

REPRESENTATIVE FOR PETITIONER: Christopher D. Oakes, Attorney

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Parkview Townhomes LTD)	Petitions No.: 03-003-06-1-4-00001
)	03-003-06-1-4-00002
Petitioner,)	
)	Parcels: 03-96-29-120-000.301-005
v.)	03-96-29-120-000.300-005
)	
Bartholomew County Assessor,)	Bartholomew County
)	Columbus Township
Respondent.)	2006 Assessment

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

October 19, 2010

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

The subject property is an apartment complex in Columbus. Based on comparing the market value of the subject property with its assessment and then comparing market values with assessments for five other apartment complexes in Columbus, did the Petitioner prove that principles of uniformity and equity require reducing the assessment of the subject property to an amount that would match the average deviation between market value and assessed value?¹

¹ This is the issue the parties presented; however, neither party ever mentioned Ind. Code § 6-1.1-4-39, which specifically allows the assessed value for this kind of property to be the lowest value determined using the cost approach, the sales comparison approach, or the income approach.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The two parcels in this appeal (the subject property) constitute an apartment complex known as Parkview Townhomes located at 3393 North Country Brook Court in Columbus. Multiple apartment buildings are located on both parcels.
2. The Petitioner initiated assessment appeals with the Bartholomew County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 for each parcel. The PTABOA mailed its decisions on July 17, 2008. The Petitioners then filed a Form 131 for each parcel with the Board.
3. For parcel 03-96-29-120-000.300-005 the PTABOA determined the assessed value is \$2,510,500. For Parcel 0396-29-120-000.301-005 the PTABOA determined the assessed value is \$2,332,100. Consequently, the total assessment for the complex is \$4,842,600.
4. The Petitioner contends the total assessed value for both parcels should be \$4,113,305.
5. Administrative Law Judge Kay Schwade held a hearing for these petitions on July 21, 2010. There was no on-site inspection by the Administrative Law Judge or the Board.
6. The following persons were sworn as witnesses at the hearing:
 - For the Petitioner – Kevin Morse,
 - For the Respondent – Cathi Gould and County Assessor Tom Owens.
7. The Petitioner presented the following exhibits:
 - Petitioner Exhibit 1 – 2006 Study of Comparable Assessed Value of Apartment Communities,
 - Petitioner Exhibit 2 – Supporting documentation for the Study, Book 1 (tabs A-H) and Book 2 (tabs I-M),

Petitioner Exhibit 3 – Calculation of proposed assessed value.

8. The Respondent presented the following exhibits:

Petitioner Exhibit A – 2006 Bartholomew County Sales Ratio Study and a separate page (not actually part of that Sales Ratio Study) summarizing the apartment data,

Petitioner Exhibit B – Media Release from the Department of Local Government Finance (DLGF),

Petitioner Exhibit C – DLGF Resolutions for several counties regarding the need to reassess for 2006.

9. The following items are recognized as part of the record:

Board Exhibit A – Form 131 petitions with attachments,

Board Exhibit B – Notices of Hearing,

Board Exhibit C – Hearing Sign-In Sheet.

OBJECTIONS

10. The Petitioner objected to Respondent’s Exhibit B because it is hearsay. Among other things, this document states that assessments in Bartholomew County passed DLGF review and “Commissioner Musgrave said these counties [including Bartholomew] have conducted assessments in accordance with state guidelines and will not be ordered to reassess.” “Hearsay” is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. The media release is hearsay. Nevertheless, hearsay evidence is admissible with significant limitations:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If the hearsay evidence is not objected to, the evidence may form the basis for a determination. However, if the evidence is: (1) properly objected to; and (2) does not fall within a recognized exception to the hearsay rule; the

resulting determination may not be solely based upon the hearsay evidence.

52 IAC 2-7-3. The Board will admit the Media Release into evidence. But because the Respondent objected, the document cannot serve as the sole basis for the Board's decision.

11. The Petitioner objected to Respondent's Exhibit C as being irrelevant because nothing in that group of documents pertains to Bartholomew County. The Respondent argued the documents substantiate testimony that Bartholomew County was not ordered to be reassessed for 2006, even though many other parts of the state were. The absence of anything from the DLGF requiring a 2006 reassessment in Bartholomew County is the point. Other evidence supports the same point and nothing in the record indicates the DLGF did anything to the contrary regarding Bartholomew County. Nevertheless, the Board will admit Respondent Exhibit C.

