

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

**Petition:** 55-005-08-1-4-00022  
**Petitioner:** Meadow Lake of Mooresville, LLC  
**Respondent:** Morgan County Assessor  
**Parcel:** 55-02-30-321-003.000-005  
**Assessment Year:** 2008

The Indiana Board of Tax Review (Board) issues this determination in the above matter, finding and concluding as follows:

**Procedural History**

1. The Petitioner initiated an assessment appeal with the Morgan County Property Tax Assessment Board of Appeals (PTABOA) by written document on June 22, 2009.
2. The PTABOA issued notice of its decision (Form 115) on October 29, 2009.
3. The Petitioner appealed to the Board by filing a Petition for Review of Assessment (Form 131) on December 7, 2009. The Petitioner elected to have this case heard according to small claims procedures. While typically small claims procedures are reserved for appeals of parcels with an assessed value not in excess of one million dollars, the Respondent did not object or exercise its option to remove this matter from the small claims procedures.
4. The Board issued a notice of hearing to the parties dated August 24, 2010.
5. Administrative Law Judge Ronald Gudgel held the Board's administrative hearing on November 16, 2010.
6. Certified Tax Representative Paul Kropp represented the Petitioner. County Assessor Brenda Brittain appeared *pro se*. Reva Brummett, a PTABOA member, also represented the Respondent. All three were sworn as witnesses.

**Facts**

7. The property consists of seven garden home apartment units located at Meadow Lake Drive in Mooresville.
8. The Administrative Law Judge did not conduct an inspection of the property.

9. The PTABOA determined the 2008 assessed value is \$2,055,400 for land and \$2,182,500 for improvements (total \$4,237,900).
10. The Petitioner claimed the total assessed value should be \$3,097,300.

### **Record**

11. The official record for this matter is made up of the following:
  - a. The Petition,
  - b. A digital recording of the hearing,
  - c. Petitioner Exhibit 1 – Sales disclosure form dated June 3, 2005,  
Petitioner Exhibit 2 – Sales disclosure form dated August 11, 2006,  
Petitioner Exhibit 3 – Sales disclosure form dated April 13, 2007,  
Petitioner Exhibit 4 – Property record cards for the subject parcel,  
Petitioner Exhibit 5 – Calculations for the Petitioner’s proposed assessment,  
Petitioner Exhibit 5b – Explanation of the difference between the current  
proposed assessment and the Form 131,  
Petitioner Exhibit 6 – Statement and justification of prima facie case,  
Petitioner Exhibit 7 – Board ruling, June 21, 2010, *Roop v. Monroe Co. Assessor*,  
Petitioner Exhibit 8 – Complete 31-page construction cost document,  
Petitioner Exhibit 9 – Form 115,  
Petitioner Exhibit 10 – Form 131 Petition,  
Petitioner Exhibit 11 – Google Earth photographs, February 2005 and May 2010,  
Petitioner Exhibit 12 – Indiana Code 6-1.1-4-39,  
Respondent Exhibit 1 – Not offered,  
Respondent Exhibit 2 – Form 115,  
Board Exhibit A – Form 131 Petition,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing Sign In Sheet,
  - d. These Findings and Conclusions.

### **Contentions**

12. Summary of the Petitioner’s case:
  - a. Three relevant sales occurred within the Meadow Lake Planned Unit Development (PUD). The sale of 33.34 acres, in June 2005, was for \$20,250 per acre. This was the original purchase of all of the land that became the PUD. *Kropp testimony; Pet’r Ex. 1.* A sale of 1.377 acres in April 2007 was for \$599,129 per acre. *Kropp testimony; Pet’r Ex. 3.* A sale of 3.745 acres in August 2006 was for \$173,565 per acre. *Kropp testimony; Pet’r Ex. 2.* The sales disclosure form for this sale was apparently lost and was not considered at the

time land values for the PUD were determined. *Kropp testimony*. Local officials relied solely on the April 2007 sale for determining the current assessed value of \$600,000 per acre. Because the August 2006 sale was not considered in the assessment process, the land value used for the assessment is in error. *Kropp testimony*.

