

REPRESENTATIVES FOR PETITIONER:
Larry J. Stroble, Barnes & Thornburg LLP
Richard J. Deahl, Barnes & Thornburg LLP

REPRESENTATIVE FOR RESPONDENTS:
Scott Potts, Representative

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

INDIANA GRISSOM)	Petition Nos.
LIMITED PARTNERSHIP,)	
)	52-016-02-1-5-10000
Petitioner,)	52-016-02-1-5-10001
)	52-016-02-1-5-10003
v.)	
)	County: Miami
PIPE CREEK TOWNSHIP ASSESSOR AND)	Township: Pipe Creek
MIAMI COUNTY PROPERTY TAX)	Assessment: March 1, 2002
ASSESSMENT BOARD OF APPEALS,)	Property: Estates at Eagles Pointe
)	
Respondents.)	

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

DECEMBER 8, 2005

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts, the evidence, and the arguments of the parties. Having considered the issues, the Board now enters the findings of fact and conclusions of law that follow as the express basis for its final assessment determination.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

What was the correct true tax value of the Petitioner's real property comprising the Estates at Eagle's Pointe as of March 1, 2002?

PROCEDURAL HISTORY

1. Pursuant to Ind. Code § 6-1.1-15-3, on August 10, 2004, Larry Stroble, Barnes & Thornburg, filed three Form 131 Petitions for Review of Assessment on behalf of Indiana Grissom Limited Partnership (Petitioner), seeking an administrative review of its 2002 property tax assessments. The Miami County Property Tax Assessment Board of Appeals (PTABOA) had issued its determinations on July 10, 2004.
2. The Petitioner is appealing the assessments on 866 real estate parcels. The Petitioner identified the parcels as being in Phase I, Phase II, and Phase III. At the hearing, the Petitioner claimed that all parcels actually constitute one property. The Petitioner presented an appraisal that valued all these parcels as one property.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Ted J. Holaday and Kay Schwade, the duly designated Administrative Law Judges (ALJs), held the hearing on April 27, 2005, in Peru, Indiana.
4. The following persons were sworn and presented testimony at that hearing:
 - Joel M. Bertuzzi, Aspen Square Management, Inc.,
 - Nick A. Tillema, MAI, SRA, Access Valuation, LLC,
 - Scott Potts, Tax Representative.

5. Petitioner presented the following exhibits:

- Exhibit 1 – Form 131 for Phase I properties, including property record cards;
- Exhibit 2 – Form 131 for Phase II properties, including property record cards;
- Exhibit 3 – Form 131 for Phase III properties, including property record cards;
- Exhibit 4 – Closing statement dated September 13, 1996;
- Exhibit 5 – Appraisal of subject property;
- Exhibits 6 through 17 – Each exhibit consists of 2 photographs;
- Exhibit 18 – Closing statement dated December 3, 2004;
- Exhibit 19 – 2001 cap rates from Nation Market Indicators;
- Exhibit 20 – (Not admitted), copy of page 57 from Appraisal;
- Exhibit 21 – Valuation of the Lake County Industrial Facilities Greater than \$25M in value for the 2002 General Reassessment dated July 2004;
- Exhibit 22 – Web page from the U.S. Department of Labor, Bureau of Labor Statistics detailing the Consumer Price Index – All Urban Consumers from 1995 – 2005;
- Exhibit 23 – (Not admitted) Board decision regarding Unity Park; and
- Exhibit 24 – Map of Estates at Eagle's Pointe with designation of the Phases.¹

6. Respondents presented the following exhibits:

- Exhibit A – Synopsis of the assessment methodology used for this case;
- Exhibit A (1) – Ratio Study based on the sales shown in Exhibit B;
- Exhibit B – Sales disclosures and property record cards for row-type 2-unit single-family dwellings at the Estates at Eagles Pointe;
- Exhibit C – 2002 Real Property Assessment Manual, pages 24-26²;
- Exhibit D – 50 IAC 14, Equalization Standards; and
- Exhibit E – 1999 IAAO Standard on Ratio Studies.³

7. The three Petitions, the Notice of Hearing, and the "First Stipulation of Facts" dated April 27, 2005, are officially recognized as part of the record of proceedings.

