REPRESENTATIVE FOR PETITIONERS:
Paul M. Jones, Jr., Attorney
Carla D. Higgins, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT:
John C. Slatten, Attorney

BEFORE THE INDIANA BOARD OF TAX REVIEW

SHADELAND STATION APARTMENTS I, LLC, SHADELAND STATION APARTMENTS II, LLC, JPMCC 2005-NEWBERRY ROAD, LLC PETITIONERS, v. MARION COUNTY ASSESSOR, RESPONDENT.	)	Petition Nos.: 49-400-08-1-4-00007 49-400-09-1-4-90005-15 49-400-10-1-4-82831-15 49-400-11-1-4-82221-15 49-400-08-1-4-00008 49-400-09-1-4-90004-15 49-400-10-1-4-82830-15 49-400-11-1-4-82220-15 Parcel Nos.: 49-02-35-108-002.000-400 (4000497) 49-02-35-108-001.000-400 (4000498) County: Marion Township: Lawrence Assessment Years: 2008-2011

March 10 , 2016

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Shadeland Station Apartments I, LLC, Shadeland Station Apartments II, LLC, and JPMCC 2005-LDP2 Newberry Road, LLC (collectively "Petitioners") appealed the assessments of two parcels operated as a single apartment complex for the 2008-11 assessment years.[1] Despite Respondent's assertions to the contrary, we find that Petitioners had standing and that Carla Higgins, the certified tax representative who filed the notices for review and Form 131 petitions in these appeals, was authorized by Shadeland Station I and Shadeland Station II to do so.

2. As for the merits, the Petitioners' valuation evidence, including an appraisal, was too far removed from the valuation dates for the 2008-2009 assessments to have any probative weight. But we find the appraisal was sufficiently related to the valuation date for the 2010 assessment to be probative, and we order that assessment to be changed. Because the parties do not dispute the 2011 assessment, we order no change for that year.

PROCEDURAL HISTORY

A. Path to the Board

3. Higgins filed notices for review with the Respondent. The Marion County Property Tax Assessment Board of Appeals ("PTABOA") failed to timely hold hearings on those notices, and Petitioners exercised their option to file Form 131 petitions directly with the Board.[2] *See* Ind. Code § 6-1.1-15-1(o) (allowing a taxpayer to appeal to the Board at any time after the maximum time for the PTABOA to hold a hearing or issue a determination has lapsed).

[1]Before Newberry Road bought the property, 18 different limited liability companies, all incorporating "Shadeland Station Apartments" in their names, owned fractional undivided interests as tenants in common. *Pet'rs Ex. C at 2*.

[2] They filed their petitions for 2009-2011 on February 12, 2015 and their petitions for 2008 on March 15, 2012.

B. Hearing

4. On August 19, 2015, Jacob Robinson, our designated administrative law judge ("ALJ"), held a hearing on the petitions. Neither he nor the Board inspected the property.

5. The following people were sworn as witnesses and testified at the hearing: Carla D. Higgins (f/k/a Carla D. Bishop), George Spenos, Greg Dodds, and Jeff Hill.

6. The parties agreed that the property was assessed at the following values:

Year	Land (4000497)	Improvements (4000497)	Land (4000498)	Total
2008	$1,798,300	$16,867,300	$185,100	$18,850,700
2009	$1,798,500	$16,200,800	$185,100	$18,184,400
2010	$1,798,700	$16,419,200	$185,100	$18,403,000
2011	$1,799,600	$6,515,300	$185,100	$8,500,000

7. Petitioners requested the following assessments:

Year	Total
2008	$16,195,900
2009	$13,630,500
2010	$11,065,100
2011	$8,500,000

C. The Record, Evidence, and Objections

1. The Record and Exhibits

8. The record includes a digital recording of the hearing, all filings by the parties, and all orders and notices issued by the Board or ALJ. It also includes various exhibits offered by the parties. As discussed more fully below, we admit some of those exhibits without objection and some over objection. We also sustain the objection to one exhibit—Respondent's Exhibit 2.

