

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

**Petition #:** 46-022-02-1-4-00001  
**Petitioner:** ALS Holding Inc.  
**Respondent:** Michigan Township Assessor (LaPorte County)  
**Parcel #:** 42-01-33-476-008  
**Assessment Year:** 2002

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 an assessment appeal with the LaPorte County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated September 26, 2003.
2. The Petitioner received notice of the decision of the PTABOA on November 16, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on November 23, 2004. The Petitioner elected to have this case heard in small claims.<sup>1</sup>
4. The Board issued a notice of hearing to the parties dated May 24, 2006.
5. The Board held an administrative hearing on July 25, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Persons present and sworn in at hearing:

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<sup>1</sup> The Petitioner initially opted-out of the small claims procedures in its Petition. By letter from the Petitioner's Representative to the Board dated August 31, 2005, the Petitioner requested to "opt-in" to the small claims procedure. The Petitioner, however, failed to obtain "the written consent to such election from the other parties to the hearing" as required by 52 IAC 3-1-3 (d)(2). Despite the Petitioner's failure to meet the requirements to opt-in to the small claims procedures, the Board granted the Petitioner's request by letter dated September 2, 2005. By letter dated September 7, 2005, the Respondent, by counsel, alleged that it had not been served with the Petitioner's request to "opt-in" to the small claims procedures and requested that the case be transferred out of the small claims procedure pursuant to 52 IAC 3-1-3. The Board's rules provide that a party may remove the matter from the small claims docket by filing a "written notice to the Board no later than fifteen (15) days prior to the date of the small claims hearing." 52 IAC 3-1-3(b)(2). The Board, however, inadvertently failed to act on the Respondent's request and the hearing proceeded pursuant to the small claims procedures of 52 IAC 3-1 et al. despite the Respondent's timely and proper request.

For Petitioner: Paul Kropp, Kropp and Associates.

For Respondent: Terry Beckinger, Michigan Township Assessor,  
Judith Anderson, LaPorte County Deputy Assessor.

Marilyn Meighen appeared as counsel for the Michigan Township Assessor and the LaPorte County PTABOA.

### Facts

7. The subject property is an assisted living facility on a lot measuring 353' x 225' located at 1400 E. Coolspring Avenue in Michigan City, Indiana.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the subject property to be \$41,100 for the land and \$1,697,900 the improvements, for a total assessed value of \$1,739,000.
10. The Petitioner requested a total assessed value of \$1,387,700.

### Issue

11. Summary of Petitioner's contentions in support of an error in the assessment:
  - a. The Petitioner contends that the subject improvement should be priced from the GCR apartment schedule rather than the GCR nursing home schedule. In support of this contention, the Petitioner submitted a copy of the model specifications for both GCR apartment and GCR nursing home and indicating whether the subject building meets the criteria for apartment or nursing home. *Kropp testimony; Petitioner Exhibit 3.* According to the Petitioner, the structure more closely resembles the GCR apartment schedule with regard to floor height, flooring, ceiling, lighting and cooling additive and resembles GCR nursing home for partitions and HVAC. *Id.* The Petitioner argues that, because the property fits the apartment model in five categories and the nursing home model in only two categories, it is more appropriate to price the subject improvements from the GCR apartment model. *Id.*
  - b. The Petitioner further contends that properties located in Bloomington, Columbus, Kokomo, Merrillville, Portage, Richmond and South Bend, Indiana all have the same improvements as the subject property and are all priced from the GCR apartment schedule. *Kropp testimony; Petitioner Exhibit 4.* According to the Petitioner, the subject property is receiving disparate treatment because it is priced differently from these seven properties located throughout Indiana. *Id.* The Petitioner also contends that the Oak Woods Manor property located in LaPorte, Indiana is priced from the GCR apartment schedule and is an assisted living property the same as the subject property. *Kropp testimony; Petitioner Exhibit 5.*

- c. The Petitioner contends that since the Petitioner has been building assisted living centers in Indiana, a facility located in Columbus, Indiana is the only property that has been sold in an arms-length transaction. *Kropp testimony; Petitioner Exhibit 2*. According to the Petitioner, the property that sold in Columbus has 42 units, as does the subject property, and sold for \$1,525,000 in October 2004. *Id.* The Petitioner argues that if the sale price from the Columbus sale is time adjusted back to the January 1, 1999, appraisal date of the assessment and is further adjusted for personal property and the “enterprise value component of the sale” the resulting value supports that the current assessment is flawed. *Id.* In response to cross examination the Petitioner’s representative testified that he had no value or numbers for personal property and enterprise value. *Id.* Mr. Kropp further testified that he adjusted the sales price to support the value that he proposed based on a change in the cost schedule. *Id.*
- d. In its rebuttal case, the Petitioner argues that the \$6,637,800 sale of the subject property dated October 7, 2002, that was submitted by the Respondent was a sale-leaseback and is not representative of an arms-length transaction. *Kropp testimony*. The Petitioner, however, testified that he could not explain the August 20, 1997, sale of the property for \$2,500,000. *Id.*
- e. Further, in response to the Respondent’s testimony, the Petitioner argues that to raise a prima facie case, he need not present the “best” evidence of market value-in-use, only “some” evidence of value. *Kropp testimony*. Thus, the Petitioner’s representative contends that the Petitioner was not required to produce income information in support of its arguments.<sup>2</sup> *Id.*

