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**IN THE
INDIANA TAX COURT**

LINCOLNWOOD COOPERATIVE, INC.,)
)
 Petitioner,)
 v.)
)
DEPARTMENT OF LOCAL)
GOVERNMENT FINANCE,¹)
)
 Respondent.)

Cause No. 49T10-0107-TA-49

ON APPEAL FROM A FINAL DETERMINATION OF
THE STATE BOARD OF TAX COMMISSIONERS

NOT FOR PUBLICATION
December 7, 2005

FISHER, J.

¹ The State Board of Tax Commissioners (State Board) was originally the Respondent in this appeal. However, the legislature abolished the State Board as of December 31, 2001. 2001 Ind. Acts 198 § 119(b)(2). Effective January 1, 2002, the legislature created the Department of Local Government Finance (DLGF), see Indiana Code Annotated § 6-1.1-30-1.1 (West Supp. 2005-2006)(eff. 1-1-02); 2001 Ind. Acts 198 § 66, and the Indiana Board of Tax Review (Indiana Board). IND. CODE ANN. § 6-1.5-1-3 (West Supp. 2005-2006)(eff. 1-1-02); 2001 Ind. Acts 198 § 95. Pursuant to Indiana Code § 6-1.5-5-8, the DLGF is substituted for the State Board in appeals from final determinations of the State Board that were issued before January 1, 2002. IND. CODE ANN. § 6-1.5-5-8 (West Supp. 2005-2006)(eff. 1-1-02); 2001 Ind. Acts 198 § 95. Nevertheless, the law in effect prior to January 1, 2002 applies to these appeals. A.I.C. § 6-1.5-5-8. See *also* 2001 Ind. Acts 198 § 117. Although the DLGF has been substituted as the Respondent, this Court will still reference the State Board throughout this opinion.

Lincolnwood Cooperative, Inc. (Lincolnwood) appeals the final determination of the State Board of Tax Commissioners (State Board) valuing its real property for the 1995 tax year. The sole issue for the Court to decide is whether the State Board erred in failing to assign an obsolescence depreciation adjustment to Lincolnwood's improvements.

FACTS AND PROCEDURAL HISTORY

Lincolnwood owns an apartment complex in Kokomo, Indiana. On October 4, 1996, Lincolnwood timely filed two Petitions for Review of Assessment (Forms 131) with the State Board challenging the complex's 1995 assessment. In its Forms 131, Lincolnwood claimed the property was entitled to obsolescence depreciation. The State Board conducted an administrative hearing on Lincolnwood's petitions on May 4, 1998. On June 4, 2001, the State Board issued a final determination denying Lincolnwood's request for relief.

On July 2, 2001, Lincolnwood initiated an original tax appeal. The Court conducted a trial on the matter on September 30, 2002, and heard the parties' oral arguments on September 26, 2003. Additional facts will be supplied as necessary.

ANALYSIS AND OPINION

Standard of Review

This Court gives great deference to final determinations of the State Board when it acts within the scope of its authority. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998). Consequently, the Court will reverse a final determination of the State Board only if it is unsupported by substantial evidence,

arbitrary, capricious, constitutes an abuse of discretion, or exceeds statutory authority.
Id.

A taxpayer who seeks to overturn a State Board final determination bears the burden of proving its invalidity. *Id.* In order to meet that burden, the taxpayer must have submitted, during the administrative hearing process, probative evidence regarding the alleged assessment error. See *id.* at 1234. Probative evidence is evidence sufficient to establish a given fact that, if not contradicted, will remain sufficient. See *id.* at 1233. Once the taxpayer demonstrates a prima facie case, the burden shifts to the State Board to support its final determination with substantial evidence. *Id.*

Discussion

Obsolescence, a form of depreciation, is the functional or economic loss of property value expressed as a percentage reduction in the remaining value of an improvement. IND. ADMIN. CODE tit. 50, r. 2.2-10-7(e),(f) (1996). See also *Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 477-78 (Ind. Tax Ct. 2003). Functional obsolescence is caused by factors internal to the property and is evidenced by conditions within the property itself whereas economic obsolescence is caused by external factors. 50 IAC 2.2-10-7(e). In the commercial context, a loss in property value represents a decrease in an improvement's income generating ability. See *Miller Structures, Inc. v. State Bd. of Tax Comm'rs*, 748 N.E.2d 943, 953 (Ind. Tax Ct. 2001).

