

REPRESENTATIVE FOR PETITIONER: Paul M. Jones, Jr., Attorney

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Shelbyville MHPI, LLC	)	Petition No. 73-002-07-1-4-12802
	)	Petition No. 73-002-07-1-4-12803
Petitioner,	)	Petition No. 73-002-07-1-4-12804
	)	Petition No. 73-002-07-1-4-12805
	)	Petition No. 73-002-08-1-4-12802
	)	Petition No. 73-002-08-1-4-12803
	)	Petition No. 73-002-08-1-4-12804
	)	Petition No. 73-002-08-1-4-12805
)	
v.	)	Parcel No. 73-11-06-300-008.000-002
	)	Parcel No. 73-10-01-400-013.000-002
	)	Parcel No. 73-10-01-400-014.000-002
	)	Parcel No. 73-11-06-300-096.000-002
Shelby County Assessor,)	
	)	Shelby County, Addison Township
Respondent.	)	2007 and 2008 Assessments

Appeal from the Final Determinations of the
Shelby County Property Tax Assessment Board of Appeals

August 5, 2011

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE

The Petitioner appealed the 2007 and 2008 assessments for a mobile home park. Did the Petitioner prove the total valuation of the park at \$3,900,000 is too high and did it prove a more accurate assessed value?

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject property is a mobile home park consisting of four parcels of land located at 911 Hale Road in Shelbyville. It is commonly known as the Westar Manufactured Home Community (Westar).
2. The Petitioner initiated assessment appeals for each parcel by filing Form 130. The Property Tax Assessment Board of Appeals (PTABOA) mailed its decisions on April 1, 2010. The Petitioner filed Form 131 for each parcel with the Board on May 10, 2010. At that point it elected to opt out of small claims procedures.
3. The PTABOA determined the 2007 and 2008 total assessed values for each parcel as shown below.

<u>Parcel 73-11-06-300-008.000-002</u>	\$3,658,900
<u>Parcel 73-10-01-400-013.000-002</u>	\$174,900
<u>Parcel 73-10-01-400-014.000-002</u>	\$41,400
<u>Parcel 73-11-06-300-096.000-002</u>	\$24,800

4. The total assessed value of all four parcels as determined by the PTABOA for both years is \$3,900,000.
5. The Petitioner contends that total should be \$2,900,000 for 2007 and 2008.
6. Administrative Law Judges Kay Schwade and Ted Holaday held a hearing on April 19, 2011. There was no on-site inspection by the Administrative Law Judges or the Board.
7. Carla Bishop and Rich Correll testified for the Petitioner. Gilbert Mordoh and Bradley Berkemeier testified for the Respondent.

8. The Petitioner presented the following exhibits:
 - Petitioner Exhibit A – Forms 130 with attachments for the 2007 assessment year,
 - Petitioner Exhibit B – Forms 130 with attachments for the 2008 assessment year,
 - Petitioner Exhibit C – Forms 131 with attachments for the 2007 assessment year,
 - Petitioner Exhibit D – Forms 131 with attachments for the 2008 assessment year,
 - Petitioner Exhibit E – Real Estate Appraisal of the subject property by Rich Correll (Correll Appraisal),
 - Petitioner Exhibit F – Memorandum of Law,
 - Petitioner Exhibit G – Property record card for each parcel,
 - Petitioner Exhibit H – A 2005, 2006, 2007, and 2008 Profit and Lost Statement for Westar.

9. The Respondent presented the following exhibit:
 - Respondent Exhibit A – Real estate appraisal of the subject property by Gilbert S. Mordoh & Company (Mordoh Appraisal).

10. The following items are recognized as part of the record:
 - Board Exhibit A – Form 131 petitions with attachments,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing Sign-In Sheet.

SUMMARY OF THE PETITIONER'S CASE

11. Westar is a 51 acre site with 205 mobile home pads accommodating both single-wide and double-wide homes. The park was built in 1989 and expanded in 1994. A converted single-wide mobile home is used as an office. Playground areas are located at several points in the community. It also has 25 self-storage units. *Correll testimony; Pet'r Ex. E.*

12. The Petitioner engaged Rich Correll, an Indiana Certified General Appraiser and owner of Correll Real Estate Service, to perform an appraisal of Westar. Mr. Correll has appraised commercial property for 25 years with an expertise in manufactured and

mobile home communities. He co-authored the Allen Report on the operating expenses of mobile home parks. He worked with Reitz Real Estate Investment Trust in the process of making decisions about acquiring mobile home parks for investment portfolios. He was the largest mobile home park broker in the Midwest during mid-2000. *Correll testimony; Pet'r Ex. E.*

