

REPRESENTATIVE FOR PETITIONER:
Joshua Rhoads, Senior Manager, Ryan, LLC

REPRESENTATIVE FOR RESPONDENT:
Jim Davis, Tyler Technologies

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

MHP Investor 1, Ltd.)	Petition No.: 69-004-11-1-4-00001
)	Petition No.: 69-004-12-1-4-00001
)	
Petitioner,)	
)	
v.)	Parcel: 69-07-17-111-022.000-004
)	
Ripley County Assessor,)	County: Ripley
)	Township: Adams
Respondent,)	Assessment years: 2011 and 2012
)	

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

June 9, 2014

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE

Do the assessments for 2011 and 2012 accurately reflect the market value-in-use of the subject property?

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject property is a mobile home park located at 328 South Meridian Street, Sunman, Indiana. The park is named the Trees Mobile Home Community.
2. The Petitioner initiated the 2011 appeal on August 20, 2011 and the 2012 appeal on October 25, 2012. The Ripley County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on December 12, 2012, changing the assessment to \$1,209,100 for both the 2011 and 2012 assessment years.
3. The Petitioner filed Form 131 Petitions on January 25, 2013, seeking a review of the 2011 and the 2012 determinations.
4. Administrative Law Judge, Paul Stultz, held the hearing on March 14, 2014. He did not conduct an on-site inspection of the property.
5. Joshua Rhoads, Sara Coers, Joe Alerding, Jim Davis, and County Assessor Shawna Bushhorn were sworn as witnesses. Joe Alerding did not testify.
6. The Petitioner presented the following exhibits:
 - Petitioner Exhibit A – Form 131 with attachments for 2011,
 - Petitioner Exhibit B – Form 131 with attachments for 2012,
 - Petitioner Exhibit C – 2011 property record card for subject property,
 - Petitioner Exhibit D – 2012 property record card for subject property,
 - Petitioner Exhibit E – Appraisal of Sara Coers for the subject property.
7. The Respondent presented following exhibits:
 - Respondent Exhibit 1 – Sales Disclosure Form,
 - Respondent Exhibit 2 – Sales Disclosure Verification Form,
 - Respondent Exhibit 3 – Subject property record card,
 - Respondent Exhibit 4 – Power of Attorney.
8. The following additional items are recognized as part of the record of proceedings:
 - Board Exhibit A – The 131 Petitions,
 - Board Exhibit B – Notices of Hearing-Reschedule, dated January 14, 2014,
 - Board Exhibit C – Hearing Sign-in Sheet.

9. For 2011 and 2012, the PTABOA determined the assessed value was \$515,400 for the land and \$693,700 for the improvements (total \$1,209,100)¹.
10. The Petitioner requested a total assessed value of \$650,000 for both the 2011 and 2012 assessment years.

BURDEN

11. Generally, the taxpayer has the burden to prove that an 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). A burden-shifting statute creates two exceptions to that rule in Indiana Code § 6-1.1-15-17.2 as amended by P.L.97-2014.
12. First, IC § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” IC § 6-1.1-15-17.2(a) “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” IC § 6-1.1-15-17.2(b).
13. Second, IC § 6-1.1-15-17.2 “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC § 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless

¹ Mr. Rhoads and Mr. Davis testified that the Form 115 does not reflect the correct assessment for the property because the Assessor revised the PTABOA determination after the Form 131 petitions were filed. The Respondent changed the 2011 assessed values to \$486,000 for land and \$643,900 for improvements (total \$1,129,900). The Respondent changed the 2012 assessed values to \$515,400 for land and \$670,100 for improvements (total \$1,185,500). The Assessor, however, lacks the authority to unilaterally disturb a determination of the PTABOA. The assessment of record is therefore as indicated.

of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” These provisions may not apply if there was a change in improvements, zoning, or use, or if the assessment was based on an income capitalization approach.

14. In the present case, the parties incorrectly agreed at the hearing that the Petitioner had the burden of proof for both years. The 2010 assessment was \$1,129,900.² To the extent that the Petitioner seeks an assessment below the 2010 assessed value of the subject property, it has the burden to prove any lower value for 2011. The burden of proof for 2012 depends on the outcome of the 2011 appeal. In the final analysis, the burden-shifting statute is irrelevant because the Board finds the Petitioner made a more credible case.

