

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

Petitions: 55-005-09-1-4-00008
55-005-10-1-4-00004
Petitioner: Meadow Lake of Mooresville, LLC
Respondent: Morgan County Assessor
Parcel: 55-02-30-321-003.000-005
Assessment Years: 2009 and 2010

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

Procedural History

1. The Petitioner initiated an assessment appeal for 2009 on May 10, 2010, and for 2010 on April 20, 2011.
2. The Property Tax Assessment Board of Appeals (PTABOA) mailed notice of its decision, Form 115, for the 2009 petition on November 10, 2010, and for the 2010 petition on November 15, 2011.
3. The Petitioner appealed to the Board by filing a Form 131 Petition for Review for the 2009 assessment on December 6, 2010, and subsequently filing for the 2010 assessment on November 28, 2011. The Petitioner elected to have both cases heard according to small claims procedures. The Respondent did not elect to remove his case from the small claims procedures.
4. Administrative Law Judge Paul Stultz held the Board's administrative hearing on July 24, 2012. He did not inspect the property.
5. Paul Kropp represented the Petitioner. County Assessor Brenda Brittain appeared *pro se*. Appraiser Phillip Johns, Assessor Brittain, and Mr. Kropp were sworn as witnesses. Reva Brummett also was sworn, but she did not testify.

Facts

6. The property is elderly housing located at Meadow Lake Drive, Mooresville. Both parties describe the property as garden homes.

7. The PTABOA determined the 2009 assessed value is \$2,055,400 for land and \$1,994,800 for improvements (total \$4,050,200).
8. The PTABOA determined the 2010 assessed value is \$2,055,400 for land and \$1,894,600 for improvements (total \$3,950,000).
9. The Petitioner claimed the total assessment should be \$3,097,300 for each year.

Record

10. The official record for this matter contains the following:

- a. The Form 131 Petitions,
- b. A digital recording of the hearing,
- c. Exhibits for Petition 55-005-09-1-4-00008

Petitioner Ex. 1 – Sales disclosure form dated June 3, 2005, for \$675,000,
Petitioner Ex. 2 – Sales disclosure form dated August 11, 2006, for \$650,000,
Petitioner Ex. 3 – Sales disclosure form dated April 13, 2007, for \$825,000,
Petitioner Ex. 4 – Final Determination for 2008 for subject property,
Petitioner Ex. 5 – Statement and justification of prima facie case, calculation of construction cost, and statement of the Petitioner's position,
Petitioner Ex. 6 – Indiana Code 6-1.1-4-39,
Petitioner Ex. 7 – Final Determination for *Roop v. Monroe County Assessor*, Pet. No. 53-017-08-1-5-00001 (Ind. Bd. Tax Rev. June 21, 2010),
Petitioner Ex. 8 – Subject property record card (printed June 25, 2009),
Petitioner Ex. 8a – Subject property record card (printed November 16, 2010),
Petitioner Ex. 9 – Construction cost document,
Petitioner Ex. 10 – Form 115,
Respondent Ex. 1 – Pages 1-7 Real Property Assessment Manual,
Respondent Ex. 2 – RSMeans construction cost estimates-Bloomington area,
Respondent Ex. 3 – RSMeans construction cost estimates-Indianapolis area,
Respondent Ex. 4 – Construction cost estimate for average Indiana home,
Respondent Ex. 5 – Appraisal as of January 1, 2008,
Respondent Ex. 6 – Aerial map,
Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign-In Sheet,

- d. Exhibits for Petition 55-005-10-1-4-00004

Petitioner Ex. 1 – Sales disclosure form dated June 3, 2005, for \$675,000,
Petitioner Ex. 2 – Sales disclosure form dated August 11, 2006, for \$650,000,
Petitioner Ex. 3 – Sales disclosure form April 13, 2007, for \$825,000,

