

REPRESENTATIVE FOR PETITIONER:  
Maureen M. Houglund, Vice President of the General Partner

REPRESENTATIVE FOR RESPONDENT:  
Jeff Phillips, Deputy Assessor, Osolo Township

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Pedcor Investments 2002 LVI, L.P., )	Petition No.: 20-026-04-1-4-00001
)	
Petitioner, )	Parcel No.: 20-02-21-101-011.000-026
)	
v. )	County: Elkhart
)	
Osolo Township Assessor, )	Township: Osolo
)	
Respondent. )	Assessment Year: 2004

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

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**August 22, 2008**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”) having reviewed the evidence and arguments and having considered the issues, now finds and concludes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**INTRODUCTION**

1. In this assessment appeal, Pedcor Investments 2002 LVI, L.P. relied on an appraisal estimating the value of its property as of the March 1, 2004 assessment date. For assessment years 2002-2005, however, properties must be valued as of January 1, 1999.

Because Pedcor did not explain how its appraisal related to the property's value as of the relevant valuation date, the Board denies Pedcor's appeal.

### PROCEDURAL HISTORY

2. On January 31, 2006, the Elkhart County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying Pedcor's request for a change in assessment. On March 6, 2006, Pedcor filed a Form 131 petition asking the Board to review the PTABOA's determination. The Board has jurisdiction over Pedcor's appeal under IND. CODE §§ 6-1.1-15 and 6-1.5-4-1.
3. On May 28, 2008, the Board's designated Administrative Law Judge, Patti Kindler, held a hearing. She did not inspect Pedcor's property.
4. The following persons were sworn as witnesses:
  - For Pedcor:
    - Maureen Houglan, Vice President of Pedcor's general partner<sup>1</sup>
    - Bonnie Mitchell, Mitchell Appraisals, Inc.
  - For the Osolo Township Assessor:
    - Jeff Phillips, Real Estate Deputy, Osolo Township
5. Pedcor offered the following exhibits, which were admitted into evidence:
  - Petitioner Exhibit 1 – Form 11 dated February 28, 2005,
  - Petitioner Exhibit 2 – Form 131 petition,
  - Petitioner Exhibit 3 – Declaration of Extended Rental Housing Commitment,
  - Petitioner Exhibit 4 – Copy of IND. CODE § 6-1.1-4-40,
  - Petitioner Exhibit 5 – Site plan,
  - Petitioner Exhibit 6 – Rent history,
  - Petitioner Exhibit 7 – Occupancy percentages,
  - Petitioner Exhibit 8 – Audited financials for year ending December 31, 2003,
  - Petitioner Exhibit 9 – Audited financials for year ending December 31, 2004,

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<sup>1</sup> Ms. Houglan did not identify the general partner by name.

Petitioner Exhibit 10 – Complete Appraisal Summary Report prepared by Bonnie Mitchell of Mitchell Appraisals and unsigned Supplemental Memorandum,

Petitioner Exhibit 11 – Appraiser’s additional capitalization rate support,

Petitioner Exhibit 12 – Summary of 2004 assessed value resolutions.

6. The Osolo Township Assessor offered the following exhibits, which were admitted into evidence:

Respondent Exhibit 1 – PTABOA’s request for additional evidence dated November 30, 2005; a copy of the Form 115 Notice of Final Assessment Determination; and the 2004 property record card (“PRC”) for Pedcor showing partial completion,<sup>2</sup>

Respondent Exhibit 2 – PTABOA’s request to Osolo Township dated August 22, 2005, asking for a physical inspection and recommendation; a comparison of Pedcor’s building permit costs and property-record-card values; a newspaper article from the Elkhart Truth’s Business Digest section titled “Funding Secured for Apartment Site”; and the post-inspection PRC.

7. The Board recognizes the following additional items as part of the record of proceedings:

Board Exhibit A – The Form 131 petition and attachments,

Board Exhibit B – Notice of hearing,

Board Exhibit C – Hearing sign-in sheet,

Board Exhibit D – List of witness and exhibits from Maureen Houglund dated May 12, 2008.

8. The PTABOA valued the property’s land at \$474,900 and its improvements at \$5,754,000 for a total assessment of \$6,228,900.