SUMMARY OF THE PETITIONER’S CASE

15. The subject property is a 131-lot mobile home community on 24.64 acres. It was originally constructed in 1970 and the second phase was constructed around 1990. The improvements consist of a building, concrete pads, and streets within the park. *Coers testimony; Pet’r. Ex. E at 6.*
16. The current owner purchased the property in June 2007 for \$1,750,000. The owner based the value on a projection that the property would reach stabilized occupancy (almost 100%) after three years. The plan included taxes of \$4,500 per year based on what the previous owner paid. The actual taxes for 2011 and 2012 are approximately \$20,778. The difference in taxes and the inability to lease the pads has made the basis of the sale price irrelevant. Also the market conditions from 2007 to 2011 or 2012 are dramatically different and considered drastically inferior in the midst of nationwide recession. The owner did undertake an intense marketing effort to lease the park, but it failed. The mortgagor had an appraisal done in 2010 that valued the property at \$700,000 to \$750,000 and at that point the bank called in the loan. This information was

²The record does not clearly indicate the 2009 assessed value and there was a dispute about the 2010 value for burden-shifting purposes.

communicated to the assessor. *Rhoads testimony; Coers testimony; Pet'r. Ex. E, pp. 6 and 10.*

17. The Petitioner engaged certified general Indiana appraiser, Sara Coers, MAI, to appraise the subject property as of March 1, 2011, and March 1, 2012. The intended use of the appraisal is for an appeal of the ad valorem real property tax assessment. Ms. Coers certified that the appraisal report was prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). The appraiser valued the property at \$650,000 for both valuation dates using fee simple estate property rights. In the case of the subject property, valuing it as fee simple estate or leased fee estate would have no material effect on the final conclusion of value. *Coers testimony; Pet'r. Ex. E.*
18. The appraiser considered all three approaches to value and developed the income capitalization and sales comparison approaches within the appraisal. The cost approach is not relevant to the subject property due to the age of the property and the lack of consideration given to it by market participants. Economic obsolescence is a factor to be considered for the subject property and that can best be recognized by applying the income approach. *Coers testimony; Pet'r. Ex. E, pp.15 and 36.*
19. The appraiser determined that the income approach to value was the most reliable indicator of value based on the following facts and data:
 - Income stream and return on investment is the main motivation for buyers and sellers in the subject's market.
 - The income approach has the best quality of data and is the main focus for participants in the subject's market.
 - The sales comparison approach was not given as much weight as the income approach, but information on comparable sales was gathered and provided in the appraisal as a check on the reasonableness of dollar per lot basis. The price per lot ranges from \$6,735 to \$17,077. Due to the subject's high vacancy rate, the subject should and does fall below the more stabilized comparable sales.

- The subject property's net operating income (NOI) per unit falls below the range of the sale comparables. This is appropriate given the issues with the subject property.

Coers testimony; Pet'r. Ex. E.

20. There are two main issues the appraiser encountered and addresses relating to the income approach to value. One is the subject's high vacancy rate; the other is lower than market rent per lot. *Coers testimony; Pet'r. Ex. E., pp. 10-11.*
21. The subject property's location has experienced steady population decline and above average unemployment as demonstrated by the subject area's income and employment statistics and demographics. These attributes have a negative impact on the subject property's value. Demand trend is stable but weak. Supply trend is stable but the area is oversupplied. There are 131 lots on the subject property. There are 174 lots in Sunman and 428 lots in Ripley County. Sunman has 41% of the mobile home lots in Ripley County and has 3.6% of the county's population. *Coers testimony; Pet'r. Ex. E, pp. 28-34.*
22. When looking at the high vacancy level of the subject, the first step is to determine if prudent management is in place. Many of the new lots have never been leased and many lots have never been occupied after 22 years of attempting to lease the new phase. Numerous methods were used to advertise and promote the mobile home park. The property manager advertised the park with flyers and newspaper advertisements, offered incentives to existing tenants to find new tenants, and offered free pad rent for three, six, and nine months to encourage people to move into the park. New and used mobile homes were brought in to attract interest. A billboard was placed on the interstate advertising the park. A local real estate broker was engaged to find tenants with no results. The Petitioner has spent approximately \$36,000 on roads, landscaping, and other items to enhance the appearance of the subject park. According to the property manager, Mr. Lattire, the population and employment trends of Sunman cannot support a 131-lot mobile home community and the second phase should never have been built. *Coers testimony; Pet'r. Ex. E, pp. 38-39.*