13. Mr. Correll prepared a summary report appraisal dated April 7, 2011, with effective valuation dates of January 1, 2005, January 1, 2006, and January 1, 2007. It values the fee simple interest of Westar for property tax purposes. *Correll testimony; Pet'r Ex. E at 10.*
14. The principles used by an appraiser to determine market value are the same as the principles used to determine market value-in-use. The Correll Appraisal stays close to the principle that “in markets where property types are frequently exchanged and used by both buyer and seller for the same general purpose, a sale will be representative of utility and market value-in-use will equal value-in-exchange.” In this case, market value and market value-in-use are “pretty much” the same. Westar was sold by an investor and purchased by an investor. It remains an investment property. The appraised value is tightly aligned with the market value-in-use principle. *Correll testimony.*
15. The Correll Appraisal developed a sales comparison approach and an income approach. The cost approach was not developed. For this kind of property that decision is common. *Correll testimony.*
16. The income approach is the most important method for appraising an investment property of this type. *Correll testimony.*
17. There has been a general downward trend for new manufactured homes and mobile homes in the Midwest, but during 2005 to 2007 there was some continuity and the industry remained relatively level. Westar itself was stable during 2006 and 2007. Therefore, time adjustments for January 1, 2006, or January 1, 2007, are not required. *Correll testimony; Pet'r Ex. E at 27.*

18. The sales comparison approach analyzed data from other mobile home park sales. It selected the sales of Holiday South MHP (Comp 1), Maple Hills MHP (Comp 2) and Forest Oaks MHP (Comp 3) as representing the best data available. The appraisal developed a value per pad, which is the typical unit basis for mobile home parks. *Correll testimony; Pet'r Ex. E at 32.*
19. Comp 1 was adjusted downward for both condition and occupancy. Comp 2 was adjusted downward for location. Comp 3 was adjusted upward for occupancy and downward for quality and size. The comparable sales indicate an adjusted per pad value range from roughly \$13,000 to \$15,000. *Correll testimony; Pet'r Ex. E at 42.*
20. The sales comparison approach indicates Westar's value was approximately \$2.7 million to \$3.2 million—the appraisal concluded \$2,900,000 as of 2005, 2006, and 2007. *Correll testimony; Pet'r Ex. E at 43.*
21. Westar is a stable, mature asset. Its vacancy rate was low with little turnover. The financial records show a consistent vacancy/collection loss of 10% to 15%. A stabilized vacancy/collection loss of 12% was used for the income and expense statement each year. *Correll testimony; Pet'r Ex. E.*
22. A market survey of similar properties in southern Indiana showed the average monthly rent ranged from \$205 to \$365 per pad. Westar's 2005 actual rent rates were \$225 for a single wide pad and \$255 for a double wide pad. There were no significant rate increases between 2005 and 2007. The actual rent rates were used to develop Westar's potential gross income (PGI) of \$579,060. *Correll testimony; Pet'r Ex. E at 29.*
23. Westar also gets rent from its self-storage units. Based on Westar's financial records, the actual amount reported as "Other Income" was \$5,970 in 2004. It was \$3,874 in 2005. It was \$4,291 in 2006. And it was \$17,042 in 2007. A stabilized "Other Income" would be \$5,000. The 2007 "Other Income" used \$17,000 by mistake because it included the proceeds from some mobile home sales that were an aberration. Using the correct

stabilized “Other Income” for 2007, the effective gross income (EGI) would be less and ultimately result in a slightly lower value. *Correll testimony; Pet’r Ex. E at 45-46.*

24. Mobile home parks typically operate with an expense ratio of 45% or higher. Westar’s actual operating expenses for 2002 through 2007 are shown on page 46 of the appraisal. (A more detailed breakdown of actual expenses is shown on Exhibit H.) Those expenses were “pretty tight.” The utility expense appears high, but for the time period under review Westar paid all the utilities. In 2008 Westar paid the utilities, but started “billing back” the tenants. Westar’s actual profit/loss statements for 2005 through 2008 show that the utility expenses are accurate and supported. *Correll testimony; Pet’r Ex. E, H.*

25. Westar’s actual income and expense data is within market ranges for this type of property and is not inconsistent with other properties of this class in the marketplace—expenses of about \$200,000 on roughly \$500,000 of income. With this ratio, Westar is operating better than many such communities, but of course not including real estate taxes makes a big difference. An expense ratio of 38% to 45% of effective income is the industry standard for manufactured home communities in North America. *Correll testimony.*