9. Pedcor requested an assessment of \$4,223,400.

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<sup>2</sup> The property record card for parcel #20-02-21-101-011.000-026 has 13 pages. The first page represents Pedcor’s land, asphalt, concrete paving, clubhouse, shed, and garages/carports. The remaining 12 pages each represent one of Pedcor’s 12 apartment buildings.

## FINDINGS OF FACT

10. Pedcor owns an apartment complex known as North Lake Apartments located at 25800 Brookstream North in Elkhart. The property contains 12 apartment buildings with a total of 192 units, a clubhouse, a pool, 12 carports, and 6 garages. As of March 1, 2004, only 96 of the apartments were open for leasing, and only 25 of those 96 apartments were occupied. *Houglan testimony*. The Osolo Township Assessor assessed eight apartment buildings, the clubhouse, pool, carports, and garages as 100% complete and the remaining four apartment buildings as only 50% complete.
  
11. Pedcor operates the property under a program authorized by Section 42 of the Internal Revenue Code. *Houglan testimony; Pet'r Ex. 3*. Thus, Pedcor agreed to restrictions on the use and occupancy of its property. Those restrictions include Pedcor's declaration that it will rent 87% of the property's apartments to individuals or families with an income less than or equal to 60% of Elkhart County's median. *Id.* Similarly, Pedcor agreed to limits on the amount of rent it can charge for the restricted apartments. *Houglan testimony*. In exchange for agreeing to those use and occupancy restrictions, Pedcor's limited partners received tax credits that can be used to offset federal income-tax liability. Those credits total \$4,863,440 distributed in equal amounts over a ten-year period. *Houglan testimony; Pet'r Ex. 3*. Those tax credits may be recaptured if Pedcor fails to abide by the rent, use, and occupancy restrictions. *Houglan testimony; Pet'r Ex. 3 at 3-5*.
  
12. Pedcor engaged Bonnie Mitchell and Elizabeth C. Mutzl of Mitchell Appraisals, Inc., to appraise the property. The Mitchell appraisers prepared a complete summary appraisal report estimating the "retrospective value in use of a Fee Simple Interest in the property based upon market conditions prevailing on March 1, 2004, with a date of value of March 1, 2004 and effective assessment date of 2004." *Pet'r Ex. 10 at 2*. Nowhere in their report did the appraisers explain how their estimates related to the property's value as of January 1, 1999. *See id. at 1-50*. And neither Ms. Mitchell nor Ms. Houglan touched on that question in her testimony.

13. The appraisers gave two different estimates for the property—\$4,380,000 as partially completed and \$5,350,000 as fully completed. *Id. at 36*. For their partial-completion estimate, the appraisers used the completion percentages reflected in the property’s March 1, 2004, assessment. *Id. at 7*.
14. The appraisers certified that they performed their analysis and prepared their report in conformity with the Uniform Standards of Professional Appraisal Practice (“USPAP”). *Id. at 38*. They applied two generally accepted appraisal methodologies—the cost and income approaches, arriving at identical estimates under each. They found that sales-comparison approach was inapplicable because Section 42 properties rarely, if ever, sell on the open market. *Id. at 35; see also Mitchell testimony; Hougland testimony*.
15. Pedcor owns other Section 42 properties in other counties.<sup>3</sup> Although Pedcor appealed those assessments for 2004, the appeals were all resolved. And according to Ms. Hougland, they were resolved based upon appraisals in which Ms. Mitchell used the same methodology that she used in appraising the property in this case. *Hougland testimony; Pet’r Ex. 12*.

## CONCLUSIONS OF LAW AND ANALYSIS

### A. Pedcor’s Burden of Proof

16. A taxpayer seeking review of an assessing official’s determination must establish a prima facie case proving both that the current assessment is incorrect and 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). If a taxpayer meets that burden, the assessing

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<sup>3</sup> Ms. Hougland referred to those properties as “our Pedcor . . . properties.” *Hougland testimony*. The property record card for each of those properties, however, lists an entity different from Pedcor Investments 2002 LVI, L.P (“Pedcor”) as the owner. Presumably, the entities are all related to each other. *Pet’r Ex. 12*. For ease of reference, we will follow Ms. Hougland’s lead and refer to those properties as Pedcor’s.

official must offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479. But the burden of persuasion remains at all times with the taxpayer. *Thorntown Tel. Co. v. State Bd. of Tax Comm'rs*, 629 N.E.2d 962, 965 (Ind. Tax Ct 1995).

