

**STATE OF INDIANA  
Board of Tax Review**

HANK ADAMS, ST. JOHN TOWNSHIP ASSESSOR	)	On Appeal from the Lake County Property Tax Assessment Board of Appeals
Petitioner,	)	
	)	
v.	)	Petition for Review of Assessment, Form 131
	)	Petition Nos. 45-036-95-1-4-00028
LAKE COUNTY PROPERTY TAX	)	45-036-95-1-4-00029
ASSESSMENT BOARD OF APPEALS	)	45-036-95-1-4-00030
	)	45-037-95-1-4-00031
	)	
	)	Parcel Nos. 201302800004
Respondent.	)	201302800003
	)	201302800002
	)	201302800001

**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:

**Issue**

Whether economic obsolescence of 25% is warranted on the assessment.

## 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, Hank Adams, St. John Township Assessor, filed a petition requesting a review by the State. The Form 131 was filed on January 19, 2001. The Lake County Property Tax Assessment Board of Appeals (PTABOA) final determination on the underlying Form 130 is dated December 18, 2000; the notification date is December 27, 2000..
  
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on March 27, 2002 before Administrative Law Judge, Joan L. Rennick. Testimony and exhibits were received into evidence. Mr. Hank Adams, St. John Township Assessor, Alberta Massey, Deputy Assessor and Jacqueline Rokasz, Deputy Assessor, represented the Petitioner. Karen Delgado was an observer from the Lake County Assessor's office. The Lake County PTABOA, Respondent, was not represented. Mr. Joseph E. Costanza and Kathryn D. Schmidt of Burke Costanza & Cuppy, LLP represented the taxpayer, People's Bank as Trustee of Trust #10096. Testifying on behalf of the Taxpayer was Mary Evans, Property Manager of Camelot Apartments, Ruth Choate, former tenant of Camelot Apartments, and Howard Cyress, Appraiser. Mr. Edward Ignas, owner of Camelot Apartments and a beneficiary of Peoples Bank Trust #10096, testified.
  
4. At the hearing, the subject Form 131 petition was made a part of the record and labeled Board Exhibit A with the following attachments:
  - (1) Letter from Hank Adams to the State Board of Tax Commissioners dated January 18, 2001
  - (2) Letter from Hank Adams to Juanita Peters, Code Enforcement Officer, dated January 2, 2001
  - (3) Definition of economic obsolescence (highlighted)

- (4) Copy of 50 IAC 2.2-10-7, Commercial and industrial building depreciation
- (5) Bases for Appeal stating issues and quantification of economic obsolescence submitted at the PTABOA hearing
- (6) Copy of 50 IAC 2.2-11-1, General commercial mercantile "GCM" models
- (7) Copies of photographs of apartment buildings from 50 IAC 2.2-11
- (8) Schedule E (Form 1040) Supplemental Income tax returns of Edward Ignas for 1995, 1996, 1997, and 1998
- (9) Rent Journals for June, 1995, September, 1995 and January 1996
- (10) Final determination of the Lake County PTABOA
- (11) Form 130 petition
- (12) 1993 and 1995 property record cards (PRCs) for the subject property.
- (13) Form 11 for subject property.

The Notice of Hearing was labeled Board Exhibit B. Copies of Hearing Tapes (#1 & #2) of the Lake County PTABOA dated December 18, 2000 are labeled Board Exhibit C. In addition, the following documents were submitted to the State:

Petitioner's Exhibit 1 – Schererville Plan Commission minutes dated October 5, 1976 (Pg.3) and minutes dated February 2, 1977 (Pg.2)

Respondent's Exhibit 1 (on behalf of the taxpayer) – Summary of events leading up to today's hearing prepared by Joseph E. Costanza

Respondent's Exhibit 2 – Photographs of the subject property numbered #1 through # 40

Respondent's Exhibit 3 – Comparison chart of subject property to other apartments in the area.

5. The subject property consists of four (4) parcels comprising Camelot Apartments that are located at 1825-1829, 1901, and 1905 Austin Avenue in Schererville, St. John Township in Lake County. The Administrative Law Judge did not view the property.