26. Westar’s actual income and expenses were used to develop a stabilized income and expense statement. After deducting for vacancy and credit losses, the stabilized income and expense statement has effective gross incomes as follows:

January 1, 2005	EGI \$524,077
January 1, 2006	EGI \$529,763
January 1, 2007	EGI \$544,319

The estimated expenses used on this statement are in line with typical mobile home park operations and expense ratios. They range from \$207,000 to \$232,500. After deducting those expenses (but not the real estate tax expense), the stabilized income and expense statement has net operating incomes as follows:

January 1, 2005	NOI (Rounded) \$313,000
January 1, 2006	NOI (Rounded) \$323,000
January 1, 2007	NOI (Rounded) \$312,000

Correll testimony; Pet’r Ex. E at 47.

27. The capitalization rate used in the income approach was developed both from market data and a national publication for investors. Listings and sales from 1999 through 2008 for six mobile home parks were used to develop a capitalization rate. Those parks were located both inside and outside of Indiana. They indicated capitalization rates ranging from 8.52% to 10.00%. The appraisal also considered *Realty Rates Investor Survey*, which indicated capitalization rates for mobile home parks ranging from 7.53% to 13.08% with an average of 8.84%. Selecting exact capitalization rates is a “judgment call” for appraisers. In this case, a capitalization rate of 8.75% was selected for 2006 and 8.25% for 2007. After adding the net tax rates, the loaded capitalization rate for 2006 is 11.05% (8.75% + 2.3%) and for 2007 it is 10.61% (8.25% + 2.36%). *Correll testimony; Pet’r Ex. E at 48–50.*
28. Using the stabilized net operating income of \$323,000 for 2006 and the loaded capitalization rate of 11.05%, the indicated value for 2006 is \$2,923,077. Using the stabilized net operating income of \$312,000 for 2007 and the loaded capitalization rate of 10.61%, the indicated 2007 value is \$2,940,622. Both numbers rounded to \$2,900,000. *Correll testimony; Pet’r Ex. E at 50.*
29. The biggest difference between the Correll Appraisal and the Mordoh Appraisal is in the expenses part of the income approach. The Correll Appraisal considered the actual utility expenses paid by Westar during 2005 through 2007. At that time the utilities were not billed back to the tenants, but the Mordoh Appraisal failed to include anything for the utility expenses. The Mordoh Appraisal also failed to include anything for lawn mowing and landscape maintenance, which with a park this size is a substantial expense. The Mordoh Appraisal has a single line for management fees, but typically there are separate expense lines for outside management and on-site management. The Mordoh Appraisal has a reserve for replacements expense line that is not common practice for mobile home parks. *Correll testimony.*

30. Overall Westar's actual data shows it costs about \$200,000 to operate its property, which is an expense level that is well within normal standards for this kind of operations. The actual expenses are not too high. The Mordoh Appraisal estimates only about \$100,000 for expenses. Mordoh's estimate is too low for any such operation. Nobody operates with an expense ratio at 20%. If just the utility expense in the Mordoh Appraisal was corrected to show the actual expenses, the income approach in the Mordoh Appraisal would result in a value that is in line with the Correll Appraisal's income approach. *Correll testimony.*

SUMMARY OF THE RESPONDENT'S CASE

31. The Respondent engaged Gilbert Mordoh, an Indiana Certified General Appraiser, to perform an appraisal of Westar's property as of January 1, 2006, and January 1, 2007. Mr. Mordoh has appraised residential and commercial property for 32 years. Those appraisals have been 95% for properties in Indiana. Mobile home parks are not something in which he has specialized, but during his career he has appraised perhaps ten mobile home parks. *Mordoh testimony.*
32. The Mordoh Appraisal estimates Westar's value at \$3,560,000 as of January 1, 2006, and \$3,775,000 as of January 1, 2007.¹ In preparing this appraisal, the subject property was inspected on October 7, 2010. Mr. Mordoh inspected the property himself and at that time he talked to one of the on-site managers, who showed him around. That manager provided information about the number of units, current rents, and the rents for prior years. They also discussed utilities and at that time it was stated that utilities were paid by the tenants. *Mordoh testimony; Resp't Ex. A at 2-4.*

¹ The date of the report is October 28, 2010.

