

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

Petition No.: 48-003-09-1-4-00051
Petitioner: Basic American Convalescent Center
Respondent: Madison County Assessor
Parcel No.: 48-11-02-101-009.000-003
Assessment Year: 2009

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, Basic American Convalescent Center, through its tax representative, Paul Kropp of Kropp & Associates, appealed the assessed value of its property for the 2009 tax year with the Madison County Property Tax Assessment Board of Appeals (the “PTABOA”) by letter dated July 15, 2010.
2. On September 12, 2011, the PTABOA issued a notice of its determination, upholding the property’s 2009 assessment.
3. The Petitioner’s representative filed a Form 131 petition with the Board on October 17, 2011, and elected to have the case heard according to the Board’s small claims procedures.
4. The Board issued a notice of hearing to the parties dated January 27, 2012.
5. The Board held an administrative hearing on April 18, 2012, before the duly appointed Administrative Law Judge (the “ALJ”) Dalene McMillen.
6. The following were present and sworn in at hearing:
 - a. For Petitioner: Paul Kropp, Kropp & Associates
 - b. For Respondent: Larry Davis, Madison County Assessor
Charles W. Ward, County Representative

Facts

7. The property at issue in this appeal is a 50,179 square foot nursing home located at 1809 North Madison Avenue, Anderson, in Madison County.
8. For 2009, the assessor determined the assessed value of the Petitioner's property to be \$10,800 for the land and \$2,761,500 for the improvements, for a total assessed value of \$2,772,300.
9. For 2009, the Petitioner's representative requested an assessed value of \$10,800 for the land and \$1,810,100 for the improvements, for a total assessed value of \$1,820,900.
10. The ALJ did not conduct an on-site inspection of the property under appeal.

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in its property's assessment:
 - a. The Petitioner's representative contends that the Petitioner's nursing home was assessed in error based on the assessed value of a neighboring nursing home. *Kropp testimony*. According to Mr. Kropp, the property located at 1809 North Madison is licensed for 216 beds and is 66% occupied; whereas the property under appeal is licensed for 125 beds, of which only 79 beds are available for use, resulting in an occupation rate of 53%. *Kropp testimony; Petitioner Exhibit 13*. The neighboring nursing home was constructed in 1972 and the building has 74,542 square feet; whereas the property under appeal was constructed in 1968 and the building has only 50,179 square feet. *Id.* The neighboring nursing home's assessed value was \$2,550,500 in 2009; whereas the Petitioner's nursing home was assessed for \$2,772,300. *Kropp testimony; Petitioner Exhibit 4 and 8*. Thus, a nursing home that is superior in size, age and occupancy is assessed for less than the property under appeal, which Mr. Kropp argues shows that the Petitioner's property is assessed incorrectly. *Kropp testimony*.
 - b. To prove the value of the Petitioner's property, Mr. Kropp presented an income approach calculation based on the property's 2007 and 2008 income and expense statements. *Kropp testimony; Petitioner Exhibits 1 and 2*. In his analysis, Mr. Kropp testified that he used the property's actual 2007 income of \$3,585,007 and subtracted the property's actual expenses totaling \$3,646,030, resulting in a net operating income of negative \$61,023 for 2007.¹ *Kropp testimony; Petitioner Exhibit 1*. Similarly, for 2008, Mr. Kropp used the property's actual income of \$4,986,718 and subtracted the property's actual expenses of \$4,579,726, resulting in a net operating

¹ According to Mr. Kropp, he did not subtract the 2007 or 2008 property taxes because they are not an allowable expense in a property tax appeal. *Kropp testimony*.