8. The property under appeal (Property) is a residential housing project known as the Estates at Eagle's Pointe, which is the former military base housing complex for Grissom Air Force Base. On March 1, 2002, the property consisted of approximately 866 residential parcels situated on 300.67 acres of land.

¹ Exhibit 23, the Unity Park determination, was marked and included with Petitioner's exhibits, but it was not admitted into evidence. Exhibit 24 is a map of the property with color designation of the separate Phases of the project. The map was admitted as evidence, but at times the map was incorrectly identified as Exhibit 23.

² These pages are the same as pages 20-22 of the January 2004 reprinted Manual.

³ IAAO refers to the International Association of Assessing Officials.

9. The ALJs did not conduct an on-site inspection of the subject property.
10. The PTABOA's assessment of Phase I covering 548 parcels totals \$29,721,250. Its assessment of Phase II covering 118 parcels totals \$3,068,900. Its assessment of Phase III covering 200 units totals \$1,914,300. The total combined assessed value assigned by the PTABOA to Phases I, II, and III is \$34,704,850.
11. Petitioner contends the total assessed value of the property should be \$13,780,000.
12. The Respondents contend that the property should not be viewed as a single property because the Petitioner had it separated into different parcels to be sold. The Respondents contend that the current assessment is correct.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

14. 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).

15. 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”).
16. 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

17. Real property is assessed on the basis of its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter Manual) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A* (hereafter Guidelines). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5; *See Fidelity Federal Savings & Loan v. Jennings Co. Assessor*, 836 N.E.2d 1075 (Ind. Tax Ct. 2005).
18. For the 2002 reassessment, an assessment is to reflect value of the property as of January 1, 1999. MANUAL at 4. Should a Petitioner present any evidence of value relating to a

different time, the Petitioner is required explain how those values demonstrate, or are relevant to, the subject property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

19. The parties presented the following evidence regarding this issue:
 - A. Petitioner classified all units in the project as being Phase I, II or III. Phase I units were remodeled and/or capable of being rented or sold with additional remodeling. Phase II primarily included ranch duplexes and some single-family homes that were very deteriorated and unoccupiable, but they could be salvaged for rent or sale after significant renovations. Phase III included 200 uninhabitable multi-family units . *Bertuzzi testimony*.
 - B. Petitioner followed a business plan where it renovated and leased units, similar to an apartment complex, and used the proceeds to renovate additional units to be leased or sold. *Id.* Petitioner started with repairing, marketing and selling the units in Phase I when the housing project was purchased. *Id.* Petitioner marketed 186 Phase I units and began to renovate additional units only after the initial units were occupied. *Id.* In addition, in order to spur sales and establish selling prices, Petitioner financed the purchase of approximately 41 units for homebuyers in the early stages of the project. *Id.*
 - C. The entire housing project consisted of single-family, multi-family and duplex units with similar style construction and varying floor plans. *See Pet'r. Exs. 6-17.* The most desirable homes were a portion of the 172 single-family units that were not located next to duplexes. *Bertuzzi testimony*. The remainder of the units in the housing project included 200 uninhabitable multi-family units and hundreds of duplex buildings. *Id.*
 - D. Petitioner requested that the township assessor assign a separate parcel number to each unit in order to facilitate the eventual sales of the units in an efficient manner and to establish a system for new homeowners to participate in a homeowners association. *Id.*

- E. Petitioner engaged its affiliate, Aspen Square Management, to manage the entire operation of the Property, including making extensive renovations to units comprising the Property, handling the marketing, sales, leasing and renting of units, collecting lease and other payments and performing maintenance on the residential units. *Id.*
- F. While the Property consists of numerous individual units that were assigned separate parcel numbers, the Property was owned and operated as a single project. *Id.* The management and operation of the Property, including all maintenance, construction, advertising, marketing, leasing, sales, insurance and general operational activities were conducted as if the housing project was a single operating asset. *Id.*
- G. Between 1997 and the end of 2001, Petitioner sold approximately 226 units. *Id.*; *Pet'r Ex. 5, at 52.* As of March 1, 2002, there were 866 units remaining. These consisted of 548 units in Phase I, 118 units in Phase II, and 200 units in Phase III. *Pet'r Exs. 1-3.*
- H. By March 1, 2002, Petitioner had sold most of the single-family units in the project and had experienced a slowdown with the leasing and sales of all remaining units, which were primarily duplex units. *Bertuzzi testimony.* Petitioner attributed this slowdown to a number of factors, including (a) Petitioner's prior leases and sales of single family homes that were the best product in inventory, (b) a saturation in the market for rental properties, (c) the terror attacks of September 11, 2001, and general economic slowdown that led to lower unit occupancy and an increase in the number of renovated units available for lease, and (d) layoffs at Chrysler and Delphi, local employers, that led to an increase in the number of residents vacating units at the project. *Bertuzzi testimony.*
- I. The number of unit sales per year, or the absorption rate, also had declined by March 1, 2002, because the majority of units in inventory were ranch style duplexes that had limited market appeal. *Id.* In essence, the less desirable units

