

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

Petition No.: 06-019-11-1-5-00672
Petitioner: Manchester Square Development, LLC
Respondent: Boone County Assessor
Parcel No.: 019-14710-07
Assessment Year: 2011

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

Procedural History

1. Manchester Square Development, LLC appealed the subject property's March 1, 2011 assessment to the Boone County Property Tax Assessment Board of Appeals ("PTABOA"). On July 9, 2012, the PTABOA issued its determination lowering the property's assessment, although not to the amount that Manchester had requested.
2. Manchester then timely filed a Form 131 petition with the Board, electing to have its appeal heard according to the Board's small claim procedures.
3. On April 9, 2013, the Board held a hearing before its administrative law judge, Dalene McMillen ("ALJ"). The following people testified at that hearing:
 - a. For Manchester: Denise Praul, Accurate Tax Management Corporation
Jim Knighton, Heritage Realty Group, LLC
 - b. For the Assessor: Lisa Garoffolo, Boone County Assessor
Peggy Lewis, PTABOA member
Dan Spiker, Government Utilities Technology Service
Cliff Hardy, Government Utilities Technology Service

Facts

4. The subject property is a six-unit condominium complex located in Zionsville.
5. Neither the Board nor the ALJ inspected the subject property.
6. The PTABOA determined the subject property's assessment at \$580,200 for land and \$749,800 for the improvements, for a total assessment of \$1,330,000.

7. Manchester requested a total assessment of \$1,177,300.

Summary of Parties' Contentions

8. Manchester offered the following evidence and arguments:
 - a. The subject property is part of a larger condominium development known as Manchester Square. The property consists of a building with six condominium units ranging from 2,784 square feet to 3,356 square feet. *Praul testimony; Pet'r Exs. 5-10.* The original owner went out of business in September 2008 while construction was still underway, and the property went into a receivership. When construction halted, the building had only been framed—it had not yet been closed up with doors, windows, or a roof. Construction resumed in June 2009, but the building was open to the elements during the interim. *Praul testimony; Pet'r Ex. 12.*
 - b. On April 6, 2011, the first condominium unit, located at 251 Wakefield Way, sold for \$317,000. Nicholas Holston also appraised that unit for \$317,000 as of January 28, 2011. *Praul testimony; Pet'r Exs. 2-3.*
 - c. According to Denise Praul, once a condominium unit is sold, the interior features are then finished. After completing the interior finish for 251 Wakefield Way, Heritage Realty Group, LLC, which managed the property for Manchester, discovered that exposure to the elements had extensively damaged the unit's plumbing, its electrical system, and its heating, ventilation and air conditioning ("HVAC") system. Heritage also found mold in the unit. According to Jim Knighton, the person at Heritage responsible for the subject property, the original owner had been spending about \$80,000 to finish a unit. But it took \$112,758 to finish 251 Wakefield Way because of the problems caused by the building's exposure to the elements. And the unit at 251 Wakefield Way had considerably less damage than did some of the other units. *Praul testimony; Knighton testimony; Pet'r Exs. 2, 4, 12.*
 - d. To support Ms. Praul's numbers, Manchester offered a spreadsheet titled "Manchester Square Draw Request by Heritage Realty Group, LLC." *Pet'r Ex. 4.* The spreadsheet lists budgeted costs for various jobs and identifies the subcontractors who performed the work. The spreadsheet also has columns for five "draws," the first four of which are dated "12/7/2010," "12/31/2010," "1/27/2010," and "3/8/2010." *Id.* The first three columns list draws totaling \$41,579.97. Included in that total are draws for things that Ms. Praul described as remediation for damage caused by the building's exposure to the elements, including mold remediation and "rough electrical" work. *Id.* The fourth column has draws totaling \$71,178.13. There are no entries in the fifth column. Neither the spreadsheet nor any of the witnesses explained what funds the draws were made from, or whether the work was completed before or after the draw date.

- e. Ms. Praul testified that finishing work, including the work that she described as remediation, did not begin on a unit until after the unit was sold. But Ms. Praul did not explain whether she had personal knowledge of that fact. Mr. Knighton, however, testified:

I don't recall when, but at some point we did go in and remediate everything that we knew needed to be done. So the only thing that happens on a case-by-case basis at this point is something that we discover during the construction process. Be we didn't just let the mold set there.