9. Petitioners offered the following exhibits:

Petitioners Exhibit A:	Power of Attorney authorizing Carla D. Higgins to represent JPMCC 2005-LDP2 Newberry Road, LLC for the 2008-2011 tax years
Petitioners Exhibit B:	Real Estate Sales Agreement by and between VP Shadeland Station, LLC and RealSource Equity Services, LLC dated January 6, 2005, with amendments
Petitioners Exhibit C:	Buyer's Settlement Statement for closing by and between VP Shadeland Station, LLC and Shadeland Station Apartments I, LLC, et al., dated April 25, 2005
Petitioners Exhibit D:	Letter to Carla D. Bishop from V. Kelly Randall, COO, RealSource Equity Services, LLC dated October 30, 2008
Petitioners Exhibit E:	2002 Property Record Card for Parcel 4000497
Petitioners Exhibit F:	CapMark Escrow Statement for Village Park Apartments, dated October 16, 2008
Petitioners Exhibit G:	Email correspondence between Robert Heninger, RealSource, and Carla Bishop dated June 27, 2008
Petitioners Exhibit H:	Praecipe for Sale of Real Estate filed January 31, 2011 in *JPMCC 2005-LDP2 Newberry Road, LLC v. Shadeland Station Apartments I, LLC, et al.*; Cause No. 49D131008MF034298 with agreed judgment and decree of foreclosure and other attachments
Petitioners Exhibit I:	Indygov online Property Owner History for Parcel 4000497
Petitioners Exhibit J:	Agreement for Sale and Purchase of Property by and between Newberry Road and SBV-Indianapolis-Hillcrest Woods, LLC dated February 16, 2012
Petitioners Exhibit K:	Email from V. Kelly Randall, RealSource Equity Services, to Carla Bishop, dated June 11, 2009
Petitioners Exhibit L:	Analysis showing current and proposed assessed values for 2006-2011
Petitioners Exhibit M:	Self-Contained Appraisal Report prepared by CBRE and dated December 16, 2010

Petitioners Exhibit N: Undated Sales Disclosure Form for Parcel 4000497 documenting sale from Newberry Road to SBV

10. Respondent submitted the following exhibits:

Respondent Exhibit 1: Printouts from Indiana Secretary of State showing entity information for Shadeland Station I and Newberry Road

Respondent Exhibit 2: E-mails between Carla Bishop, Gregory A. Dodds, Alexa L. Gibson, and John C. Slatten dated April 16, 2013 through May 2, 2013

Respondent Exhibit 3: Power of Attorney authorizing Carla Bishop to represent Shadeland Station Apts. I, LLC, and Shadeland Station Apts. II, LLC for the 2008 tax year;

Power of Attorney authorizing Carla Bishop to represent Shadeland Station Apts. I, LLC and Shadeland Station Apts. II, LLC for the 2008-2009 tax years;

Power of Attorney authorizing Carla Bishop to represent Shadeland Station Apts. I, LLC and Shadeland Station Apts. II, LLC for the 2008-2010 tax years;

Power of Attorney authorizing Carla Bishop to represent Shadeland Station Apts. I, LLC and Shadeland Station Apts. II, LLC for the 2008-2012 tax years;

Power of Attorney authorizing Carla D. Higgins to represent JPMCC 2005-LDP2 Newberry Road, LLC for the 2008-2011 tax years;

Written notice of appeal filed by Carla D. Bishop for 2008 assessment of Parcel Nos. 4000497 and 4000498 dated November 30, 2009;

Written notice of appeal filed by Carla D. Bishop for 2009 assessment of Parcel Nos. 4000497 and 4000498 dated March 31, 2010;

Written notice of appeal filed by Carla D. Bishop for 2010 assessment dated October 25, 2010;

Written notice of appeal filed by Carla D. Bishop for 2011 assessment of Parcel No. 4000498 dated May 15, 2012;

Written notice of appeal filed by Morgan E. Thomas, Marvin F. Poer and Company, for 2010 assessment of Parcel Nos. 4000497 and 4000498, dated May 24, 2011;

Power of attorney authorizing Morgan E. Thomas, Marvin F. Poer and Company to represent Newberry Road for the 2010 tax year;

Form 131 petition for 2009 for parcel 4000498.

2. Objections

11. The parties objected to various questions posed to witnesses or their testimony in response. Most were grounded on relevancy or hearsay, while some dealt with whether questions called for legal conclusions. The ALJ ruled on most of those objections. We adopt his rulings and overrule any remaining objections to questions or testimony.

