
STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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TO: Mark Yagelski, President of the LaPorte County Council

CC: Carol McDaniel, LaPorte County Assessor; Terry Beckinger, Michigan Township Assessor; LaPorte County Commissioners

FROM: Timothy J. Rushenberg, Commissioner *JR 8/10/09*

RE: Review of LaPorte County property assessment activities under Indiana Code section 6-1.1-4-31

DATE: August 10, 2009

I. Introduction

Indiana law authorizes the Department of Local Government Finance (“Department”) “to periodically check the conduct of” a general reassessment, annual adjustments (or trending), and other assessment work in a county. Ind. Code § 6-1.1-4-31(a). The Department undertook a review of the assessment work in LaPorte County. The purpose of this memo is to inform the LaPorte County Council President that assessment work of the LaPorte County Assessor, Carol McDaniel, is not being properly conducted.

The Department’s findings are consistent with the observations of several public officials from LaPorte County who have called for Ms. McDaniel’s resignation or removal from office. The Mayor of the City of LaPorte, Kathleen Chroback, reported that both the County Auditor and Michigan Township Assessor held a “core distrust of the work coming out of the County Assessor’s Office.” Mayor Chroback also stated that Ms. McDaniel was “ineffective and, on many occasions, missing in action.” Mayor Chroback attributes “intolerable delays” and

“overriding distrust” to Ms. McDaniel’s acts and omissions, which she believes have “caused the system to grind to a halt.” Additionally, Mayor Chroback requested that the Department “exercise the authority granted . . . to initiate the processes by which (McDaniel) can legally be removed from office.” (Letter from Kathleen Chroback to Timothy J. Rushenberg (June 1, 2009) [attached hereto as Exhibit A].) Similarly, the Common Council of the City of LaPorte passed a formal resolution officially, and unanimously, calling for Ms. McDaniel’s removal. (Resolution No. R-10-2009 of the Common Council of the City of LaPorte (June 2, 2009) [attached hereto as Exhibit B].) Additionally, at a June 1, 2009 public hearing conducted by the Department in LaPorte, Indiana, an official of LaPorte County government, Mike Bohacek of the Board of Commissioners, asked the Department to initiate the process that would allow for Ms. McDaniel’s removal.

II. Statutory Standard and Process

Before setting forth the information related to McDaniel’s work, this memo will briefly describe Indiana Code section 6-1.1-4-31, which this memo will sometimes refer to as the “Assessment Review Statute.” The statute refers broadly to “property assessment activities not being properly conducted,” retrending work “not being properly conducted,” and property assessments “not being properly made.” I.C. § 6-1.1-4-31(a). The standard then is whether the assessor is doing assessment work properly. The distinction between misfeasance and malfeasance, or between negligence and a crime, need not be made. For example, whether or not the Assessor’s unilateral lowering of property values for the local Democratic Party Headquarters is criminal (*see infra* Part III(B)), it is improper.

If assessment work is not being “properly conducted,” the Department may inform the township assessor (if any), county assessor, and the president of the county council. I.C. § 6-1.1-

4-31(a). A county council president who is informed by the Department that assessment work is not being properly done “shall provide the information to the board of county commissioners.”

I.C. § 6-1.1-4-31(f). In turn, the county commissioners may adopt an ordinance to determine that the information received indicates “the county assessor has failed to perform adequately [her] duties” and “by that failure the county assessor forfeits the office of county assessor and is subject to removal from office by an information filed under IC 34-17-2-1(b).” I.C. § 6-1.1-4-31(f)(1). If the county commissioners adopt such an ordinance, the prosecutor shall file an information in circuit court against the county assessor. I.C. § 34-17-2-1(b) (“The prosecuting attorney *shall file* an information in the circuit court of the county against the county assessor or a township assessor under IC 34-17-1-1(2) if ... the board of county commissioners adopts an ordinance under IC 6-1.1-4-31(f)” (emphasis added).)

III. Carol McDaniel’s Assessment Work

Relevant to the Assessment Review Statute are two state audits of Carol McDaniel’s office performed by the Indiana State Board of Accounts.

