

**STATE OF INDIANA
Board of Tax Review**

PEDCOR INVESTMENTS-1994-XVII, L.P.,)	On Appeal from the Porter County Property Tax Assessment Board of Appeals
)	
Petitioner,)	Petition for Review of Assessment, Form 131
)	Petition No. 64-008-98-1-4-00004
v.)	
)	Parcel No. 08-000469326
PORTER COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS and PORTAGE TOWNSHIP ASSESSOR,)	
)	
Respondents.)	

Findings of Fact and Conclusions of Law

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

Issues

1. Whether economic obsolescence is warranted due to restrictions limiting rents and income levels of residents.

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, Pedcor Investments-1994-XVII, L.P. (Pedcor) filed a Form 131 petition requesting a review by the State. The Porter County Property Tax Assessment Board of Appeals (PTABOA) issued the final determination on the underlying Form 130 petition on March 28, 2000. The Form 131 petition was filed on April 27, 2000.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on February 8, 2001, before Hearing Officer Ellen Yuhan. Testimony and exhibits were received into evidence. Maureen Houghland represented Pedcor. Shirley La Fever and Lindy Wilson represented the Porter County PTABOA. John R. Scott represented the Portage Township Assessor's Office.

4. At the hearing, the Form 131 petition was made part of the record and labeled Board's Exhibit A. The Notice of Hearing on Petition was labeled Board's Exhibit B. In addition, the Petitioner submitted the following evidence:
Petitioner's Exhibit 1 – Brief including: (1) Power-of-attorney; (2) Final Assessment Determination from the PTABOA; (3) Declaration of Extended Low Income Housing Commitment; (4) Judgment Entry by the Honorable Thomas G. Fisher; (5) Indiana Tax Court cases supporting economic obsolescence; (6) Amended and Restated Agreement of Limited Partnership of Pedcor Investments-1994-XVII, L. P.; (7) *The Low-Income Tax Credit Advisor*, dated April 1998; (8) Rent history summary; (9) Market

study updates; (10) Audited financial statements for 1997 and 1998; (11) Tax credit pay-in schedule; (12) Comparison of market and restricted rents; (13) Average obsolescence analysis; and (14) Certification of the brief.

Petitioner's Exhibit 2- Includes a Resume of Pedcor Investments, LLC; Resume of Pedcor Management Corporation; Description of Projects; Description of Properties; and Photographs of Pedcor Developments.

Petitioner's Exhibit 3 - Additional information pertaining to this petition includes: (a) the U. S. Partnership Return of Income, Form 1065, for 1997 and 1998; (b) Promissory note; (c) Adjustable rate note; (d) the mortgage note; and (e) Final construction costs.

The Respondents did not present any documentary evidence at the hearing.

5. The Hearing Officer requested additional information. This information was to include the partnership income tax returns for 1997 and 1998, construction costs, and the mortgage and/or the note securing the mortgage. The information was to be received by February 22, 2001. The documents were received in a timely manner and labeled Petitioner's Exhibit 3.
6. In addition, Ms. LaFever requested fourteen (14) days to rebut the documentation submitted by Pedcor. Pedcor was then to have an additional fourteen (14) days for rebuttal.
7. The Respondent's rebuttal was not submitted.
8. The apartment property is located on Airport Road, Portage, Indiana (Portage Township, Porter County). The hearing officer did not view the property.

**Issue No. 1 – Whether economic obsolescence is warranted
due to restrictions limiting rents and income levels of residents.**

9. The PTABOA did not grant any economic obsolescence to the property. The Petitioner contended that the apartment complex should receive an average of 28.28 percent obsolescence depreciation over the length of the rent restrictions.
10. The subject property participates in the Low Income Housing Tax Credit (LIHTC) program defined in §42 of the Internal Revenue Service Code. In Indiana, this program is administered by the Indiana Housing Finance Authority (IHFA).
11. Under the terms of this program, the subject will receive tax credits for 10 years in exchange for renting apartments to individuals with incomes at or below 60% of the median income for the county.
12. All of the apartments (96 units) in the complex are subject to the LIHTC program agreement. The Petitioner voluntarily chose to enter into the LIHTC program.
13. In 1997, the median income in Porter County was \$46,000; 60% of this median income would be \$27,840 for a family of four. In 1998, incomes in Porter County went up to \$49,000; the 60% figure became \$29,400.
14. Pedcor Investments, LLC is the general partner. It was responsible for the development and management of the subject property. The limited partners are the “money men.” The limited partners provided cash, in return for the tax credits, to allow Pedcor to secure the mortgage to construct the subject properties. These tax credits are a dollar for dollar credit against federal income tax. The tax credits are generally sold to institutional investors for \$0.68 to \$0.74 per \$1.00 tax credit.