12. The parties also objected to the admission of nearly every exhibit offered. The ALJ took those objections under advisement, except in a few instances, where they were not addressed. We now turn to those objections.

a. <u>Objections Based on Exchange Requirement</u>

13. Petitioners' counsel objected to Respondent's Exhibits 1-2 and Respondent's counsel objected to Petitioners' Exhibits B-H and J, primarily on grounds that they were not exchanged before the hearing. In some instances, the parties also objected on relevancy grounds. We summarily overrule the relevancy objections. Respondent also objected to Exhibit H—the praecipe for sale of real estate, agreed foreclosure judgment, and related documents—on grounds they referenced missing exhibits that might be relevant. We overrule the objection. Respondent did not identify the missing exhibits or explain their significance. In any case, Respondent was free to offer the missing exhibits. We therefore overrule his objection.

14. As to the objections based on the failure to exchange documents, our procedural rules require parties to exchange copies of their documentary evidence at least five business days before a hearing. 52 IAC 2-7-1(b)(1). This allows parties to be better informed and to avoid surprises. It also promotes an organized, efficient, and fair consideration of the issues. We may exclude evidence based on a party's failure to comply with the exchange rule where it appears that admitting the exhibit would prejudice the opposing party. *See* 52 IAC 2-7-1(f).

15. Respondent offered Exhibits 1-2 to support its challenges to the Petitioners' standing and to Higgins' authorization to represent them. The grounds for those challenges and the need for the exhibits to support them should have been apparent to Respondent well before the exchange deadline. But we see little prejudice to Petitioners from admitting Exhibit 1. That exhibit shows the status of Shadeland Station I and Newberry Road with the Indiana Secretary of State as of March 14, 2013, and February 24, 2015, respectively. Higgins admitted the Shadeland Station entities had been dissolved. More importantly, as discussed later in these findings and conclusions, the status of those entities as of the dates listed in the printouts, without more, does not affect their standing.

16. Exhibit 2 is a different story. It contains e-mails relating to an appeal Higgins filed on a different parcel, where Respondent's employee, Greg Dodd, had questioned whether Higgins was authorized to file the appeal. To the extent the e-mail has any relevance (and we think it has little), Petitioners could not reasonably have anticipated having to respond to the e-mail. Thus, we sustain Petitioners' objection to Exhibit 2.

17. By contrast, Petitioners offered Exhibits B-H in response to Respondent's challenges to their standing and to Higgins' authority to represent Shadeland Station I and Shadeland Station II. Thus, they claim they did not know the exhibits would be necessary until the hearing. Although Petitioners likely knew before the hearing that Respondent would raise the authorization and standing issues, the record does not show when. Under those circumstances, we cannot say they knew, or reasonably should have anticipated, that the

exhibits would be necessary before the exchange deadline. Consequently, we overrule Respondent's objection to those exhibits.

18. Petitioners offered Exhibit J—a February 16, 2012 purchase agreement by which Newberry Road sold the property to SBV- Indianapolis-Hillcrest Woods, LLC—both in response to Respondent's challenge to their standing and to prove the property's value. As discussed above, Petitioners did not need to exchange it for the first purpose. But they did for the second. Petitioners' counsel, however, indicated that he both provided the exhibit in advance of the hearing and included it on Petitioners' exhibit list. We therefore overrule the objection.

b. Respondent's Remaining Objections

19. Respondent also objected to Petitioners' Exhibits L-N on various grounds. We address each objection in turn.

i. Exhibit L

20. Respondent objected to Exhibit L, Hill's analysis, on three grounds: (1) it was part of settlement negotiations between the parties, (2) Petitioners failed to lay a foundation to show its relevance, and (3) it is hearsay.

21. For reasons our supreme court has outlined, we have repeatedly rejected attempts to use evidence of settlement negotiations to prove value. *See Dept. of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227-28 (Ind. 2005) (explaining that allowing parties to use the settlement would have a chilling effect on the resolution of cases). Higgins admitted that the parties were in settlement negotiations, but she testified that she received the document as part of Respondent's evidence exchange.[3] Although Petitioner offered it as Exhibit L, it also bears stickers identifying its various pages as

[3]Higgins acknowledged during cross-examination that she was being paid for this case on a contingency fee basis. The Board notes that it has taken this into consideration in weighing the credibility of her testimony herein.