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

- a. The Respondent contends that the market value-in-use of the property is the concern of the assessor and the pricing schedules used or other calculations the assessor uses do not matter as long as the appropriate final value is determined. *Meighen argument*. In support of this contention, the Respondent submitted the Indiana Tax Court decision in *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674 (Ind. Tax 2006). *Meighen argument; Respondent Exhibit O*.
- b. According to the Respondent, two parcels, including the subject property, sold on August 20, 1997, for \$2,500,000 with no indication on the sales disclosure that personal property was included. *Petitioner Exhibits A, B and F*. The Respondent further contends that the two parcels, Parcel No. 42-01-33-476-007 and 42-01-33-476-008 (the subject property), are assessed for a total of \$1,764,800. *Meighen argument*. Although the 1997 sale included Parcel No. 42-01-33-476-007 which is not at issue in this proceeding, the Respondent argues that the assessment of that

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<sup>2</sup> The Petitioner, here, appears to confuse its burden of proof with its discovery obligation. Regardless of the evidence which it will present at hearing to support its own case, a party has a responsibility pursuant to the Board’s rules and the Indiana Rules of Trial Procedure, to fully and fairly respond to requests for information from the opposing party seeking relevant evidence. *See* 52 IAC 2-8-3.

parcel represents only 2% of the total assessment for the two properties together. *Meighen argument*. Thus, the Petitioner contends, it is reasonable to assume that the value attributable to Parcel No. 42-01-33-476-007 similarly represents only a small percentage of the \$2,500,000 sale amount. *Meighen argument*.

- c. Further, the Respondent contends that the Petitioner sold Parcel Nos. 42-01-33-476-007, 42-01-33-476-008, 42-01-33-476-009, 42-01-33-476-010 and 42-01-33-476-011, which are all contiguous properties and includes the subject property, on October 7, 2002, for \$6,637,800. *Respondent Exhibits A, B, C, D, E and G*. According to the Respondent, only \$220,000 of that sales price was identified as personal property on the sales disclosure. *Beckinger testimony*.
- d. Finally, the Respondent contends that the income approach to value is the most applicable valuation method for income producing property. *Meighen testimony; Respondent Exhibit H*. According to the Respondent's attorney, she requested income and expense information, as well as construction cost data from the Petitioner on August 17, 2005. *Id.; Respondent Exhibit I*. The Respondent's counsel testified that the Petitioner refused to provide the information requested on August 17, 2005. *Id.; Respondent Exhibit M*. The Respondent argues that the lack of cooperation by the Petitioner in responding to legitimate requests for information by the Respondent hindered the Respondent's ability to prepare their case in this matter. *Meighen testimony*.

### **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 # 6249,
  - c. Exhibits:

Petitioner Exhibit 1 – IBTR Determination 64-004-02-1-4-00046,  
Petitioner Exhibit 2 – Market Value Evidence of a Columbus Indiana sale,  
Petitioner Exhibit 3 – Model Comparison and Analysis,  
Petitioner Exhibit 4 – Alterra Comparable List with PRCs,  
Petitioner Exhibit 5 – LaPorte County Comparable.

Respondent Exhibit A – Property record card for parcel 42-01-33-476-007,  
Respondent Exhibit B – Property record card for parcel 42-01-33-476-008,  
Respondent Exhibit C – Property record card for parcel 42-01-33-476-009,  
Respondent Exhibit D – Property record card for parcel 42-01-33-476-010,  
Respondent Exhibit E – Property record card for parcel 42-01-33-476-011,  
Respondent Exhibit F – Sales Disclosure dated August 1997,  
Respondent Exhibit G – Sales Disclosure dated October 2002,

Respondent Exhibit H – DLGF “Overview of the Income Approach in Valuation” dated November 12, 2003,  
Respondent Exhibit I – Meighen letter to Kropp dated August 17, 2005,  
Respondent Exhibit J – Kropp letter to IBTR dated August 31, 2005,  
Respondent Exhibit K – IBTR letter to Kropp dated September 2, 2005,  
Respondent Exhibit L – Meighen letter to IBTR dated September 7, 2005,  
Respondent Exhibit M – Meighen letter to Kropp dated October 11, 2005,  
Respondent Exhibit N– *Corey v. State Board of Tax Commissioners*, 674 N.E.2d 1062 (Ind. Tax 1997),  
Respondent Exhibit O– *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674 (Ind. Tax 2006).

Board Exhibit A – Form 131 petition,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Notice of Appearance for Marilyn Meighen,  
Board Exhibit D – 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 failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a. The Petitioner contends that the Respondent erred in using the cost schedules for general commercial residential nursing homes in assessing the subject property.

According to the Petitioner, the cost schedules for GCR apartments more accurately reflect the subject property.

