

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

Petition #s: 49-300-02-1-4-01186
49-300-03-1-4-00458
Petitioner: Residential Care V, LLC
Respondent: Franklin Township Assessor (Marion County)
Parcel #s: 3005719
3014997
Assessment Years: 2002 and 2003

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 the above captioned assessment appeals with the Marion County Property Tax Assessment Board of Appeals (“PTABOA”) by written documents dated June 13, 2003, for Petition # 49-300-02-1-4-01186, and April 15, 2004, for Petition # 49-300-03-1-4-00458.
2. The Petitioner received notices of the decisions of the PTABOA on February 25, 2005, for both petitions.
3. The Petitioner filed an appeal to the Board by filing Form 131 petitions with the county assessor on March 9, 2005, for Petition # 49-300-02-1-4-01186, and March 10, 2005, for Petition # 49-300-03-1-4-00458. The Petitioner elected to have these cases heard in small claims.
4. The Board issued notices of hearing to the parties dated June 22, 2005.
5. The Board held an administrative hearing for both petitions on August 31, 2005, before the duly appointed Administrative Law Judge Debra Eads.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Paul Kropp, Kropp & Associates
 - b) For Respondent: George Spenos, Franklin Township Chief Deputy Assessor

Facts

7. The subject parcels are classified as commercial, as is shown on the property record cards for parcel #s 3005719 and 3014997.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Values of subject parcels as determined by the Marion County PTABOA:

49-300-02-1-4-01186	Land \$ 716,300	Improvements \$ 5,771,400
49-300-03-1-4-00458	Land \$ 242,400	Improvements \$ 797,300

10. Assessed Values requested by Petitioner:

49-300-02-1-4-01186	Land \$ 299,300	Improvements \$ 5,771,400
49-300-03-1-4-00458	Land \$ 100,200	Improvements \$ 797,300

Issues

11. Summary of the Petitioner's contentions in support of alleged error in assessment:
 - a) The land values assigned to the subject parcels exceed the values for apartment land indicated in the Marion County Land Order for Franklin Township. *Kropp testimony; Pet'r Exs. 1, 4.*
 - b) The subject parcels are valued at \$2.00 per square foot or \$87,120 per acre. The Marion County Land Order indicates a maximum land value of \$47,000 per acre for apartment land located in Franklin Township. *Kropp testimony; Pet'r Ex. 1.* The appropriate land value for the subject parcels is \$36,000 per acre. This is the value assigned to land in the "good" category of the Apartment Land Order for Franklin Township. *Kropp testimony.* Sundance Apartments, which are located in Perry Township (Marion County) and within view of the subject parcels, are assessed at \$36,000 per acre. *Kropp testimony; Pet'r Ex. 5.*
 - c) The Perry Township Assessor and the Franklin Township Assessor agreed to change the assessments of two (2) other assisted living facilities in Marion County - Forest Creek Commons and Clearwater Commons. *Kropp testimony; Pet'r Ex. 6.* In each case, the assessor agreed to base the assessment of improvements on the GCR pricing schedule for apartments and to price the land as apartment land. *Id.*
 - d) The case of *Indianapolis Historic Partners v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1224 (Ind. Tax Ct. 1998) supports the Petitioner's contention that the value assigned to the subject land violates the Marion County Land Order. *Kropp testimony; Pet'r Ex. 2.*

- e) The improvements on the subject parcels are correctly valued utilizing the GCR pricing schedule for apartments with service pricing for the dining area. *Kropp testimony.*

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

- a) The *Indianapolis Historic Partners* case arose from the 1989 general reassessment. The property at issue in that case was a high-rise apartment building. The court determined that the property should be priced as apartment land in conjunction with the Marion County Land Order. That case is not germane to the 2002 reassessment, because every assessment involves different criteria for establishing values. *Spenos testimony.* Moreover, unlike the property at issue in *Indianapolis Historic Partners*, the Petitioner operates the subject parcels as a nursing home. The fact that the Respondent utilized the GCR apartment cost schedule in valuing the subject improvements does not mean that the subject land must be valued utilizing the apartment land schedule. *Spenos testimony.*
- b) The zoning of an area is one of the main criteria utilized when determining the appropriate base rate to apply to a parcel of land for assessment purposes. *Spenos testimony; Resp't Ex. 15.* The subject parcels are zoned as special commercial and are not zoned specifically for use as apartments. *Spenos testimony; Resp't Exs. 2 – 4.*
- c) The Sundance Apartments, which the Petitioner relied upon as a comparable property, are zoned as D-6 and D-7. Those are residential classifications. Sundance Apartments therefore qualify to be priced as apartment land. *Spenos testimony; Resp't Exs. 26 – 28.*
- d) Forrest Creek Commons is zoned for commercial and planned unit development. The stipulation agreed to by the Washington Township Assessor erroneously utilized the pricing schedule for apartment land given that the land is zoned for commercial use. *Spenos testimony; Resp't Exs. 5 – 8.*
- e) Clearwater Commons is zoned for planned unit development, which is a residential use. The stipulation made by the Perry Township Assessor to price that land as apartment land is more reasonable given that the zoning includes residential use. *Spenos testimony; Resp't Exs. 9 – 11.*
- f) The land values for the Clearwater Commons and Forrest Creek Commons were changed by stipulation pursuant to a preliminary conference between the respective township assessors and the taxpayers. *Spenos testimony; Resp't Exs. 16, 17.* Indiana Code § 6-1.1-15-4 states, "The Indiana board may assign: full, limited; or no; evidentiary value to the assessed valuation of tangible property determined by stipulation submitted as evidence of a comparable sale." *Resp't Ex. 25.* Thus, the stipulations are not binding on anyone but the parties, and they do not constitute evidence regarding the correct valuation of the subject land. *Spenos testimony.*

