

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

Petition #: 64-004-02-1-4-00046
Petitioner: HCRI Indiana Properties LLC
Respondent: Center Township Assessor (Porter County)
Parcel #: 64-09-13-100-052.000-004
Tax Id #: 01000222188
Assessment Year: 2002

The Indiana Board of Tax Review (the “Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner initiated an assessment appeal with the Porter County Property Tax Assessment Board of Appeals (“PTABOA”) by written document dated December 17, 2003.
2. The Petitioner received notice of the decision of the PTABOA on November 18, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 petition with the Porter County Assessor on December 20, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated January 26, 2006.
5. The Board held an administrative hearing on March 14, 2006, before the duly appointed Administrative Law Judge Joan Rennick.
6. Persons present and sworn in at hearing:

For Petitioner: Paul Kropp, Tax Representative

For Respondent: Shirley LaFever, Porter County Assessor
Lindy Wilson, Porter County Deputy Assessor
Janine Chrisman, Porter County PTABOA President
Susan A. Larson, Center Township Assessor
Debra L. Walker, Center Township Deputy Assessor

Facts

7. The subject property is an assisted living facility known as Alterra Sterling House located at 2601 Valparaiso Street, Valparaiso, Indiana. The property is classified as a commercial Nursing Home & Private Hospital, as is shown on the property record card for parcel # 64-09-13-100-052.000-004 and tax id # 01000222188.
8. The Administrative Law Judge (“ALJ”) did not conduct an inspection of the subject property.
9. Assessed Value of subject property as determined by the Porter County PTABOA:
Land: \$427,700 Improvements: \$1,777,900 Total: \$2,205,600.
10. Assessed Value requested by Petitioner on the Form 131 petition:
Land \$128,500 Improvements \$1,625,300 Total: \$1,753,800.

Issues

11. Summary of the Petitioner’s contentions in support of alleged error in assessment:
 - a) The subject building is an assisted living facility, which the Respondent priced as a nursing home. The building should be priced as an apartment building rather than as a nursing home. The Petitioner’s representative, Paul Kropp, testified that he has filed other appeals using this argument. In most instances, the local officials have agreed with him. *Kropp testimony.*
 - b) Mr. Kropp testified that another Alterra Sterling House facility in Portage was priced using the general commercial residential (“GCR”) apartment pricing schedule. Similarly, an Alterra Sterling House facility in Merrillville was changed from being priced as a nursing home to being priced as 70% apartments, 5% GCR office, and 25% GCR service. The Petitioner presented floor plans for the subject building and the facilities located in Portage and Merrillville. All three facilities are comparable to each other, and the rooms in each building have similar names. Each facility has a dining room and the residents are encouraged to eat there. If the residents choose to dine in their rooms, however, each unit has a kitchenette with a small refrigerator, sink, and microwave. Residents come and go as they please, and they can have pets. The Petitioner presented three photographs of the exterior of the subject building and two photographs of the exterior of the Portage facility. *Kropp testimony; Pet’r Exs. 3, 6.*
 - c) The subject property and a neighboring property (Clare Bridge) sold for \$5,740,000 in July 2001, about a year-and-a-half before the Petitioner (or its predecessor) filed a bankruptcy petition. This transaction was a “sale leaseback” and therefore was not an arms length transaction. The subject property was not available on the market and was not listed. Nonetheless, the Petitioner presented an analysis allocating the sale

price between the two facilities and further allocating the price attributable to each facility between real property, personal property, and goodwill. According to the analysis submitted by the Petitioner, \$2,145,000 of the sale price was allocated to the subject property. *Kropp testimony; Pet'r Ex. 4.*

- d) The Petitioner further requests that the subject land be valued using a base rate of \$42,845 per acre. In support of its position, the Petitioner provided assessment information concerning sixty-eight (68) properties. For thirty-six (36) of those properties, the land portion of the assessment is calculated using a base rate of \$42,845 per acre. The Petitioner provided a map showing location of the 68 properties. *Kropp testimony; Pet'r Ex. 2.*
- e) The subject land is valued on a front foot basis. Properties located in the Vale Park subdivision are valued on a front foot basis using a subdivision rate, but the legal description for the subject property does not indicate that it is located in the Vale Park subdivision. *Kropp testimony.*
- f) There is a Fifth Third Bank on Vale Road near the subject property. The bank is similarly situated to the subject property in that both properties are located outside of the Vale Park subdivision looking in. The bank's land is assessed at \$42,845 per acre. The Petitioner also presented property record cards for four (4) properties located near the subject property, but within the Vale Park Subdivision. The land portion of each of those properties is assessed on a front foot basis, using the same base rate applied to the subject land. *Kropp testimony; Pet'r Exs. 2, 7; Resp't Ex. 2.*
- g) The Valparaiso Redevelopment Commission purchased a twenty-two (22) acre parcel of land ("Redevelopment Commission Parcel") for \$399,000 in July 2004. This amounts to roughly \$18,140 per acre. Of the twenty-two (22) acres, 3.43 acres will be available for commercial development. The northern border of the subject property is adjacent to the Redevelopment Commission Parcel. *Kropp testimony; Pet'r Ex. 5.*

