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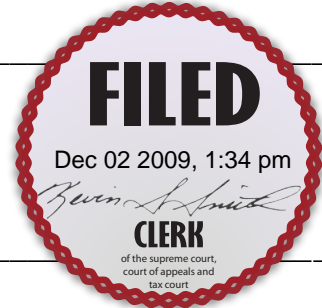
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**IN THE  
INDIANA TAX COURT**

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R. KEITH SANDIN TRUST )  
(R. KEITH SANDIN, TRUSTEE), )  
 )  
Petitioner, )  
 )  
v. )  
 )  
MICHIGAN TOWNSHIP ASSESSOR and )  
LAPORTE COUNTY ASSESSOR, )  
 )  
Respondents. )

Cause No. 49T10-0811-TA-63

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

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**NOT FOR PUBLICATION**  
**December 2, 2009**

FISHER, J.

The R. Keith Sandin Trust (R. Keith Sandin, Trustee) (hereinafter, Sandin) challenges the final determination of the Indiana Board of Tax Review (Indiana Board) which upheld the Michigan Township Assessor's (Assessor) 2004 and 2005 interim assessments of his property. The parties present the following issue for the Court to

decide: whether the Assessor was authorized under Indiana law to change Sandin's property assessment in 2004 and 2005 to a value different than its 2002 assessed value. (See Pet'r Br. at 2; Michigan Twp. Assessor Br. at 3.)

### **RELEVANT FACTS AND PROCEDURAL HISTORY**

Sandin owns residential property along Lake Shore Drive in the Duneland Beach neighborhood, Michigan City, Indiana.<sup>1</sup> For the March 1, 2002 general reassessment, all land in Duneland Beach was valued using a base rate of \$672 per front foot. (See Cert. Admin. R. at 548-50.) In applying that base rate to Sandin's land, assessing officials assigned Sandin's property (including the improvements) a total assessed value of \$1,256,200. (See Cert. Admin. R. at 169-70.)

For the 2004 and 2005 tax years, the Assessor increased the Duneland Beach neighborhood base rate to \$5,000 per front foot. (See Cert. Admin. R. at 404, 573-74.) As a result of that change, the total assessed value of Sandin's property increased to \$1,729,900.<sup>2</sup> (Cert. Admin. R. at 173-74 (footnote added).)

Upon receiving notice of the increase in his assessment for both 2004 and 2005, Sandin appealed to the LaPorte County Property Tax Assessment Board of Appeals (PTABOA). The PTABOA affirmed the assessments. Sandin then appealed to the Indiana Board.

On May 8, 2008 the Indiana Board conducted an administrative hearing in the

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<sup>1</sup> Lake Shore Drive runs along the Lake Michigan shoreline. Sandin's property is not directly on the beach; rather, it is across Lake Shore Drive from the beach. (See Cert. Admin. R. at 393, 544-45.) Sandin's property consists of a 6,842 square foot house on a 1.13 acre lot. (See Cert. Admin. R. at 21.)

<sup>2</sup> While Sandin's land increased in assessed value as a result of the base rate change, his improvement actually decreased in assessed value. (See Cert. Admin. R. at 173.)

matter. Prior to the hearing, however, the parties presented the Indiana Board with a stipulation that provided, in relevant part:

[ ]The parties have agreed to drop the valuation issue in [ ] Sandin's 2004 and 2005 assessment appeal(s) pending before the Board. As a result, neither party will offer appraisal evidence and no inspection of [ ] Sandin's property will be required.

[ ]The only remaining issue to be decided by the Board is whether, under the facts of this case, the township assessor was authorized under Indiana law to change the assessment for the 2004 and 2005 assessment years to a value different than the value finally determined for the March 1, 2002 assessment date. If [ ] Sandin prevails on this issue, he will be entitled to have his assessment reduced to \$1,256,000 for the assessment years at issue, and if the Assessor prevails, [ ] Sandin's assessment will remain \$1,729,900 for the assessment years at issue.