SUMMARY OF THE PETITIONERS' CASE

12. There is a lack of uniformity and equity in the 2006 assessments of apartment complexes in Bartholomew County. The assessed value of certain properties has no correlation to the fair market value of those properties. The subject property was assessed at a higher rate than similar properties. That fact resulted in the subject property carrying a disproportionate share of the property tax burden. The difference demonstrates a lack of uniformity and equity and violates the equal protection clause of both the Indiana and Federal Constitution. Even though the Bartholomew County sales ratio study was approved, the evidence shows the subject property is overassessed when compared to other apartment properties in the same county. *Oakes argument.*
13. Equity Property Management did a study to compare the 2006 assessed value of the subject property with five comparable apartment communities in Columbus that had sold. Kevin Morse was the vice-president of Equity Property Management. He authored this study for the subject property, Parkview Townhomes. He is not an appraiser. This study

shows that all the properties studied, including the subject property, were under assessed in relation to market value. But more importantly, it shows that the range of deviation between market value and assessed value for these properties is from 2.74% to 79.27%. The supporting data for the study is in Petitioner's Exhibit 2, Book 1 and Book 2. If the assessments were equitable, that range would be narrow. This deviation proves that inequitable assessment exists. The assessor should not increase the assessment for the subject property over the 2002 assessed value until all like properties in the Columbus market are fairly and equitably assessed. *Morse testimony; Pet'r Ex. 1.*

14. The subject property's percentage of deviation, or underassessment, is 18.16%. That percentage is calculated by dividing the difference between \$5,722,179 (sale price adjusted for inflation) and \$4,842,600 (the 2006 assessed value) by the 2006 assessed value. *Morse testimony; Pet'r Ex. 1; Pet'r Ex. 2 at tabs A & B.*
15. Columbus Village (Comp 1) has 97 units and sold for approximately \$2.7 million sometime around July 2007. The estimated selling price was adjusted for inflation to \$2,609,324. The 2006 assessed value is \$1,627,800. Therefore, the 2006 assessment percentage of deviation is 60.30% for Comp 1. On cross-examination Mr. Morse acknowledged the "sales price" used in his study is an estimate based on marketing information—the asking price—with an assumed sale date of July 2007. He also admitted he had not followed up on Comp 1 to determine whether it actually sold. *Morse testimony; Pet'r Ex. 1; Pet'r Ex. 2 at tabs C & D.*
16. Grand Avenue Apartments (Comp 2) is a 42 unit complex. It sold in March 2005 for \$1,680,000. The time adjusted sale price would be \$1,752,408 and it has a total assessment of \$1,493,300. Therefore, its percentage of deviation is 17.35%. *Morse testimony; Pet'r Ex. 1; Pet'r Ex. 2 at tabs E & F.*
17. Williamsburg Way Apartments (Comp 3) is a 192 unit complex. It sold in July 2006 for \$5,154,776. The time adjusted sale price would be \$5,118,170 and is assessed for \$4,981,900. Therefore, its percentage of deviation is 2.74%. *Morse testimony; Pet'r Ex. 1; Pet'r Ex. 2 at tabs G & H.*

18. Evergreen Court/Bloomfield Apartments (Comp 4) is a 139 unit complex. It sold in August 2001 for \$3.5 million. The time adjusted sale price would be \$4,048,508 and it is assessed at \$2,258,300. Therefore, its percentage of deviation is 79.27%. *Morse testimony; Pet'r Ex. 1; Pet'r. Ex. 2 at I p.62 & J.*
19. Westwood Pines (Comp 5) is a 202 unit complex. It sold in August 2000 for \$14,003,087. The time adjusted sale price would be \$16,845,810 and the assessment is \$13,863,800. Therefore, its percentage of deviation is 21.51%. *Morse testimony; Pet'r Ex. 1; Pet'r Ex. 2 at I p. 61 & K.*
20. The average percentage of deviation or under assessment is 33.22%. The subject property only has a percentage of deviation of 18.16%. Therefore, the rate of assessment on the subject property is 15.06% more than the average (33.22% - 18.16%). The subject property's assessment should be reduced by 15.06% to arrive at an equitable assessment of \$4,113,305. *Morse testimony; Pet'r Ex. 3.*
21. The appraisal of the subject property did not use the cost approach: "The Cost Approach is not utilized by investors when purchasing a property of this advanced age due to the conjectural nature of estimating accrued depreciation. Therefore, it was deemed not necessary, inapplicable and was not utilized." *Pet'r Ex. 2, Sect. I at 75.* The appraisal did use the income capitalization approach and the sales comparison approach. They both indicated the market value of the subject property was \$5,700,000 as of April 28, 2005. *Pet'r Ex. 2, Sect. I at 75.*

SUMMARY OF THE RESPONDENT'S CASE

22. Bartholomew County's 2006 Sales Ratio Study used sales from 2004 and 2005 including the sale information regarding the subject property and Petitioner's Comp 2. It has data for all major property classes; however, for the purpose of this hearing a separate summary sheet was prepared showing only the sales/assessment data for apartment properties. The apartment data shows a median level of assessments at 90.0% of selling prices—within the acceptable range of 90% to 110%—and supports the accuracy of those

assessments. A coefficient of dispersion (COD) measures uniformity. The COD of the apartment data is 11.178, which is well within the acceptable standard for commercial property. *Gould testimony; Resp't Ex. A.*