23. The subject property's current rent per pad is \$180 per month. This appears low for the market, however, it is operating in an inefficient, irregular market and the subject rent is the best it can achieve under prudent management. Prior experience in raising the rent from \$180 per month had a negative effect on occupancy. It is reasonable to believe the \$180 per lot could actually be slightly higher than what the subject is able to acquire. The subject's actual rent is used to develop the income approach. *Coers testimony; Pet'r. Ex. E, pp. 37-38.*
24. The subject property has a 40% vacancy rate, but has more occupied lots in total than any other mobile home park in the county. The subject was achieving above market penetration and, at 40% vacancy, capturing more than its share of the market. Given the efforts to lease the property, the demographics of the area, and the supply and demand issues, a 40% vacancy rate is the best the subject property can achieve and represents its market vacancy rate. Income was based on subject's vacancy rate. *Coers testimony; Pet'r. Ex. E, pp. 39 and 43.*
25. The subject property's expenses were fairly consistent over the relevant two year period and fell below the typical range of comparable properties. The high vacancy rate could explain some of the lower than typical expenses. The subject property's expenses were reasonable and conservative, so expenses were based on the subject property's historical expenses. Expenses were \$74,048 per year or \$565 per lot. That is a 43.4% expense ratio. *Coers testimony; Pet'r. Ex. E, pp. 39-40.*
26. Five comparable properties were used to determine and develop an overall capitalization rate for the subject property. The capitalization rates for the comparables ranged from 9.06% to 13.28%. Based on the property productivity analysis contained in the appraisal, it is reasonable to believe the subject would demand a capitalization rate towards the high end of this range. The appraiser also considered data from RealtyRates, which publishes the capitalization rates for mobile home parks such as the subject property. The national survey results were similar to the comparable properties and this was a check for reasonableness. The appraiser used a 13% capitalization rate for both years. The 2011

tax rate of 1.839% is used to obtain a loaded capitalization rate for both 2011 and 2012 of 14.84%. The market value using the income approach is \$650,000 for both March 1, 2011, and March 1, 2012. *Coers testimony; Pet'r. Ex. E, pp. 41-42.*

27. The appraiser used the same comparable properties that were used in the income approach to develop a comparable sales analysis. This approach presented a wide range of sale price per lot values. The range was from \$6,735 to \$17,077 per lot. The appraiser used the sales approach as a check for reasonableness. The sales approach does not measure the subject property's risk due to high vacancy and low rent (income). *Coers testimony; Pet'r. Ex. E., p.52*
28. The income approach and the sales comparison approach were developed with most weight given to the income approach in the final value reconciliation. This weight is due to buyer emphasis on the income characteristics. The sales approach has little applicability in the final reconciled value. *Coers testimony; Pet'r. Ex. E., pp. 45, 52.*

SUMMARY OF THE RESPONDENT'S CASE

29. The subject property sold in 2006 for \$1,750,000. The sale price is often the best evidence of value for a property. *Davis testimony; Resp't Ex. 1.*
30. The sales disclosure verification form states there was an appraisal of the subject property that justified a \$1,750,000 purchase price. We have not seen that appraisal. *Davis testimony; Resp't Ex. 2.*
31. The sales disclosure verification form states the property was made available to other potential buyers with no unusual circumstances. The buyer and seller were knowledgeable and acting prudently in their best interest. Neither party was under duress. The sale is an arm's-length transaction. *Davis testimony; Resp't Ex. 2.*
32. The Respondent's approach, justification, and support for the 2011 and the 2012 assessed values asserted by the assessor of \$1,129,900 for 2011 and \$1,185,000 for 2012 makes use of the data provided in the comparative sales analysis found on page 52 of Petitioner

Exhibit E. The range of sale prices is \$6,735 to \$17,077 per unit. Taking the median price of \$15,416 per pad per year for 131 pads equals \$2,019,496. This value ties back to the sales price in that it is reasonable to conclude that an investor that specializes in mobile home parks would value the property based on their expectation that the property would be fully leased and well worth \$2 million in several years. It is unreasonable to suggest that an investment company so badly misunderstands their own investment that within a few years it is only worth a fraction of the sale price. *Davis testimony; Pet'r. Ex. E, p. 52.*

33. The weakness of the sales approach is that it doesn't take into consideration the vacancy. So, applying the 40% vacancy rate to the \$2,019,496 results in a value of \$1,211,698. This value provides ample support for the 2011 assessed value, as well as the adjusted 2012 assessed value of \$1,185,500. *Davis testimony.*
34. Without all the other creative valuation techniques, the simplest data, the most reliable data can provide the most clarity on this type of property. *Davis testimony.*

ANALYSIS

35. Real property is assessed based on its "true tax value," which 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." IC § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
36. Regardless of the approach used to prove a property's value-in-use, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also*

Long v. Wayne Twp. Assessor, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2011 assessment, the valuation date was March 1, 2011. For the 2012 assessment, the valuation date was March 1, 2012.