- income of \$406,992. *Kropp testimony; Petitioner Exhibit 2.* According to Mr. Kropp, he averaged the property's 2007 and 2008 net operating incomes and applied a capitalization rate of 9.5%. *Id.* Based on his analysis, Mr. Kropp estimated the property's value to be \$1,820,900 for the March 1, 2009, assessment date. *Id.* In response to questioning, Mr. Kropp testified that the Petitioner changed management companies in 2008 and the new management company was able to better attract Medicare patients, which resulted in the Petitioner showing a profit in their net operating income. *Kropp testimony.* Thus, Mr. Kropp testified, he did not use the property's 2006 income and expenses because the net operating income would also have been a negative amount for the year, which in turn would have resulted in a lower property value for the property's March 1, 2009, assessment. *Id.*
- c. The Petitioner's representative also contends that the property's 2009 assessment should be lowered due to an error in the effective age of the building. *Kropp testimony; Petitioner Exhibits 3 and 4.* Mr. Kropp contends that the effective age of the Petitioner's property should not have changed from 32 years in 2008 to 11 years in 2009 after it was remodeled in 2007, because the Petitioner did not increase the size of the building. *Id.; Petitioner Exhibits 3, 4 and 12.* According to Mr. Kropp, the renovation was done to replace the roof, windows and doors and update the plumbing fixtures in the building, and to add a new air conditioning unit. *Id.* Mr. Kropp argues that the Petitioner's building permit shows that the total cost of the remodeling was approximately \$598,000, while the assessor increased the property's assessed value almost \$2 million. *Id.* Thus, Mr. Kropp concludes, the property's value was "inflated" in 2009 based on the change in the effective age of the building. *Kropp testimony.*
- d. Finally, the Petitioner's representative contends that the assessor erred when he removed the 20% obsolescence depreciation from the Petitioner's building in 2009. *Kropp testimony.* According to Mr. Kropp, the Petitioner's nursing home started receiving 20% obsolescence depreciation in 1998 because of its low occupancy rate. *Id.; Petitioner Exhibits 3 and 4.* Mr. Kropp argues that the Petitioner's nursing home is licensed for 125 beds. *Id.* However, sixteen rooms in the "C-hall" have been closed for approximately five years. *Id.* In 2008, the average occupancy was 68 beds; which represents only a 53% occupancy rate. *Id.; Petitioner Exhibit 13.* Because the nursing home continues to show a low occupancy rate, Mr. Kropp argues, the building should still be entitled to the 20% obsolescence depreciation. *Id.*
12. Summary of the Respondent's contentions in support of the property's assessment:
- a. The Respondent contends that the Petitioner's property is not over-assessed for the 2009 assessment year and, in fact, may be assessed too low. *Davis testimony.* The Respondent's representative testified that he calculated an income value for the Petitioner's property based on the building's lease rate. *Ward testimony.* According to Mr. Ward, the Petitioner's 2007 and 2008 income and expense statements show that the building was leased for \$701,712. *Id.* Applying a capitalization rate of

- 9.65%, Mr. Ward estimated the property's value to be \$7,271,627 for the March 1, 2009, assessment. *Id.* Mr. Ward testified that because he did not know the specifics of the building lease, the assessor is not asking for the property's assessed value to be increased. *Id.* However, he argues, the income value of the property based on its lease rebuts the Petitioner's argument that its property is undervalued. *Id.*
- b. The Respondent's representative also contends that the property under appeal is correctly assessed for the March 1, 2009, assessment. *Ward testimony.* According to Mr. Ward, the Petitioner applied for two building permits in 2007; representing improvements made to the property at an estimated cost of \$683,000. *Id.*; *Respondent Exhibits 3 and 4.* As a result of the building permits and a subsequent site visit to the property, Mr. Ward testified, the assessor removed the obsolescence depreciation and changed the effective age of the building to 1988. *Ward testimony; Respondent Exhibit 1.* The changes resulted in a value of \$2,772,300, or \$53.93 per square foot for the Petitioner's nursing home. *Id.* Mr. Ward argued that nursing homes in the area sold for between \$100.40 per square foot to \$268.48 per square foot during the relevant time period. *Ward testimony; Respondent Exhibit 8.* Thus, the Respondent's representative concludes, the Petitioner's property is not over-valued. *Ward testimony.*
- c. Finally, the Respondent argues that the Petitioner's representative's income calculation is flawed and should be given little weight. *Davis testimony.* According to Mr. Davis, Mr. Kropp's income calculation used the subject property's actual income and expenses. *Id.* In addition, Mr. Davis contends the income is based on only a portion of the Petitioner's 125 licensed beds being occupied. *Davis testimony.* Further, Mr. Davis contends Mr. Kropp only used two years of income and expenses to value the property, while the International Association of Assessing Officer (IAAO) Standards requires three years of income and expense data. *Davis testimony.*
- d. Similarly, to the extent that the Petitioner's representative presented a sales comparison analysis, the Respondent argues, Mr. Kropp's analysis is flawed. *Davis testimony.* According to Mr. Davis, the Petitioner's representative failed to make any adjustments to the sale price to account for the differences between the subject property and the comparable property. *Id.* Thus, the Respondent argues, the Petitioner's representative's comparable sale fails to show the property under appeal was over-valued for 2009. *Id.*