- b. The 2002 Real Property Assessment Manual defines the “true tax value” of real property 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.” 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2) (the MANUAL). In Indiana, assessing officials primarily use the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (the GUIDELINES), to assess property.
- c. The Guidelines provide models of typical improvements in order to “facilitate the user 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 for ad valorem tax purposes.” GUIDELINES, app. D at 2 (emphasis added). The models are divided into three major categories, based upon occupancy type: General Commercial Mercantile, General Commercial Industrial, and GCR. *Id.* Each major category has several use-specific models within it, such as banks, retail stores, and motels. *Id.* at 2-41. In some instances there are models within multiple categories for the same use-type. For example, the GCR and GCM categories each contain models for banks and apartment buildings. *Id.* at 6, 8, 33, 38.
- d. The Indiana Tax Court in *Bender v. Ind. State Bd. of Tax Comm’rs*, 676 N.E.2d 1113 (Ind. Tax Ct. 1997), found that it was firmly within the assessor’s discretion to determine which schedule is the appropriate schedule to use to assess a property. *Id.* at 1116. In that case, the Tax Court held that:

Clearly, the assessor must use his or her judgment in determining which schedule to use. It is not a decision automatically mandated by a straightforward finding of fact. The assessor must consider the property in question, including its physical attributes and predominant use, and make a judgment as to which schedule is most appropriate. Just as the assessor must use subjective judgment to determine which base price model to employ with these schedules, so too the assessor must exercise his or her discretion to determine which schedule to use. *See Herb v. State Bd. of Tax Comm’rs*, 656 N.E.2d 890, 894 (Ind. Tax Ct. 1995) (“Because a building may not conform perfectly with model specifications, a hearing officer must use subjective judgment to decide which model the building most closely resembles.”). *In some cases, this decision will be a closer call than in others, but regardless of the closeness of the judgment, it remains a judgment committed to the discretion of the assessor.*

*Id.* (emphasis added). Although the Petitioner has presented the Board with a schedule different than the assessor used that may be applied to the subject property, the Petitioner has not shown us that the schedule used by the assessor here was in error. In making its case, a Petitioner must show that the

current assessment is incorrect. *See Meridian Towers*, 805 N.E.2d at 478. This the Petitioner did not do and we will not disturb the assessor's proper exercise of discretion. Thus, the Petitioner has failed to raise a prima facie case on the basis of the property's valuation through the GCR nursing home schedule.

- e. Further, even if we found that the Petitioner had shown error, a strict application of the Guidelines, is insufficient to rebut the presumption that an assessment is correct. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). The Petitioner must show through the use of market-based evidence that the assessed value does not accurately reflect the property's market value-in-use. *See Eckerling*, (“In challenging their assessment, the Eckerlings have offered [no] market value-in-use evidence. Rather, they have focused strictly on the Assessor's methodology. The Eckerlings have not shown, however, that the Assessor's methodology resulted in an assessment that failed to accurately reflect their property's market value-in-use. Accordingly, the Court cannot say that the Eckerlings presented a prima facie case that their assessment was in error.”).
- f. According to the Manual, a taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual's definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property's market value-in-use, to establish the actual true tax value of a property. *See MANUAL* at 5. Here, the Petitioner contends that a facility located in Columbus, Indiana, with 42 units like the subject property, sold for \$1,525,000 in October 2004. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. 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 proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* The only measure of “comparability” that the Petitioner presented is that both properties have the same number of individual units and that the rooms styles are given the same name. The Petitioner admitted that the locations of the subject property and the “comparable” were different, but failed to assign any value to this difference.<sup>3</sup> This is insufficient to establish comparability. Further, even if the properties were “comparable,” a single property is not sufficient to establish market value.

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<sup>3</sup> Moreover, the adjustments that the Petitioner did apply to its “comparable” sale were without support. According to the Petitioner's representative, he had no value or numbers for personal property and enterprise value. He further testified that he adjusted the sales price to support the value that he proposed based on a change in the cost schedule.

- g. Finally, the Petitioner argues that the subject property is receiving disparate treatment because similar properties are priced from the GCR apartment schedule. While all the comparables presented are indeed valued as apartments, further examination of the assessments of the Petitioner's purportedly "comparable" properties and the subject property show that the assessed values of the properties with a similar number of apartments range from \$1,444,900 to \$1,827,100. The subject property is assessed at \$1,739,000. Thus, the Petitioner has failed to prove that the selection of pricing schedule has lead to inequality in the assessment.
- h. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Thus, any allegations of prejudice relating to the Petitioner's failure to respond to the Respondent's information requests are moot.<sup>4</sup>

### **Conclusion**

- 16. The Petitioner failed to make a prima facie case that the assessment of the subject improvements is in error. The Board finds in favor of the 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: October 19, 2006**

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Commissioner,  
Indiana Board of Tax Review

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<sup>4</sup> We note, however, that the Respondent had the right to move the Board for a discovery order pursuant to 52 IAC 2-8-3(c) to compel the Petitioner's response, but failed to do so.

## 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](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>.