Petitioner Ex. 4 – Final Determination for 2008 for subject property,
Petitioner Ex. 5 – Statement and justification of prima facie case, calculation of construction cost,
Petitioner Ex. 6 – Indiana Code 6-1.1-4-39,
Petitioner Ex. 7 – Final Determination for *Roop v. Monroe County Assessor*, Pet. No. 53-017-08-1-5-00001 (Ind. Bd. Tax Rev. June 21, 2010),
Petitioner Ex. 8 – Subject property record card (printed November 16, 2010),
Petitioner Ex. 9 – Construction cost document,
Petitioner Ex. 10 – Form 115,
Respondent Ex. 1 – Pages 1-7 Real Property Assessment Manual,
Respondent Ex. 2 – RSM means construction cost estimates-Bloomington area,
Respondent Ex. 3 – RSM means construction cost estimates-Indianapolis area,
Respondent Ex. 4 – Construction cost estimate for average Indiana home,
Respondent Ex. 5 – Appraisal as of January 1, 2008,
Respondent Ex. 6 – “Oral Appraisal Report” as of March 1, 2010,
Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign-In Sheet,

- e. These Findings and Conclusions.

Contentions

11. Summary of the Petitioner’s case:

- a. The Respondent is required per Indiana Code 6-1.1-4-39 to use the lowest value based on the three approaches to value. *Kropp testimony; Pet’r Ex. 6.*
- b. The Board set the assessment for this property at \$3,097,300 in its Final Determination for 2008. The assessment should remain at that amount for the 2009 and 2010 assessment years. *Kropp testimony; Pet’r Ex. 4.*
- c. To determine the land value, the Petitioner used the actual purchase price for this land. *Kropp testimony; Pet’r Exs. 1-3.*
- d. The actual construction costs of the improvements were used to determine the 2008 assessment. *Kropp testimony; Pet’r Ex. 9.*
- e. In its final determination for *Roop v. Monroe County Assessor*, the Board concluded construction cost for the subject property is good evidence. *Kropp testimony; Pet’r Ex. 7.*
- f. The 2009 and the 2010 values do not need to be trended because the Respondent did not apply a trending factor for these years. *Kropp testimony; Pet’r Exs. 8, 8a.*

12. Summary of the Respondent's case:

- a. The 2002 Real Property Assessment Manual states, "each taxpayer does not have the right to 'absolute and precise exactitude as to the uniformity and equality of each individual assessment ... nor does it [the Property Taxation Clause of the Constitution of Indiana] mandate the consideration of independent property wealth evidence in individual assessments or tax appeals." It goes on to say, "Appeals of assessments must operate within the rules and utilize data in the same manner as provided in this manual. In general, this requires that challenges to assessments be proven with aggregate data, rather than individual evidence of property wealth." *Brittain testimony; Resp't Ex. 1 at 5.*
- b. The subject property is on 9.609 acres and has seven garden home apartment buildings with 35 apartment units for senior citizens. Johns testimony; *Resp't Ex. 5 at 17-18.*
- c. According to the Petitioner's cost figures, the actual costs for each of these units ranged from \$43.74 to \$50.90 per square foot. Market costs for senior living, however, ranged from \$86.23 to \$125.04 per square foot. That is a large difference. *Brittain testimony; Resp't Exs. 2, 3, 4.*
- d. A certified appraiser, Phillip Johns, appraised the subject property. The Reconciliation section of his appraisal summarized the two valuation approaches that he used:

The *Income Capitalization Approach* utilized the direct capitalization technique to estimate the true tax value. In doing so, the potential gross income was estimated based on the assumption that the subject property could be leased at market rates. Vacancy and collection loss was estimated to be 5% to derive the estimated effective gross income. Applicable fixed, variable and replacement reserve expenses were then deducted to give the estimated net operating income for the property. After selecting an overall capitalization rate of 9.30%, the true tax value was estimated to be \$3,892,000.