23. The subject property is the fourth property from the bottom of the list of apartment properties. Its ratio is 87.7%, which means the assessment is at 87.7% of market value. The sale ratio data for apartments indicates that apartment property throughout Bartholomew County is underassessed. *Gould testimony; Resp't Ex. A.*
24. The Sales Ratio Study is sorted by township and property class within each township. The Sales Ratio Study was submitted to, and approved by the DLGF. The data for Columbus Township Commercial property shows a median of 90.8%, a COD of 13, a standard deviation of less than 20, and a PRD (a measure of progressivity/regressivity) of .981. These results indicate that the commercial assessments are within the required ranges and that the commercial properties are assessed uniformly and equitably. *Gould testimony; Resp't Ex. A.*
25. The DLGF approved the assessments in Bartholomew County. The list of counties ordered by the DLGF to reassess, or retrend, did not include Bartholomew County. *Gould testimony; Resp't B and C.*
26. Before making the argument of equal protection, the Respondent must prove “disuniformity.” The Respondent did not do this with incorrect valuation dates, marketing data and sales outside the relevant time period—the Petitioner has not made a case. *Meighen argument.*
27. The appraisal of the subject property indicates it is not assessed as high as it should be. *Meighen argument.*
28. The concept of equal protection does not create a personal substantive right to a perfect assessment. *Meighen argument.*

ADMINISTRATIVE REVIEW AND BURDEN

29. 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).
30. 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”).
31. 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.

ANALYSIS

32. The Petitioner’s claim is based on an alleged lack of uniformity and equality. The Petitioner contends that other apartment complexes in Columbus are assessed at a lower percentage of market value than the subject property. In attempting to make its case, the Petitioner compared the assessments and market values of the subject property and five other apartment complexes. According to the Tax Court, “when a taxpayer challenges the uniformity and equality of his or her assessment *one* approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals.” *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007).

33. To make the kind of case envisioned in *Westfield Golf*, the studies must be prepared according to professionally acceptable standards. See *Kemp v. State Bd. of Tax Comm'rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). Such studies also must be based on a statistically reliable sample of properties that actually sold. See *Bishop v. State Bd. of Tax Comm'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (citing *Southern Bell Tel. and Tel. Co. v. Markham*, 632 So. 2d 272, 276 (Fla. Dist. Co. App. 1994)). The Petitioner, however, failed to establish that its evidence satisfied either of these requirements.
34. The Petitioner relied on a comparison study that used just five purportedly comparable properties. And the market data from even that small sample group has problems. The most serious problem pertains to Comp 1, which was originally presented as a sale, but subsequently was acknowledged to be merely estimated or projected figures based on listing information. Comp 4 was a 2001 sale. Comp 5 was a 2000 sale. Consequently, those sale prices required significant time adjustments. Furthermore, the purported percentages of deviation or underassessment established by Comp 1 (60.30%), Comp 4 (79.27%) and Comp 5 (21.51%) are the only ones in the study that were more than the subject property (18.16%). The Petitioner failed to establish that Mr. Morse's calculations and the proposed adjustment for the assessment of the subject property are based on a statistically reliable sample.
35. In addition, the Petitioner failed to establish that simply determining the average percentage of assessed value/market value deviation and then adjusting the assessment of the subject property to match the average deviation is a methodology that conforms to any professionally acceptable standards. Indeed, it is difficult to see how Mr. Morse's Study of Comparable Assessed Value of Apartment Communities would do so where by statute, the assessments of the subject property and the other apartment complexes are not linked to the actual market value of the property. The failure to address the statutory authority that specifies how these apartment complexes were supposed to be assessed creates serious doubt about the credibility of the study.

36. A residential rental property with more than four rental units gets the benefit of specific valuation alternatives authorized by Ind. Code § 6-1.1-4-39(a), which provides that the true tax value of such a property is the lowest valuation determined from the three generally accepted approaches to value: cost, sales comparison, or income capitalization. Nobody disputed that the subject property and the Petitioner's comparables are the type of property to which this provision applies. Consequently, each of those assessments properly could be based on whichever of those three approaches produces the lowest value, not the actual market value of such a property. And no evidence in the record indicates what the basis for any of those assessments actually was.
37. This is not a case where an assessor's valuation of a property according to the Assessment Guidelines is presumed to be accurate. And 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 to determine the assessed value of the subject property because Ind. Code § 6-1.1-4-39(a) specifies how the assessed value must be determined.
38. Given the statutory requirement to use the lowest valuation from among the cost, sales comparison, or income capitalization methods for the assessments of residential rental properties with more than four rental units (and the total disregard of that statute), the evidence and arguments that the Petitioner presented in support of its claim are not probative or relevant. Nothing that the Petitioner presented is enough to establish the current assessment is wrong or to establish a more accurate valuation.
39. The Petitioner failed to make a case for any reduction of the current assessment. When a taxpayer fails to provide substantial evidence to support a claim, the Respondent's duty to support the assessment is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 704 N.E.2d at 1119 (Ind. Tax Ct. 1998).

SUMMARY OF FINAL DETERMINATION

40. The Board finds in favor of the Respondent. The assessments for the subject property will not be changed.

This Final Determination for the above captioned matter is issued on the date first written above.

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>>