In order to establish a prima facie case for obsolescence, a taxpayer must (1) identify factors that are causing obsolescence, and (2) quantify the amount of

obsolescence to which it believes it is entitled. See *Clark*, 694 N.E.2d at 1241. Consequently, the taxpayer must relate the factors (and therefore the quantification) of obsolescence to an actual loss in property value. See *Miller Structures*, 748 N.E.2d at 954. See also *Clark*, 694 N.E.2d at 1238.

At the administrative hearing, Lincolnwood claimed that its property was entitled to a 40% economic obsolescence adjustment. To support its claim, Lincolnwood presented a survey that compared its rental charges to the rental charges of thirteen allegedly comparable properties, concluding that “Lincolnwood[’s] rents vary from . . . 8% below competitive properties for a one bedroom unit to . . . 48% below competitive properties for a [three] bedroom townhouse.” (Cert. Admin. R. at 137-142.) In addition, Lincolnwood presented an analysis that contained: 1) the property’s statements of profit and loss for 1992 through 1996; 2) definitions of obsolescence; and 3) an estimate of value for the property using the income approach. (See Cert. Admin. R. at 76-136.) Lincolnwood concluded that the difference between the property’s assessed (true tax) value and the value determined under the income approach was attributable to the obsolescence present in the property. (Cert. Admin. R. at 115.)

Nonetheless, Lincolnwood has failed to present a prima facie case. First, Lincolnwood was required to identify the factors that were causing its property to lose money. See *Clark*, 694 N.E.2d at 1238. Instead, Lincolnwood merely stated that its rents were lower than comparable properties. Lower rents in and of themselves do not prove the presence of obsolescence in a property. Rather, Lincolnwood was required to present probative evidence showing the reason why its property commanded lower rents. Cf. *Deer Creek Developers, Ltd. v. Dep’t of Local Gov’t Fin.*, 769 N.E.2d 259,

263 (Ind. Tax Ct. 2002) (holding that vacancy by itself does not prove obsolescence; rather, probative evidence must be presented to show why a property is vacant). It failed to do so.

Even if Lincolnwood had identified the factors that were causing obsolescence in its property, its quantification of obsolescence was flawed. In 1995, property in Indiana was assessed on the basis of true tax value, and true tax value bore no relation to market, or dollar, value. See *Town of St. John v. State Bd. of Tax Comm'rs*, 665 N.E.2d 965, 967 (Ind. Tax Ct. 1996), *rev'd on other grounds by* 675 N.E.2d 318 (Ind. 1996). Thus, when Lincolnwood asserted that the difference between its property's true tax value and its market value under the income approach was equal to the obsolescence present in its property, it was comparing apples to oranges. See *Loveless Constr. Co. v. State Bd. of Tax Comm'rs*, 695 N.E.2d 1045, 1050 (Ind. Tax Ct. 1998) (holding that income generated by a property is measured in real dollars, not true tax value dollars; therefore a comparison between true tax value and the value of property as calculated by the income approach is meaningless). *But cf. Canal Square Ltd. P'ship v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 806-07 (Ind. Tax Ct. 1998) (holding that the quantification of obsolescence in accordance with generally recognized appraisal principles, and then converting that quantification into quantification under the true tax value system *is* an acceptable method of quantifying obsolescence). Hence, Lincolnwood has also failed to quantify the amount of obsolescence to which it believed it was entitled.

CONCLUSION

For the aforementioned reasons, the Court AFFIRMS the final determination of the State Board.