The *Cost Approach* utilized the Marshall Valuation Service to provide estimates of the replacement costs of the improvements, including any buildings and site improvements. An allocation for entrepreneurial incentive was then applied to these costs. Accrued depreciation, including physical, functional, and external factors was then applied to these costs. Finally, the estimated value of the subject's land was added to arrive at an estimated true tax value of \$4,195,000.

Johns testimony; Resp't Ex. 5 at 33. The sales comparison approach was excluded from the appraisal "due to a lack of sales of similar use properties." *Id.*

- e. The appraisal's reconciled opinion of value, trended to January 1, 2008, was \$3,950,000. *Johns testimony; Resp't Ex. 5 at 34.*
- f. For the 2010 appeal, Mr. Johns presented an oral appraisal report that supplements or updates the appraisal. Sections of the oral appraisal that differed from the earlier appraisal were reduced to writing. *Resp't Ex. 6.* It contained virtually the same explanation about the income capitalization approach, the cost approach, and the sales comparison approach. It concluded that the value indicated by the income capitalization approach was \$3,968,000 and the value indicated by the cost approach was \$4,132,000. *Johns testimony; Resp't Ex. 6 at 16.*
- g. This appraisal's reconciled opinion of value, trended to March 1, 2010, was \$4,000,000. *Johns testimony; Resp't Ex. 6 at 17.*
- h. The Respondent requested actual income and expense data from the Petitioner regarding the subject property so that the appraiser could consider it, but that data was not provided. *Brittain testimony.*
- i. The appraisals prepared by Mr. Johns meet all requirements of the 2002 Real Property Assessment Manual. *Brittain testimony.*
- j. The appraised values should be used for the 2009 and 2010 assessments. *Brittain testimony.*

Burden of Proof

13. Generally, a taxpayer seeking review of an assessment has the burden of proving that the 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

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 ... 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.

I.C. § 6-1.1-15-17.2 (emphasis added).

14. At the start of the hearing, the parties agreed that the Respondent has the burden of proof for 2009 and the Petitioner has the burden of proof for 2010, but the evidence shows otherwise.
15. Even though the values subsequently got reduced, the assessor's original assessment was \$4,444,600 for both 2008 and 2009. The 2009 PTABOA assessment is \$4,050,200. That amount is less than the assessor's 2008 assessment. The 2010 PTABOA assessment the Petitioner is appealing is \$3,950,000. Again, that amount is less than the assessor had determined for 2009. Neither of the values under appeal increased more than 5% over the assessor's valuation for the prior year. Therefore, the Petitioner still has the burden of proof for both years. But ultimately in this case the final determination does not rest on who has the burden of proof.

Analysis

16. A residential rental property with more than four rental units receives the benefit of specific valuation alternatives authorized by Ind. Code § 6-1.1-4-39(a), which provides that its true tax value is the lowest valuation determined from the three generally accepted approaches to value: cost, sales comparison, or income capitalization.¹ The Petitioner claims to qualify for this statute and nobody disputed that the subject property is the type of property to which this provision applies. Consequently, *by statute the market value-in-use for an assessment of this kind of property can be proved based on whichever of those three approaches produces the lowest value. Nothing in the Assessment Manual or Assessment Guidelines changes or limits that specific statutory authority.*
17. Because Ind. Code § 6-1.1-4-39(a) specifies how the assessed value must be determined, this is not a case where an assessor's valuation according to the Assessment Guidelines is presumed to be accurate. This is not a case where an assessor has discretion to choose among the cost method, the comparable sales method, the income capitalization method, or other generally accepted appraisal principles. And this is not a case where an opinion of value based on some combination of those three approaches to value would be determinative. Again, the lowest value from the cost, sales comparison, or income capitalization approaches determines the proper assessed value. Therefore, the Respondent's request to set the 2009 and 2010 assessments at the final, reconciled values concluded in Mr. John's appraisal is inconsistent with the applicable statute.
18. Regardless of the valuation approach, the record must somehow establish how evidence relates to market value-in-use as of the required valuation date or that evidence is not

¹ The significance of this statute was clearly explained in the Board's determination for 2008. At this point, the Respondent's continuing disregard of this statute is unjustified and difficult to understand.

relevant. *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 a 2009 assessment, the valuation date was January 1, 2008, and for a 2010 assessment the valuation date was March 1, 2010. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3 (2009).