Record

13. The official record for this matter is made up of the following:
- a. The Form 131 petition and related attachments.
 - b. The digital recording of the hearing.

c. Exhibits:²

- Petitioner Exhibit 1 – 2007 income and expense statement for the Petitioner’s property,
- Petitioner Exhibit 2 – 2008 income and expense statement for the Petitioner’s property,
- Petitioner Exhibit 3 – Petitioner’s property’s 2008 property record card,
- Petitioner Exhibit 4 – Petitioner’s property’s 2009 property record card,
- Petitioner Exhibit 5 – “Nursing Home QuickCheck Report” from UCompare Health Care website,
- Petitioner Exhibit 6 – Notification of Final Assessment Determination – Form 115, dated September 12, 2011,
- Petitioner Exhibit 7 – 2008 property record card for 1345 North Madison Avenue, Anderson,
- Petitioner Exhibit 8 – 2009 property record card for 1345 North Madison Avenue, Anderson,
- Petitioner Exhibit 9 – Notice of Hearing on Petition (By County Property Tax Assessment Board of Appeals) – Form 114, dated August 11, 2011,
- Petitioner Exhibit 10 – Letter from Paul Kropp, Kropp & Associates to Larry Davis, Madison County Assessor, dated March 15, 2012,
- Petitioner Exhibit 11 – Map of the facility layout in 2008 for the subject property,
- Petitioner Exhibit 12 – City of Anderson structural building permit application for the subject property, dated June 4, 2007,
- Petitioner Exhibit 13 – Petitioner’s comparable analysis and street map,
- Respondent Exhibit 1 – Petitioner’s property’s 2009 property record card,
- Respondent Exhibit 2 – Notification of Final Assessment Determination – Form 115, dated September 12, 2011,
- Respondent Exhibit 3 – Building permit application for the subject property, dated June 13, 2007,

² Mr. Kropp objected to Respondent’s Exhibit 8 because the exhibit was not exchanged five days prior to the hearing. The Board rules state that “[i]f requested by any party, the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small claims hearing.” 52 IAC 3-1-5 (d). Mr. Kropp requested the county’s evidence by letter on March 15, 2012. *Petitioner Exhibit 10*. Mr. Ward admitted that Respondent Exhibit 8 was not submitted to Mr. Kropp prior to the Board’s hearing, which was conducted on April 18, 2012. The Board finds the Respondent failed to timely comply with providing the Petitioner’s representative with a copy of Respondent Exhibit 8. Thus, the Petitioner’s representative’s objection is sustained and the Board will take no notice of Respondent Exhibit 8.

- Respondent Exhibit 4 – Building permit application for the subject property, dated September 14, 2007,
 - Respondent Exhibit 5 – 2009 property record card for 2335 North Madison Avenue, Anderson,
 - Respondent Exhibit 6 – Sales Disclosure Form for 2335 North Madison Avenue, Anderson, dated July 29, 2011,
 - Respondent Exhibit 7 – Correspondence from Larry Davis, Madison County Assessor, to the Indiana Board of Tax Review and Kropp & Associates,
 - Respondent Exhibit 8 – List of seven comparable nursing homes located in Delaware County,
- Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

Analysis

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its correct assessment should 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2.³ That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2. Here, the property's value decreased from \$2,783,300 in 2008 to \$2,772,300 in 2009. *Kropp testimony; Petitioner's Exhibit 4*. Therefore, the

³ HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

Petitioner has the burden to show that its property's assessment is incorrect and the burden to prove the property's market value-in-use. *See e.g. Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d at 478 (a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its correct assessment should be).

15. The Petitioner's representative failed to provide sufficient evidence to establish a prima facie case for a reduction in the assessed value of the Petitioner's property for 2009. The Board reached this decision for the following reasons:
 - a. In Indiana, assessors value real property based on the property's market value-in-use, which the 2002 Real Property Assessment Manual defines as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *See id.* A market-value-in-use appraisal prepared according to USPAP often will suffice. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501,506 n. 6. (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2009, assessment date, the valuation date was January 1, 2008. 50 IAC 21-3-3.
 - c. Here, the Petitioner's representative contends that the property under appeal was over-valued based on an income approach calculation. *Kropp testimony*. According to Mr. Kropp, he used the property's 2007 and 2008 income and expenses and applied a 9.5% capitalization rate to estimate the property's value at \$1,820,900 for the 2009 assessment year. *Id.*; *Petitioner Exhibits 1 and 2*. Mr. Kropp's analysis, however, fails to raise a prima facie case for a reduction in the Petitioner's property's assessed value, because his analysis is based on site-specific financial information and Mr. Kropp failed to support his capitalization rate.
 - d. "The income approach to value is based on the assumption that potential buyers will pay no more for the subject property ... than it would cost them to purchase an equally desirable substitute investment that offers the same return and risk as the subject property." MANUAL at 14. The income approach, thus, focuses on the intrinsic value of the property, not upon the Petitioner's operation of the property because property-specific rents or expenses may reflect elements other than the value of the property "such as quality of management, skill of work force, competition and the like." *Thorntown Telephone Company, Inc. v. State Board of Tax Commissioners*,