33. The income approach is the most relevant valuation method for Westar. The sales comparison approach is used to test or measure the income approach. The cost approach is not relevant. *Mordoh testimony*.
34. According to Mr. Mordoh, Mr. Correll did a very thorough job with his appraisal. Mr. Mordoh agreed with the use of Westar's actual rents to determine income and he noted that the cap rates in both appraisals are very close. He also testified that he agreed with a \$15,000 per pad value for the sales comparison approach (although Mordoh added \$100,000 of value for the storage units that Correll did not). According to the Mordoh Appraisal, the sales comparison approach indicated a value of \$3,175,000 as of 2006 and 2007 ("there would not be a substantial difference in either year..."). *Mordoh testimony; Resp't Ex. A at 6*.
35. For the income approach, both appraisals started with approximately the same potential gross income (PGI) from the property.² As in the Correll Appraisal, the rent rates used to develop the PGI are based on market rent and actual rent. After allowing for vacancy and collection losses, the effective gross income (EGI) in the Mordoh Appraisal was \$506,384 for 2006 and \$538,315 for 2007. *Mordoh testimony; Resp't Ex. A at 8, 10; Pet'r Ex. E at 47*.
36. The major difference between the two appraisals is the expenses in the income approach. The Mordoh Appraisal used the actual insurance cost for 2006 expenses and estimate insurance costs for 2007. The Mordoh Appraisal estimated management expenses at 15% of EGI and estimated a reserve for replacement expense for items such as roadways, pads, etc. The Mordoh Appraisal allowed total expenses of \$105,609 for 2006 and \$110,692 for 2007. These expenses are "pretty much" in line with the expenses in the Correll Appraisal except for the utility expenses. *Mordoh testimony; Resp't Ex. A*.

² The Mordoh Appraisal, p. 8, used a PGI of \$592,560 for 2006. The Correll Appraisal, p. 47, used potential gross incomes of \$589,860 for 2005, \$602,003 for 2006, and \$599,226 for 2007.

37. The Mordoh Appraisal did not include an expense line for utilities because, based on the expense information provided and a conversation with Westar’s property manager during the site inspection in October 2010, it was understood that the tenants paid all the utilities rather than Westar paying the utilities. Westar’s net operating income would be lower if the rents excluded an amount to recover utility costs. But if the rent did include utility costs and Westar paid the utilities, the result would be a “wash”. The utilities would be an expense, but the amount set aside in the rent would be income. *Mordoh testimony.*
38. If the Mordoh Appraisal included expense items such as lawn care or utilities, the resulting net operating income would be lower and would yield a lower indicated value. *Mordoh testimony.*
39. By subtracting those expenses from those effective gross incomes, the net operating income for 2006 is \$400,776 and for 2007 it is \$427,623. *Mordoh testimony; Resp’t Ex. A at 8, 10.*
40. Capitalizing the 2006 net operating income at an overall cap rate of 11.26% indicates the value of the subject property was \$3,560,000. Capitalizing the 2007 net operating income at an overall cap rate of 11.32% indicates the value of the subject property was \$3,775,000. (The “overall cap rate” includes the effective tax rate.) *Mordoh testimony; Resp’t Ex. A at 9, 11.*
41. The Respondent acknowledged that even its own evidence indicates values that are lower than the existing assessments for both 2007 and 2008.

ADMINISTRATIVE REVIEW AND BURDEN

42. A Petitioner seeking review of a determination of an assessing official has the burden to prove 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).

43. 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”).
44. Once the Petitioner establishes a prima facie case, the burden of going forward 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). Then the assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

45. Real property is assessed on the basis of its “true tax value,” which means “the market value-in-use of a property for its current use, as reflected by the utility received by the owner of a similar user, from the property.” Ind. Code § 6-1.1-31-6(c); REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use.
46. The primary method for assessing officials is the cost approach. MANUAL at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A. A value established by use of those Guidelines, while presumed to be accurate, is merely a starting point. Other evidence relevant to market value-in-use can 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.