19. Some time ago the Petitioner successfully appealed the 2008 assessment of the subject property and got the assessed value reduced to \$3,097,300. That final determination of value was based on evidence of the Petitioner's 2005-2006 costs trended up to January 1, 2007. In that earlier case the Petitioner's cost evidence was not disputed by the Respondent and the Board determined it was sufficient to make a prima facie case. But each tax year stands alone. *See Thousand Trails Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 1072, 1077 (Ind. Tax Ct. 2001). Furthermore, the evidence and arguments presented for these 2009 and 2010 appeals is substantially different from what was presented for 2008.² Consequently, these appeals will not be determined based on the Petitioner's bare-bones assertion that the 2008 assessed value should be carried forward for 2009 and 2010.
20. Rather, the 2009 and 2010 appeals must be determined from the rule specified in Ind. Code § 6-1.1-4-39(a) and weighing the evidence from both sides. In other words, because the lowest value indicated by the cost approach, the income capitalization approach, or the sales comparison approach is required, the credibility of the cost approach offered by the Petitioner must be weighed against the credibility of the income capitalization approach offered by the Respondent. Weighing the credibility of evidence involves a great number of considerations. There are no general rules that one type of evidence is always more credible than another. The Board has established no such general rules of priority in past cases, nor will it do so here. Specifically, the language the Petitioner relied on in the *Roop v. Monroe County Assessor* determination does *not* mean actual construction costs for the subject property always outweigh other types of evidence.
21. Indiana Code § 6-1.1-4-39(a) does not require anybody to present evidence related to all three approaches to value. In this case the Petitioner indicated that reducing the assessments to the value indicated by its cost approach would be satisfactory and chose to rely totally on that approach. The Petitioner offered absolutely no evidence regarding income capitalization. The Respondent offered evidence (in the appraisal) regarding both cost and income capitalization. Neither party offered any evidence of a value based on comparable sales.
22. First we consider the evidence based on the cost approach. The Petitioner submitted documentation of the actual construction costs for each building as well as its land costs. Exhibit 5 summarizes the information and provides references to the more detailed cost

² In making this statement we recognize that the Petitioner's cost evidence is very similar, if not identical, to the cost evidence it presented for the 2008 appeal. The time difference between those costs and the valuation dates, of course, is greater at this point. The most important distinction, however, is the vastly different case presented by the Respondent.

information in Exhibit 9, which is a 31-page itemized list with site development costs and actual costs of constructing the garden apartments. In addition, Exhibit 5 shows how the calculation added another 10% for “entrepreneurial profit.” It also shows those costs were trended to a value as of January 1, 2007, by adding 10% to the 2005-2006 costs. This calculation results in a value of \$3,097,300. Mr. Kropp concluded that no further trending was required because the Respondent did not make changes for trending for 2009 or 2010. The Petitioner prevailed in the 2008 appeal with this evidence. In that instance it was sufficient to make a prima facie case and the Respondent offered nothing substantial to rebut or impeach it.