## Issue

### Whether economic obsolescence of 25% is warranted on the assessment.

6. Hank Adams, St. John Township Assessor, is the Petitioner in this appeal. He does not agree with the decision of the Lake County PTABOA to apply a 25% negative obsolescence factor to the assessments of four (4) parcels containing four (4) apartment buildings known as Camelot Apartments. The tax returns presented in evidence at the PTABOA hearing are for an unrelated business (Hair Design), as well as the Camelot II Apartments. Even with the auto and travel expense of \$25,959 in 1995, the properties still made a profit according to the line 26 of the Schedule E (Form 1040). *Adams testimony. Board Exhibit A, Attachment 8.*
  
7. There was a discussion at the PTABOA hearing regarding the apartment complex request for PUD status and under that status, the complex is exempt from some local codes and the developers are responsible for their own snow removal and garbage pickup. The storm drainage was designed to discharge a 10-year storm on the unimproved land and retain the excess based on a 100-year storm on the improved property. At that meeting of the Schererville Plan Commission, it is spelled out that the parking lot would retain the excess and it is estimated the water would be a maximum of one and one-half feet deep within the parking area. The commission unanimously voted for final plat approval to Camelot Apartments and the owners agreed previously at public meetings to provide proper water main looping. The owners are required to take care of all services that would normally be taken care of by the town with the exception of fire. *Adams testimony. Petitioner's Exhibit 1.*
  
8. The vacancy figures listed on the rent rolls show none of the apartments were over 15% vacant and that is normal for an apartment complex. The photographs submitted into evidence by the taxpayer at the PTABOA hearing include appliances that are considered personal property and not real estate. The

apartment buildings are receiving physical depreciation that should be sufficient to take care of wear and tear with normal maintenance. When the buildings were built in the 70's, the owner stated these buildings were built at the top of the cost structure. When buildings are constructed under a PUD, they are not expected to be up to normal standards and no more than an average grade.

*Adams testimony. Board Exhibit A, Attachment 9.*

9. Functional or economic obsolescence would have to show there is some outside force contributing to a loss in value of the subject property and there is none. Schererville is a town with little crime and the apartments are located in a very good residential area. *Adams testimony.*
10. The PTABOA gave no reason why the 25% obsolescence factor was applied to the assessment of the subject property. *Adams testimony.*
11. Ms. Schmidt objected to the reference and testimony by Mr. Adams concerning the PUD status and how it might impact this hearing. Ms. Schmidt contends the issue of the PUD status was not listed as an issue on the Form 131 petitions or by any exhibit list prior to the hearing and she was not prepared to rebut as a result.
12. The administrative law judge noted the objection for the record and will rule on the admission of the testimony after consulting with attorneys in the main office.
13. Alberta Massey stated the attorney's firm was involved in the PUD initial stages and they should have knowledge of the arrangement.
14. Kathryn Schmidt presented into evidence photographs of the subject property and reported that copies of the pictures were sent to Mr. Adams with the pre-hearing evidence. Ms. Schmidt requested the evidence presented at the PTABOA hearing be incorporated and become a part of this hearing also.

15. The photographs presented into evidence were taken by her in 1995 and show the flooding of the parking lot and the resulting aftermath. Many of the photographs show deterioration of the exteriors of the buildings and sidewalks and several show the outdated appliances and fixtures. The retention pond at the subject property never flooded until a drainage pipe was changed. Also, water from another source was drained into the subject property causing more drainage problems. The result was flooding and the aftermath that caused smells and created an eyesore. The tenants complained and it became difficult to rent apartments except at lower rents and the lower rents caused deferred maintenance. *Evans testimony. Respondent's Exhibit 2.*
16. Ruth Choate, a former tenant, testified she had health problems that occurred approximately the same time as the flooding.
17. The major flooding at the complex began around 1995 after the town made adjustments to pipes that ran from the pond into some type of sump system and the retention pond could no longer accommodate the water. Some of the water was coming from outside the property and flowing into the pond. He requested the town resolve the situation, but to no avail. He tried installing a fountain hoping that circulating the water would alleviate some of the problem, but that did not work because the scum was so thick it would not circulate. This impacted the maintenance program because it is difficult to attract and sustain quality tenants and maintenance costs increase with a high turn over of tenants because of extra painting and cleaning. *Ignas testimony.*
18. Joseph Costanza stated a portion of the evidence presented at the PTABOA hearing and attached to the petition contains a capitalization process prepared by Sandy Bickel and is based on the 1995 income of the subject apartments. *Board Exhibit, Attachment 5.*
19. Mr. Cyress is a licensed Certified Residential Appraiser with experience as a commercial and industrial appraiser and is acquainted with the Camelot

Apartment complex. He is familiar with the retention pond located at the complex and the problems with the flooding and aftermath. He has not done an appraisal on the subject property. *Cyress testimony.*

