

REPRESENTATIVES FOR PETITIONER:

Bradley J. Adamsky, Attorney, Newby, Lewis, Kaminsky & Jones, LLP
Robert R. Porter, Tax Representative

REPRESENTATIVES FOR RESPONDENT:

Marilyn S. Meighen, Attorney, Meighen & Associates, P.C.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Country Acres Limited	)	Petition No.:	46-058-04-1-4-00001
Partnership	)	Parcel:	571106201013
)		
Petitioner,)		
)		
v.)		
	)	County:	LaPorte
Pleasant Township Assessor	)	Township:	Pleasant
	)	Assessment Year:	2004
Respondent)		

Appeal from the Final Determination of
LaPorte County Property Tax Assessment Board of Appeals

January 21, 2009

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. In this assessment appeal, we are faced with three different valuation opinions, all of which are less than the property’s current assessment. Two of the opinions

were from experts who are not certified appraisers, one of whom had a direct financial interest in this appeal's outcome. The third opinion was from a certified appraiser who appraised the property in accordance with the Uniform Standards of Professional Appraisal Practice. We find that appraiser's opinion to be the most reliable of the three and we therefore order a corresponding reduction in the property's assessment.

BACKGROUND AND PROCEDURAL HISTORY

2. Country Acres Limited Partnership filed a Form 130 petition asking the LaPorte County Property Tax Assessment Board of Appeals ("PTABOA") to lower the subject property's 2004 assessment. On August 15, 2006, the PTABOA issued its determination upholding that assessment. Country Acres then filed a Form 131 petition asking us to review the property's assessment. We have jurisdiction over Country Acres's appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.
4. On October 21, 2008, our designated administrative law judge, Ellen Yuhan ("ALJ"), held a hearing in LaPorte.
5. The following people were sworn-in and testified at the hearing:
For Country Acres: Robert R. Porter, certified tax representative
Dennis J. Dillman
For the Pleasant Township Assessor: Joshua D. Pettit, Nexus Group, Inc.
6. Country Acres offered the following exhibits:
Petitioner Exhibit 1 – Notice of Hearing
Petitioner Exhibit 2 – Robert Porter's resume
Petitioner Exhibit 3 – Power of attorney
Petitioner Exhibit 4 – Amended summary of appeal
Petitioner Exhibit 5 – Summary of appeal presented to the PTABOA
Petitioner Exhibit 6 – Form 115
Petitioner Exhibit 7 – Report of the LaPorte County PTABOA meeting

Petitioner Exhibit 8 – August 18, 2006, letter to Joie Winksi from Robert Porter

Petitioner Exhibit 9 – Undated e-mail from Robert Porter to Frank Kelly; August 26, 2006, e-mail from Frank Kelly to realtytaxes@aol.com and miehenlaw@att.net; unsigned letter to Frank Kelly; September 3, 2007, e-mail from Frank Kelly to Robert Porter (RealtyTaxes@aolc.om); March 7, 2006, e-mail from RealtyTaxes to Jeff Wuensch.¹

Petitioner Exhibit 10 – Form 8825 for 2004 and the 2004 income and expenses

Petitioner Exhibit 11 – Estimates to replace water heater

Petitioner Exhibit 15 – Complete Appraisal of Real Property prepared by Janet E. Sallander, Cushman & Wakefield of Illinois, Inc.

7. The Assessor offered the following exhibits :

Respondent Exhibit A – Comparable Sales Approach for Section 8 Apartments

Respondent Exhibit B – Time Adjusted Sales and Appraisal Data

Respondent Exhibit C – E-mail from Frank Kelly to Josh Pettit.

8. We recognize the following additional items as part of the record of proceedings and label them as Board Exhibits:

Board Exhibit A – Form 131 petition

Board Exhibit B – Notice of hearing dated July 18, 2008

Board Exhibit C – Sign-in sheet

9. The ALJ did not inspect subject property.

¹ The Assessor objected to Exhibits 9, 12, 13, and 14 because the Country Acres did not establish any foundation. Country Acres withdrew the exhibits, but later offered Exhibit 9, which the ALJ admitted without objection.

10. The PTABOA determined the assessed value of the property to be:
Land: \$103,900 Improvements: \$3,232,300 Total: \$3,336,200.
11. The Petitioner contends the assessed value should be:
Land: \$103,900 Improvements: \$733,021 Total: \$836,921.