A. Assessor’s mishandling of cash

The first audit spanned the period February 7, 2003, through September 15, 2006. (State Board of Accounts, *Audit Report of County Assessor LaPorte County, Indiana, February 7, 2003 to September 15, 2006* (filed Feb. 9, 2007) [hereinafter “2007 Audit” and attached hereto as Exhibit C].) It uncovered McDaniel’s mishandling of cash. McDaniel failed to remit cash her office received for copies to the county auditor. At first McDaniel denied that her office received cash or issued receipts. (2007 Audit, at 4.) McDaniel’s employees told a different story. They said that the assessor’s office did accept cash for copies for a fee of \$.50 to \$1.00 per page. (*Id.*) And they found three duplicate receipt books for the following periods: July to November 2003,

2 days in 2004, 7 days in 2005, and 35 days in 2006. (*Id.*) A few billing statements also noted that McDaniel's office had received cash. (*Id.*)

Given her office's recordkeeping, only \$601 of unremitted cash could be documented. The SBOA found that "accountability for all receipts could not be determined." (*Id.* at 5.) For instance, in the prenumbered receipt books, receipts were missing and not used in date order. Receipts for one day in 2004 and two days in 2005 were found, even though it's estimated "the office can serve anywhere from 10 to 15 patrons a day." (*Id.*) The SBOA found other deficiencies in McDaniel's internal controls over billing and receipts, including the probable disposal of receipt books. (*Id.* at 4-5.)

In her written response to the SBOA's findings, McDaniel reversed her earlier statement that her office never received cash or issued receipts. "With respect to cash collected," she explained, "those payments are maintained in our office and consistent with past practice and procedure of our office, which commenced well prior to my taking office, that cash is utilized for miscellaneous expenses of the Assessor's office, as well as the annual holiday party for the employees." (*Id.* at 9 (incorporating Letter from Carol McDaniel, LaPorte County Assessor, to Doug Wiese, State Board of Accounts (Nov. 7, 2006).)

B. Assessor's lowering assessments of her property and property of the local Democratic Party Headquarters

The SBOA's second audit spanned January 1, 2007, through December 31, 2007. (State Board of Accounts, *Audit Report of County Assessor LaPorte County, Indiana, January 1, 2007 to December 31, 2007* (filed Nov. 25, 2008) [hereinafter "2008 Audit" and attached hereto as Exhibit D].) The audit found that Ms. McDaniel changed the value of a parcel she owned on one of the "hard cards," which is a hard copy of the property record card used as a back-up to the

computer system. (2008 Audit, at 4.) According to the 2008 Audit, Ms. McDaniel changed that value without following assessment procedures used for changes made to other property values:

During our review of the changes noted on the “hard cards,” we noted one in which the County Assessor changed the value of a parcel of land she owned. For all other “hard cards” reviewed, we noted that the land values had changed from 2005 to 2006, either increasing or decreasing as a result of the new assessment procedures; *however, for this property owned by the County Assessor, no such change in land value was noted.* The value of the property in 2002, 2005, and 2006 was \$500. Additionally, on other “hard cards” where changes were made to the system generated values, those original system generated values were documented on the land valuation portion of the “hard cards,” *but on this “hard card” the system generated value, which was \$5,600 was “voided” per the “valuation history” screen, so it did not post to the land valuation record portion of the “hard card.”* Under the land data and calculations portion of the card, it shows that the computed value was \$5,640, but an influence factor of 92% was applied to bring the value down to \$500.

(2008 Audit, at 4 (emphases added).)

The State Board of Accounts uncovered “[a]nother unusual change” to property values.

(2008 Audit, at 4.) Ms. McDaniel lowered the property value of the local Democratic Party Headquarters:

Another unusual change was observed on a commercial property, which houses the democratic headquarters. For all “hard cards” reviewed, the totals from the land data and calculations portion of the card can be traced to the land value on the valuation record portion of the card, but for this property, the land data and calculations portion of the card shows the land value at \$24,700, but the land per the valuation portion of the card is \$15,400. Also, this commercial property is located in downtown LaPorte. It has been given a 65% obsolete depreciation rate. *Other commercial properties in this same area were not given the same treatment.* In fact, only one other commercial property in this area was given an obsolete depreciation rate, and the rate given was only 10%.