Respondent's exhibits (R1(A), R1(B), and R1(B2)).[4] To the extent the document was part of settlement negotiations, Respondent waived its objection by identifying it as a potential exhibit.

22. Respondent's relevance objection is not colorable. On its face, the exhibit analyzes the property's value, which is precisely the issue in these appeals. As the hearsay objection, Petitioners neither disputed that the document is hearsay nor argued that it falls within a recognized exception to the hearsay rule. Our procedural rules specifically allow us to admit hearsay, with the caveat that if an opposing party properly objects to the evidence and it does not fall within a generally recognized exception to the hearsay rule, we may not base our final determination solely on that evidence. 52 IAC 2-7-3. In accordance with that rule, we admit Exhibit L. But as explained below in our discussion of the merits, we give it no weight.

ii. Exhibit M

23. Respondent next objected to Petitioners' Exhibit M—an appraisal report prepared by CBRE—on the following grounds: (1) Petitioners failed to lay a proper foundation identifying "the context of who it was for or what it is," (2) it is copyrighted material prepared for and intended for use only by people or entities other than Petitioners, and (3) it is hearsay.

24. As to Respondent's first ground, the appraisal is self-explanatory and is plainly relevant to a central issue in these appeals—the property's value.

25. Moving on, Respondent failed to cite to any rules of evidence, statutes, or relevant case law to support his copyright objection. It is not readily apparent that offering the appraisal as evidence in an administrative proceeding would violate any copyright. More importantly, it does not follow that the remedy would be to exclude the appraisal from evidence rather than an action by the copyright holders against the Petitioners.

[4] Petitioners' Exhibits M and N bear similar markings.

26. Regardless, at least one Petitioner, Newberry Road, was authorized to use the appraisal. The appraisal was prepared for LNR on behalf of U.S. Bank National Association as successor trustee to Wells Fargo Bank, N.A., as trustee for the registered holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2005-LDP2 ("Trust"). More importantly, Newberry Road became the holder of the note, and the appraisal report specifically states that it may "be relied upon by any purchaser or assignee of the Property Note…" A purchase agreement by which Newberry Road later sold the property shows LNR was authorized to act on Newberry Road's behalf. *See Pet'rs Ex. H at 21, ¶ F; Pet'rs Ex. J; Pet'rs Ex. M at 2.* .

27. Respondent's hearsay objection similarly fails. Statutorily an appraisal report is not admissible solely on the grounds of hearsay. I.C. § 6-1.1-15-4(p).

iii. Exhibit N

28. Finally, Respondent objected to Exhibit N—a sales disclosure form documenting Newberry Road's sale of one of the two parcels comprising the property (parcel 4000497)—on relevance grounds, arguing the disclosure does not show the terms of the sale, whether the sale included personal property, or whether the reported information was accurate. The terms are documented in the underlying purchase agreement, which Petitioners offered as Exhibit J. To the extent Respondent believed anything in the disclosure was inaccurate, he was free to offer evidence to that effect. We overrule the objection.

FINDINGS OF FACT

A. Procedural Facts

29. There are procedural as well as substantive issues in these appeals, both of which require us to make factual determinations. We will begin with the procedural facts, which go to Respondent's claims (1) that Higgins, a certified tax representative who filed notices of review with Respondent to initiate the appeals at the local level as well as the Form 131

petitions with the Board, lacked authority to act on Petitioners' behalf, and (2) that Petitioners lack standing.

30. Those facts are most easily conveyed through a timeline.

April 25, 2005: Various entities incorporating "Shadeland Station" in their business names bought the property as tenants in common. Those entities include Shadeland Station I and Shadeland Station II. As Higgins understood things, the property was under the care of RealSource, an asset manager, and Arlington Properties, LLC managed the property. *Higgins testimony; Pet'rs Exs. B-C.*

July 9, 2007: Higgins was engaged by Arlington Properties to file property tax appeals. William Daniel, vice president of Arlington Properties, signed various powers of attorney on behalf of "Shadeland Station Apartments I, LLC, Shadeland Station Apartments II, LLC et. al.," authorizing Higgins to appeal property taxes. *Higgins testimony; Form 131 petitions; Resp't Ex. 3.*

Nov. 30, 2009: Higgins filed a notice for review of the 2008 assessment, naming Arlington Properties as the "client." *Form 131 petitions; Resp't Ex. 3.*