12. Summary of Respondent's contentions in support of the assessment:

- a) Porter County hired a company to handle appeals. The company reviewed the subject property and estimated its market value using the income approach. The company arrived at a value of \$3,510,467, which is higher than the current assessment. *Larson testimony; Resp't Ex. 7.*
- b) The Petitioner owns nursing homes and assisted living facilities all over the country. A healthcare agency operates the subject property, which is not typical of an apartment building. The subject property includes other features not typical of an apartment building, such as a living room, TV room, dining room, kitchen, medication room where the medicines are kept, a wellness center for 24-hour care if needed, and an oxygen room. The facilities are locked and the residents must use a code to get in and out. Each room has a kitchenette (without a stove) instead of a full

- kitchen. The Respondent presented a brochure highlighting the services provided to residents at the subject facility. Those services typically are not provided to residents of apartment buildings. The Respondent visited the subject property and provided interior photographs of the subject building. *Larson testimony; Resp't Exs. 3-5.*
- c) The Respondent provided a property record card for the Alterra Sterling and Clare Bridge facilities located in Vero Beach, Florida. The Respondent spoke to an appraiser in Florida who said that those facilities are valued as nursing homes. *Larson testimony; Resp't Exs. 10-14.*
 - d) The Respondent believes that the land portion of the Fifth Third Bank's assessment is incorrect. The Respondent did not realize that she had valued the bank's land on an acreage basis rather than a front foot basis until the Petitioner brought it to her attention. The Respondent also presented a property record card for First National Bank located across the street from the subject property. That bank's land is assessed on a front foot basis. The Respondent also presented a copy of the Commercial/Industrial Neighborhood Valuation Form for the subject property's neighborhood. *Larson testimony; Pet'r Ex.7; Resp't Exs. 9, 16.*
 - e) The bottom line value is what is important in a market value-in-use system. *Larson testimony.* The July 2001 sale price submitted by the Petitioner exceeds the assessed value of the subject property even though that sale was "out of bankruptcy." *Id.*

Record

13. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled BTR #6226.
- c) Exhibits:

Petitioner Exhibit 1: Desired Petitioner Outcome with Calculations
Petitioner Exhibit 2: Porter County-Center Township-Land Assessment Analysis.
Petitioner Exhibit 3: Comparable List plus "Walk Through" Analysis
Petitioner Exhibit 4: Sales Disclosure dated July 2001 with Analysis
Petitioner Exhibit 5: Vale Park Road Extension Analysis
Petitioner Exhibit 6: Photographs (5) of Valparaiso and Portage facilities
Petitioner Exhibit 7: Property record cards (PRC) of 5 Commercial Properties
located near the subject property

Respondent Exhibit 1: Memo from IBTR (Evidence Exchange Rules)
Respondent Exhibit 2: Subject Property PRC
Respondent Exhibit 3: Subject Brochure
Respondent Exhibit 4: Subject Floor Plan

Respondent Exhibit 5: Subject Pictures
Respondent Exhibit 6: Real Property Assessment Guidelines - Version A, Model description for Nursing Homes & Apartments
Respondent Exhibit 7: Subject Income Figure from Nexus
Respondent Exhibit 8: Subject Sales Disclosures
Respondent Exhibit 9: PRC of Land Comparables & Sale
Respondent Exhibit 10: PRC of Sterling House in Vero Beach, FL
Respondent Exhibit 11: FL Explanation of Abbreviations
Respondent Exhibit 12: FL Property's Summary of Improvements
Respondent Exhibit 13: FL Property's Brochure
Respondent Exhibit 14: FL Property's Tax Summary
Respondent Exhibit 15: Subject Property's Tax Sheet
Respondent Exhibit 16: C/I Neighborhood Valuation Form