OBJECTION

12. Country Acres objected to Respondent's Exhibit C—an October 13, 2008, e-mail from Frank Kelly to Joshua Pettit containing what Mr. Pettit described as information from *housing.com* and some articles that “are published out there.” *Pettit testimony*. Mr. Pettit did not consult the original sources, and it is unclear whether the e-mail contains verbatim excerpts or Mr. Kelly's summary of the articles. Country Acres objected because the e-mail contained hearsay and because the Assessor did not lay a foundation to show that it reflected the actual articles. *Adamsky objection*. The ALJ admitted the exhibit over Country Acres's objection, but later said that the objection would be addressed in our findings.
13. We uphold the ALJ's decision to admit Exhibit C. The exhibit is hearsay—it contains statements made by an out-of-hearing declarant offered to prove the truth of the matters asserted in those statements. *See* INDIANA EVID. R. 801 (“Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”). Nonetheless, our procedural rules allow us to admit hearsay, as long as we do not base our final determination solely on objected-to hearsay. IND. ADMIN. CODE tit. 52, r. 2-7-3. In deciding whether to admit hearsay, we determine whether it bears any indicia of reliability. Exhibit C strains the limit of that test, given that Mr. Pettit could not identify the precise source of the articles and that we cannot tell from the exhibit itself whether the offered assertions are verbatim excerpts from articles or Mr. Kelly's summaries. But we see no need to change the ALJ's ruling. We simply give no weight to the exhibit.

FINDINGS OF FACT

14. The subject property is 10-building apartment complex located at 1704 Country Lane Drive in LaPorte. The complex was built in 1972. *See Pet'r Ex. 5.* Country Acres rents to low-income tenants under a governmental rent-subsidy program known as "Section 8." Under that program, Country Acres's tenants pay only a portion of their rent and the United States Department of Housing and Urban Development pays the rest. *Porter testimony.* In July of 2005, 77 of the complex's 100 apartments were occupied by tenants who received rent subsidies. *Pet'r Ex. 15 at 42.*

15. The parties offered three different opinions of the property's value—one by Robert Porter, Country Acres's tax representative, one by Janet Sallander, a certified appraiser, and one by Joshua Pettit, an employee of Nexus, Inc. who performs assessing duties for LaPorte County. Dennis J. Dillman, a member of the St. Joseph County PTABOA also gave his opinion about the relative merits of Mr. Porter's and Ms. Sallander's opinions.

A. Mr. Porter's opinion

16. Mr. Porter believed that the subject property's market value-in-use was \$836,921. *Porter testimony; Pet'r Ex. 4.* Mr. Porter is not licensed or certified as an appraiser, but he is certified as a Level II assessor/appraiser by the Department of Local Government Finance. *Porter testimony; Pet'r Ex. 2.* Mr. Porter acknowledged that Country Acres agreed to pay him a contingency fee and that the lower the property's value on appeal, the more he would be paid. *Porter testimony.*

17. In estimating the subject property's value, Mr. Porter relied solely on the income approach. *Porter testimony; Pet'r Exs. 4-5.* He rejected the cost approach for two reasons. First, the age of the buildings made estimating depreciation difficult,

- if not impossible. Second, in his view, no investor would use the cost approach to determine an investment position. *Porter testimony*. Mr. Porter similarly rejected the sales-comparison approach. He felt that approach was inapplicable because it estimates value-in-exchange rather than value-in-use. In his view, value-in-exchange is incompatible with how the 2002 Real Property Assessment Manual defines true tax value. *Porter testimony*.
18. In developing his income-approach analysis, Mr. Porter first estimated the subject property's net operating income. To do so, he looked at Country Acres's federal tax returns and profit and loss statements for 2001 – 2003. *Porter testimony; Resp't Ex. 5*. Mr. Porter largely relied on the expenses listed on Country Acres's tax returns, including those listed for repairs. *Porter testimony; Pet'r Exs. 4-5*.
19. Mr. Porter, however, departed from the tax returns and profit-and-loss statements in two significant ways—(1) he did not deduct expenses for real estate taxes, depreciation, or debt service, and (2) he did not use the amount listed under “Reserves for Replacement Deposits.” As to the first departure, Mr. Porter did not believe that depreciation and debt service were allowable expenses under the income approach. And while he acknowledged that real-estate taxes should be considered, he accounted for those taxes by loading them into his capitalization rate. *Porter testimony; Pet'r Ex. 4; see also Pettit testimony* (explaining what a “loaded” capitalization rate is).
20. As for his decision to use his own calculations for replacement reserves, Mr. Porter simply explained how he determined those costs. Citing to International Association of Assessing Officers, *Property Assessment Valuation* (2nd ed.), Mr. Porter described replacement reserves as allowances for replacing short-lived parts of a building before the building reaches the end of its economic life. *Porter testimony*. He distinguished replacement reserves from repair expenses, which he described as costs incurred to maintain items in operating condition. *Id.* Mr. Porter thought that 11 items would need to be replaced before the subject buildings reached the end of their economic lives—asphalt paving, carpeting,