Feb. 19, 2010: Newberry Road became holder of the note and mortgage. *See Pet'rs Ex. H at 21, ¶ F.*

April 28, 2010: Higgins filed a notice for review of the 2009 assessment, again naming Arlington Properties as her client. *Form 131 petitions; Resp't Ex. 3.*

Aug. 4, 2010: Newberry Road filed a foreclosure action involving the subject property. *Pet'rs Ex. H.*

Nov. 23, 2010: Higgins filed a notice for review of the 2010 assessment, once again naming Arlington Properties as the client. *Form 131 petitions; Resp't Ex. 3.*

Jan. 3, 2011: The Marion Superior Court entered an agreed judgment in the foreclosure action. The judgment required the Shadeland Station entities, their agents, or management companies to "turn over all net funds, now or in the future, to Newberry Road, including, but not limited to: (i) all tax refund amounts held for the Property or, still to be received and related to the Property…." *Pet'rs Ex. H at 21, ¶ F.*

April 13, 2011: Following a sheriff's sale, Newberry Road obtained a sheriff's deed to the property. *Pet'rs Ex. I.*

May 26, 2011: Morgan Thomas, a certified tax representative, filed a notice for review for the 2011 assessment. He attached a power of attorney that identifies Newberry Road as the taxpayer and that is signed by LNR's vice president. Although Thomas later withdrew the appeal, the record does not show when or why he did so. At most, Respondent's witness, Jeff Hill, testified that there was an issue about Thomas's representation and that there were e-mails on those questions as far back as 2014. *Hill testimony; Resp't Ex. 3*.

Feb. 16, 2012: Newberry Road and SBV entered into a purchase agreement whereby SBV agreed to buy the property for $8,500,000. *Pet'rs Ex. J*.

March 15, 2012: Higgins filed Form 131petitions for 2008. She named Shadeland Station I as property owner and attached powers of attorney signed by Daniel, vice president of Arlington Properties. *Form 131 petitions*.

May 23, 2012: Higgins filed 2011 notices of review naming Newberry Road as taxpayer. *Form 131 petitions; Resp't Ex. 3*.

March 14, 2013: Shadeland Station I dissolved, and the Indiana Secretary of State revoked its status as a foreign limited liability company. *Higgins testimony; Resp't Ex. 1*.

Feb. 12, 2015: Higgins filed Form 131petitions for 2009-2011, naming Shadeland Station I as property owner but attaching a power of attorney that (1) identified Newberry Road as the taxpayer, and (2) was signed by LNR's vice president. *Form 131 petitions*.

Feb. 24, 2015: Newberry Road voluntarily dissolved. *Resp't Ex. 1*.

Apr. 9, 2015: We issued notices of defect for the 2009-2011 Form 131 petitions, noting that different taxpayers were named on Form 131 petitions, Form 130s (notices for review) and powers of attorney, and asking for an explanation.

May 8, 2015: Higgins responded to the defect notices by including attachments naming "Shadeland Station Apts. 1, LLC and Shadeland Station Apts. 11,[5] LLC, et al c/o Arlington Properties (property manager)

[5] The use of Arabic, rather than Roman, numerals appears to be a typographical error.

and JPMCC 2005-LDP2 Newberry Road, LLC" as the property owners.

B. Valuation Facts

31. Two Indiana licensed appraisers and a trainee appraiser from CBRE (CB Richard Ellis) prepared a self-contained appraisal report in which they estimated the market value of the fee simple interest in the property, both "as is" on December 8, 2010 and as of the date at which they projected the property could achieve stabilized occupancy (June 8, 2012). They certified that they performed the appraisal and prepared their report in conformity with USPAP. They developed the sales-comparison and income-capitalization approaches to value. *Pet'rs Ex. M.*

32. The property was only 75% occupied, which was below the market occupancy rate of 90%. Given that occupancy level and market conditions, the appraisers did not believe a "traditional rent loss alone" adequately represented the "as is" value. They projected a lease-up period of 18 months. They also surveyed brokers, owners, and developers regarding the profit level they would require to assume a property leased well below market levels. Based on that data, the appraisers performed a "Lease-Up Discount Analysis," which yielded a deduction of $980,000. They applied the deduction as a line item to their "as is" analyses under both valuation approaches. Their conclusions under each approach were similar:

Approach	**As Is**	**Stabilized**
Sales-comparison	$13,520,000	$14,500,000
Income-capitalization	$13,320,000	$14,300,000

In reconciling their conclusions, they settled on the values reflected in their analyses under the income approach. *Pet'rs Ex. M.*

33. Jeff Hill, an employee of Respondent, prepared a written analysis of the property's value. He gave some basic information about the property, such as the age and size of the

buildings and the number of units. He also laid out the 2005 and 2012 sale prices for the property and the estimate from the CBRE appraisal, and he expressed those values in terms of price per unit. He next listed sales of other apartment complexes and provided information regarding the buildings' size, age, and number of units. He grouped the sales by the assessment year to which he apparently believed they applied, and he again expressed the sale prices in terms of price per unit. He then computed minimum, maximum, median, and average prices for each group. Finally, he listed a proposed assessment for each year, although he did not explain how he reached that number. *Pet'rs Ex. L.*

CONCLUSIONS OF LAW AND ANALYSIS

A. Burden of Proof

34. Generally, a taxpayer seeking review of an assessing official's determination has the burden of making a prima facie case both that the current assessment is incorrect and what the correct assessment should be. If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence.

35. Indiana Code § 6-1.1-15-17.2, also known as the burden shifting statute, creates an exception to that rule where (1) the assessment currently under appeal represents an increase of more than 5% over the previous year's assessment for the same property, or (2) a successful appeal reduced the previous year's assessment below the current year's level, regardless of the amount. I.C. § 6-1.1-15-17.2. Under those circumstances, the assessor has the burden of proving the assessment is correct. *Id*. If she fails to do so, it reverts to the previous year's level or to another amount shown by probative evidence. See I.C. § 6-1.1-15-17.2(b).

36. The parties stipulated that the Petitioners had the burden of proof for all the years under appeal. We accept their stipulation.[6]

C. Higgins' Authority to File Appeals on Petitioners' Behalf

37. Respondent claims Higgins lacked authority to file appeals for the Petitioners, because (1) she referred only to Arlington Properties when she filed her notices of review below, and (2) Arlington Properties' vice president, rather than an officer of any Shadeland Station entity, signed Higgins' powers of attorney.

38. We disagree. The powers of attorney expressly name Shadeland Station I and Shadeland Station II as taxpayers. And they are on State Form 23261, the top of which provides "If signed by a corporate officer, partner, guardian, tax matters partner/person, executor, receiver, administrator or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer." Similarly, the notary section incorporates the following language: "Before me, a notary public…personally appeared…the taxpayer(s) *or a person duly authorized to sign for and on behalf of the taxpayer(s)*…" Thus, on their faces, the powers of attorney appear to validly authorize Higgins to file property tax appeals on behalf of Shadeland Station I and Shadeland Station II, if not the other tenants in common.

39. We also note that Paul Jones later appeared as counsel for Shadeland Station I, showing that entity was aware of and desired to pursue these appeals. Under those circumstances, we have little doubt that Higgins was authorized to file the appeals.

D. Standing

40. The Respondent also challenges the Petitioners' standing. First, he claims the Petitioners are foreign corporations that do not currently have certificates of authority to transact

[6] Stipulations for multiple years under appeal are rare, because the determination of who has the burden for later years often depends on the outcome for the immediately preceding year. The outcome would be the same in these appeals even if the parties had not stipulated to the burden of proof.

business in Indiana. Second, he claims that Newberry Road does not qualify as the "taxpayer." We will address each claim in turn.

1. Dissolution or Revocation of Status Does not Deprive Petitioners' of Standing

41. Respondent claims that the revocation of Shadeland Station I's status with the Secretary of State and Newberry Road's voluntary dissolution deprived them of standing. For support, he cites to Indiana Code § 23-1-49-2, which prohibits foreign corporations from transacting business in Indiana without a certificate of authority. On its face, that statute does not apply to Petitioners. Newberry Road is a domestic, not a foreign, company. And both Petitioners are limited liability companies, not corporations.

