

ATTORNEYS FOR PETITIONER:  
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ATTORNEYS FOR RESPONDENT:  
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Indianapolis, IN

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**IN THE  
INDIANA TAX COURT**

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PLAZA PROPERTIES COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cause Nos. 71T10-0107-TA-61
	)	71T10-0107-TA-64
DEPARTMENT OF LOCAL	)	71T10-0107-TA-67
GOVERNMENT FINANCE, <sup>1</sup>	)	
	)	
Respondent.	)	

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ON APPEAL FROM THREE FINAL DETERMINATIONS OF  
THE STATE BOARD OF TAX COMMISSIONERS

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**NOT FOR PUBLICATION**  
November 9, 2005

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<sup>1</sup> The State Board of Tax Commissioners (State Board) was originally the Respondent in these appeals. 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.

FISHER, J.

Plaza Properties Company (Plaza) appeals from the final determinations of the State Board of Tax Commissioners (State Board) valuing its three commercial properties (hereinafter, Property 61, Property 64, and Property 67) for the 1995 tax year. The issues for the Court to decide are:

- I. Whether the State Board erred in assigning Property 61 a grade of "B";
- II. Whether the State Board erred by failing to assign Property 64 an obsolescence depreciation adjustment; and
- III. Whether the State Board erred in assigning Property 67:
  - a) a grade of "C + 2";
  - b) a zero obsolescence depreciation adjustment; and
  - c) a condition rating of "good."<sup>2</sup>

### **FACTS AND PROCEDURAL HISTORY**

On July 11, 1997, Plaza timely filed three Petitions for Review of Assessment (Forms 131) with the State Board challenging the 1995 assessment on each of its three commercial properties in Lawrenceburg, Indiana. The State Board conducted administrative hearings on each of Plaza's Forms 131 on October 8, 1998. On May 23, 2001, the State Board issued final determinations on each appeal, denying Plaza's requests for relief.

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<sup>2</sup> Plaza also raised constitutional claims in relation to each of these three appeals; it withdrew these claims, however, during oral argument. (Oral Arg. Tr. at 3.)

On July 10, 2001, Plaza initiated three original tax appeals. The Court heard the parties' oral arguments on January 31, 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. *Grider v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1239, 1240 (Ind. Tax Ct. 2003). 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. *See id.* at 1240-41.

A taxpayer who seeks to overturn a State Board final determination bears the burden of proving its invalidity. *Id.* at 1241. In order to meet that burden, the taxpayer must have submitted, during the administrative hearing process, probative evidence regarding the alleged assessment error. *Osolo Township Assessor v. Elkhart Maple Lane Assocs. L.P.*, 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003) (footnote omitted). Probative evidence is evidence sufficient to establish a given fact that, if not contradicted, will remain sufficient. *Id.* at n.4. Once the taxpayer demonstrates a prima facie case, the burden shifts to the State Board to support its final determination with substantial evidence. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998).

## Discussion

### I. Property 61

Plaza contends that the State Board erroneously graded Property 61's improvement. Specifically, Plaza maintains that the current grade of "B" is excessive and that the grade should be reduced to "C." In response, the State Board argues that Plaza did not present a prima facie case demonstrating that the "B" grade was in error. The State Board is correct.

Under Indiana's true tax value system, commercial properties are assigned various grades based on their workmanship, quality, and design of building. See IND. ADMIN. CODE tit. 50, r. 2.2-10-3 (1996). See also *Deer Creek Developers, Ltd. v. Dep't of Local Gov't Fin.*, 769 N.E.2d 259, 265 (Ind. Tax Ct. 2002). The assessor is to use his or her subjective judgment to distinguish significant variations in quality and design when determining the grade to be applied to a building. 50 IAC 2.2-10-3(a).

The State Board's regulations describe various characteristics that help assessors distinguish between grades. For example, "B" grade buildings are architecturally attractive and constructed with good quality materials and workmanship. These buildings have a high quality interior finish with abundant built-in features, very good lighting and plumbing fixtures, and a custom heating and air conditioning system." 50 IAC 2.2-10-3(a)(2). On the other hand, "C" grade buildings are moderately attractive and constructed with average quality materials and workmanship. These buildings have minimal to moderate architectural treatment and conform with the base specifications used to develop the pricing schedules." 50 IAC 2.2-10-3(a)(3).

In challenging the grade assigned to its building, Plaza was required to submit probative evidence demonstrating that the State Board either improperly gave the building a “B” grade or improperly denied the building a “C” grade. See *Deer Creek Developers*, 769 N.E.2d at 265-66. As this Court has previously held, however, mere references to photographs or the State Board’s regulations, without explanation, do not qualify as probative evidence with respect to grading issues. *Lacy Diversified Indus., Ltd. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003).

To support its claim, Plaza submitted to the State Board during the administrative hearing a photocopy from Indiana Administrative Code title 50, rule 2.2-11-1, which represented the General Commercial Mercantile (GCM) model for a bank. (Cert. Admin. R. at 34.) In addition, Plaza also submitted the testimony of its property tax consultant. (See Cert. Admin. R. at 38.) His testimony stated that “as far as grade goes we feel that the County does not have any basis for a grade higher than a ‘C’.” (Cert. Admin. R. at 38.) Other than merely stating that “there are some superior features . . . [and] some inferior features also[,]” Plaza failed to offer any explanation that established a comparison between the model for GCM - Bank and the characteristics of its own property. (Cert. Admin. R. at 38.)

