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**IN THE
INDIANA TAX COURT**

FIRST BANK OF WHITING)	
TRUST NO. 1857,)	
)	
Petitioners,)	
)	
v.)	Cause No. 49T10-0608-TA-75
)	
DEPARTMENT OF LOCAL)	
GOVERNMENT FINANCE)	
and ST. JOHN TOWNSHIP)	
ASSESSOR,)	
)	
Respondents.)	

ON APPEAL FROM A FINAL DETERMINATION OF
THE INDIANA BOARD OF TAX REVIEW

NOT FOR PUBLICATION
November 26, 2007

FISHER, J.

The Petitioners¹ appeal the final determination of the Indiana Board of Tax Review (Indiana Board) valuing their real property for the March 1, 2002 assessment

¹ The caption of the Verified Petition only names the First Bank of Whiting Trust No. 1857 as the Petitioner. The Court notes, however, that the body of the Verified Petition indicates that there are several other petitioners involved, namely: Anthony C. Lapasso, Paul D. and Dawn S. Russert, Apolinario and Enid Moreno, Eungin O. Kim,

date. The issue before this Court is whether the Indiana Board properly affirmed the Petitioners' assessments.

FACTS AND PROCEDURAL HISTORY

Each of the Petitioners owns one or more condominium units within a 168-unit condominium complex known as Cedar Point (Cedar Point) in Lake County, Indiana. For the 2002 assessment date, each unit was assessed between \$40,300 and \$64,200.

On April 23, 2004, each of the Petitioners filed a Petition for Review of Assessment with the Indiana Board. On June 28, 2006, after conducting one hearing on the matter, the Indiana Board issued its final determination affirming the assessed value on each of the units.

The Petitioners filed an original tax appeal on August 14, 2006. The Court heard the parties' oral arguments on July 27, 2007. Additional facts will be supplied as necessary.

STANDARD OF REVIEW

This Court gives great deference to final determinations of the Indiana Board when it acts within the scope of its authority. *Wittenberg Lutheran Vill. Endowment Corp. v. Lake County Prop. Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 486 (Ind.

David K. Stephenson, John T. Schmidt, Centier Bank Trust #1857, Lisa R. Franklin, EKA Realty Company, Natalie L. Wilander, Ray Szarmach, Erick Falkinburg, Bella Real Estate LLC, Jodell Buckman, Michael L. and Maureen Ghormley, Emmett A. Williams, Russell and Claudia J. Miller, Peoples Bank SB Trust #5002, Richard A. Ruzbasan, George Novogroder, Robert and Cheryl A. Hart, Peoples Federal S&L Assoc., James A. Hosfeld, Milorad Peles, Robert E. and Barbara D. Wetzel, Mary Austgen Trust, Paul G. Nelson, Robert J. and Sandra L. Styka, Dragan and Branka Gardijan, Michael A. Krapac, Andre R. and Nadine J. Pelagalli, Rosemary Mlinarich, Radovan and Ika Beric, Darci Baldin, Lois P. Law, Christine Czerniak, Brian M. Jeppeson, John and Janice Eppl, Nine and Solbodanka Bjedov, Deborah L. Hefner, Mark and Monica Onohan, and Ella M. Stephen. (Pet'rs V. Pet. for Judicial Review at 1-5.)

Tax Ct. 2003), *review denied*. Consequently, the Court will reverse a final determination of the Indiana Board only if it is:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial or reliable evidence.

IND. CODE ANN. § 33-26-6-6(e)(1) - (5) (West Supp. 2007-2008). The party seeking to overturn the Indiana Board's final determination bears the burden of proving its invalidity. *Osolo Twp. Assessor v. Elkhart Maple Lane Assocs.*, 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003).