(2008 Audit, at 4 (emphasis added).)

C. Assessor’s failure to reset 2006 property data to the 2005 property data

The Department discovered that the 2006 assessment was improperly conducted. (May 23, 2008 DLGF Reassessment Order [hereinafter “Order”].) Among other failures of the

assessment, one or more factors such as age, grade, and condition of many real properties were adjusted without cause to arrive at what the Assessor's contractor believed to be the correct market value-in-use. (Order ¶ 83.) As part of a Department ordered retrending, the Assessor and the contractor developed a workplan for remedying the improperly conducted 2006 assessment. This plan involved, in part, resetting the 2006 property data (such as the grade, condition, and effective age) to the 2005 data—unless the 2006 data was supported by documented changes due to rehabilitation or new construction. (*La[P]orte County 2006 Re-Trending Workplan*, item (A)(3).) LaPorte County engaged Crowe Horwath to conduct an independent review of the LaPorte County Assessor's and the contractor's performance of this work. In a document dated February 26, 2009, Crowe Horwath concluded that the contractor failed to support changes made to grade, effective age, and condition with appropriate documentation or notation:

Many of the assessment decisions made by the County's consultant were not fully explained in the working papers prepared by the consultant. Notations regarding effective age, grade or condition contained the conclusion of the assessor's decision (i.e., Grade of B) without any notation of criteria for the judgment regarding grade. In many instances where the effective age was changed a single notation of "remodel" was noted.

We recommend that LaPorte County require its consultant to fully document the reason that changes are made to parcel records and provide the County with copies of such documentation. Example[s] of documentation that would be appropriate for a remodel would be a building permit or a photograph of the improved home.

(Crowe Horwath Letter to LaPorte County, Indiana at 1 (Feb. 26, 2009).)

Crowe issued a companion document the same day titled "Independent Accountant's Report on Applying Agreed-Upon Procedures." Crowe Horwath found that for at least 10,900 parcels out of approximately 80,000 it reviewed, the effective age, condition, or grade was not changed back to the 2005 data. Crowe requested "a sample of supporting documentation from (the contractor) for the changes made to effective age, condition, or grade." The contractor

provided documentation for 34 parcels, or less than one third of one percent of the parcels not changed back to the 2005 data. This documentation for less than one third of one percent of the total had, according to Crowe, “a notation regarding the change without exception.” (Crowe Horwath, *Independent Accountant’s Report on Applying Agreed-Upon Procedures*, item no. 2 (Feb. 26, 2009).)

On May 29, 2009, the contractor stated that “the county assessor’s office was responsible for” the “data entry” resetting the 2006 data characteristics to 2005 characteristics. (Jeff Wuensch e-mail to Commissioner Timothy J. Rushenberg (May 29, 2009).) The Assessor’s office admitted in an e-mail to the Department that “not all the parcels were put back to the 2005 parcel characteristics” within “the 2006 pay 2007 re trended data.” (Judy Anderson e-mail to Carol L. Johns (July 9, 2009).) The evidence indicates the Assessor did not restore the 2006 unsupported changes to the 2005 data.

D. Assessor demonstrated a lack of knowledge regarding basic assessment principles and concepts.

As part of litigation before the Indiana Board of Tax Review, Ms. McDaniel was deposed and asked questions about fundamental assessment principles and concepts. (*See R. Keith Sandin Trust v. Mich. Township Assessor & LaPorte County Assessor*, Cause Nos. 46-021-04-5-1-0003 and 46-021-05-1-5-0002 (Ind. Bd. Tax Rev. Oct. 3, 2008) (Final Determination).) She repeatedly demonstrated a lack of knowledge about property tax assessment and, in the process, denied three times that she did “assessing”:

Q: How do you determine what acreage is excess acreage?

[McDaniel]: See, I don’t do assessing, so I don’t know how they calculate that.

Q: Is the residential excess acreage determination made by Nexus?