- central-air units, disposals, heating units, exterior siding, ranges and hoods, refrigerators, cabinets, roofs, and water heaters. *Id.; Pet'r Ex. 4.* He then consulted contractor estimates, cost manuals, and property managers to determine the replacement cost new of each item, which he spread over the item's economic life. In that way, he estimated total annual replacement reserves of \$83,903. *Id.*
21. Mr. Porter's calculations ,however, varied dramatically from the "Reserve for Replacement Deposits" listed in Country Acres's profit-and-loss statements. Those amounts were \$0, \$7,850, and \$8,580 respectively. *Pet'r Ex. 5.* When asked to explain that difference, Mr. Porter simply said that he was not an accountant and did not know why those numbers were in the profit-and-loss statements. *Porter testimony.*
 22. All told, Mr. Porter calculated operating expenses and reserves totaling \$531,582. He deducted that amount from the subject property's gross income of \$633,222 to arrive at net operating income of \$101,640. *Porter testimony; Pet'r Ex. 4.*
 23. Mr. Porter then looked to Integra Realty Resources to determine an appropriate capitalization rate. *Porter testimony; Pet'r Exs. 4-5.* He chose a rate of 9%, which was the reversion capitalization rate for the Indianapolis area. *Id.* He then loaded that rate by 2.35% to account for real-estate taxes and arrived at a total overall rate of 11.35%. *Id.* When he divided the subject property's net operating income by that rate, it yielded a value of \$895,506. *Porter testimony; Pet'r Ex. 4-5.*
 24. Finally, Mr. Porter adjusted his estimate to reflect the subject property's value as of January 1, 1999. He looked at Viewpoint Reports from Integra and determined that values had increased 7% between 1999 and 2004. *Porter testimony; Pet'r Ex. 5.* He therefore reduced the property's 2004 value by 7%, which yielded a 1999 value of \$836,921. *Id.*

B. Ms. Sallander's opinion

25. Country Acres also offered a self-contained appraisal report prepared by Janet E. Sallander, an Indiana certified general appraiser and member of the Appraisal Institute. *Pet'r Ex. 15*. Ms. Sallander appraised the subject property's market value at \$2,200,000 as of June 28, 2005. *Id.* She prepared the appraisal for First Bank of Beverly Hills, F.S.B. to use "in evaluating potential financing on a sale transaction." *Id. at Introduction, p. 1.*
26. Ms. Sallander prepared her report in conformity with the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute, which included the Uniform Standards of Professional Appraisal Practice. *Pet'r Ex. 15 at 56*. In reaching her valuation opinion, she used the sales-comparison and income approaches. She did not use the cost approach because she felt that the subject buildings' ages prevented her from accurately estimating depreciation and because investors typically do not rely on that approach when buying a property like the subject property. *Id. at 28*.
27. In her sales-comparison analysis, Ms. Sallander identified six comparable properties that sold between July 2003 and October 2004. *Pet'r Ex. 15 at 30-37*. Due to what she described as a depressed local economy, she had to use some properties that were not in directly comparable locations. *Id. at 51*. Three of the properties were from Indianapolis, two more were from Merrillville and LaPorte, and two were from Illinois. *Pet'r Ex. 15 at 30-37*. Ms. Sallander then adjusted each property's sale price to account for various ways in which it differed from the subject property. *Id.* In particular, she reduced each property's sale price to reflect its relatively superior location. She also reduced each property's sale price to reflect the subject property's "higher than typical" expense ratio, which she attributed largely to the greater costs associated with the subject property's subsidized tenancies. *Id. at 34*. Notably, she did not adjust the sale prices to

account for changes in the market between the sale dates and the date of her appraisal, finding that the market had “generally remained the same.” *Id. at 33.*