Board Exhibit 1: Form 131 Petition with attachments
Board Exhibit 2: Notice of Hearing
Board Exhibit 3: Hearing Sign-In Sheet

d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a) 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).
 - b) 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”).
 - c) 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.
15. The Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:

Improvements

- a) The Petitioner contends that the Respondent erred in using the cost schedules for general commercial residential (“GCR”) nursing homes in assessing the subject property instead of using the cost schedules for GCR apartments.
- b) The 2002 Real Property Assessment Manual (Manual) defines the “true tax value” of real property 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 2 (incorporated by reference at 50 IAC 2.3-1-2). As set forth in the Manual, the appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales comparison approach, and the income approach. *Id.* at 3, 13-15. In Indiana, assessing officials primarily use the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”), to assess property.
- c) A property’s market value-in-use, as ascertained through application of the Guidelines’ cost approach, 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). A taxpayer, however, may offer evidence to rebut that presumption, as long as such evidence is consistent with the Manual’s definition of true tax value. MANUAL at 5. Thus, appraisals prepared in accordance with the Manual’s definition of true tax value may be used to rebut the presumption that an assessment is correct. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1 (“[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with [USPAP].”). A taxpayer may also rely upon sales information regarding the subject or comparable properties and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
- d) Strict application of the Guidelines, however, is insufficient to rebut the presumption that an assessment is correct. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax. Ct. 2006). In *Eckerling*, the taxpayers argued that the Wayne Township Assessor erred in valuing their building by utilizing the cost schedules set forth in the Guidelines for residential improvements rather than the cost schedules for the GCR general office model. The Petitioners based their claim on the fact that they used the building at issue as an office instead of as a residence. *Id.* at 674-75. The Court held that the taxpayers failed to present a prima facie case that their assessment was in error. The Court based its decision on grounds that the taxpayers relied solely upon asserted errors in the assessor’s methodology and did not submit any market-based evidence to demonstrate that the assessment did not accurately reflect their property’s market value-in-use. *Id.* at 678.

- e) The Petitioner in this case relied upon precisely the type of evidence rejected by the Court in *Eckerling*. Like the taxpayers in that case, the Petitioner relied solely upon its assertion that the Respondent used the incorrect pricing schedules to assess the subject improvements and failed to offer any market-based evidence to establish that the assessment actually exceeded the subject property's market value-in-use. The only market-based information even referenced by the Petitioner was the allocated sale price of the subject property from July 2001. The Petitioner's representative, Mr. Kropp, however, conceded that the sale was not an arm's length transaction because it was a "sale leaseback."¹ Moreover, the allocated sale price from that transaction lends little support to the Petitioner's position, given that it is only slightly less than the property's assessed value.
- f) Even if it were possible for the Petitioner to make a prima facie case by showing that the Respondent did not use an appropriate cost schedule in assessing the subject building, the Petitioner did not present sufficient facts to do so.
- g) The Guidelines provide models of typical improvements in order to "facilitate the assessor in estimating the replacement cost new of the subject improvements as of the effective valuation date to serve as the *starting point* in the application of the cost approach to value" GUIDELINES, App. D at 2 (emphasis added). The models are divided into three major categories based upon occupancy type: general commercial mercantile ("GCM"), general commercial industrial ("GCI") and GCR. *Id.* Each major category has several use-specific models within it, such as banks, retail stores, and motels. *Id.* at 2-41. Separate cost schedules are associated with each model. *See id., at app. G.*
- h) The foundation, framing and basic shell construction are category specific and reflect floor and roof loads, doors, fenestration and storefronts typical of the occupancy. *Id.* at 2. Floor heights, interior finish and mechanical features are specific to the individual models within the broader categories. *Id.* The purpose of the model descriptions is to assist assessors in determining whether adjustments to the cost schedules are necessary to account for variations between the subject improvement and the model selected to compute its replacement cost new. *Id.*
- i) Thus, while the use designations for the various models provide a useful guide for assessors in determining the appropriate model to use in assessing a given building, the choice of model ultimately is governed by the Guidelines' descriptions of physical features for each model. The more closely a building conforms to a particular model's description, the fewer the adjustments that the assessor will need to make in applying the cost schedules associated with that model.
- j) Consequently, it was incumbent upon the Petitioner to do more than simply state that it uses the subject building more like an apartment building than a nursing home.