[McDaniel]: See, I can't answer that. I don't know. I don't know how that—see, I don't do this assessing, so I don't know.

Q: Must there be a change or improvement for the grade to be changed?

[McDaniel]: I don't know. I don't do assessing, so I can't answer those questions.

(Deposition of Carol McDaniel at 29, 30, 33-34 (Sep. 7, 2007) [hereinafter “McDaniel Deposition”].)

When asked about standard assessment abbreviations, notations, and concepts regarding her own property record card, Ms. McDaniel repeatedly answered she did not know or had “no idea.” To avoid charges of selectively quoting or taking her words out of context, this memo sets forth lengthy portions of the deposition transcript. These portions underscore the Assessor's unfamiliarity with, and incomprehension of, basic assessment terms and concepts:

Q. The next entry as I go from left to right, because we talked about ID and use, is STRY HGT. Does that stand for story height?

[McDaniel]: I don't know.

Q: Do you know what STRY HGT does stand for?

[McDaniel]: No, I don't.

Q: The next column is entitled CONST type; does that mean construction type?

[McDaniel]: I don't know.

Q: The next column moving from left to right under Summary of Improvements is entitled “Grade.” What does Grade mean?

[McDaniel]: I don't know.

Q: How did you come to have a C Grade on your dwelling, a D grade on your utility shed, and no Grade on your attached garage, if you know?

[McDaniel's attorney objects.]

[McDaniel:] I don't know.

Q: Under what circumstances can the grade of an existing dwelling be changed?

[McDaniel]: I don't know.

Q: And is the year of construction to be the actual year that dwelling is constructed?

[McDaniel]: I don't know.

Q: Under what circumstances would the tax card have a year of construction other than the year in which the dwelling was actually constructed?

[McDaniel]: I don't know.

Q: The next column is entitled "EFF Year." Do you know what EFF year stands for?

[McDaniel]: No.

Q: Have you ever been told that that stands for effective year?

[McDaniel]: I have heard of effective year, but I did not know that's what that is for.

Q: What do you understand the term "effective year" to mean?

[McDaniel]: I don't really know.

Q: Should the year of construction and effective year be the same for all taxpayers in LaPorte County?

[McDaniel's attorney objects.]

[McDaniel]: I have no idea. I don't know.

Q: Under what circumstances should the year of construction and effective year ever be different?

[McDaniel]: I don't know.

Q: In terms of coming up with the tax assessment, which year should be used, the year of construction or the effective year?

[McDaniel]: I don't know.

Q: The next column is entitled "COND." Does that stand for condition?

[McDaniel]: I don't know.

Q: In your particular card it says "AV." Do you know what AV stands for?

[McDaniel's attorney objects.]

[McDaniel]: I don't know.

Q: The next entry – the next column is entitled "Base Rate." What does Base Rate mean?

[McDaniel]: I have no idea.

Q: The next column is entitled "Features." What does features mean?

[McDaniel]: I don't know.

Q: The next column says "ADJ Rate," which I assume is adjusted rate; do you agree with that?

[McDaniel]: I don't know what it is.

Q: On your card it says the size of the dwelling is 3244; is that square feet?

[McDaniel's attorney objects.]

[McDaniel]: I don't know.

Q: Then the next column says "Computed Value." What does that column represent?

[McDaniel]: I don't know.

Q: The next column over is entitled "PHYS DEPR." Does that mean physical depreciation?

[McDaniel]: I don't know.

Q: Is there a depreciation factor that comes into play when assessing taxes of a taxpayer in LaPorte County?

[McDaniel]: I've heard of it, but I don't know how it's calculated, don't know how they use it.

Q: The next column is entitled "OBSOL DEPR," which I understand means obsolescence depreciation; is that correct?

[McDaniel]: I don't know that.

Q: Have you heard that term before?

[McDaniel]: Yes.

Q: What is obsolescence depreciation?

[McDaniel]: I can't answer that, because I don't know what it is.

Q: Do you know how obsolescence depreciation is to be calculated?

[McDaniel]: No, I don't.

Q: The next column talks about market adjustment, and in there there is a number on your card of 124. What does that mean?