20. Economic obsolescence is defined as a factor that exists outside of the building that causes a negative impact on either tenancy or income or high vacancy or something that would have a negative impact on the value of the building. The retention pond fits within the definitions of economic obsolescence as expressed by the State Board of Tax Commissioners and the capitalization of income method is one, and the best, way to quantify economic obsolescence. *Cyress testimony.*
21. Economic obsolescence as defined in the manual is outside the subject property and the code enforcement officer has not received any complaints concerning the stench from the retention pond. *Adams testimony. Board Exhibit A, Attachment 2.*
22. In the 1998 Indiana Tax Court decision of *Loveless Construction Co. v the State Board of Tax Commissioners*, the court wrote on the very issue that this petition addresses. In that case, lower rents were being charged, but this did not rebut Loveless' prima facie case of obsolescence. A high occupancy rate is not necessarily determinative of whether obsolescence exists because a taxpayer may have had to reduce rents to maintain the high occupancy rate. This is the exact situation in this case. *Costanza testimony.*
23. Low rents can keep the vacancy low and could result in 100% occupancy. A comparison of the subject property to surrounding properties indicates lower rents and fewer amenities at Camelot. Camelot is compared to Barberry, Cedar Point, Crestview, Hampton-in-Highland, Mansards, Pine Island, Sherwood Lake, and Summer Wood. The comparison is reflective of conditions in 1995. *Evans testimony. Respondent's Exhibit 3.*

24. If you don't leave the town of Schererville, there are only two apartment complexes that are true comparisons on the chart and they are Cedar Point and Pine Island. The higher rent comparables also have more amenities to maintain. The Sherwood Apartment complex was recently remodeled because it was sold to a new owner and rents were increased. The previous owner of Sherwood Apartments was not making money and if Camelot cannot make money, perhaps they should sell. *Adams testimony.*
  
25. The impact of lower rents caused by economic obsolescence, mainly the flooding of the retention pond, resulted in deferred maintenance for the subject property. Although the vacancy rate was under 15%, the lowered rents left no money for normal maintenance. *Schmidt testimony.*
  
26. Economic obsolescence was not impacting the replacement of fixtures, appliances, and general upkeep prior to 1995 according to the taxpayer. So why wasn't normal maintenance done before that? *Massey testimony.*
  
27. Mr. Costanza concluded by stating the taxpayer has followed the language of the regulation promulgated by the State Tax Board by identifying the source of the obsolescence, that is the flooding of outside water into the retention pond. The quantification of the obsolescence was done at the original hearing. The PTABOA did not grant the entire quantification of 70%, but did apply 25%. It would be incumbent for the Petitioner to show that quantification of obsolescence was not appropriate and there has been no evidence of that. The Final Determination of the PTABOA should be upheld.

### **Conclusions of Law**

1. The Petitioner is statutorily 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. 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, 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. “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.

**D. Whether economic obsolescence of 25% is warranted on the assessment.**

18. 50 IAC 2.2-10-7(e) reads as follows:

In addition to physical depreciation, some buildings experience loss of value due to obsolescence. These effects are much less noticeable than physical depreciation and must be examined in depth. Accurate determination of obsolescence depreciation requires the assessor to recognize the symptoms of obsolescence and to exercise sound judgment in equating his or her observation of the property to the correct deduction in value. Functional obsolescence is caused by internal factors. Economic obsolescence is caused by external factors. The following is a list of some of the causes of the two (2) kinds of obsolescence:

(1) 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.

(2) 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 the danger from floods, toxic waste, or other special hazards.

19. 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. The elements of functional and economic obsolescence can be documented using recognized appraisal techniques. *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801 (Ind. Tax 1998). These standardized techniques enable a knowledgeable person to associate cause and effect to value pertaining to a specific property.
21. 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 Revenue*, 690 N.E. 2d 795, 798 (Ind. Tax 1998).
22. 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 at 1230, 1233 (Ind. Tax 1998).
23. "External (economic) obsolescence, which is the result of diminished utility of a structure due to negative influences from outside of the site, is always incurable." (*The Appraisal of Real Estate, Eighth Edition*, published by the American Institute of Real Estate Appraisers, page 487.)
24. "An appraiser can use either of two methods to measure external (economic) obsolescence. The appraiser uses the method that is supported by the best market evidence. The two methods are (1) capitalizing the rent loss attributable to the negative influence, or (2) comparing sales of similar properties, some of which are subject to the negative influence and some that are not. If pertinent sales are available, the second method is preferable to the first." (*The Appraisal of Real Estate, Eighth Edition*, published by the American Institute of Real Estate

Appraisers, page 487).