23. The Respondent’s case in the 2009 and 2010 appeals is much different. Most of the Respondent’s case is focused on the certified appraisals of the subject property prepared by Phillip Johns, who is an Indiana Certified General Real Property Appraiser and a member of the Appraisal Institute. His appraisals were completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP). He appears to be a well-qualified, credible witness who has no financial interest in the outcome of these appeals. His appraisals’ final conclusions of value for each year are problematic because they are not consistent with the statutory mandate to use the lowest value indicated by the three standard approaches. But within each appraisal he developed a value based on the cost approach (Exhibit 5 at 28-32). In contrast to the actual construction cost evidence offered by the Petitioner, Mr. Johns cost approach looked at sales of other vacant land in the Mooresville area and estimated replacement cost from Marshall Valuation Service for the improvements.
24. The two versions of the cost approach lead to dramatically different conclusions about the value of the subject property—they are over \$1 million apart. Both the land component and the improvement component of the conflicting cost approaches differ significantly. In such circumstances, credibility is an extremely important point. Neither side, however, pointed to any specific errors the other had made or offered any meaningful analysis regarding which cost approach is more credible. It is unfortunate that the parties neglected their obligations in this regard. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (explaining one must “walk the Indiana Board . . . through every element of the analysis”).³
25. In spite of the Respondent’s failure to walk the Board through the analysis, several factors weigh against the credibility of the cost valuation presented by the Petitioner.
 - Mr. Kropp is a certified tax representative. The record does not disclose how he is being compensated. In the absence of such disclosure, it is presumed that a contingent fee arrangement exists between the taxpayer and Mr. Kropp. 52 IAC 1-2-4(c). Therefore, he has a financial stake in the outcome.

³ The Respondent briefly touched on the credibility issue when she asked Mr. Kropp if he could explain the big difference between his cost per square foot numbers and the cost per square foot numbers used by Mr. Johns. Mr. Kropp did not do so. Nothing else about credibility was ever discussed by anybody.

- Nothing in the record indicates that Mr. Kropp had direct, first hand knowledge about the Petitioner's land acquisitions, the construction of the subject property or the associated costs.
 - It is not clear who prepared the Petitioner's cost figures or how they were obtained.
 - Nothing in the record indicates that Mr. Kropp is a certified appraiser.
 - Nothing in the record indicates the Petitioner's cost approach methodology was prepared according to generally accepted appraisal principles or satisfies USPAP requirements.
26. The cost approach developed in Mr. Johns' appraisals is more credible for several reasons.
- Mr. Johns is an Indiana Certified General Appraiser.
 - Although he was paid for doing these appraisals, it was not on a contingent fee basis.
 - His analyses, opinions, and conclusions were developed, and his reports were prepared, in conformity with the USPAP.
 - His estimates for the improvements were based on the Marshall Valuation Service Manual.
27. Therefore, we conclude that when the cost approach is applied according to generally accepted appraisal principles, it indicates the value of the subject property was approximately \$4.1 million, rather than the \$3,097,300 calculated by Mr. Kropp.
28. Because of the specific mandate in Ind. Code § 6-1.1-4-39 to use the lowest value from the three generally accepted approaches, another part of Mr. Johns' appraisals must be considered. His income capitalization approach concludes the value of the subject property is less than the value indicated by the cost approach. The income capitalization approach value was \$3,892,000 as of March 1, 2009, and \$3,968,000 as of March 1, 2010. Even though the Petitioner did not provide the income and expense data that Mr. Johns would like to have considered with this approach, the value that he developed using the income capitalization approach is still credible. Significantly, the Petitioner made no attempt to rebut or impeach Mr. Johns' income capitalization approach. Based on everything offered in the present cases and the weight of the evidence, we conclude that this income capitalization approach is what the statute requires for this kind of property.
29. One small additional step in the analysis is necessary. The required valuation date for the 2009 assessment was January 1, 2008. Mr. Johns related the overall conclusion in the appraisal back to that date, but he did not do so just for the value indicated by the income capitalization approach. Nevertheless, the calculation is fairly simple. He trended a value of \$4,000,000 as of March 1, 2009, to \$3,950,000 as of January 1, 2008. That calculation reduced the value by \$50,000 (1.25%). A similar calculation for the relevant value based on the income capitalization approach results in the value of \$3,843,400 (rounded) as of January 1, 2008.

Final Determination

In accordance with the above findings and conclusions, the 2009 assessment will be reduced to \$3,843,400 and the 2010 assessment will be increased to \$3,968,000.

ISSUED: November 16, 2012

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>