[McDaniel's attorney objects.]

[McDaniel]: I don't know.

Q: The next column is Percentage COMP. What does that mean?

[McDaniel]: I don't know.

Q: What had been done, Ma'am, with that total improvement value number?

[McDaniel]: I don't know.

Q: If we return to the first page or the front page, do you know where that total improvement value number appears in determining your total appraised value or your total true tax value?

[McDaniel's attorney objects.]

[McDaniel]: No.

Q: Are adjustments to be made to that total improvement value before being carried to and included in the calculation of the true tax value?

[McDaniel]: I don't know.

(McDaniel Deposition at 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41.)

The Assessor demonstrated unfamiliarity with assessment terms, concepts, and processes. This knowledge is essential and is covered in assessor-appraiser courses that all assessing officials—including Ms. McDaniel—are required by law to take and pass. Ind. Code §§ 6-1.1-35.5-1 to -9.

E. The Assessor's failure to perform assessment duties

In October 2007, the Department began a review of LaPorte County's 2006 pay 2007 annual adjustment process under Indiana Code section 6-1.1-4-31, which allows the Department to periodically check the trending done by local officials. The Department reviewed how real

property assessments had changed from assessment year 2005 to assessment year 2006 and whether the 2006 assessments were accurate reflections of property values. After its review uncovered “sales chasing” and manipulation of property data, the Department ordered a full county retrending on May 23, 2008, making LaPorte County the twenty-first county to be ordered to reassess property for the 2006 pay 2007 tax year.

The Department ordered the county to complete the retrending by November 28, 2008. On November 20, 2008, the county submitted the retrending ratio study and workbook values. However, in reviewing that study, the Department found that the Assessor failed to cure one of the serious deficiencies—sales chasing—that prompted the retrending order. The ratio study submitted prior to the November deadline did not meet minimal Department standards until two months later. While other county assessors timely completed reassessments and have their counties well on their way to restoring on-time tax billing, the LaPorte County Assessor has failed to timely remedy the deficiencies that prompted the reassessment order and restore on-time assessments in LaPorte. The fact that the job was not done right the first or even second time has pushed the County nearly three years behind other counties in the assessment process. Because the assessor rolled the values to the auditor on April 14, 2009, the County is not much further along in the 2006 pay 2007 process than it was a year ago.

In fact, Indiana law requires that by July 1 of each year, the Assessor submit gross assessed values to the Auditor. *See* Indiana Code § 6-1.1-5-14 (“On or before July 1 of each year, each county assessor shall, under oath, prepare and deliver to the county auditor a detailed list of the real property listed for taxation in the county.”). The Assessor failed to timely complete assessment activities for three consecutive years: 2007, 2008, and 2009. The Department,

therefore, was compelled to exercise its authority to perform “trending” for the 2008 and 2009 assessment years.¹

IV. Conclusion

In sum, property assessment activities in LaPorte County are not being “properly conducted” and “assessments” have not been “properly made.” Ind. Code § 6-1.1-4-31(a). First, the State Board of Accounts found that the Assessor’s handling of cash and lowering the values of her own property and that of the local Democratic Party headquarters were not conducted according to proper procedures. Furthermore, the Assessor did not reset the 2006 property data to reflect the 2005 property data as indicated in the 2006 pay 2007 retrending work plan. In her deposition she revealed a lack of understanding and knowledge of basic assessment principles and duties. Additionally, the Assessor missed deadlines requiring the Department to perform trending for the 2008 and 2009 assessment years. In fact, the County is nearly three years behind most other counties, which have already completed the first steps in on-time tax billing for 2010. Even the counties furthest behind are more than a year ahead of LaPorte County.

For all the reasons stated above, the Department informs the LaPorte County Assessor, Michigan Township Assessor, and the LaPorte County Council President (under Ind. Code § 6-1.1-4-31(a)) that assessment work in LaPorte County is not being properly conducted.

¹ The 2007 assessment work is not completed. The Department is reviewing the Assessor’s ratio study for the 2007 assessment year. This was submitted on May 5, 2009.