took much longer to lease or sell than the more desirable units -- most of which were already sold by March 1, 2002. *Id.*

- J. Petitioner was unable to increase the volume of sales of the duplex units through price discounts or by increasing prices on single family homes. *Id.* As of and after March 1, 2002, there was not enough market demand in the Peru area to absorb Petitioner's duplex units, regardless of price concessions. *Id.* Further, Petitioner could not demand anywhere near its suggested retail price for units if it introduced all the units for sale in the market at the same time. *Id.*
- K. The market conditions related to operations of the Property on and after March 1, 2002, led Petitioner to sell the entire Property. According to Petitioner, it was "really pretty clear we had sold the best of the best product; so sales were going to be on an ever decreasing slope . . . [s]imilarly, the rental property, the apartment property, had also plateaued. We had saturated the property for the given number of people in the area and the employment base . . . with a plateauing of the market, we made a decision to sell." *Id.*
- L. CB Richard Ellis listed the entire remaining Property for sale in 2003 for \$19,500,000. *Id.* During the yearlong listing there was only one offer. It was for \$10,000,000. *Id.* In December 2004, Petitioner sold the Property, which at that time consisted of 812 units in Phase I, II and III, in an arms length transaction for a total price of \$19,500,000. *Id.*; *Pet'r Ex. 5 at 48*; *Pet'r Ex. 18.*
- M. For years prior to the 2002 assessment, the Respondents and their consultant, Mr. Potts, viewed the Property as a single property even though it was subdivided into separate parcels. *Bertuzzi testimony.* Respondents agreed that the assessment of parcels comprising the Property would be based on replacement cost, less physical depreciation and less obsolescence based on the style, stage of renovation and occupancy of units. *Id.*; *Potts testimony.* The obsolescence factors applied before 2002 ranged from 10% to 50%. *Potts testimony.* For the 2002 reassessment, the Respondents took a different approach. They calculated the assessment of each parcel using the cost value, less physical depreciation, and

added a 23% increase as a neighborhood factor based on the sale of some units.
Id.

- N. Respondents (a) reviewed sales information related to 51 duplex units that were sold before March 1, 2002, (b) compared the assessment of these 51 units to the sales price of each such unit, (c) conducted a sales ratio analysis to determine how close the assessments matched the sales prices on a statistical basis, and (d) based on the results, concluded that the assessments of all 866 parcels under appeal (the ones that had not been sold) are uniform and accurate. *Id.*
- O. The Petitioner commissioned the preparation of an appraisal of the Property as of March 1, 2002. Nick A. Tillema, an appraiser with Access Valuation, LLC in Indianapolis, Indiana, prepared the appraisal. Mr. Tillema has an MAI designation by the Appraisal Institute, an SRA designation by the Society of Real Estate Appraisers, and a CCIM designation by the Commercial Industrial Institute of realtors. *Tillema testimony.*
- P. Mr. Tillema used the definition of market value-in-use from the Indiana Real Property Assessment Manual in arriving at the value determined in his appraisal. *Id.; Pet'r Ex. 5 at 9-11.* The use of the Property assumed by Mr. Tillema is a residential real estate development involving the rental and sale of individual units. *Pet'r Ex. 5 at 13.*
- Q. Mr. Tillema personally inspected the Property several times during the course of his engagement and also researched the sales of other former military base housing complexes for comparison purposes. *Id. at 9, 11, 26, 43-48; Tillema testimony.*
- R. Mr. Tillema testified that there are three recognized approaches to the valuation of property — the sales comparison approach, the income approach, and the cost approach. *Tillema testimony.* He used two of these approaches, the sales comparison and income approach, to estimate the market value-in-use of the Property. *Id.; Pet'r Ex. 5 at 13.* Mr. Tillema testified a typical buyer of the

Property would use these two approaches to develop an offer to purchase. A buyer would not use the cost approach to evaluate the Property because (a) the improvements are old, (b) the appropriate amount of depreciation would be difficult to estimate across the entire Property, and (c) a potential buyer would be interested in the cash flow that could be generated from the operation of the Property. *Tillema testimony*.