Knighton testimony. When asked whether that was before or after March 1, 2011, he replied, "I could not tell you. I don't have a clue, I really don't." *Id.*

- f. Ms. Praul used 251 Wakefield Way's sale price to estimate the market value-in-use for the building as a whole. She subtracted the \$112,758 that Manchester spent to finish 251 Wakefield Way from the unit's sale price to arrive at a price of \$61 per square foot for an unfinished unit. Applying the \$61 per square foot to the subject building's six units (including 251 Wakefield Way), Ms. Praul estimated the subject property's value at \$1,177,300 as of March 1, 2011. *Praul testimony; Pet'r Ex. 11.* As further support that the property was assessed too high for 2011, Ms. Praul pointed to the fact that the individual units were assessed for a combined total of only \$1,183,300 in 2012. *Praul testimony; Pet'r Exs. 5-10.*
9. The Assessor offered the following evidence and arguments:
 - a. As of March 1, 2011, Manchester had not recorded deeds dividing the six individual condominium units into separate parcels; the Assessor therefore assessed the subject property as one parcel. In what Mr. Spiker referred to as a computer "glitch," the 2010 improvement value "dropped off" the assessment records. *Spiker testimony.* According to Mr. Spiker, the Assessor corrected the assessment records on September 29, 2010. Thus, for 2010, the property was assessed at \$1,672,300—\$580,200 for land and \$1,092,100 for improvements. For 2011, the Assessor valued the property at \$1,407,200, which the PTABOA reduced to \$1,330,000. *Spiker testimony; Resp't Ex. 2.*
 - b. As of March 1, 2011, only one of the subject building's units—251 Wakefield Way—was assessed as being 100% complete. The five remaining units were assessed as 70% complete to account for the lack of interior build-outs such as cabinets, plumbing fixtures, floor coverings, and built-in appliances. The assessment did not reflect problems associated with the building's exposure to the elements, which Mr. Spiker believed had been remediated before March 1, 2011. Cliff Hardy visited the property each year on the Assessor's behalf, and he did not notice anything that would indicate a completion percentage of less than 70%. Also, several of the units were listed for sale in late 2010 without mentioning unusual problems, like mold.

Instead, the listings indicated that the units would be “finished per buyer’s selections as priced” (*Resp’t Ex. 4*) and that some were ready to move in while others had custom selections available. *Spiker testimony; Hardy testimony; Resp’t Exs. 2, 4, 10.*

- c. Mr. Spiker offered two comparative market analyses and a comparative assessment analysis to support the subject property’s assessment. He based his first analysis on six condominiums from Manchester Square that sold for prices ranging from \$70 per square foot to \$115 per square foot. The second analysis again includes six condominiums from Manchester Square and five of the six units at the subject property. The six other Manchester Square condominiums sold for prices ranging from \$65 per square foot to \$112 per square foot. By comparison, the five units from the subject property sold between April 6, 2011, and January 15, 2013, for prices ranging from \$118 per square foot to \$149 per square foot.¹ The average sale price for the eleven condominium units was \$109. The assessment analysis shows that condominiums located just north of the subject property were assessed from \$81 per square foot to \$93 per square foot in 2011. *Spiker testimony; Resp’t Exs. 8B, 9, 11-12.*

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

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

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| Petitioner Exhibit 1: | Form 115, Notification of Final Assessment Determination, |
| Petitioner Exhibit 2: | Settlement statement for 251 Wakefield Way, |
| Petitioner Exhibit 3: | Individual condominium unit appraisal report prepared by Nicholos E. Holston of P1, Inc., dated January 28, 2011, |
| Petitioner Exhibit 4: | Manchester Square Draw Request by Heritage Realty Group, LLC, |
| Petitioner Exhibit 5: | Property record card for 235 Wakefield Way, |
| Petitioner Exhibit 6: | Property record card for 239 Wakefield Way, |
| Petitioner Exhibit 7: | Property record card for 243 Wakefield Way, |
| Petitioner Exhibit 8: | Property record card for 247 Wakefield Way, |
| Petitioner Exhibit 9: | Property record card for 251 Wakefield Way, |
| Petitioner Exhibit 10: | Property record card for 255 Wakefield Way, |
| Petitioner Exhibit 11: | Proposed assessment calculation, |
| Petitioner Exhibit 12: | Summary of position, |

Respondent Exhibit 1: Boone County appeal worksheet,

¹ On average, those units sold for prices that were 26% higher than their 2011 assessments. *Spiker testimony*

- Respondent Exhibit 2: Property record card for the subject property,
- Respondent Exhibit 3: Form 114, Notice of Hearing on Petition – Real Property,
- Respondent Exhibit 4: Listing sheets for 243 Wakefield Way, 255 Wakefield Way, 239 Wakefield Way, 247 Wakefield Way, and 235 Wakefield Way,
- Respondent Exhibit 5: Form 115, Notification of Final Assessment Determination,
- Respondent Exhibit 6: Form 131, Petition to the Indiana Board of Tax Review for Review of Assessment,
- Respondent Exhibit 7: Indiana Board of Tax Review, Notice of Hearing on Petition,
- Respondent Exhibit 8A: Aerial map for the subject property,
- Respondent Exhibit 8B: Aerial map for the subject property,
- Respondent Exhibit 8C: Aerial map for the subject property,
- Respondent Exhibit 9: Boone County comparative assessment analysis for the subject property and comparable properties,
- Respondent Exhibit 10: Page 5 of Appendix C from Version A – Real Property Assessment Guideline and attached sheet entitled “Percentage of Completion,”
- Respondent Exhibit 11: Comparative market analysis and listing sheets for 207 Wakefield Way, 241 Manchester Drive, 229 Manchester Drive, 216 Manchester Drive, 215 Wakefield Way, and 204 Manchester Drive,
- Respondent Exhibit 12: Comparative market analysis,
- Respondent Exhibit 13: Manchester Square land calculation and two Gunstra Builders pricing sheets, dated May 15, 2005, and June 30, 2006,