Testimonial statements that “the grade is this” but “it should be that” are nothing more than conclusions. See *Lacy*, 799 N.E.2d at 1221. Conclusory statements do not qualify as probative evidence. *Id.* Accordingly, Plaza’s request for a grade reduction on Property 61 must fail.

## II. Property 64

Next, Plaza contends that the State Board failed to apply an obsolescence depreciation adjustment to Property 64. Specifically, Plaza maintains that the obsolescence determination should be increased from 0% to 30% because the property suffers from vacancy and flooding. The Court disagrees.

Obsolescence, a form of depreciation, is the functional or economic loss of property value expressed as a percentage reduction in the remaining value of the subject 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. See 50 IAC 2.2-10-7(e).

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. The taxpayer must relate the factors (and therefore the quantification) of obsolescence to an actual loss in property value. See *Miller Structures, Inc. v. State Bd. of Tax Comm'rs*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001). In the commercial context, actual loss corresponds to a reduction in an improvement's income generating ability. *Id.* at 953 (citations omitted).

To support its claim for obsolescence, Plaza submitted at the administrative hearing a sketch of the subject property, testimony explaining that due to a prior flood a

tenant moved out and did not return (resulting in vacant space in the subject facility), and a copy of a 1996 State Board Final Determination indicating that the subject property received an obsolescence adjustment for tax year 1992. (Cert. Admin. R. at 36-38, 43-44.)

Plaza failed to submit any evidence substantiating the vacancy allegation. At any rate, however, vacancy by itself does not prove any obsolescence, but merely serves as a sign of possible obsolescence. *Deer Creek Developers*, 769 N.E.2d at 263. In addition, Plaza failed to demonstrate a link between its obsolescence adjustment for tax year 1992 and its claim for an obsolescence adjustment for tax year 1995. See *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n.14 (Ind. Tax Ct. 1998) (holding that each tax year is separate and distinct). Accordingly, the State Board's determination that Property 64 was not entitled to an obsolescence depreciation adjustment is affirmed.

### III. Property 67

Finally, Plaza contends that the State Board erroneously assessed Property 67. Specifically, it maintains that: (a) the current grade of "C + 2" is excessive and that the grade should be reduced to "C;" (b) the failure to apply an obsolescence depreciation adjustment is in error; and (c) the condition of "good" is incorrect and should be reduced to "average."

#### (a) Grade

At the administrative hearing, Plaza presented to the State Board a copy of a 1998 State Board Final Determination indicating that its property received a "C" grade for the 1992 tax year. Plaza's tax consultant testified that for the 1995 tax year, the

grade should likewise be a “C,” and not a “C + 2.” (Cert. Admin. R. at 41-43, 48.) As stated earlier, each tax year stands alone. See *Barth*, 699 N.E.2d at 805 n.14. Consequently, the evidence presented for tax year 1992 is not relevant to tax year 1995. Because Plaza failed to support its claim for a grade reduction with probative evidence, Plaza’s request for a grade reduction must fail.

(b) Obsolescence

Plaza presented testimony at the State Board hearing indicating that its property was located in a flood zone. (Cert. Admin. R. at 50.) Plaza thus contends that a 10% obsolescence depreciation adjustment should be applied. (Cert. Admin. R. at 50.) In support of its contention, Plaza offered no evidence indicating a loss of tenants or explaining how it arrived at the requested 10% adjustment. Plaza therefore failed to establish a connection between Property 67’s location in a flood zone and any resulting loss of income. Accordingly, the State Board’s determination of 0% obsolescence depreciation adjustment for Property 67 is affirmed.

(c) Condition

Condition represents an improvement’s remaining usefulness. 50 IAC 2.2-10-7(b). To estimate an improvement’s condition, the assessor must observe the amount of physical deterioration (i.e., “wear and tear”) relative to the age of the improvement, as well as the degree of both maintenance and modernization to the improvement. See *id.* The assessor then assigns one of nine levels of condition ranging from “excellent” to “no value.” IND. ADMIN. CODE tit. 50, r. 2.2-10-5(d)(8)(A)-(I) (1996).

In presenting this issue to the State Board, the taxpayer could have offered specific examples of the types of physical deterioration its building was suffering from



and how that depreciation related to the age of the building. See *Lacy*, 799 N.E.2d at 1223. Here, Plaza merely presented to the State Board a copy of a State Board Final Determination indicating that the improvement had an “average” condition for tax year 1992 and therefore concluded that an “average” condition rating should be used. (Cert. Admin. R. at 41-43, 50.)

This evidence does not demonstrate what types of deterioration had occurred and how it was unusual for a building of its age. Furthermore, Plaza failed to establish a comparison between the property in 1992 and its property in 1995. See *Barth*, 699 N.E.2d at 805 n.14 (holding that each tax year stands alone). Accordingly, the State Board’s determination of a “good” condition rating for Property 67 is affirmed.

### **CONCLUSION**

For the aforementioned reasons, the Court AFFIRMS the final determinations of the State Board on all counts.