- S. Mr. Tillema appraised the Property in a manner similar to an investor interested in purchasing the housing project. *Id.* Mr. Tillema evaluated the macro-economic factors and market conditions as of March 1, 2002, that affected activity in the real estate markets and property values. Mr. Tillema also conducted a detailed review of the local economy, demographics, housing statistics, history of the Property and sales trends of units at Estates at Eagle's Point. *Id.* As of March 1, 2002, the area where the Property was located was experiencing an unstable economic environment and the market demand was weak. Vacant housing was on the rise and absorption rates for residential units were also on the rise and could be expected to remain in that state into the future. *Id.; Pet'r Ex. 5 at 18.*
- T. Mr. Tillema reviewed four sales of former military housing complexes in a sales comparison analysis. *Tillema testimony; Pet'r Ex. 5 at 45-48.* Mr. Tillema considered the sale of the Property as a whole to be the relevant unit of measurement and determined that past sales of military base housing developments provided the best sales for comparison purposes. The four sales considered were Wurtsmith Air Force Base (Village of Oscada, Michigan); Fort Devens Army Base (Estate at Harbor Hills) (Devens, Massachusetts); Seneca Army Depot (Lake Shore Landing) (Romulus, New York); and Grissom Air Force Base (Estates at Eagle's Pointe) (Peru, Indiana) [i.e. the 1996 sale of the Property to the Petitioner]. *Id.*
- U. The comparable sales established that there is a recognized market and use in the redevelopment and operation of former military base housing complexes. Mr. Tillema indicated that a buyer interested in purchasing the Property on March 1,

2002, would consider the price that the Petitioner paid for the Property in 1996, which was \$8,910,000. In addition, for purposes of the appraisal, Mr. Tillema found that the actual sale of the Property in 2004 for \$19,500,000 was reliable evidence that established a top range of value for the Property. *Tillema testimony; Pet'r Ex. 5 at 45-48.*

- V. Mr. Tillema used changes in the consumer price index to adjust the actual sales price of the Property in 1996 and 2004 to reflect the price that would have been paid in both cases had the transactions closed in 2002. *Id.* Mr. Tillema then averaged the two values and estimated that, based on the actual sales of the Property in a single transaction, the market value-in-use of the Property on March 1, 2002, was \$13,550,000. Mr. Tillema indicated that he gave this estimate of value less weight in his analysis because the income approach to value was a standard that buyers in the marketplace would follow to value the Property. *Id.*
- W. Mr. Tillema's income analysis followed a subdivision approach that "calculates how long it's going to take to sell all the units, what kind of income, net operating income, you would have at [the] end of that period of time, and then discount that [by] a present value factor to say how much [the Property] is worth today." *Tillema testimony.* Mr. Tillema also explained, that Petitioner or any buyer of the Property "can't take those 865 units to the [retail] market today and sell all of them. So what they have to do is build into the process the idea that they're going sell some next year, the following year, the following year, and so on." *Id.*
- X. Mr. Tillema testified that the valuation approach he used was the only appropriate one under the circumstances of this case and that it would be recognized as such by other appraisers. He also testified that a potential buyer of the Property would use the same approach in determining what the buyer would be willing to pay for the Property. *Tillema testimony.*
- Y. Mr. Tillema developed a model for valuing the Property based on a steady, measurable income stream from leasing and a second erratic stream from sale of completed units. *Pet'r Ex. 5 at 49.* First, Mr. Tillema estimated the future annual

sales activity of units based on historic sales trends by model type. Mr. Tillema estimated it would take 17 years in order to sell all 865 units in inventory on March 1, 2002. *Tillema testimony; Pet'r Ex. 5 at 20* At this same time, based on historic rental patterns, Mr. Tillema estimated the number of units that would be rented during this 17 year absorption period. *Id.*