- g) The subject parcels were included in the sale of a larger 18.9-acre parcel in 1997. That sale was utilized in determining land values for the Franklin Township Land Order. *Spenos testimony; Resp't Ex. 13.*
- h) The 18.9-acre parcel sold for \$650,000. The primary rate based on the actual sale is \$2.63 per square foot. The subject parcels currently are assessed at the base rate of \$4.00 per square foot. In addition, the subject parcels receive a negative influence factor of 50%. Thus, the subject parcels effectively are valued at the rate of only \$2.00 per square foot (\$4.00 x 50%). *Spenos testimony; Resp't Ex. 14.*
- i) The Respondent also assessed the primary land of the parcels adjoining the subject parcels at a base rate of \$4.00 per square foot with a negative 50% influence factor. These adjoining parcels, two of which are owned by the Petitioner, have not been appealed to the Marion County PTABOA. *Spenos testimony; Resp't Exs. 22, 23A-D.*
- j) The Respondent expressed its willingness to review the assessed value of the subject parcels based on the income approach to value, but the Petitioner failed to provide income and expense information needed to utilize that approach. *Spenos testimony; Resp't Exs. 18, 19.*

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 # 6186.
- c) Exhibits¹:

- Petitioner Exhibit 1: Franklin Township apartment land valuation page from Marion County land order
- Petitioner Exhibit 2: *Indianapolis Historic Partners*, Cause Nos. 49T10-9506-TA-00051 and 49T10-9506-TA-00052 (Ind. Tax Ct. April 23, 1998)
- Petitioner Exhibit 3: Franklin Township commercial/industrial land order
- Petitioner Exhibit 4: One page Summary of Petitioner's position
- Petitioner Exhibit 5: Sundance Apartment property record card; Perry Township apartment land order, and maps showing subject and Sundance Apartments locations
- Petitioner Exhibit 6: Washington Township (8059186) and Perry Township (5013559) PTABOA summaries

Respondent Exhibit 1: Aerials for subject parcels

¹ The Petitioner submitted separate packets of exhibits for each Form 131 petition. The exhibits are identical with the exception of the documents labeled Exhibit 4 in each packet. The respective documents labeled Exhibit 4 are parcel specific.

Respondent Exhibit 2: Zoning Map for subject parcels from Zoning Browser
Respondent Exhibit 3: C-S zoning classification for subject parcels
Respondent Exhibit 4: C-S Special Commercial District Regulations
Respondent Exhibit 5: Aerial for parcel number 8059186
Respondent Exhibit 6: Zoning Map for 8059186 from Zoning Browser
Respondent Exhibit 7: C-1, C-3 and D-P Zoning classification for 8059186
Respondent Exhibit 8: C-1, C-3 and D-P Commercial and Planned Unit
Development District Regulations for 8059186
Respondent Exhibit 9: Aerial for parcel number 5013559
Respondent Exhibit 10: Zoning Map for 5013559 from Zoning Browser
Respondent Exhibit 11: D-P Zoning classification for 5013559
Respondent Exhibit 12: D-P Planned Unit District Regulations for 5013559
Respondent Exhibit 13: Purchase of subject land utilized in determining Land
Order
Respondent Exhibit 14: Reconciliation of Land Purchase
Respondent Exhibit 15: Copy of Page 84, Chapter 2, Version A-Real Property
Assessment Guideline
Respondent Exhibit 16: Copy of appeals recommendation to PTABOA showing
that the parties resolved the issues through a preliminary
conference for parcel number 8059186
Respondent Exhibit 17: Copy of appeals recommendation to PTABOA showing
that the parties resolved the issues through a preliminary
conference for parcel number 5013559
Respondent Exhibit 18: Copy of correspondence from assessor to hearing officer
dated 10-26-04 requesting a rehearing and the production of
financial statements by the petitioner
Respondent Exhibit 19: Copy of correspondence from petitioner to hearing officer
dated 11-2-04 relating to the production of financial data
Respondent Exhibit 20: Copy of property record card for parcel number 3005719
Respondent Exhibit 21: Copy of property record card for parcel number 3014997
Respondent Exhibit 22: Copy of plat for subject parcels and adjoining parcels
Respondent Exhibit 23: Copy of property record cards for adjoining parcels
showing commercial square foot rate (same as appealed properties)
Respondent Exhibit 24: Copy of Zoning Map for the adjoining parcels showing
C-S Zoning classification for each (same as appealed properties)
Respondent Exhibit 25: Copy of IC 6-1.1-15-4, Sec 4 (a)
Respondent Exhibit 26: Copy of Zoning Map from browser for Sundance
Apartments showing D-6 and D-7 (residential) Zoning
Classification
Respondent Exhibit 27: Aerials for Sundance Apartments
Respondent Exhibit 28: D-6 and D-7 Zoning Regulations