28. After adjustments, the comparable properties’ sale prices ranged from \$18,050 to \$27,853 per unit. *Id. at 35.* Ultimately, Ms. Sallander felt that the Merrillville property, which sold for an adjusted price of \$23,738 per unit, was the most comparable to the subject property in terms of location and condition. She therefore gave that sale the greatest weight in settling on a value of \$2,300,000 (\$23,000 per unit) for the subject property. *Id.*
29. For her income approach, Ms. Sallander compared the subject property’s rents to those charged by comparable properties in LaPorte, Michigan City, and Portage. *Pet’r Ex. 15 at 40-45.* One of those properties had 100% rent-subsidized apartments. The other properties did not have any subsidized apartments. *Id. at 42.* Ms. Sallander found that the subject property’s quoted rents were within the range of market rents charged by the comparable properties, and she used the subject property’s actual contract rents to determine its potential gross rental income. After subtracting an estimated 4% for vacancy and collection losses, she arrived at an effective gross income of \$664,380. *Id. at 45.*
30. To forecast operating expenses, Ms. Sallander again looked both at the subject property’s actual experience and at the experience of comparable properties. *Pet’r Ex. 15 at 46.* While the subject property had a higher than normal expense-to-income ratio, that ratio was at the upper end of the range suggested by the comparable properties. *Id.* Ms. Sallander therefore based her expense forecast on the subject property’s historical expenses. *Id.* She used \$25,000 (\$250 per unit) for replacement reserves, \$20,000 (\$200 per unit) for repairs and supplies, and \$7,500 (\$85 per unit) for cleaning and decorating. *Id.* Ms. Sallander explained that, while she separated those three expenses, the owner’s historical information had lumped them together. *Id. at 47.* Unlike Mr. Porter, Ms. Sallander included real-estate taxes in calculating the property’s operating expenses. *Id.*

31. After deducting her forecasted operating expenses of \$515,056 (\$5,151 per unit) from the property's effective net income, Ms. Sallander estimated total net operating income of \$149,234 (\$1,493 per unit). *Id. at 48.*
32. Ms. Sallander next determined an appropriate "going-in" capitalization rate. In doing so, she looked both at rates derived from the sales of the six comparable properties that she used in her sales-comparison analysis and at capitalization rates published by two investor surveys. The comparable sales yielded capitalization rates ranging from 5.23% to 9.22%, with an average of 7.60%. The surveys showed going-in rates ranging from 4.5% to 9.3% and 5.7% to 6.7%, respectively, and averages of 6.7% and 6.2%. *Id. at 49.* Based on that data, Ms. Sallander settled on a capitalization rate of 6.75%. When she divided that rate into the property's estimated net operating income, she arrived at a rounded value of \$2,200,000. *Id. at 50.*
33. In reconciling her findings, Ms. Sallander gave more weight to her conclusions under the income approach. She felt that the income approach best mirrored the methodologies used by investors when buying properties like the subject property. *Pet'r Ex. 15 at 51.* Although she acknowledged that having to use properties from outside the subject property's locale was less than ideal, she believed that she had sufficiently adjusted their sale prices to account for those location differences and that her conclusions were reliable. She therefore gave her conclusions under the sales-comparison approach "secondary consideration." *Id.*

C. Mr. Pettit's opinion

34. Joshua Pettit also offered his opinion about the subject property's value. Mr. Pettit is certified as a Level II assessor/appraiser who works for Nexus Group, Inc. As part of his duties, Mr. Pettit reviews commercial and industrial property for LaPorte and other counties and assists the PTABOA with appeals. *Pettit testimony.*