DISCUSSION AND ANALYSIS

Under Indiana's assessment system, real property is assessed on the basis of its "true tax value." IND. CODE ANN. § 6-1.1-31-6 (West 2002). "True tax value" does not mean fair market value, but rather "[t]he 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 (2004 Reprint) (hereinafter, Manual) (incorporated by reference at 50 IND. ADMIN. CODE 2.3-1-2 (2002 Supp.)) at 2. See also A.I.C. § 6-1.1-31-6(c). In turn, a property's market value-in-use "may be thought of as the ask price of property by its owner, because this value . . . represents the utility obtained from the property, and the ask price represents how much utility must

be replaced to induce the owner to abandon the property.”² Manual at 2 (footnote added).

On appeal, the Petitioners contend that their assessed values do not accurately reflect the actual market value-in-use of their units. More specifically, they argue that Cedar Point should have been valued pursuant to its actual, current use as an apartment complex. To support their claim, the Petitioners presented testimony at the Indiana Board hearing that, in 1999, approximately 158 units were leased as apartments; in 2005, approximately 140 units were leased as apartments. (See Cert. Admin. R. at 4161, 4215.)

In conjunction with their testimony, the Petitioners presented an appraisal (Appraisal), completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP), which was prepared by James E. Lee, a Certified General Real Estate Appraiser. (Cert. Admin. R. at 3553.) The Appraisal valued the complex using the income capitalization approach.³ (Cert. Admin. R. at 3550 (footnote added).) Using this approach, each unit in turn was valued between \$27,281 and \$43,368. (Cert.

² “In markets in which sales are not representative of utilities, either because the utility derived is higher than indicated sale prices, or in markets where owners are motivated by non-market factors such as the maintenance of a farming lifestyle even in the face of a higher use value for some other purpose, true tax value will not equal value in exchange. In markets where there are regular exchanges, so that ask and offer prices converge, true tax value will equal value in exchange[.]” 2002 REAL PROPERTY ASSESSMENT MANUAL (2004 Reprint) (hereinafter, Manual) (incorporated by reference at 50 IND. ADMIN. CODE 2.3-1-2 (2002 Supp.)) at 2.

³ Under the income capitalization approach, the fair market value of a property is determined by capitalizing the net income that the property produces; the process of capitalization converts net income at a reasonable rate of return to arrive at an overall indication of value. See *Lacy Diversified Indus., Ltd. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1224 (Ind. Tax Ct. 2003).

Admin. R. at 3592-93.) The Appraisal valued the properties as of April 1, 1999. (Cert. Admin. R. at 4167-68.)

Indiana's assessment regulations provide that a 2002 general reassessment is to reflect a property's market value-in-use as of January 1, 1999. See Manual at 4. See also *117 Republic Ltd. P'ship v. Brown Twp. Assessor*, 851 N.E.2d 399, 400 n.2 (Ind. Tax Ct. 2006). As a result, the Petitioners' Appraisal has no bearing upon the properties' 2002 assessment values unless there is some probative explanation as to how the April 1 values relate to the properties' January 1 values. See *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006) (explaining that as part of making a prima facie case, the taxpayer must walk the Indiana Board through every element of its analysis). See also *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005), *review denied*.

The record reveals that Lee merely opined that the January 1 values would "probably not" have been any different than the April 1 values. (Cert. Admin. R. at 4198.) Specifically, Lee testified: "I suspect [that] if I used the same data the results would have been the same. I don't think there is a dynamic change in the market between those few months." (Cert. Admin. R. at 4198.) Lee's opinions, however, are insufficient to relate the April 1 values to the January 1 values, as they are nothing more than conclusory statements. See *Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (explaining that conclusory statements do not constitute probative evidence), *review denied*. While the Court recognizes that Lee may be considered an appraisal expert, even an expert witness's opinion, without explanation, can be conclusory and lack probative value. See, e.g., *Inland Steel Co. v.*

State Bd. of Tax Comm'rs, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (where an expert witness's opinion regarding an inflation adjustment made pursuant to the Producer Price Index was deemed conclusory and therefore not probative because it was not accompanied by an explanation), *review denied*. Lee's statements regarding the January 1 values were tentative; these tentative statements do not sufficiently establish values as to April 1. As such, the Petitioners have failed to make a prima facie case that their assessments are improper.

CONCLUSION

For the foregoing reasons, the final determination of the Indiana Board is AFFIRMED.