Board Exhibit A: Form 131 Petitions
Board Exhibit B: Notices of hearing
Board Exhibit C: 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. The Board reaches this conclusion for the following reasons:
- a) The Petitioner contends that the subject parcels should be valued as apartment land under the applicable Neighborhood Valuation Form² for Franklin Township rather than as commercial land. The Petitioner makes essentially two arguments in support of its position. First, the Petitioner asserts that the plain language of the Franklin Township Neighborhood Valuation Form requires such a result. The Petitioner points to *Indianapolis Historic Partners v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1224 (Ind. Tax Ct. 1998) in support of its position. Second, the Petitioner contends that assessors in Perry and Washington townships settled appeals from the owners of other assisted living facilities by agreeing to value those properties as apartment land.

Franklin Township Neighborhood Valuation Forms

- b) As noted above, the Petitioner relies on *Indianapolis Historic Partners* for the proposition that the subject parcels must be valued as apartment land under the plain language of the applicable Franklin Township Neighborhood Valuation Form.

² The Petitioner refers to the Franklin Township portion of the “Marion County Land Order.” It is clear from context, however, that the Petitioner is referring to various Neighborhood Valuation Forms for Franklin Township. The term “land order” appears to be an anachronism from assessment methodology prior to the 2002 general reassessment. That term is no longer found in the 2002 Real Property Assessment Manual or the Real Property Assessment Guidelines for 2002 – Version A.

- Indianapolis Historic Partners* involved the assessment of land underneath a three-story apartment building and parking lot in downtown Indianapolis. *Indianapolis Historic Partners*, 694 N.E.2d at 1225. The Center Township Assessor valued the taxpayer’s land using the commercial land schedule of the Marion County Land Order rather than under the apartment land schedule of that order. *Id.* at 1226. The State Board of Tax Commissioners affirmed the use of the commercial land schedule when the taxpayer petitioned for review of its assessment. *Id.*
- c) The Court held that the assessment violated the clear terms of the Marion County Land Order. *Id.* at 1227. Although the Marion County Land Order did not define the term “apartment land,” the Court found that the “plain language” of the classification contemplated that it would be applied to land upon which apartments, such as the apartments at issue in that case, were constructed. *Id.*³
 - d) In *Indianapolis Historic Partners*, neither side appeared to dispute that the property at issue contained an apartment building. Thus, the plain language of the Marion County Land Order required assessment of the land as “apartment land.” Here, by contrast, the subject parcels contain what the Petitioner refers to as an “assisted living facility” and “garden apartments” consisting of twelve (12) buildings on parcel 3005719 and six (6) buildings on parcel 3014997. *Pet’r Ex. 4*. The Petitioner, however, provided little evidence concerning the specific use of the subject parcels or how that use compares to traditional apartment buildings.
 - e) Moreover, the area in which the subject parcels are located is zoned for commercial rather than multi-family use, and the subject parcels are valued using the same base rate as adjoining parcels. *Resp’t Exs. 3, 23A-D*. Thus, the Board cannot say that the “plain language” of the relevant Neighborhood Valuation Forms mandates assessment of the subject parcels as apartment land.
 - f) This is true despite the fact that the Respondent used the GCR apartment pricing schedules contained in the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”) to compute the replacement cost of many of the subject improvements. 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