17. The taxpayer's burden of proof, however, must be viewed in the context of Indiana's assessment system. Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines as "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." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property's market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the REAL PROPERTY ASSESSMENT GUIDELINES for 2002 – Version A.
18. A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* Manual at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared in conformity with USPAP often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer sales information for the subject or comparables properties and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
19. The Manual further provides that for the 2002-2005 assessment years, a property's assessment must reflect its value as of January 1, 1999. *See* MANUAL at 2, 4; *see also* IND. CODE § 6-1.1-4-4.5 (requiring the Department of Local Government Finance to

adopt rules for annually adjusting assessments to account for changes to value in years between general reassessments, with such adjustments to begin in 2006). Thus, whatever method a taxpayer uses in trying to rebut an assessment, the taxpayer must explain how its evidence relates to the appealed property's market value-in-use as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Absent such an explanation, the evidence lacks probative value. *Id.* (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment)

## **B. The Appraisal**

20. To rebut the current assessment's presumption of accuracy, Pedcor offered the Mitchell appraisers' appraisal report as well as Ms. Mitchell's testimony. The appraisal generally bears the hallmarks of what both the Manual and Tax Court describe as valid market-based evidence. The appraisers estimated the property's market value-in-use using two generally accepted appraisal methodologies. And they certified that they conformed to USPAP in performing their analyses and preparing their report.
21. Unfortunately for Pedcor, the appraisal lacks one essential element—it does not estimate the property's value as of the relevant January 1, 1999, valuation date. Instead, the appraisers estimated the property's value as of March 1, 2004—more than five years after that valuation date. And neither the appraisers nor any of Pedcor's witnesses separately attempted to explain how the appraisers' value estimate related to the property's market value-in-use as of January 1, 1999. The appraisal therefore lacks probative value.
22. That is true even though Pedcor's improvements do not appear to have existed in 1999. While a parcel must be assessed based on the physical characteristics that it exhibits on the assessment date (in this case, March 1, 2004), it must be valued as of the same date that all other properties are valued. And for the March 1, 2004, assessment date, all properties were valued as of January 1, 1999.

### C. Settlements in Other Appeals

23. Ms. Hougland also testified that other counties have accepted Ms. Mitchell's valuation opinions in settling Section-42-property appeals. She did so largely to support Pedcor's claim that the Mitchell appraisers correctly disregarded the tax credits that Pedcor's limited partners received in exchange for Pedcor agreeing to occupancy, use, and rent restrictions. Because the appraisal fails for an unrelated reason, Ms. Hougland's testimony does not affect the Board's decision.
24. Even if the Board were required to decide whether the Mitchell appraisers properly disregarded the Section 42 tax credits, decisions by officials from other counties to settle unrelated appeals would be irrelevant to resolving that issue. Also, basic policy concerns caution against giving that evidence any weight. Indiana law encourages parties to engage in settlement negotiations. *Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227, (Ind. 2005). For that reason, the Indiana Rules of Evidence prohibit using settlement terms or even settlement negotiations to prove liability for or invalidity of a claim or its amount. *Id.* (citing IND. EVIDENCE RULE 408). And the Tax Court has recognized that using the settlement of one appeal as evidence in another "would have a chilling effect on the incentive of all assessing officials to resolve cases outside the courtroom." *Boehning v. State Bd. of Tax Comm'rs*, 763 N.E.2d 502, 505 (Ind. Tax. Ct. 2001).

### SUMMARY OF FINAL DETERMINATION

25. Because Pedcor's evidence related to March 1, 2004, rather than to the relevant January 1, 1999, valuation date, it failed to make a prima facie case. The Board therefore finds for the Osolo Township Assessor. There is no change to the assessment.



This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

## **IMPORTANT NOTICE**

### **- 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>>