Income Housing Tax Credits (Declaration) (Petitioner's Exhibit 28) 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 Indiana Housing Finance Authority (IHFA). In fact, it was the Petitioner who sought out these agreements with the IHFA and the limited partners.

43. The mere fact that Petitioner entered into the deed restrictions voluntarily does not preclude Petitioner from ever receiving obsolescence. *See Pedcor* at 437. However, on the facts before us, it is clear that the Petitioner was well aware of the restrictions placed upon it by entering into the LIHTC program and equally aware of the benefits to be gained. *See Petitioner's Exhibit 28*. Therefore, at the time Petitioner entered into the transaction, it understood (or should have understood) the rents the received for the life of the LIHTC agreement would be below market. They weighed that burden against the tax credits gained over the following ten-year period and went forward. This is a compelling indication that the Petitioner believed the tax credits were sufficient compensation for the rent reductions to make the transaction more attractive than a conventionally financed market-based housing project.

44. The Petitioner's burden is to demonstrate that a change in the market reaction occurred to the deed restrictions and/or the tax credits between the signing of the Declaration and the assessment date. They have failed to do so. For example, Petitioner did not demonstrate that the market rate for comparable housing had changed significantly, that the restrictions on the contract rents had changed or deviated from their reasonable projections, or that the overall value of the LIHTC had been reduced. The Petitioner has failed to show any negative market reaction to the bargain it originally struck.

45. Furthermore, Petitioner was, or should have been, able to balance the long-term benefit of the tax credits and long-term burden of rent restrictions. Certainly Petitioner was capable of making those projections and gathering that market information; the evidence offered at the hearing proves their understanding of the relevant market factors. When they looked at those factors in April of 1991, they decided to proceed with a low-income housing project rather than a property that would rent at market rates. They have not met their burden to prove how those factors have changed to their disadvantage for the 2000 assessment.[3] Having failed to demonstrate any factors that changed in the market reaction to the LIHTC program, Petitioner has failed to demonstrate any loss in the value of the property as a result of rent restrictions. "Without a loss of value, there can be no economic obsolescence." *Pedcor* at 438.

46. 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*.

Vacancy

47. The Petitioner also argues for obsolescence due to vacancies caused by a lack of amenities. Petitioner presented testimony that on March 31, 2000 the vacancy of Phase I was 11.66% and the vacancy of Phase II was 5%.

48. There was also testimony that the average vacancy for Tippecanoe County as a whole is around 12% or 13%. From this evidence, it appears that the subject properties are experiencing normal vacancy.

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

49. The Petitioner testified that the apartments do not have amenities that other complexes have, such as washer/dryer connections and a swimming pool.

50. The Petitioner never explains how the lack of a swimming pool or washer/dryer connections cause a loss of value. Instead, the Petitioner merely claims they do not have these amenities, and as a result it is more difficult to rent apartments. 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.

51. The Petitioner has failed to demonstrate how the vacancy was caused by the lack of amenities and how the vacancies, if they were caused by a lack of amenities, 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*.

Operating Costs

52. The Petitioner also claims that higher than normal operating costs casue a loss in value.[4] The Petitioner presented a document with average expenses of 50 other apartment complexes.

53. The Petitioner, however, does not indicate whether any of the 50 are similar to the subject. The Petitioner never attempts to show what typical expenses are for an apartment complex participating in the LIHTC program. The Petitioner never attempts to compare this average expense for LIHTC apartments to comparable market apartments to show what the difference is.

[4] Operating costs here are used to incorporate operating expenses, maintenance costs, and construction costs.

54. Instead, the Petitioner claims expenses are higher, and presents a document with average expenses of 50 other apartments. These apartments are a varying size (12 to 648 apartment units) and age (year of construction from 1928 to 1998), and Petitioner never claims any of them are comparable to the subject.

55. In fact, the expenses for the subject for 1999 were $3,027 and $3,147 for 2000. The average expenses for the 50 properties were $3,098. It appears that the subject property is right in the range of the other 50 properties. However, a complete analysis cannot be made because it is not clear which of the 50 are comparable.

56. The Effective gross income for the subject was $5,639 for 1999 and $5,414 for 2000. The average Effective Gross Income for the 50 properties was $6,257. There appears to be a difference here, however, there is not enough evidence to determine whether any of the 50 were comparable. Furthermore, the Petitioner did not indicate whether the benefits from participation in the LIHTC program offset this loss in value, if there was a loss in value.