42. The Indiana Code does have the following parallel section that applies to foreign limited liability companies: "[a] foreign limited liability company transacting business in Indiana without a certificate of authority may not maintain a proceeding *in any court* in Indiana until it obtains a certificate of authority." I.C. § 23-18-11-3(a) (emphasis added). But even that statute does not apply to these proceedings. First, while a hearing before the Board may be analogous to a court proceeding in some respects, we are not a court. Second, simply "maintaining, settling, or defending a proceeding" does not constitute "transacting business" for purposes of that statute. I.C. § 23-18-11-2(b)(1). And there is no evidence in the record to show that either Shadeland Station I or Newberry Road (to which the statute does not apply in the first place) otherwise transacted business after the dates on which their status became inactive. Third, dissolved limited liability companies are authorized to conduct business necessary to wind up their affairs, including collecting assets, discharging liabilities, and any other acts necessary to wind up and liquidate the company. I.C. § 23-18-9-3(a). Finally, dissolution does not "[a]bate or suspend a proceeding pending by or against the limited liability company on the effective date of dissolution." I.C. § 23-18-9-3(b)(6).

2. Newberry Road as the "Taxpayer"

43. According to Respondent, the term "taxpayer" normally means the person liable for the tax, and that pursuant to Indiana Code § 6-1.1-2-4, that person is the owner of the property on the assessment date.[7] He also argues that treating anyone who pays the property taxes as a "taxpayer" is problematic because "taxes are generally paid by escrow companies, they are often paid by multiple tenants, and because in the year of sale, at least two parties would have standing to appeal the same assessment if the taxes are prorated between the parties." *Resp't Post-Hearing Brief at 2.*

44. Respondent does not cite to any authority for his reading of the statute. And he ignores our procedural rules, which include both a property's owner and a "taxpayer responsible for paying the property taxes payable on the subject property" as people who may be included in the definition of a "party." We have repeatedly allowed individuals who bought properties after the assessment date to pursue appeals when they could show they were contractually or otherwise responsible for the taxes that were based on the assessments they sought to appeal.

45. Newberry Road owned the property when the taxes based on the 2010 assessments were billed. It presumably paid those taxes.[8] Similarly, when Newberry Road sold the property, it gave the buyer a credit against the purchase price for taxes based on the 2011 assessment. In other words, Newberry Road was not writing a check to the county treasurer for the 2011 taxes when they came due in 2012 because it had prepaid them in the form of a credit to SBV at closing.

46. In short, Newberry Road has a substantial interest in the outcome of all the appeals (under the agreed foreclosure judgment, it is entitled to any refunds, including for taxes

[7] Shadeland Station I and Shadeland Station II owned the property on each assessment date at issue. They would qualify as taxpayers under Respondent's reading of the law.

[8] In Indiana, property taxes are due and payable in two (2) equal installments on May 10 and November 10 of the year following an assessment. I.C. § 6-1.1-22-9(a). For example, the taxes for the March 1, 2010 assessment at issue in this appeal were due and payable on May 10, 2011 and November 10, 2011.

based on the 2008 and 2009 assessments), and it fits within our procedural rule's definition of a party for the later years under appeal. More importantly, two of the property's owners for all the assessment dates under appeal (Shadeland Station I and Shadeland Station II) are already parties, and the same certified tax representative and attorney have appeared for all three entities. Under those circumstances, we see no need to determine whether Newberry Road would have been statutorily authorized to initiate the appeals in its own name.[9]

47. We note that Higgins could have avoided all the procedural questions in these appeals by simply paying closer attention to detail. Her careless descriptions of the property's owners and her failure to clearly identify which entity or entities she represented led the parties and us to unnecessarily waste time and effort that would have been better spent on the underlying merits. As it is, the parties devoted shockingly little time or effort to those merits.

D. VALUATION

48. For rental properties such as the subject property, Indiana Code § 6-1.1-4-39(a) ("apartment statute") provides that true tax value is the lowest value indicated by applying the cost, sales-comparison, and income-capitalization approaches:

> (a) For assessment dates after February 28, 2005, except as provided in subsections (c) and (e), the true tax value of real property regularly used to rent or otherwise furnish residential accommodations for periods of thirty (30) days or more and that has more than four (4) rental units is the lowest valuation determined by applying each of the following appraisal approaches:
>
> (1) Cost approach that includes an estimated reproduction or replacement cost of buildings and land improvements as of the date of valuation together with estimates of the losses in value that have taken place due to wear and tear, design and plan, or neighborhood influences.