- 588 N.E.2d 613, 619 (Ind. Tax Ct. 1992). *See also* MANUAL at 5 (“[C]hallenges to assessments [must] be proven with aggregate data, rather than individual evidence of property wealth. ...[I]t is not permissible to use individual data without first establishing its comparability or lack thereof to the aggregate data”).
- e. Here Mr. Kropp provided no evidence to demonstrate that the Petitioner’s property’s income and expenses were typical for comparable properties in the market. Thus, any low income or high expense levels may be attributed to the Petitioner’s management of the property as opposed to the property’s market value. *See Lake County Trust Co. No. 1163 v. State Board of Tax Commissioners*, 694 N.E.2d 1253, 1257-58 (Ind. Tax Ct. 1998) (economic obsolescence was not warranted where taxpayer executed unfavorable leases resulting in a failure to realize as much net income from the subject property). In fact, Mr. Kropp testified that the Petitioner hired a new management company in 2008, which did a better job of marketing the property, resulting in a higher net operating income. *Kropp testimony; Petitioner Exhibit 2*. The difference in net operating income between the prior management company, where the facility lost \$61,023, and the net operating income under the new management company, where the facility earned a profit of \$406,992 the following year, starkly proves the point made by the Tax Court in the *Lake County Trust* and *Thornton Telephone Company* cases.⁴ Thus, without showing what comparable properties are earning, the Petitioner’s representative’s income analysis has little probative value.
- f. Moreover, Mr. Kropp did not adequately support his capitalization rate. A capitalization rate “reflects the annual rate of return necessary to attract investment capital and is influenced by such factors as apparent risk, market attitudes toward future inflation, the prospective rates of return for alternative investments, the rates of return earned by comparable properties in the past, the supply of and demand for mortgage funds, and the availability of tax shelters.” *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 275 (Ind. Tax Ct. 2005). Here Mr. Kropp did not present any evidence to support his capitalization rate of 9.5%. While the rules of evidence generally do not apply in the Board’s hearings, the Board requires some proof of the accuracy and credibility of the evidence. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); *and Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
- g. Ultimately, Mr. Kropp failed to show that his income approach methodology conformed to the Uniform Standards of Professional Appraisal Practice (USPAP) or any other generally accepted standards. Consequently, Mr. Kropp’s income approach

⁴ If the property’s 2007 income is dismissed as not reflecting the property’s value because of poor management and the property’s 2008 income under the new management of \$406,992 is considered alone, Mr. Kropp’s own calculation results in a value of \$4,284,126.30 for the property.

calculation lacks probative value in this case. *See Inland Steel Co. v. State Board of Tax Commissioners*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser’s opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).

- h. The Petitioner’s representative also contends that the assessor erred when he changed the effective age of the building and removed the 20% obsolescence adjustment from the Petitioner’s property in 2009. *Kropp testimony*. However, a Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the method used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that “under the old system, a property’s assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*.”). Thus, because the Petitioner’s representative failed to sufficiently prove the market value-in-use of the subject property, Mr. Kropp’s contentions that the assessor erred in his method of assessing the property fail to raise a prima facie case that the Petitioner’s property’s assessed value should be reduced for the 2009 assessment year.⁵
- i. Where a Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioner failed to establish a prima facie case that its property was over-valued for the March 1, 2009, assessment year. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioner’s property should not be changed.

⁵ To the extent that the Petitioner’s representative can be seen as arguing that the Petitioner’s property is over-valued based on the assessed value of a neighboring nursing home, this argument also fails. *Kropp testimony*. In *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007), the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the Court found that the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property’s market value-in-use. *Id.*

ISSUED: June 25, 2012

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

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 as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE0287.1.html>.