25. Recognition of obsolescence beyond physical depreciation is a profession that requires supportable evidence. This recognition of cause and effect may be supported by use of some of the following techniques and methods: (1) the paired data analysis, (2) a capitalization of rent loss, (3) the breakdown method, (4) the market extraction method, and (5) the age-life method. Even when fully prepared to the requirements acceptable in professional appraisal standards and ethics, these techniques and methods are considered support approaches in justifying and documenting obsolescence.
26. The use of any singular technique or method identified above without the use of other approaches would be considered unethical and incomplete.
27. To meet his burden, the Petitioner must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the petitioner 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).
28. The Petitioner, in this case the Township Assessor, has the burden of presenting a prima facie case and presenting evidence to establish his case. The burden is two (2) prong and not only must the obsolescence be identified, it must be quantified.
29. The Petitioner contends a portion of the evidence presented at the PTABOA hearing was faulty in that personal property was included in the tax return. (Board Exhibit A, Attachment 8). On closer inspection of the documents, the Camelot II income is listed in column A and Hair Design is listed in column B. Ms. Bickel had correctly identified the income on column A.
30. The Petitioner contends economic obsolescence is due to forces outside the subject property and that the taxpayer has no economic obsolescence because

Schererville has a low crime rate and the apartments are located in a nice residential neighborhood. The Petitioner further contends the code enforcement officer has received no complaints about the stench from the retention pond. These statements do not identify or describe obsolescence.

31. The Petitioner believes because the apartment complex has PUD status, the owners are responsible for correcting any water problem. The Petitioner does not agree any economic obsolescence exists and if it does, the taxpayer should fix it or sell the property. The Petitioner stated the subject property is receiving 35% physical depreciation and that should take care of any wear and tear and normal maintenance. The Petitioner made accusations that a PUD complex is below standard, but provided no evidence to support the accusations. The Petitioner did not follow through on the point that deferred maintenance was present before 1995 and the complex was not updated even though many components were at the end of their economic life.
32. The Petitioner did not address the capitalization calculation presented at the PTABOA hearing or address the occupancy issue other than to say 15% vacancy is normal for an apartment complex. The courts have repeatedly ruled in favor of Petitioners that make a prima facie case. No evidence was presented to establish the rent rolls and vacancies of comparable properties. The Petitioner did not question how the taxpayer calculated the capitalization rate and/or if the quantification of obsolescence was established through accepted appraisal techniques.
33. The Petitioner wrote letters to the State explaining that he never received any complaints about the bad odor from the retention pond when he was a town councilman from 1992 through 1994. The Petitioner further contends the code enforcement officer never received any complaints either (Board Exhibit A, attachments 1 and 2). The Petitioner's term ended in 1994 before the flooding (according to testimony) on the subject property occurred. The Petitioner attached a copy of a portion of material presented at an obsolescence class



given by the State and a copy of 50 IAC 2.2-10-7 that have economic obsolescence highlighted. The courts have not given weight to any evidence copied from a source and highlighted.

34. The Petitioner 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 Petitioner of his burden of proof would place the State in the untenable position of making the Petitioner's case for him. Second, requiring the Petitioner to meet his burden in the administrative adjudication conserves resources.
35. For the reasons listed above, the Petitioner has not met the burden of proof in the appeal and no change is made in the assessment.

#### **Other Comments**

36. Hearing tapes were requested from the Lake County Auditor's office by the Administrative Law Judge concerning the issue of the status of Camelot Apartments as a Planned Unit Development (PUD). These tapes (Board Exhibit C) revealed no discussion of the PUD status of the subject property at the PTABOA hearing of the subject property on December 18, 2000.
37. The taxpayer's representative objected to the introduction of a new issue that was not presented in documentary evidence required before the hearing. The Petitioner stated the issue of the PUD status was discussed at the PTABOA hearing. The taxpayer's representative requested any reference to the PUD status of the subject property be stricken from the record because no preparation was made to rebut testimony.
38. The Petitioner did not develop any issue regarding the PUD status of the subject property other than to state general references, minutes of the plan commission, and personal opinions that carried no weight in the outcome of the hearing. The testimony of the Petitioner stands as recorded.

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.

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Chairman, Indiana Board of Tax Review