[9] Although Respondent offered an exhibit showing a different tax representative filed a notice for review on behalf of Newberry Road for the 2010 assessment, that appeal was later withdrawn. Respondent did not explain the relevance of that information, and it does not affect our analysis.

(2) Sales comparison approach, using data for generally comparable property.
(3) Income capitalization approach, using an applicable capitalization method and appropriate capitalization rates that are developed and used in computations that lead to an indication of value commensurate with the risks for the subject property use.

Ind. Code § 6-1.1-4-39(a).

49. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass'r,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2008 and 2009 assessments, the valuation dates were January 1, 2007, and January 1, 2008, respectively. 50 IAC 21-3-3. Otherwise, that evidence lacks probative value. *Id*. For the 2010 and 2011 assessments, the valuation dates were March 1, 2010, and March 1, 2011, respectively. Ind. Code § 6-1.1-4-4.5(f).

2008-2009 Appeals

50. As explained above, Petitioners had the burden of proof. They offered three things in an attempt to meet that burden: (1) Hill's analysis, (2) the CBRE appraisal, and (3) the purchase agreement and sales disclosure from when Newberry Road sold the property.

51. Hill's analysis has no probative weight. It simply lists sale prices for various other apartment complexes and breaks them down by price-per-unit. Hill did little to identify the properties' relevant characteristics or compare them to the subject property. He similarly failed to explain how any relevant differences affected values. He did not even explain how he arrived at his proposed values. Thus, his analysis falls well short of what the Tax Court has explained is necessary when relying on comparative sales data. *See Long,* 821 N.E.2d at 470-71 (holding that taxpayers' comparative sales data lacked probative value where they failed to compare relevant characteristics or explain how differences affected value).

52. The other two items—the CBRE appraisal and Newberry Road's sale of the property, both address the property's value as of dates far removed from the relevant valuation dates for the 2008-2009 assessments (January 1, 2007 and January 1, 2008). Petitioners did not even attempt to explain how the appraisal or sale related to those valuation dates as required by *Long*. Thus, Petitioners failed to make a prima facie case for changing the 2008 or 2009 assessments.

2010 Appeal

53. The 2010 appeal is a different story. The CBRE appraisers estimated the property's value as of December 16, 2010—less than 10 months after the valuation date. The appraisers certified that they prepared their appraisal in conformity with USPAP, and they valued the fee simple interest in the property. They used two of the three appraisal approaches contemplated by the apartment statute—the income capitalization and sales-comparison approaches—with their conclusions under the income-capitalization approach being slightly lower.

54. The appraisers did not testify, and Petitioners did little to walk us through the appraisal report. But the report is largely a self-explanatory narrative. For that reason, it makes a prima facie case for changing the assessment to $13,320,000—the "as is" value under the income approach. We understand that the apartment statute defines true tax value as the lowest of the values from all three generally recognized approaches, and the appraisers only developed two of those approaches. Including the third approach, however, could not lead to a higher value, only a lower one. Thus, through the appraisal, Petitioners made a prima facie case that the assessment was too high and that the property's true tax value for 2010 was no more than $13,320,000.

55. Respondent did not attempt to impeach the appraisal or any of the appraisers' underlying analyses, arguing only that the appraisal should have been excluded from evidence on grounds that it is copyrighted material. As explained above, we overrule that objection.

Respondent similarly failed to offer valuation evidence of his own. Thus, we find the 2010 assessment should be changed to $13,320,000.

2011 Appeal

56. At the hearing's outset, the parties stipulated that the 2011 assessment was $8,500,000. According to Respondent, the Auditor corrected the assessment, changing it from the original level of $18,403,900. The record does not show why or when the change was made. In any case, Petitioners did not request a lower value and the Respondent did not ask us to raise the assessment. Thus, there is no real dispute for us to resolve for 2011.

57. We recognize that the CBRE appraisal estimates a higher value as of a date less than four months before the 2011 valuation date. Again, Respondent did not ask us to increase the assessment based on that appraisal. To the contrary, he objected to it being admitted into evidence.

CONCLUSION

58. Petitioners failed to make a prima facie case in their 2008-2009 appeals, and there is no real dispute for 2011. We order no change to those assessments. Petitioners proved the assessment was too high for 2010. The parcels' combined assessment for that year must be reduced to $13,320,000.

This Final Determination of the above captioned matter is issued by the Board 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>.