15. Pedcor will receive \$4,260,000 in tax credits over a 10-year period, under the terms of its "Declaration of Extended Low-Income Housing Commitment," dated October 31, 1994. (Petitioner's Exhibit 1(tab 3)). Pedcor first received the benefit of the tax credits in 1995 and will continue to receive tax credits each year through 2005, assuming it is in compliance with Section 42 of the Internal Revenue Code.
16. The Petitioner contends that it is entitled to an obsolescence adjustment because the rent restrictions, required as a condition of eligibility for the LIHTC program, result in a loss of value.

Conclusions of Law

1. The Petitioner is limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 130 petition. 50 IAC 17-5-3; Ind. Code §§ 6-1.1-15-1, -2.1, and -4. See also the Forms 130 and 131 petitions. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal

circumvent review of the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, neither party requested that such discretion be exercised and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.

2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

A. Indiana's Property Tax System

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.
4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.

6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State’s decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr.,

Administrative Law and Practice, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.

10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
11. The taxpayer's burden in the State's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V*, 702 N.E. 2d at 1040.
12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer

must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not “triggered” if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State’s final determination merely because the taxpayer demonstrates flaws in it).

C. Review of Assessments After Town of St. John V

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property’s market value will fail.
16. Although the Courts have declared the cost tables and certain subjective elements of the State’s regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.
17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

Issue No. 1 – Obsolescence Depreciation

Definitions and Burden

18. The subject property is not currently receiving an obsolescence depreciation adjustment. The Petitioner argued that the property has experienced economic (external) obsolescence depreciation in the amount of 12.50 percent.

19. Depreciation is an essential element in the cost approach to valuing property. Depreciation is the loss in value from any cause except depletion, and includes physical depreciation and functional and external (economic) obsolescence.¹ *International Association of Assessing Officers (IAAO) Property Assessment Valuation*, 153 & 154 (2nd ed. 1996); *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801, 806 (Ind. Tax 1998) (citing *Am. Inst. Of Real Estate Appraisers, The Appraisal of Real Estate*, 321 (10th ed. 1992)). Depreciation is a concept in which an estimate must be predicated upon a comprehensive understanding of the nature, components, and theory of depreciation, as well as practical concepts for estimating the extent of it in improvements being valued. 50 IAC 2.2-10-7.

20. Depreciation is a market value concept and the true measure of depreciation is the effect on marketability and sales price. *IAAO Property Assessment Valuation* at 153. The definition of obsolescence in the Regulation, 50 IAC 2.2-10-7, is tied 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.*

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

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

22. “Economic obsolescence may be caused by, but is not limited to, the following:
 - (A) Location of the building is inappropriate for the neighborhood.
 - (B) Inoperative or inadequate zoning ordinances or deed restrictions.
 - (C) Noncompliance with current building code requirements.
 - (D) Decreased market acceptability of the product for which the property was constructed or is currently used.
 - (E) Termination of the need of the property due to actual or probable changes in economic or social conditions.
 - (F) Hazards, such as danger from floods, toxic waste, or other special hazards.” 50 IAC 2.2-10-7 (e)(2).

23. The elements of 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.

24. It is incumbent on the taxpayer to establish a link between the evidence and the loss of value due to obsolescence. After all, the taxpayer is the one who best knows his business and it is the taxpayer who seeks to have the assessed value of his property reduced. *Rotation Products Corp. v. Department of State Revenue*, 690 N.E. 2d 795, 798 (Ind. Tax 1998).

25. Regarding obsolescence, the taxpayer has a two-prong burden of proof: (1) the taxpayer has to prove 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).

Conclusions Regarding Obsolescence

26. In the instant case the State need not address the issue of whether the rent restrictions or other factors result in obsolescence. The reason for this is because the Petitioner's own calculation show that for Tax Year 1998 the subject property does not deserve an obsolescence deduction.
27. The Petitioners calculation indicates that for Tax Year 1998, the subject property maybe under-valued by the local officials. Petitioner's Exhibit 1, Tab 13 indicates that the calculation used by the Petitioner that the subject is under valued by 12.5% for 1998. The State, however, will not increase the value of the subject property.
28. For all the reasons above, the Petitioner did not make a prima facie case regarding obsolescence in this appeal. Accordingly, 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.

Chairman, Indiana Board of Tax Review