35. Mr. Pettit first looked at Respondent's Exhibit A. Mr. Pettit, however, did not know who prepared that document. *Pettit testimony*. Exhibit A contains information about three Section-8 apartment complexes, including their time-adjusted sale prices. *Resp't Ex. A*. Those prices range from \$28,165 to \$31,351 per unit. *Id.* The time adjustment was based on the same information that Mr. Porter used to adjust his valuation opinion from 2004 to January 1, 1999. *Pettit testimony*.
36. Mr. Pettit also looked at Ms. Sallander's appraisal. He again used Mr. Porter's information to adjust Ms. Sallander's valuation opinion to a January 1, 1999, value of \$21,359 per unit. *Pettit testimony; Resp't Ex. B*. While Mr. Pettit did not have any opinion about the quality of Ms. Sallander's appraisal, he noted that it was much closer to the range suggested by the three comparable sales listed in Exhibit A than to Mr. Porter's valuation opinion. *Id.*
37. Mr. Pettit also analyzed the subject property's value using the income approach. He took data from the subject property's 2001-2003 tax returns and its profit-and-loss statements and prepared a "pro forma" statement. *Pettit testimony; Resp't Ex. B*. In preparing his pro forma, Mr. Pettit capped the subject property's expenses at 60% of its income. *Id.* He based that cap on Nexus's experience as to what is typical for apartment complexes throughout the state and on information from Respondent's Exhibit C—an e-mail from Frank Kelly. *Pettit testimony*.
38. Mr. Pettit then divided the property's net operating income by what he described as a loaded capitalization rate of 9.5%. *Pettit testimony; Resp't Ex. B*. That was the average rate indicated by the three sales listed in Respondent's Exhibit A. *Id.* Mr. Pettit, however, admitted that he did not know whether real-estate taxes had been subtracted as an expense in calculating the three properties' net operating incomes. *Pettit testimony*. Mr. Pettit also checked his 9.5% rate against the reports from Integra Realty Resource that Country Acres included in its evidence. *Pettit testimony; Pet'r Ex. 5*. He felt that those rates, which were around 9%,

confirmed his rate. He did not further load the survey rates, because those rates are normally premised on real-estate taxes having been included in calculating a property's net operating income. *Pettit testimony*. When Mr. Pettit divided his 9.5% rate into the subject property's net operating income, he arrived at an estimated value of \$2,560,000. *Id. Resp't Exs. A-B*. Once again, he adjusted that number to a January 1, 1999, value of \$2,393,000. *Pettit testimony; Resp't Ex. B*.

39. In explaining why his valuation opinion differed so markedly from Mr. Porter's, Mr. Pettit focused on the differences in operating expenses that each used in calculating the property's net operating income. Mr. Pettit explained that, in his experience, apartment-complex owners save little for replacement reserves, choosing instead to expense those items as repairs. *Pettit testimony*. By using Country Acres's listed repair expenses—which likely included amounts more properly characterized as replacement reserves—and then adding \$83,903 in replacement reserves, Mr. Porter “double dipped.” *Pettit testimony*. Indeed, Mr. Porter deducted total operating expenses equaling close to 85% of the property's gross income. *Pettit testimony*.

D. Mr. Dillman's opinion

40. Finally, Dennis Dillman gave his view about the relative credibility of Mr. Porter's and Ms. Sallander's valuation opinions. Although he is a certified appraiser, Mr. Dillman did not testify in that capacity. *Dillman testimony*. He admitted that he did not appraise the subject property and that USPAP therefore prohibited him from giving an opinion about its value. *Id.* And he did not do a review appraisal of Mr. Sallander's appraisal because that is a specific function of an appraiser. *Id.* Mr. Dillman instead performed “administrative audit[s]” of Mr. Porter's analysis and Ms. Sallander's appraisal and testified in his capacity as a “freeholder.” *Id.*
41. Mr. Dillman pointed to several things in Mr. Sallander's appraisal that he felt were problems, including what he viewed as an exceedingly low capitalization

rate and comparable properties that were more than twice the subject property's size and were from places as far away as Illinois and Indianapolis. *Dillman testimony*. By contrast, he felt that Mr. Porter's estimate was "not far off the mark," although it was a "bit on the low side." Finally, Mr. Dillman felt that the increase in the subject property's assessment between its 2001 value of \$1,620,400 and its 2002-2004 value of \$3,336,200 was "almost confiscatory."