47. The Tax Court has stated a market value-in-use appraisal that is completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) can be the most effective method to rebut the assumption that an assessment is correct. *See French Lick Twp. Assessor v. Kimball International*, 865 N.E.2d 732, 736 n.4 (Ind. Tax Ct. 2007); *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006); *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). Here we have two such appraisals as well as the testimony of two appraisers. They reach significantly different conclusions. The Correll Appraisal estimates \$2,900,000 as of January 1, 2006, and January 1, 2007. The Mordoh Appraisal estimates \$3,560,000 as of January 1, 2006, and \$3,775,000 as of January 1, 2007. Our final determination about the assessments, of course, depends on who presented the most credible and most persuasive case, but at this point it is clear that some change is required because none of the evidence supports the total assessed value as determined by the PTABOA.
48. Both Mr. Correll and Mr. Mordoh are Indiana Certified General Appraisers. Both appraisals are certified as conforming to USPAP requirements. They estimated Westar's market value-in-use as of the appropriate valuation dates. They developed the income capitalization approach and the sales comparison approach, but not the cost approach. Both emphasized the income capitalization approach as being the most relevant method for valuing this type of property. And most of the arguments from counsel have a similar focus in trying to present one analysis or the other as being more credible and persuasive. Everyone agreed that the heart of this dispute is the proper amount of expenses that should be deducted in determining net operating income prior to capitalization. Our analysis has a similar focus.
49. The evidence and arguments supporting an assessed valuation of \$2,900,000 are more convincing for a number of reasons.

50. Both appraisers have many years of experience. Mr. Mordoh has appraised residential and commercial property for 32 years. During that time he has appraised perhaps ten mobile home parks, but admitted they are not something in which he has specialized. Mr. Correll has appraised commercial property for 25 years with an expertise in manufactured and mobile home communities. He co-authored a publication on the operating expenses of mobile home parks. He has participated in the process of making decisions about acquiring mobile home parks for investment portfolios. For a time he was the largest mobile home park broker in the Midwest. These kinds of qualifications provide a great deal of additional support for the statements in the Correll Appraisal and Mr. Correll's testimony about Westar's operations and how they compare to other similar operations.
51. The income capitalization approach in the Correll Appraisal began with the actual income and expenses for the subject property from 2005 through 2008. That actual data was determined to be within market ranges for this type of property and not inconsistent with other properties of this class in the marketplace. Mr. Correll provided clear, unambiguous testimony that the utilities shown as expenses were actually paid by Westar and from 2005 through 2007 utilities were not being billed back to tenants—that started in 2008.
52. The income capitalization approach in the Mordoh Appraisal is based on the data that Mr. Mordoh obtained from one of the on-site managers who showed him around the property on October 7, 2010. (Mr. Mordoh was unable to provide the name of the person with whom he spoke.) At that time Mr. Mordoh got information about the number of units, current rents, and the rents for prior years from that manager. They also discussed utilities and it was stated that utilities were paid by the tenants. Mr. Mordoh admitted, however, that he was not certain of exactly what he asked. Altogether, his testimony about tenants paying utilities is ambiguous and not as convincing as that of Mr. Correll on this point.

53. We conclude that the Mordoh Appraisal's valuation for 2006 and 2007 is based on an erroneous understanding about who was paying the utilities. This mistake seriously undermines credibility of the income capitalization approach in the Mordoh Appraisal.
54. In addition, the Mordoh Appraisal's estimated expenses failed to include anything for lawn care, which for this type of property is a substantial expense—the actual figures for it ranged from \$33,535 to \$40,670. No substantial justification for this omission was offered. It also undermines the credibility of the Mordoh Appraisal.
55. Finally, Mr. Correll testified that mobile home parks typically operate with an expense ratio of 45% or higher. The Respondent did not dispute that point and offered no substantial evidence that expenses for this kind of property are typically something less. Mr. Correll also testified that the 20% expense ratio estimated in the Mordoh calculations was inconsistent with *any* such operation. After carefully reviewing all of the evidence in this case, the Board concludes that Mr. Correll is correct about the expenses in general. Furthermore, Mr. Mordoh admitted that if the utilities and lawn care expenses were included in his income capitalization approach, the resulting net operating income would be lower. Therefore, the indicated value of the subject property would be lower.
56. The actual income and expense figures shown in the Correll Appraisal are accurate and realistic for this type of business. The stabilized income and expense numbers used in the Correll Appraisal are also realistic, credible estimates for its income capitalization approach. The Mordoh Appraisal, on the other hand, used estimated expenses that are approximately half as much, which is much too low. Consequently, the Mordoh Appraisal has an income capitalization approach that is less credible and it indicates a value that is too high.

SUMMARY OF FINAL DETERMINATION

57. The Petitioner and the Respondent presented substantial evidence of very different values for the subject property. After carefully weighing all the evidence, the Board concludes the Petitioner made a more credible and persuasive case based on the Correll Appraisal

and Correll's testimony. Therefore, the total assessed value of all four parcels for both 2007 and 2008 must be changed to \$2,900,000.

This Final Determination for the above captioned matter is issued on the date first written above.

Commissioner, 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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>