57. The Petitioner failed to demonstrate how the subject experiences higher than normal operating costs. The Petitioner also failed to demonstrate any loss in value due to these alleged higher operating costs. Accordingly, the Petitioner did not meet the first prong of the two-prong test articulated in *Clark.*

Quantification of Obsolescence

58. Assuming the Petitioner had met the first prong of the two-prong test articulated in *Clark,* the Petitioner would still need to quantify the amount of obsolescence requested in order to meet the second prong of the two-prong test in *Clark.*

59. The Petitioner presented a restricted use appraisal in an effort to quantify the obsolescence requested. The appraisal submitted used three methods to value the subject property. The first method is construction cost, the second method is sales comparison, and the third method is income capitalization. All three methods are generally accepted methods to value property, and arrive at an estimate of obsolescence. Each of the tree methods will be addressed in turn.

Cost Method

60. In this method, the Petitioner uses actual construction costs, then trends that number to what it would cost in 2000 to build. At first glance, this appears to be logical. However, the petitioner did not "estimate the cost to construct a reproduction of or replacement for the existing structure and then deduct all accrued depreciation in the property being appraised from the cost new of the reproduction or replacement structure." *Canal Square L.P. v. State Board of Tax Commissioners,* 694 N.E. 2d 801, 805 (Ind. Tax 1998).

61. The Petitioner claims to be following the method used in *Canal Square*. However, the Petitioner does not estimate the cost to construct, the Petitioner merely trends the actual cost. The Petitioner also, does not deduct the actual depreciation given to the subject properties. For example, Phase II costs, after trending to 2000 costs, were reduced by 4% for depreciation. A review of the subject's property record card indicates Phase II is actually receiving 5% depreciation. For Phase I, 5% was used by the appraisal when 10% was actually used on the property record card.

62. Furthermore, even if this calculation would be considered acceptable, there is no indication where the cost multiplier was obtained. Likewise, there was no

breakdown of the costs to determine if items included were proper. Without this breakdown, the State cannot determine if the cost arrived at through this method is appropriate.

63. Accordingly, this method will be given little weight in arriving at an estimate of obsolescence.

Comparable Sales

64. The Petitioner also uses comparable sales to arrive at an estimate of value. According to the appraisal: "The value from the sales approach was derived after a reviewed [sic] of three apartment sales that closed in 1996, 1997, and 1998. There have been no other sales in Lafayette of similar size since 1998. Sales in other areas of Indiana were considered."

65. "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." *IAAO Property Assessment Valuation*, 183 (2nd ed. 1996).

66. The Petitioner does not state whether the sales were for similar or comparable properties. The Petitioner never states how many other sales from Indiana were considered. The Petitioner never compares amenities, age, or location. The method by the Petitioner is not supported by probative evidence necessary to conduct a thorough review.

67. Accordingly, this method is given little weight in arriving at an estimate of obsolescence.

Income Capitalization

68. The final method used by the Petitioner is the income capitalization method. "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.

69. The IAAO approach follows these basic steps in a capitalization of income method:

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

IAAO Property Assessment Valuation at 204.

70. From the restricted use appraisal, it cannot be determined if this is the method followed by the Petitioner. There is no indication what the estimated potential gross income is. [5]

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

72. "Operating expenses vary from property to property, depending on type of occupancy, use type, and quality of management. In analyzing the operating expenses for a property, the operating statements from comparable properties must be reviewed…" *Id.* at 215.

73. The Petitioner includes real estate taxes in the computation of Net Operating Income. Generally, property taxes are omitted from the expense statements when the valuation for property tax purposes is at issue and that expense is dealt with as a component of the cap rate. *Id.* at 217.

74. The Petitioner does state that cap rate was derived from the three sales in Lafayette. However, it is not known if these were market properties or LIHTC properties.

75. 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.

[5] Because it appears that this information can be derived from the materials with relative ease, it is unclear why Petitioner omitted this step. Nevertheless, the State is not required to perform this calculation on behalf of Petitioner. *See Canal Realty v. SBTC,* 744 N.E.2d 597, 602 (Ind. Tax Ct. 2001).

76. For these reasons, the income capitalization approach submitted by the Petitioner is not considered reliable.

Conclusion

77. For all the above reasons, the Petitioner failed to meet the burden outlined in *Clark*. Accordingly, there is no change to the assessment as a result of the obsolescence issue.

Issue No. 3 – Whether the assessment is contrary to IC 6-1.1-2-2 and 50 IAC 2.2

78. This issue was not addressed or developed. No change is made in the assessment as 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