¹ Mr. Kropp did not elaborate as to why the "leaseback" aspect of the sale rendered it as something other than an arm's length transaction. Nonetheless, the Board accepts Mr. Kropp's concession for purposes of deciding whether the Petitioner submitted any probative market-based evidence concerning the subject property's market value-in-use.

Instead, the Petitioner was required to demonstrate that the subject building's physical characteristics more closely conform to the model for a GCR nursing home than to the model for GCR apartment building. *See Eckerling*, 841 N.E.2d at 678 n. 4 (noting that, even under the old assessment scheme which was based on strict application of assessment regulations, taxpayers arguing that their property was assessed under the wrong schedule were required to compare the features of their improvement to the features listed in the regulation). The Petitioner, however, presented no evidence in that regard.

Land

- k) The Petitioner next contends that the subject land should be valued at the rate of \$42,845 per acre instead of \$1,172 per front foot, as it is currently valued. The Petitioner relies upon evidence concerning the assessments of other properties located outside of the Vale Park subdivision as well as on the sale price a large tract of land near the subject property.
- l) Although the Petitioner does not explain the basis for its reliance on the land assessments for thirty-six (36) properties outside of the Vale Park subdivision, the Petitioner apparently contends that the subject property is not assessed in a uniform and equal manner in comparison to similarly situated properties. The Petitioner, however, presented virtually no evidence to show that the subject property is comparable to the properties assessed at \$42,845. Thus, for example, the Petitioner did not discuss various characteristics essential to establishing the comparability of parcels of land, such as the respective lot sizes, topography and accessibility of the parcels in question. *See Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002)(holding that taxpayer failed to establish comparability of parcels of land where, among other things, taxpayer did not compare the topography and accessibility of parcels).
- m) Moreover, the Petitioner presented evidence that various other parcels of land located within the same assessment neighborhood as the subject property were assessed using the same base rate as was the subject land. *See Pet'r Ex 7; Resp't Ex. 2*. Thus, for purposes of the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”) the Respondent treated the subject property the same as it treated similarly situated properties. Consequently, the Petitioner's real argument appears to be that the Respondent erred in drawing neighborhood boundaries for the area in question.
- n) Pursuant to the Guidelines, all property within a township must be established as part of neighborhood. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 8. The Guidelines direct township assessors to define neighborhoods according to various factors, including, among other things: distinctive geographic boundaries, any manmade improvements that significantly disrupt the cohesion of adjacent properties, and sales statistics. *Id.* The Petitioner, however, did not present any evidence addressing the factors identified by the Guidelines as being relevant to

the drawing of neighborhood boundaries. Even if the Petitioner had done so, such evidence would have shown only what a strict application of the Guidelines would yield. As explained above, however, strict application of the Guidelines is not sufficient to rebut the presumption that an assessment is correct. *Eckerling* 841 N.E.2d at 678. Instead, a petitioner must show that the assessed value does not accurately reflect the subject property's market value-in-use. *Id.*

- o) The only market based evidence submitted by the Petitioner related to the Valparaiso Redevelopment Commission's purchase of a 22-acre parcel of land ("Redevelopment Commission Parcel") for \$399,000 in July 2004. *See Kropp testimony; Pet'r Ex. 5.* The Petitioner, however, failed to present any evidence to compare relevant characteristics of the subject property and the Redevelopment Parcel. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005) (holding that taxpayers did not establish a prima facie case of error where they failed to explain how the characteristics of the subject property compared to those of purportedly comparable properties or how any differences between the properties affected their relative market values-in-use); *See also Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that taxpayer failed to establish comparability of parcels of land where, among other things, taxpayer did not compare the topography and accessibility of parcels). Similarly, the Petitioner failed to explain how any relevant differences between the two parcels affect their relative market values-in use. *See, id.* The Petitioner's failure in that regard is even more glaring in light of the fact that the Petitioner's own evidence demonstrates numerous apparent differences between the two parcels, including the fact that the Redevelopment Commission Parcel includes wetlands. *Pet'r Ex. 5.*
- p) Based on the foregoing, the Petitioner failed to prove that the current assessment of the subject land is incorrect.

Conclusions

Land

- 16. The Petitioner failed to make a prima facie case that the land portion of the current assessment is in error. The Board finds in favor of the Respondent.

Improvements

- 17. The Petitioner failed to make a prima facie case that the assessment of the subject improvements is in error. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: **June 13, 2006**

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>>.