37. In this case, the Petitioner submitted an appraisal. An appraisal completed in conformance with USPAP is often the most effective method to rebut the presumption that an assessment is correct. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006); *Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). The appraisal was prepared by a licensed appraiser, who concluded that as of March 1, 2011, and March 1, 2012, the market value of the subject property was \$650,000. Ms. Coers' appraisal of the subject property is substantial, probative evidence that supports the Petitioner's claim for an assessment of \$650,000 for both assessment years.
38. Ms. Coers presented and explained the appraisal she performed for the Petitioner. She concluded that the income approach to value is the best method to determine the market value for the subject property. The participants in the subject's market would focus on income stream and return on investment.
39. Ms. Coers indentified two issues with the property being appraised. One was the lower than market rents and the other being the higher than market vacancy rate. Her analysis of the local market, local demographics and trends, and the supply and demand factors faced by the subject property sufficiently explain the property's inability to obtain higher rents or achieve a better occupancy rate.
40. Ms. Coers prepared an income analysis using the property's actual income, expenses and vacancy rate, which she compared to other properties to determine whether they were reasonable in terms of market value. Ms. Coers developed her capitalization rate based on sales of other mobile home parks and also on capitalization rates for mobile home parks published in a national market publication.

41. The Respondent attempted to impeach the Petitioner's appraisal. The Respondent argued that the appraisal based the subject property's value on a fee simple interest and not on a leased fee interest. Ms. Coers explained in the case of the subject property the opinion of value would be the same regardless of which property rights were considered because the interest transferred is not relevant. The leases are short-term leases.
42. The Respondent took issue with the fact the appraisal states the total acreage of the subject property is 24.65928 at one place and 23.8628 at another place. Respondent Ex. 3, the property record card, also shows both measurements for the subject property. The Respondent failed to demonstrate how, or if, this issue would affect the final opinion of value.
43. The Respondent attempted to impeach the appraisal for several other reasons: because the comparables used to check for the reasonableness of the expenses were confidential; because the Petitioner's appraiser failed to develop typical vacancy rates for properties in the subject's market; and because capitalization rates from national surveys are not relevant. But the Respondent failed to develop these points in a meaningful way. And consequently, they have little or no impact on the Board's final determination—these purported weaknesses did not entirely destroy the credibility of the appraisal.
44. The Respondent presented a sales disclosure showing the Petitioner purchased the subject property for \$1,750,000 in 2006. Respondent asserts that the sales disclosure demonstrates the property was sold under normal market circumstances. Respondent made no attempt to relate this 2006 sale to the valuation dates currently under appeal. The sale does not indicate the subject property's market value as of March 1, 2011, or March 1, 2012, and is not probative evidence for this case.
45. The Respondent attempted to support the assessments under appeal by using a portion of the sales data presented in the Petitioner's appraisal. The Respondent's analysis used the median sale price of the five comparable properties found in Ms. Coers' appraisal at page 52. According to Mr. Davis, he used the median because it minimizes the effects of outliers. Respondent asserts that the cost of \$15,416 per pad results in a value of

\$2,019,496 for the 131 pads of the subject property. This value times the 60% occupancy rate equals \$1,211,698. Respondent contends this calculation supports the assessments for both 2011 and 2012, but the Respondent failed to prove that this methodology conforms to generally accepted appraisal principles.

46. A statement from the Tax Court is particularly relevant: “assessing officials should defend their assessment decisions with their own evidence at the Indiana Board hearing, even if they think a taxpayer has failed to make a prima facie case.” *Lake Co. Property Tax Assessment Bd. of Appeals v. St. George Serbian Orthodox Church*, 905 N.E.2d 536, 539 (Ind. Tax Ct. 2009). In this case, the Respondent criticized the appraisal, but did not effectively rebut its probative value.
47. In this case, substantially more weight is given to the Petitioner’s appraisal than to the Respondent’s approach of selecting one sale from the appraisal and selecting the median sale price to support the assessment of the subject property. Petitioner made a case for a reduction in value for 2011 to \$650,000.
48. The Respondent had the burden of proof for 2012 because the assessment increased from \$650,000 in 2011 to \$1,209,900 in 2012. The increase is more than five percent (5%). IC § 6-1.1-15-17.2.
49. The Respondent failed to provide the Board with a detailed explanation or analysis as to how her purportedly comparable properties specifically compare to the subject property pursuant to accepted appraisal practices. The Respondent failed to make a prima facie case proving the 2012 assessment is correct. Thus, the assessment of the subject property for 2012 must be reduced to the previous year’s amount.

SUMMARY OF FINAL DETERMINATION

50. Therefore, the Board finds in favor of the Petitioner for both the 2011 and the 2012 appeals and determines the total assessed value of the subject property is \$650,000 for both 2011 and 2012.

This Final Determination of the above captioned matter is issued 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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.