CONCLUSIONS OF LAW AND ANALYSIS

A. Burden of proof

42. A taxpayer seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and what the correct assessment should 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). If the taxpayer meets that burden, the assessing official must offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479. But the burden of persuasion remains with the taxpayer. *See Thorntown Tel. Co. v. State Bd. of Tax Comm'rs*, 629 N.E.2d 962, 965 (Ind. Tax Ct. 1995).
43. Of course, that begs the question of what types of evidence the parties may offer to meet their respective burdens. To answer that question, the Board turns to the 2002 Real Property Assessment Manual and the basic principles underlying Indiana's assessment system. Indiana assesses real property based on its true tax value, which Manual defines as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property's market value: the

cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (“USPAP”) often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. The parties may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

44. Whatever evidence the parties use, they must explain how it relates to the property’s market value-in-use as of the relevant valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property’s value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment). For the March 1, 2006, assessments, that date is January 1, 2005. IND. ADMIN. CODE tit. 50, r. 21-3-3.

B. The competing valuation opinions

45. In this case, the parties agree that the subject property’s 2004 assessment was too high. But they offered three competing opinions about its actual market value-in-use. We therefore must determine which of the three opinions best reflects the property’s true tax value.

1. Mr. Porter’s and Mr. Pettit’s opinions were unreliable

46. We begin with Mr. Porter’s opinion. He came up with the lowest value by far. That is not surprising, given that Country Acres retained Mr. Porter on a contingency-fee basis, which gave him a direct financial interest in the appeal’s outcome. While that financial interest does not make Mr. Porter’s testimony inadmissible, it causes us to doubt his objectivity.² And those doubts take away from the weight we give to his opinion.

² *See Wirth v. State Bd. of Tax Comm’rs*, 613 N.E.2d 874, 876-77 (Ind. Tax. Ct. 1993) (explaining that, while contingently paid expert witnesses are disfavored, that payment arrangement goes to the weight to be given to the expert’s testimony rather than to its admissibility).

47. We also find two more specific reasons to doubt the reliability of Mr. Porter's valuation opinion—his calculation of the subject property's operating expenses and his choice of a capitalization rate. In fact, those two things are primarily what separate Mr. Porter's valuation opinion from the opinions of Ms. Sallander and Mr. Pettit.
48. Mr. Porter made a very curious choice in determining the subject property's operating expenses. He used his own calculation of replacement reserves but simply accepted Country Acres's tax returns and profit-and-loss statements for all other allowable expenses, including repairs. As Ms. Sallander said in her appraisal report, however, Country Acres lumped what properly should have been classified as replacement reserves together with its other repair and maintenance costs. Its profit-and-loss statements therefore reflected little or only nominal amounts for replacement reserves. Thus, by using Country Acres's stated repair costs and then adding another \$83,903 for replacement reserves, Mr. Porter counted replacement reserves twice and grossly distorted the property's operating expenses. Not surprisingly, that led to much lower overall value.
49. Mr. Porter similarly erred in choosing a capitalization rate. He chose his rate from a published investor survey. But he loaded that rate by adding 2.35% for real estate taxes. As Mr. Pettit pointed out, though, the published investor survey that Mr. Porter relied on likely accounted for real-estate taxes by including them as operating expenses. *See Pettit testimony.* Indeed, Ms. Sallander apparently assumed as much given that she did not load published survey rates when comparing them to her own market-derived rate. Thus, as with his replacement reserves, Mr. Porter counted real-estate taxes twice. Once again, that led to a much lower value.
50. Mr. Porter also limited his analysis to the income approach, eschewing the other two generally accepted valuation approaches. We have no qualms with him rejecting the cost approach. All of the experts in this case agreed that the cost

approach would not have been reliable given the age of the subject apartments and the fact that investors do not rely on that approach when buying apartment complexes.

