

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 06-019-07-1-5-00663  
**Petitioner:** Karen Knighton  
**Respondent:** Boone County Assessor  
**Parcel:** 019-14709-03  
**Assessment Year:** 2007

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

**Procedural History**

1. The Petitioner initiated an assessment appeal regarding the subject property by giving notice to the Boone County Property Tax Assessment Board of Appeals (PTABOA) on October 17, 2008.
2. The PTABOA issued its decision (Form 115) on December 5, 2008.
3. The Petitioner appealed to the Board by filing a Form 131 on January 7, 2009. She elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 16, 2009.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on September 17, 2009. He did not inspect the property.
6. Karen Knighton, Jim Knighton (the Petitioner's spouse), County Assessor Lisa Garoffolo, and Clifford Hardy were sworn as witnesses.

**Facts**

7. The property is a condominium located at 211 Wakefield Way in Zionsville.
8. The PTABOA determined the assessed value is \$66,700 for land and \$194,300 for improvements (total \$261,000).
9. The Petitioner claimed the total assessed value should be \$66,700 for land and \$50,000 for improvements (total \$116,700).

## **Record**

10. The official record for this matter is made up of the following:
  - a. The Petition,
  - b. Digital recording of the hearing,
  - c. Petitioner Exhibit 1 – Purchase agreement,  
Respondent Exhibit 1 – Boone County Appeal Worksheet,  
Respondent Exhibit 2 – Property Record Card,  
Respondent Exhibit 3 – County Notice of Hearing,  
Respondent Exhibit 4 – Certificate of Occupancy,  
Respondent Exhibit 5 – Purchase agreement,  
Respondent Exhibit 6 – Settlement statement,  
Respondent Exhibit 7 – Form 115 Notification,  
Respondent Exhibit 8 – Form 131 Petition,  
Respondent Exhibit 9 – 2008 Pay 2009 Tax Calculation Worksheet,  
Respondent Exhibit 10 – Board Notice of Hearing,  
Respondent Exhibit 11 – Comparative market analysis,  
Board Exhibit A – Form 131 Petition,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing Sign In Sheet,
  - d. These Findings and Conclusions.

## **Contentions**

11. Summary of the Petitioner's case:
  - a. The assessed value of the subject property is greater than its market value-in-use. The assessed value should be reduced to \$116,700. *J. Knighton testimony.*
  - b. On March 1, 2007, the subject property was owned by Gunstra Builders. The Petitioner did not purchase it until May 23, 2008, at which time Gunstra agreed to be responsible for the 2007 property taxes. Accordingly, Gunstra paid \$1,500 into an escrow account to cover the anticipated liability, but that amount was inadequate to pay the full liability. Gunstra subsequently ceased business operations, so the Petitioner was left with the responsibility to pay. *J. Knighton testimony.*
  - c. This condominium unit was not completed as of March 1, 2007. The interior was only drywall. The property lacked features such as plumbing fixtures, flooring, kitchen appliances and cabinets. The percentage of completion calculation does not approximate the real market value of the unit in that state. *J. Knighton testimony.*

- d. Jim Knighton, the Petitioner’s husband, owns Heritage Realty in Zionsville. He has over 30 years of experience in the real estate business. He is the listing agent for all of the properties in Manchester Square, where the subject property is located. He has tried to sell other uncompleted units. A unit identical to the subject property now sells for less than \$100,000. *J. Knighton testimony.*
  - e. A purchase agreement signed on July 29, 2009, establishes that the combined market value of two condominiums in the same neighborhood was \$310,000. *Pet’r Ex. 1.* That price was for a completed two-bedroom unit and a second unit that is comparable to the subject property (three-bedrooms, same size, same configuration, and same stage of completion as of March 1, 2007). The market value of the completed unit was at least \$250,000. Deducting that value from the total purchase price leaves a value of \$60,000 for the unfinished unit. *J. Knighton testimony.*
  - f. The developer’s discount should be applied to the land assessment because Gunstra, a developer, owned the parcel on the assessment date. *J. Knighton testimony.*
12. Summary of the Respondent’s case:
- a. The property record card shows construction on the condominium began in 2005. *Resp’t Ex. 2.*
  - b. The builder, Gunstra, commonly finished these condos to a certain point—about 70%— and then stopped, as with the subject property, to allow buyers to choose their finishes. They could upgrade or downgrade. *Garoffolo testimony.*
  - c. The Petitioner purchased the property for \$400,000 in May 2008. *Resp’t Exs. 5, 6.*
  - d. The PTABOA reduced the 2007 assessment by 30% to account for the condominium not being completed on the assessment date. *Garoffolo testimony.*
  - e. Four comparable sales in the Petitioner’s neighborhood ranged from \$280,875 to \$411,115 in 2006. Those sales were used to determine the assessed value of the subject property for 2007. *Garoffolo testimony; Resp’t Ex. 11.*

### **Analysis**

13. 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).