- Z. Mr. Tillema estimated the annual gross income that Petitioner would generate over the 17-year absorption period based on Petitioner's retail price list for units and market rental rates, both of which were increased on an annual basis. In addition, Mr. Tillema considered that any buyer would likely demolish the Phase III units and sell lots for construction of single-family homes when most other units were sold. *Tillema testimony*. Income from the sale of these lots was also included in gross income starting in year 5 of the 17-year absorption period. *Id.*
- AA. Mr. Tillema then reduced gross income by the estimated costs to continue renovating and operating the Property during the absorption period. This reduced figure is the net operating income that any buyer of the Property would generate during the absorption period. *Id.*
- BB. Mr. Tillema calculated the present value of all future cash flows that would be generated at the Property using a discount rate of 14.5%. To arrive at the appropriate discount rate, Mr. Tillema considered national investor surveys and the inherent risks with redeveloping the Property. *Id.; Pet'r Ex. 19.*
- CC. In Mr. Tillema's professional opinion and based on the income approach to value, the market value-in-use of the Property was \$15,500,000 as of March 1, 2002. Mr. Tillema reconciled the values calculated under the sales and income method and estimated that the Property's market value-in-use was \$15,000,000 as of March 1, 2002. *Tillema testimony; Pet'r Ex. 5 at 58.*
- DD. Mr. Tillema noted that the difference between the market value-in-use of the Property established under the income and sales approach and the value assessed under the cost approach in the Real Property Assessment Manual, is attributable

to the existence of both functional and economic obsolescence depreciation that is not accounted for in the March 1, 2002, assessment of the Property. *Tillema testimony; Pet'r Ex. 5 at 59-61*. Some of the identified causes of obsolescence were (a) the overabundance of duplex units that are not desired in the marketplace, and (b) the downward pressure on pricing caused by the existence of dilapidated Phase III units and boarded-up Phase II and Phase III units scattered throughout the Estates at Eagle's Point project. *Id.*

- EE. Mr. Tillema noted that for the 2002 general reassessment, real property should be valued taking into account the physical condition and market factors in existence on March 1, 2002, trended to reflect the market value-in-use on January 1, 1999. *Tillema testimony; Pet'r Ex. 21*. Based on this guidance, Mr. Tillema used the change in the purchasing power of a dollar, or the consumer price index, to estimate how much \$15,000,000 on March 1, 2002, would have been worth on January 1, 1999. Mr. Tillema concluded that the value-in-use of the Property trended to January 1, 1999, was \$13,780,000. *Tillema testimony; Pet'r Ex. 5 at 59*.
20. Petitioner operated the Property as a single residential housing project. The management and operation of the Property, including all maintenance, construction, advertising, marketing, leasing, sales, insurance and general operational activities were conducted as a single operating asset.
21. Although the Property consists of separate parcels, it was a commercial investment used by Petitioner for the production of income. "Income-producing real estate is typically purchased as an investment, and from an investor's point of view earning power is the critical element affecting property value. One basic investment premise is that the higher the earnings, the higher the value." *Simmons v. State Bd. of Tax Comm'rs*, 642 N.E.2d 559, 560 (Ind. Tax Ct. 1994) (quoting APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 409 (10th ed. 1992)).
22. In this case, Petitioner presented substantial un rebutted evidence establishing the market value-in-use of the Property as of March 1, 2002, including an appraisal of the Property

conducted by Nick Tillema, MAI, SRA, CCIM. The appraisal was prepared based on two generally recognized appraisal principles, including the sales comparison and income approach to value. *Tillema Testimony; Pet'r Ex. 5, p. 13.*