- b. The use of actual costs of construction is a valid means of determining what the correct assessment should be. Because of the subject property's recent construction, cost is a better indication of value than the sales comparison approach or the income approach would provide. It is also consistent with Ind. Code § 6-1.1-4-39. *Kropp testimony; Pet'r Ex. 7, 12*.
  - c. The costs for each unit as well as the land costs are summarized in Exhibit 5 with page references to the more detailed cost information in Exhibit 8. A 31-page itemized list establishes the site development costs and actual costs of constructing the garden apartments. *Kropp testimony; Pet'r Ex. 8*. In addition, Exhibit 5 shows how the calculation added another 10% for "entrepreneurial profit." The original cost of the PUD land was apportioned to account for the acreage under appeal. The combined value of land and improvements was then trended to the valuation date of January 1, 2007 (by adding 10% to the 2005-2006 costs). This calculation results in a revised value of \$3,097,300. *Kropp testimony; Pet'r Ex. 5*.
  - d. There had been a reduction showing 25% obsolescence that was removed by the PTABOA. The assessor's computer program could not be adjusted to accept the cost data presented by the Petitioner. The obsolescence was simply a means of reaching a predetermined value in the computer. That obsolescence is not related to the value figure that is now being requested. *Kropp testimony; Pet'r Ex. 5b*.
13. Summary of the Respondent's case:
- a. When an appraiser determines an acreage value, land classifications such as primary and secondary land are ignored. The acreage value is applied uniformly across the parcel. *Brummett testimony*.
  - b. In this appeal, if land classifications were eliminated and the claimed value per acre was applied to the total acreage, a result similar to the current assessment would be obtained. *Brummett testimony*.
  - c. The Petitioner complains that the current assessment is based on a single sale, but also seeks a reduction based on only a single sale that was approximately \$173,000 per acre. *Brittain testimony*.

## Analysis

14. 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).
15. 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”).
16. 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.
17. The Petitioner made a case for an assessment change for the following reasons:
  - a. A residential rental property with more than four rental units receives the benefit of specific valuation alternatives authorized by Ind. Code § 6-1.1-4-39(a), which provides that its true tax value is the lowest valuation determined from the three generally accepted approaches to value: cost, sales comparison, or income capitalization. The Petitioner claims to qualify for this statute and nobody disputed that the subject property is the type of property to which this provision applies. Consequently, the Petitioner can make its case based on whichever of those three approaches produces the lowest value.
  - b. Because Ind. Code § 6-1.1-4-39(a) specifies how the assessed value must be determined, this is not a case where an assessor’s valuation according to the Assessment Guidelines<sup>1</sup> is presumed to be accurate. And this is not a case where an assessor has discretion to choose among the cost method, the comparable sales method, the income capitalization method, or other generally accepted appraisal principles.
  - c. Neither party presented evidence showing the true tax value produced by each of the three approaches. The Petitioner acknowledged no sales comparison or income approach was used because the cost data is recent and, therefore, the best indication of value. The Respondent did not dispute that the cost approach produces the lowest value in this appeal. Furthermore, the Respondent did not present any alternative calculation.

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<sup>1</sup> Real Property Assessment Guidelines for 2002 - Version A (incorporated by reference at 50 IAC 2.3-1-2).

- d. The itemized cost data is the principle evidence in this case. It contains 31 pages with a great deal of detail that is credible. Similarly, the Petitioner's calculation of land value is based on the original purchase price of the property. The use of actual construction costs as a method of determining value complies with generally accepted appraisal principles. 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 IAC 2.3-1-2).
- e. The Respondent presented no substantial evidence that the cost evidence presented by the Petitioner is unreliable, inaccurate, or incomplete.
- f. Regardless of the method used to challenge an assessment, a party must explain how evidence relates to 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 Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For this assessment the valuation date was January 1, 2007. 50 IAC 21-3-3 (2009).
- g. Here, the Petitioner trended the actual cost data to the relevant valuation date. Again, the record contains no substantial reason to doubt the credibility of the Petitioner's cost approach calculation. Coupled with the specific directive of Ind. Code § 6-1.1-4-39(a), the cost analysis is sufficient to make a prima facie case for changing the assessment. *See Blackbird Farms Apartments v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 713 (Ind. Tax Ct. 2002) (defining a prima facie case as one in which the evidence is sufficient to establish a given fact and which if not contradicted will remain sufficient).
- h. The Respondent presented no market data in support of the current assessment and offered only minimal explanation about how the current assessment was determined. The Respondent did not contest the validity of any of the Petitioner's cost data calculation. The Respondent did not discuss the improvements' value at all. Regarding the proposed land value, the Respondent simply stated that, if land classifications were eliminated and the claimed value per acre was applied to the total acreage, a result similar to the current assessment would be obtained. Such testimony is not relevant or probative. It does nothing to effectively counteract the evidence offered by the Petitioner.
- i. Nothing in the record overcomes the credibility of the Petitioner's cost approach evidence. This calculation indicates a total value of \$3,097,300. The assessment must be set accordingly.

### **Conclusion**

18. The Petitioner made a prima facie case for a change in assessed value. The Respondent did not rebut or impeach that case. The Board finds in favor of the Petitioner.

**Final Determination**

19. In accordance with the above findings and conclusions, the total assessment will be reduced to \$3,097,300.

ISSUED: \_\_\_\_\_

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>