14. 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”).
15. 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.
16. Real property is assessed based on its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Indiana promulgated Guidelines for assessing officials that are based on the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of those Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
17. A 2007 assessment must reflect the value of the property as of January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
18. Although the valuation date for a 2007 assessment relates back to January 1, 2006, the assessment must be based on the property as it physically existed on March 1, 2007.<sup>1</sup> In cases of new construction, such as this one, the distinction is particularly important. Nobody disputed that on March 1, 2007, the subject property was only 70% completed. It still required many things, such as plumbing fixtures, flooring, kitchen appliances and cabinets. Furthermore, nobody disputed that this status has some impact on valuation.<sup>2</sup> It is probably difficult to determine a precise market value-in-use for a property under such circumstances. Mr. Knighton may very well be correct in concluding that the percentage of completion does not approximate the real market value-in-use of the subject property in its unfinished state. Nevertheless, to get any change from the existing assessment, the

---

<sup>1</sup> The assessment date for any given year is March 1. Ind. Code § 6-1.1-1-2. "Except as otherwise provided by law, all tangible property which is within the jurisdiction of this state on the assessment date of a year is subject to assessment and taxation for that year." Ind. Code § 6-1.1-2-1.

<sup>2</sup> The evidence shows that the PTABOA reduced the original improvement value of \$277,600 by 30% to \$194,300 to account for the condominium being only 70% complete.

Petitioner (Mrs. Knighton) was required to offer substantial, probative evidence of what a more accurate value might be.

19. The Petitioner attempted to prove her case without offering an appraisal or any other information compiled in accordance with generally accepted appraisal principles. Instead, the case that was presented relies almost entirely on the experience and opinions of her husband. In fact, he presented virtually the entire case. Mr. Knighton testified about his qualifications based on over 30 years experience in the real estate business. He owns a local real estate company and is the listing agent for all of the properties in the development where the subject property is located. But there was no evidence that he is an appraiser or that his opinions about value are based on generally accepted appraisal principles.
20. According to Mr. Knighton, a unit identical to the subject property now<sup>3</sup> sells for less than \$100,000. No specific facts about such a unit, however, were presented to support that statement. And although that purported selling price would be dramatically less than the Plaintiff paid for the subject property in 2008, there was no explanation for the difference. Such vague, general, conclusory statements are not sufficient to establish any basis for comparison. *See Long*, 821 N.E.2d at 470-471 (stating that conclusory statements about value based on “similar” or “comparable” properties are not probative evidence). In addition, nothing in the record establishes how 2009 or 2008 selling prices might relate to the required valuation date of January 1, 2006. Consequently, that evidence does not help to prove the existing assessment must be changed.
21. The Petitioner also presented evidence about a pending sale of two condominiums for an aggregate price of \$310,000. Using this sale, Mr. Knighton determined the purported value of the unfinished unit by subtracting \$250,000 for the completed unit. He did not explain how that amount was determined and nothing establishes that his information complies with generally accepted appraisal principles. Such conclusory statements do not constitute probative evidence. *See Heart City Chrysler v. State Bd. of Tax Comm’rs*, 714 N.E.2d 239 (Ind. Tax Ct. 1999); *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Furthermore, nothing establishes how this 2009 sale might relate to a valuation as of January 1, 2006. As a result, this evidence is of no probative value. *Long*, 821 N.E.2d at 471.
22. The “developer’s discount” is based on Ind. Code § 6-1.1-4-12. This statute was amended in 2006, but the intent as explained in *Howser Development v. Vienna Twp. Assessor*, 833 N.E.2d 1108, 1110 (Ind. Tax Ct. 2005), and *Aboite Corp. v. State Bd. of Tax Comm’rs*, 762 N.E.2d 254, 257 (Ind. Tax Ct. 2001), remains the same: encouraging developers to buy farmland, subdivide it into lots, and resell the lots. The encouragement comes by providing that a land developer’s land in inventory is not to be reassessed until after title is transferred to somebody who is not a developer, or construction begins on the land, or a building permit is issued for construction on the land. Ind. Code § 6-1.1-4-12(h). Contrary to the Petitioner’s claim, even if Ind. Code § 6-1.1-4-12 applied, it would

---

<sup>3</sup> By the term “now” Mr. Knighton apparently meant as of the hearing date in September 2009.

not eliminate all land value from the assessment. In this case, however, the developer's discount simply does not apply. Construction began prior to March 1, 2007. Therefore, the land is not entitled to the developer's discount.

23. The Petitioner did not make a prima facie case for any assessment change.
24. When a taxpayer fails to provide probative evidence supporting her position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119.

### **Conclusion**

25. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

### **Final Determination**

In accordance with the above findings and conclusions, the assessment will not be changed.

ISSUED: \_\_\_\_\_

\_\_\_\_\_  
Commissioner, 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>>