- Board Exhibit A: Form 131 petition with attachments,
- Board Exhibit B: Hearing notice,
- Board Exhibit C: Hearing sign-in sheet,

d. These Findings and Conclusions.

Burden of Proof

11. Generally, a taxpayer seeking review of an assessing official’s determination must prove that his property’s assessment is wrong and what its 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). The legislature, however, has shifted the burden of proof to the assessor in cases where an assessment under appeal represents an increase of more than 5% over the previous year’s assessment for the same property:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the *same property*. 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.

Ind. Code § 6-1.1-15-17.2 (emphasis added).

12. Manchester has the burden of proof in this case. While the PTABOA's determination for the March 1, 2011 assessment date is substantially more than what was originally reflected for 2010, that original 2010 assessment stemmed from a computer error that caused the Assessor to omit any improvement value. When the Assessor corrected the error, the 2010 assessment was actually higher than the 2011 assessment. Even if one uses the original, rather than the corrected, 2010 assessment for comparison, that original assessment would not be for "the same property" at issue in 2011, because the original 2010 assessment did not even purport to value improvements. Indiana Code § 6-1.1-15-17.2 therefore does not shift the burden of proof from Manchester to the Assessor.

Analysis

13. Manchester failed to make a prima facie case for reducing the subject property's assessment. We reach this conclusion for the following reasons:
 - a. Indiana assesses real property based on its true tax value, which is 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. Evidence in a tax appeal must be consistent with that standard. For example, a market value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice ("USPAP") often will be probative. *See Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally acceptable appraisal principles.
 - b. Manchester relied on Ms. Praul's valuation opinion in which she backed into a price-per-square-foot for all of the units in their unfinished state by subtracting the costs for finishing 251 Wakefield Way from that unit's sale price. In doing so, Ms. Praul made several assumptions. For example, she assumed that the costs for finishing the units would necessarily contribute dollar-for-dollar to their eventual sale prices. The record, however, offers little support for that assumption. More importantly, the

- record does not support Ms. Praul's assumption that 251 Wakefield Way was unfinished on March 1, 2011. Heritage took many draws—including draws for work associated with what Ms. Praul described as remediation for the building's exposure to the elements—well before the March 1, 2011 assessment date, and it took the rest of the draws on March 8, 2008.
- c. The record is silent about whether Heritage took its draws before or after work was completed, but the fact that the sale of 251 Wakefield Way closed on April 6, 2011, supports an inference that the unit was finished in advance of that date and may have been completely, or almost completely finished on March 1, 2011. Yet Ms. Praul used that unit's unfinished price-per-square-foot in her analysis. Similarly, the record does not support Ms. Praul's claim that Heritage waited to remediate damage to the other units until after March 1, 2011. Indeed, Mr. Knighton testified that he did not "have a clue" whether the damage had been remediated before or after March 1, 2011, but that at some point "we did go in and remediate everything that we knew needed to be done." *Knighton testimony*.
 - d. At the end of the day, Manchester seeks a value that is close to the property's actual assessment.² And the assessment already reflects that the condominium units were only partially completed. Given the difficulty of the valuing an unfinished building, Ms. Praul asks us to draw a fine line. The lack of support for key assumptions underlying her methodology, however, prevents us from drawing that line. Under those circumstances, Ms. Praul's analysis lacks probative weight.
 - e. Finally, Manchester contends that subject property's lower assessment for 2012 shows that it was assessed too high in 2011. But each assessment and each tax year stands alone. *Fleet Supply, Inc. v. State Board of Tax Commissioners*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Board of Tax Commissioners*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property's assessment in one tax year generally is not probative of its true tax value in a different tax year. There are various reasons why a property's value might change from one year to the next, and Manchester had the burden of proving that the assessment for the year under appeal was wrong. As already explained, Manchester failed to meet that burden.

Conclusion

14. Manchester failed to make a prima facie case for changing the subject property's assessment. The Board therefore finds for the Assessor.

² Ms. Praul valued the subject property at almost 90% of its assessment.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the subject property's March 1, 2011 assessment should not be changed.

ISSUED: July 8, 2013

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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 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 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/bills/2007/SE0287.1.html>.