(Cert. Admin. R. at 165, 411-13.) To that end, Sandin argued that under Indiana Code § 6-1.1-9-1, an assessing official may only reassess a property between general reassessments (an "interim assessment") if he has a reasonable belief, founded upon objectively verifiable data, that the property is undervalued.<sup>3</sup> (See Cert. Admin. R. at 414, 416-17 (footnote added).) Sandin asserted, however, that in his case, the Assessor's belief that his property was undervalued was neither reasonable nor

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<sup>3</sup> During the years at issue, Indiana Code § 6-1.1-9-1 provided that "[i]f a township assessor . . . believes that any taxable tangible property has been omitted from or undervalued on the assessment rolls or the tax duplicate for any year or years, [it] shall give written notice under . . . IC 6-1.1-4-22 of the assessment or increase in assessment." IND. CODE ANN. § 6-1.1-9-1 (West 2004).

supported by objectively verifiable data.<sup>4</sup> (See Cert. Admin. R. at 418 (footnote added).)

On October 3, 2008, the Indiana Board issued a final determination upholding the Assessor's interim assessments of Sandin's property. On November 14, 2008, Sandin filed an original tax appeal challenging that final determination. Additional facts will be supplied as necessary.

## **ANALYSIS AND OPINION**

### **Standard of Review**

When this Court reviews an Indiana Board final determination, it is limited to determining whether 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 2009). The party seeking to overturn the Indiana Board's final determination bears the burden of demonstrating its invalidity. *Osolo Twp. Assessor v. Elkhart Maple Lane Assocs.*, 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003).

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<sup>4</sup> Sandin also argued that under Indiana Code § 6-1.1-9-1, an assessing official could make an interim assessment only if there was a change in the physical characteristics of or the use of a property. (See, e.g., Cert. Admin. R. at 414-16.) Since then, this Court has, in another case, rejected that argument. See *Charwood LLC v. Bartholomew County Assessor*, 906 N.E.2d 946 (Ind. Tax Ct. 2009). Accordingly, that argument need not be addressed today. (See also Oral Argument Tr. at 66.)

## Discussion

The administrative record in this case reveals that the Assessor increased the Duneland Beach neighborhood base rate from \$672 per front foot to \$5,000 per front foot because he believed that the land all along Lake Shore Drive had been incorrectly valued in 2002's general reassessment. The Assessor formulated his belief based on several factors. For instance, the Assessor explained that for the 2002 general reassessment, property in each of Lake Shore Drive's neighborhoods was valued using the same front foot base rate, whether it was lakeside, hillside, or even further inland. (See Cert. Admin. R. at 548-50.) Nevertheless, as a 30-year resident of the area, "common sense" told him that such a valuation was improper. (See Cert. Admin. R. at 538, 554-56 (explaining that he believed land values should vary depending on proximity to, and views of, Lake Michigan).) The Assessor also explained that while hearing and resolving taxpayer appeals relating to the 2002 general reassessment, he received information which also indicated to him that the land along the Lake Shore Drive corridor was undervalued. (See Cert. Admin. R. at 570.) Finally, the Assessor explained that in 2004, the LaPorte County Assessor's office hired Nexus Group, a property tax consulting firm, to advise it on numerous assessment issues, including land valuation. In the course of that engagement, Nexus Group issued a report

recommending that the base rate for Duneland Beach should be \$5,000 per front foot.<sup>5</sup> (See Cert. Admin. R. at 570-71, 585 (footnote added).)