23. Under the sales comparison approach, which used actual sales of the Property in 1996 and 2004 as a range of value, Mr. Tillema determined that the market value-in-use as of March 1, 2002, was \$13,500,000. Under the income approach, the market value-in-use as of March 1, 2002, was \$15,500,000. The income approach accounted for the fact that the Property is a single project and all the units comprising the Property could not be absorbed or sold into the market at retail prices at one time. The income approach recognized that the optimal income stream from sale and rental of the units comprising the Property would necessarily be realized over a period of several years, projected to be 17 years. A typical buyer would consider the discounted present value of this income stream in determining a fair price for the Property. This is the same approach that Mr. Tillema used in his estimate of value under the income approach. This method is recognized as appropriate by professional appraisers. The reconciled value of the Property taking into account all market factors on March 1, 2002, was \$15,000,000. *Tillema testimony; Pet'r Ex. 5.*
24. In this case, Petitioner established that the \$15,000,000 value of the Property on March 1, 2002, would be worth \$13,780,000 on January 1, 1999, which is the relevant date to be used for the 2002 general reassessment.
25. Petitioner introduced detailed testimony explaining the market conditions and establishing the causes of functional and economic obsolescence that affect the Property. One of the main causes of obsolescence was the overabundance of duplex units in the Property which could not be absorbed into the marketplace and the existence of unrenovated units scattered throughout the project. Petitioner explained that the amount of obsolescence would be calculated as the difference between the market value-in-use of the Property established under the sales and income approach and the value assessed using the reproduction cost method. *See Canal Square Ltd. Partnership v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801 (Ind. Tax Ct. 1998). Calculation of the amount of

obsolescence would be superfluous because all forms of depreciation, including obsolescence, are reflected in the value established for the Property as of March 1, 2002.

26. In this case, Petitioner made a prima facie case that the \$34,704,850 assessment of the Property is incorrect and that the correct assessment should be \$13,780,000. As a result, the burden shifted to the Respondents to rebut the Petitioner's case. The Respondents failed to do so.

27. The Respondents offered no probative evidence to rebut or impeach Petitioner's testimony, appraisal or other evidence that established the market value-in-use of the Property on March 1, 2002. In an attempt to more precisely define the Respondents' position, near the end of the hearing the following discussion took place:

Hearing Officer: Now, Mr. Potts, your case seems to be – and, again, correct me if I'm wrong on this – the appraisal doesn't really make any difference because you demonstrated that, based upon what is summarized in Exhibit A-1, when you've done a mini-equalization ratio study, we find that other properties that are there on the base are assessed at something not too far off of what their actual sale prices are.

Mr. Potts: Yes, sir.

Hearing Officer: And you're not really attacking his appraisal directly other than just indirectly by saying that this equalization-based data kind of is countervailing evidence Is that where you're coming from?

Mr. Potts: Yes.

Tr. at 199-200.

28. The Respondents claim that it assessed all property at the Estates at Eagle's Point within an acceptable mean and coefficient of dispersion based on its comparison of the assessed value and purchase price of 51 individual units within that development. Based on that

information, the Respondents claim there is no further obligation to assess or adjust any of those assessments. The Respondents provided no authority or explanation to support how this kind of presentation is relevant to the claim that the Petitioner presented in this case. The Respondents failed to establish that the equalization process and standards upon which the Respondents rely have any particular connection to determining the market value-in-use of the Property in question. Based on the record of this case, it appears that there is no such connection. The Respondents' position simply ignores the requirement to assess real property based on market value-in-use for its current use. *See* Ind. Code § 6-1.1-31-6(c). It also ignores the specific permission for a taxpayer to establish that value with appraisals. *MANUAL* at 5; *see also, Fidelity Federal Savings*, 836 N.E.2d 1075.

29. It is conceivable that the 51 sales might have been used as comparables to help determine market value-in-use, but the record is not sufficient to make any such comparison. It is not the Board's responsibility to review all the documentation to determine whether the properties are comparable. Rather, the parties must explain the characteristics of the subject property, how those characteristics compared to the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties. This record is devoid of such explanation. Therefore, the 51 sales have no probative value in this case. *Long*, 821 N.E.2d at 471.
30. The Respondents' method of assessment incorrectly assumes that data from 51 retail sales of property could be uniformly applied to 866 units that had not been sold and were still being held in Petitioner's inventory to be renovated, leased and/or introduced into the market over many, many years. The Respondents' assessment of the Property does not consider market factors affecting the value-in-use of the Property as it was managed and used in the operation of a residential housing development. The Respondents have not rebutted or impeached the Petitioner's case with anything that is relevant or probative of what the assessed value of the Property should be. Therefore, the record establishes that the current assessment is incorrect and must be changed.

Summary of Final Determination

31. The Petitioner presented probative evidence that the current assessment is incorrect and that the correct assessment of the Property should be \$13,780,000. The Respondents did not present probative evidence to rebut the Petitioner's case. The Board finds for the Petitioner. The total assessment for the Property must be changed to \$13,780,000.

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

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.