51. But Mr. Porter's decision to dispense with the sales-comparison approach is another matter. He justified that decision on grounds that true tax value is not market value, but rather market value-in-use. In his view, because the sales-comparison approach measures value in exchange, which is the same as market value, it is inappropriate for determining a property's true tax value.
52. Mr. Porter's position fundamentally misconstrues Indiana's assessment regulations. As the Manual explains, in markets where properties of the type in question readily exchange, market value-in-use will equal value-in-exchange. MANUAL at 2. The Manual, however, recognizes at least two instances in which a property's market value-in-use may differ from its value-in-exchange: (1) where the utility derived from the property is higher than its sale price, and (2) where owners are motivated by non-market factors, such as maintaining a farming lifestyle in the face of higher use values. *Id* at 2.
53. Country Acres did not offer any evidence to show that the subject property's market value-in-use differed from its value-in-exchange. At most, Mr. Porter tried to distinguish between Section-8 properties and non-subsidized complexes. But he could not point to any specifics about the Section-8 program to support a finding that Country Acres was using the property for something less than its highest and best use. *Pet'r Ex. 15 at 26*. To the contrary, Ms. Sallander expressly found that Country Acres was using the property for its highest and best use. Thus, the subject property's market value-in-use was the same as its value-in-exchange and Mr. Porter's decision to ignore the sales-comparison approach detracts from the reliability of his valuation opinion.
54. Thus, in light of Mr. Porter's direct financial interest in this appeal's outcome and the significant flaws in his analysis, we give his valuation opinion little weight.

55. That leaves us with Mr. Pettit's and Ms. Sallander's opinions. Mr. Pettit's opinion, however, was no more reliable than Mr. Porter's. In reaching his opinion, Mr. Pettit relied on sales information for three properties contained in Respondent's Exhibit A. But Mr. Pettit admitted that he neither prepared that exhibit nor even knew who did. *Pettit testimony*. Although he relied on the capitalization rates derived from those sales, he knew nothing about how the properties' net operating incomes were calculated. He therefore did not know whether the derived capitalization rates needed to be loaded to account for real-estate taxes. *Id.*

2. Ms. Sallander's opinion was the most reliable

56. Ms. Sallander's opinion, by contrast, suffered from none of the flaws that plagued Mr. Porter's and Mr. Pettit's opinions. Unlike Mr. Pettit, Ms. Sallander knew about the reliability of the underlying data that she used in her analysis. Similarly, unlike Mr. Porter, Ms. Sallander did not stand to benefit from her opinion being either higher or lower than the subject property's assessment. She also considered all three generally accepted valuation approaches and she fully developed the sales-comparison and income approaches. More importantly she did not double count expenses in determining the subject property's net operating income. And while she estimated the property's value as of June 28, 2005, the parties agreed that market values had increased roughly 7% between 1999 and 2004. That, combined with Ms. Sallander's belief that values had remained stable between 2003 and the date of her appraisal, was sufficient to relate her \$2,200,000 appraisal to a January 1, 1999, value of \$2,135,900.

57. Country Acres, however, attacked Ms. Sallander's opinion on three main grounds. First, Country Acres argued that, in using the sales-comparison approach, Ms. Sallander focused on the property's value-in-exchange rather than its value-in-use, and that she relied on properties that did not closely compare to the subject property. Second, Country Acres felt that Ms. Sallander's income-

- approach analysis was unreliable because she underestimated the subject property's expenses and chose an inappropriate capitalization rate. Finally, Ms. Sallander appraised property more than a year after the March 1, 2004, assessment date. Those points have little merit.
58. We have already rejected Country Acres's claim that the sales-comparison approach cannot be used to determine a property's true tax value. Its claim that Ms. Sallander relied on insufficiently comparable sales, however, bears a closer look. Mr. Porter pointed out that each of Ms. Sallander's comparable properties differed from the subject property in some way. Some were newer. Others had a different number of apartments. Most were from relatively distant locations, including two in Illinois. And none were Section-8 properties. *Porter testimony; Pet'r Ex. 15*. In fact, Ms. Sallander acknowledged that the properties were not as comparable as she would have liked. *See Pet'r Ex. 15 at 51*. She especially disliked having to look to properties in markets different from the subject property's market.
59. But those differences did not make Ms. Sallander's valuation opinion unreliable. Ms. Sallander used those sales because she could not find recent sales that were more comparable. Indeed, while Mr. Dillman testified that complexes in South Bend and Elkhart had been sold, he did not identify any specific sales nor did he explain how those properties compared to the subject property. *See Dillman testimony*. In fact he later said that the South Bend/Elkhart market was not particularly comparable to LaPorte's market. Plus, Ms. Sallander adjusted the comparable properties' sale prices to account for the various ways in which they differed from the subject property, including the differences that Country Acres pointed out. And even if her sales-comparison approach was unreliable, she ultimately gave it only "secondary" consideration. *Pet'r Ex. 15 at 51*.
60. The Board similarly finds little merit in Country Acres's attacks on Mr. Sallander's income-approach analysis. While Country Acres argued that Ms. Sallander underestimated the subject property's operating expenses, her estimate