On appeal, Sandin argues that these factors do not lead to a *reasonable* belief that his property was undervalued. First, Sandin argues that the Assessor's belief that his property was undervalued cannot be "based on a subjective belief that some assessments in [the] neighborhood or area [were] problematic or not valued correctly."<sup>6</sup> (Pet'r Br. at 8 (internal quotation marks omitted) (footnote added).) Rather, the Assessor was required to offer "objectively verifiable evidence regarding the subject property which would justify the conclusion that [it] was undervalued." (Pet'r Br. at 8.) Furthermore, Sandin contends that the Assessor's reliance on the Nexus report was improper. More specifically, Sandin explains that the Assessor readily admitted that he neither questioned nor fully understood how Nexus arrived at its \$5,000 per front foot recommendation. (See Pet'r Br. at 19-20 (citing Cert. Admin. R. at 452-57).) Had he done so, Sandin alleges, he would have realized that the \$5,000 rate, which was determined through the analysis of two property sales, was unreliable: not only was the

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<sup>5</sup> The report also recommended base rate increases to the other Lake Shore Drive neighborhoods, all of which were adopted by the Assessor. Consequently, at the same time the Assessor increased the base rate for the Duneland Beach neighborhood, he also increased the base rates utilized in other surrounding neighborhoods. For instance, the base rate for the Long Beach neighborhood increased from \$1,023 per front foot in 2002 to either \$8,900 or \$4,900 per front foot in 2004 and 2005 (depending on whether the property was lakeside or hillside). (See Cert. Admin. R. at 177, 398, 404.) The base rate for the Sheridan Beach neighborhood increased from \$948 per front foot in 2002 to \$7,000 or \$2,500 per front foot in 2004 and 2005 (again, depending on whether the property was lakeside or hillside). (See Cert. Admin. R. at 177, 398, 404.)

<sup>6</sup> "Moreover, such vague conclusory statements do not indicate which properties were problematic, to what degree, or for what reason." (Pet'r Br. at 15 (internal quotation marks omitted).)

sample size too small (“any sample under about five [property sales] is – [] horribly suspect”), but the same two sales had been used to arrive at the \$672 per front foot rate used in the 2002 general reassessment. (See Pet’r Br. at 21-22 (citations omitted).)

In its final determination, the Indiana Board stated that it “need not consider whether under Ind[iana] Code § 6-1.1-9-1 an assessor’s ‘belief’ that a property is undervalued must be reasonable, because in this case the Assessor had sufficient information to believe that properties in the Lake Shore area were not valued correctly.” (Cert. Admin. R. at 122 ¶ 55.) The Court agrees: it was sufficient for the Assessor to rely on his experience – both as a resident and as an assessing official – to formulate a belief that properties along Lake Shore Drive were valued incorrectly; a belief that was, in turn, reinforced by the Nexus recommendation. As a result, the Assessor was authorized under Indiana Code § 6-1.1-9-1 to make an interim assessment of those properties he believed to be undervalued, which included Sandin’s property.<sup>7</sup>

In challenging the application of the \$5,000 per front foot base rate to his land, Sandin made a fatal flaw: he merely challenged the way the Assessor arrived at that number. *But see, e.g., Lakes of Four Seasons Prop. Owners’ Ass’n, Inc. v. Dep’t of Local Gov’t Fin.*, 875 N.E.2d 833, 835-37 (Ind. Tax Ct. 2007), *review denied*; *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006) (both of which explain that when challenging assessments, taxpayers must demonstrate that the assessed

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<sup>7</sup> An assessing official’s belief that a property is undervalued does not necessarily mean that it is, in fact, undervalued. Consequently, when an assessing official acts upon his belief and makes an interim assessment of property in accordance with Indiana’s Assessment Manual, the taxpayer then has an opportunity to challenge, and present evidence rebutting, that value. See IND. CODE ANN. § 6-1.1-9-1 (West 2004).

value does not accurately reflect the property's market value-in-use). Thus, to the extent Sandin chose not to provide evidence as to his property's actual market value-in-use, the Court cannot say that the Indiana Board erred in upholding the Assessor's interim assessments of his property.

### **CONCLUSION**

For the above stated reasons, the Indiana Board's final determination is  
AFFIRMED.