

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-001-02-1-4-00117  
**Petitioner:** Miller Village Properties Co., LLC  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 001-25-45-0266-0001  
**Assessment Year:** 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

### Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held on March 3, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$4,374,300 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004
3. The Board issued a notice of hearing to the parties dated July 15, 2005.
4. Special Master Peter Salveson held a hearing on September 7, 2005, in Crown Point, Indiana. .

### Facts

5. The subject property is located at 812 County Line Road, Gary, in Calumet Township, Lake County, Indiana.
6. The subject property is a 246-unit apartment complex on 9.004 acres of land.
7. The Special Master did not conduct an on-site visit of the property
8. The DLGF determined the assessed value of the subject property to be \$232,400 for the land and \$4,050,900 for the improvements for a total assessed value of \$4,374,300.
9. The Petitioner requested an assessed value of \$81,030 for the land and \$2,378,970 for the improvements for a total value of \$2,460,000.

10. Thomas Raynor, appraiser and witness for the Petitioner, and James Hemming, representing the DLGF, appeared at the hearing and were sworn as witnesses. Timothy R. Sendak, Counsel for the Petitioner, was present, but not sworn as a witness.

### **Issues**

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
  - a. The Petitioner contends that the current assessment is higher than the market value of the subject property. The Petitioner submitted an appraisal estimating the market value of the property to be \$2,950,000 as of March 1, 2002. *Petitioner Exhibit 5*. The appraisal was prepared by a licensed appraiser and considered all three approaches to value. *Id.*
  - b. The appraiser testified that the value of the subject property as of the January 1, 1999, valuation date would be lower than the value indicated in the appraisal. Using the 2000 net income and a 10% capitalization rate, the appraiser estimated that the value of the subject property as of January 1, 1999, would be \$2,130,000. *Raynor testimony; Petitioner Exhibit 5, page 19.*
  - c. The appraiser testified that of the sales used in the sales comparison approach Sale #1 was most similar in location to the subject. The value per unit for the comparable is \$11,015 and the sale date September 1998. This untrended value would be a good indicator of value for 1999. *Raynor testimony; Petitioner Exhibit 5, page 12.*
  - d. The witness testified that he did not understand how Cole, Layer, Trumble calculated the original assessment of \$6,838,500 or the current assessed value of \$4,374,300. *Raynor testimony; Petitioner Exhibit 1.*
12. Summary of Respondent's contentions in support of the assessment:
  - a. The Respondent contends that the subject property was valued using the cost approach and presented the subject property record card as well as a summary of the methodology used to determine the land value. *Hemming testimony; Respondent Exhibit 1.*
  - b. The Respondent testified that the subject property received a 40% obsolescence adjustment as a result of the informal hearing. *Hemming testimony.*

## Record

13. The official record for this matter is made up of the following:

- a. The Petition,
- b. The tape recording of the hearing labeled Lake County 1655,
- c. Exhibits:

Petitioner Exhibit 1: Notice of Final Assessment,  
Petitioner Exhibit 2: Form 139L Petition,  
Petitioner Exhibit 3: Final Determination dated March 28, 2002,  
Petitioner Exhibit 4: Professional Resume of Thomas Raynor, SRPA,  
Petitioner Exhibit 5: Appraisal Report for March 1, 2002,

Respondent Exhibit 1: Subject property record card,  
Respondent Exhibit 2: Subject Property Photo,  
Respondent Exhibit 3: Incremental/Decremental Land Summary,  
Respondent Exhibit 4: Plats/Aerial Maps,

Board Exhibit A: Form 139L Petition,  
Board Exhibit B: Notice of Hearing,  
Board Exhibit C: Sign-In Sheet,

- d. These Findings and Conclusions.

## Analysis

14. The most applicable governing cases are:

- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
- b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
- c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*,

805 N.E.2d at 479.

15. The Petitioner did provide sufficient evidence to support the Petitioner's contentions. The Respondent did not rebut the Petitioner's contentions. This conclusion was arrived at because:
- a. The Petitioner contends that the assessment on the subject property is excessive based on a previous assessment and an Appraisal Report. .

*Previous Assessment*

- b. The Petitioner presented one page of a Final Determination issued by the Board for a 1995 appeal. *Petitioner Exhibit 3*.
- c. The one page of the Final Determination shows only the land and improvement assessments; no details are given as to how the total was determined. Even had the entire determination been presented, it would not be probative of error in the current assessment. In original tax appeals, each assessment and each tax year stands alone. *See Thousand Trails Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 1072, 1077 (Ind. Tax Ct. 2001). Thus, unless otherwise indicated, evidence submitted for one petition or tax year will not be used as evidence for a different petition or tax year. *Id.*
- d. Furthermore, the Respondent noted that the 1995 determination showed the assessment at one-third the total assessed value; the actual assessed value would have been \$2,740,920. *Hemming testimony; Petitioner Exhibit 3*.
- e. The Petitioner failed to establish a prima facie case based on the previous assessment.

*Appraisal Report*

- f. The Petitioner presented an appraisal prepared by a licensed appraiser, which indicated a market value of \$2,950,000 for the subject property as of March 1, 2002. This appraisal considered all three approaches to value. *Petitioner Exhibit 5*.
- g. The 2002 Real Property Assessment Manual (MANUAL) provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property). The same is true with regard to evidence of the sale price of a subject property, where the sale is consummated on a date substantially removed from January 1, 1999.

- h. The appraiser testified that the value of the subject property would have been lower in 1999 and that the value indicated in the appraisal would equate to an approximate value of \$2,130,000 as of the January 1, 1999, valuation date. The appraiser based that estimate on the income from 2000 and a capitalization rate of 10%. *Raynor testimony; Petitioner Exhibit 5, page 19*. This approximate value is an unsubstantiated opinion. The appraiser did not include the income for 1999 in the appraisal and did not research the capitalization rate for that year as he did for 2002. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
- i. The appraisal did include a 1998 sale of a comparable apartment complex. *Petitioner Exhibit 5, page 12*. The appraiser testified that he relied most heavily on that sale and that the untrended value of \$11,015 per unit would be a good indicator of value for 1999. *Id.*; *Raynor testimony*. The Board agrees in part. The comparable is in the same city, has 202 units, and is approximately the same age as the subject property, but in superior condition to the subject. The adjusted unit value is \$12,953; the subject is assessed at \$17,781 per unit. *Id.*
- j. As a result, the Petitioner did establish a prima facie case that the subject property is over-assessed. As a result, the burden shifted to the assessing official to rebut the Petitioner's evidence. *American United Life Ins. Co.*, 803 N.E.2d 276
- k. The Respondent testified that as a result of the informal hearing, a 40% obsolescence factor was applied to the subject improvements. The buildings were valued according to the Guidelines. *Hemming testimony; Respondent Exhibit 1*.
- l. The Respondent's evidence was insufficient to impeach the Petitioner's evidence.
- m. The Board finds that the current assessment should be changed to \$3,186,400, an amount equal to the adjusted per unit value of comparable #1 multiplied by the subject's 246 units.

### **Conclusion**

- 16. The Petitioner established a prima facie case. The Respondent did not rebut the Petitioner's evidence. The Board finds in favor of the Petitioner and concludes that the current assessment should be changed to a value equal to \$3,186,400.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: February 2, 2006

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Commissioner,  
Indiana Board of Tax Review

### IMPORTANT NOTICE

#### - APPEAL RIGHTS -

**You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code § 4-21.5-5-7(b)(4), § 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at [http://www.in.gov/judiciary/rules/trial\\_proc/index.html](http://www.in.gov/judiciary/rules/trial_proc/index.html). The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.**