- was truer to the property's actual historical expenses than Mr. Porter's estimate was. Unlike Mr. Porter, she recognized that Country Acres had lumped several expenses together under the heading of repairs. She therefore separated them. Mr. Porter, by contrast, used Country Acres's reported expenses and then added another \$83,903 for replacement reserves.
61. Ms. Sallander also generally supported her chosen capitalization rate. She extracted a capitalization rate from the sale of comparable properties, although she did not explain in depth how those properties compared to the subject property. She also checked her rate against rates for garden-style apartments contained in two published investor surveys. While more detailed information would have been helpful, Ms. Sallander's analysis was more thorough than Mr. Porter's. And unlike Mr. Porter, she was consistent. She subtracted real-estate taxes as an operating expense rather than loading them into the capitalization rate, and she relied on market data and investor surveys that were premised on the same methodology.
62. Finally, we decline Country Acres's invitation to reject Ms. Sallander's appraisal out of hand simply because she estimated the subject property's value as of a date after the March 1, 2004, assessment date. In Country Acres's view, because Ms. Sallander based her appraisal on information that the assessor could not have known on the assessment date, her appraisal cannot be used to determine the subject property's true tax value.
63. Country Acres did not cite to any authority for its position. Regardless, Ms. Sallander relied heavily on information pre-dating the March 1, 2004, assessment. For example, in estimating the subject property's net operating income, she used the property's historical income and expenses, citing most frequently to 2003 data. *Pet'r Ex. 15 at 47.*
64. In short, we find the opinion of Ms. Sallander—a certified general appraiser and Member of the Appraisal Institute who certified that she complied with USPAP—

more persuasive than Mr. Porter’s seriously flawed opinion. In so finding, we give little or no weight to Mr. Dillman’s testimony that he found Mr. Porter’s opinion more persuasive than Ms. Sallander’s. Although he is a certified appraiser, Mr. Dillman did not testify in that capacity. He did not appraise the subject property and he admitted that USPAP prohibited him from giving an opinion of value. Instead, Mr. Dillman “audit[ed]” Ms. Sallander’s appraisal and Mr. Porter’s analysis in his capacity as a “freeholder.” *Dillman testimony*. Mr. Dillman, however, did not explain why being a freeholder—owning property in fee for life or some indeterminate period³—gave him any special expertise. While Mr. Dillman’s freeholder status may be a prerequisite to his serving on the St. Joseph County PTABOA⁴, it lends little weight to his opinion about how well two experts applied generally accepted appraisal techniques.

C. Country Acres’s other claims

65. Finally, Country Acres made two more claims in passing. First, in offering Mr. Dillman’s testimony, Country Acres apparently claimed that the increase in the subject property’s assessment between 2001 and 2002-2004 somehow invalidated the property’s 2004 assessment. Each assessment and each tax year, however, stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm’rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, the subject property’s 2001 assessment does nothing to show its true tax value for 2004. *See, Id.*
66. Second, Country Acres pointed to the fact that the PTABOA did not explain its reasons for rejecting Country Acres’s appeal. Country Acres, however, did not explain what remedy it sought for that failure. Once a taxpayer has properly invoked the Boards’ jurisdiction, its proceedings are *de novo*. *See* Ind. Code § 6-1.1-15-4(k) (providing that parties before the Board can introduce evidence,

³ *See Peterson v. Snook*, 260 Ind. 160, 293 N.E.2d 200, 201 (1973)(referring to the common law definition of a freeholder).

⁴ *See* Ind. Code § 6-1.1-28-1 (requiring a county board of commissioners to appoint two “freehold members” to the county’s property tax assessment board of appeals).

regardless of whether it was introduced at a PTABOA hearing). The PTABOA's failure to explain its decision did not prejudice Country Acres in prosecuting its appeal to us.

SUMMARY OF FINAL DETERMINATION

67. Ms. Sallander's valuation opinion was the most reliable evidence of the subject property's true tax value. We therefore find that the subject property's 2004 assessment should be reduced to \$2,135,900, which equals Ms. Sallander's opinion trended to reflect the property's value as of January 1, 1999.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>