³ The Court also held that the assessment violated the requirement under Article X § 1 of the Indiana Constitution that assessments be uniform and equal. *Id.* at 1228. The Court noted that “a long line of cases” establishing that “the principles of uniformity and equality in assessment and taxation are violated when a taxpayer is assessed and taxed on a different basis as compared to taxpayers with substantially similar property.” *Id.* at 1229 (citing, *e.g.* *Harrington v. State Bd. of Tax Comm’rs*, 525 N.E.2d 360 (Ind. Tax Ct. 1988) and *Meridian Hills Country Club v. State Bd. of Tax Comm’rs*, 512 N.E.2d 911 (Ind. Tax Ct. 1987)). The Petitioner’s certified tax representative did not explicitly rely on that portion of the Court’s holding. To do so would have violated the Board’s procedural rules governing practice before the Board. *See* Ind. Admin. Code tit. 52, r. 1-2-1(b)(3) (“Property tax representatives may not be certified to practice before the board for: . . . claims regarding the constitutionality of an assessment.”). The Board therefore does not address whether the current assessment conflicts with the portion of the Court’s holding in *Indianapolis Historic Partners* addressing uniformity and equality of assessment.

added). The models are divided into three major categories based upon occupancy type: General Commercial Mercantile (GCM), General Commercial Industrial (GCI) and General Commercial Retail (GCR). *Id.* Each major category has several use-specific models within it, such as banks, retail stores, and motels. *Id.* at 2-41. The purpose of the model descriptions is to assist assessors in determining whether adjustments are necessary to account for variations between the subject improvement and the model selected to compute its replacement cost new. *Id.*

- g) Thus, while the use designations in the individual models provide a helpful guide for assessors in determining the appropriate model to utilize in assessing a given building, the choice of model is governed by the physical descriptions contained in those models. The more closely a building conforms to a model's description, the fewer the adjustments that the assessor will need to make. Consequently, the Respondent's choice of the GCR apartment cost schedules to assess many of the subject improvements is not dispositive of the appropriate classification of the subject land under the Franklin Township Neighborhood Valuation Forms.

Forrest Creek Commons and Clearwater Commons Properties

- h) The Petitioner further relies upon the assessments of two other properties - Forrest Creek Commons and Clearwater Commons - which the Petitioner described as also containing "assisted living" facilities. The Washington Township and Perry Township assessors, respectively, agreed to settle assessment appeals for those properties by, among other things, valuing the land underneath those facilities as "apartment land" under the Neighborhood Valuation forms for those townships. *Kropp testimony; Pet'r Ex. 6.*
- i) The Petitioner's offer of stipulated agreements from other disputed appeals as evidence to support a reduction in its assessment is problematic. As recognized by the Indiana Tax Court, to allow a taxpayer to use a settlement from another case as an admission regarding the propriety of a land classification would violate both Indiana Evidence Rule 408 and public policy encouraging parties to engage in settlement negotiations. *Boehning v. State Bd. of Tax Comm'rs*, 763 N.E.2d 502, 504-05 (Ind. Tax Ct. 2001); *see also, Dep't of Local Gov't Fin. v. Commonwealth Edison, Co.* 820 N.E.2d 1222, 1227-28 (Ind. 2005)(citing *Boehning* with approval). As the Tax Court explained, the evidentiary use of settlement agreements, "would have a chilling effect on the incentive of all assessing officials to resolve cases outside of the courtroom." *Boehning*, 763 N.E.2d at 505.
- j) Nonetheless, the Tax Court also recognized that stipulations between assessors and taxpayers eventually are documented on property record cards. Subsequent taxpayers may use those property record cards to demonstrate similarities between their properties and the properties that were the subject of stipulations. *Id.*, at n.3. Those similarities, in turn, may support a taxpayer's claim that its property is not assessed consistently with similar properties. *Id.*

- k) Thus, the actual stipulations concerning Forrest Creek Commons and Clearwater Commons have no probative value regarding the propriety of the Respondent's assessment of the subject parcels. Any relevance of Forrest Creek Commons and Clearwater Commons to the assessment of the subject parcels is dependant upon the Petitioner establishing that those properties are comparable to the subject parcels. To the extent that all three properties are comparable, the Petitioner may argue that they should be assessed for similar amounts. The Board therefore turns to the question of whether the Petitioner established that Forrest Creek Commons and Clearwater Commons are comparable to the subject parcels.
- l) Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to establish comparability must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *See Id.* at 470-71. When seeking to establish comparability between parcels of land, the relevant characteristics to compare include things such as location, accessibility, topography. *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). The party seeking to establish comparability between properties also must explain how any significant differences between the properties affect their relative values. *See Long*, 821 N.E.2d at 470-71.
- m) Here, the Petitioner did not provide any evidence regarding the characteristics either of the subject parcels or of Forrest Creek Commons and Clearwater Commons. In fact, the Petitioner did not even provide information regarding the assessed value ultimately assigned to the latter two properties. The Petitioner merely provided evidence that all three properties were devoted to a similar use. This is insufficient to establish comparability under *Long* and *Blackbird*.
- n) Based on the foregoing, the Petitioner failed to establish a prima facie case of error in assessment.

Conclusion

- 16. The Petitioner failed to make a prima facie case. The Board finds in favor of 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: February 6, 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>>.