

REPRESENTATIVE FOR PETITIONER:

Gregory Poore, DuCharme McMillen & Associates, Inc.
Ronnie L. Galloway, MAI

REPRESENTATIVES FOR RESPONDENT:

Brenda Egge, Floyd County Assessor
Sue Keller, Floyd County Assessor's Office
Charles P. Simons, Floyd County Technical Advisor
Harry C. Anson, Floyd County Property Tax Assessment Board of Appeals
Barbara Sillings, New Albany Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Sheffield Square Apartments,)	Petition No.: 22-008-02-1-4-00106
)	Parcel: 0083381046
Petitioner,)	
)	
v.)	
)	County: Floyd
New Albany Township Assessor,)	Township: New Albany
)	Assessment Year: 2002
Respondent.)	

Appeal from the Final Determination of
Floyd County Property Tax Assessment Board of Appeals

NOVEMBER 30, 2005

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the assessed value of the subject property exceeds its market value.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, Gregory Poore, DuCharme McMillen & Associates, Inc., on behalf of Sheffield Square Apartments (the Petitioner), filed a Form 131 Petition for Review of Assessment, petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on November 22, 2004. The determination of the Floyd County Property Tax Assessment Board of Appeals (the PTABOA) was issued on November 15, 2004.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on May 4, 2005, in New Albany, Indiana before Jennifer Bippus, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Gregory Poore, Tax Representative
Ronnie L. Galloway, MAI

For the Respondent:

Brenda Egge, Floyd County Assessor
Sue Keller, Floyd County Assessor's Office
Charles P. Simons, Floyd County Technical Advisor
Harry C. Anson, Floyd County Property Tax Assessment Board of Appeals
Barbara Sillings, New Albany Township Assessor

5. The following exhibits were presented for the Petitioner:

Petitioner's Exhibit 1 – Appraisal

6. The following exhibits were presented for the Respondent:

Respondent's Exhibit 1 – Sales Comparison Approach to Value and Income
Approach to Value, pages 1 - 14
Respondent's Exhibit 2 – Additional evidence on Effective Gross Income

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – Form 131 Petition
 - Board Exhibit B – Notice of Hearing on Petition
 - Board Exhibit C – Sign-in Sheet
 - Board Exhibit D – Request for Additional Evidence
8. The subject property is a 152 unit apartment complex on 13.405 acres, located at 600 County Club Road, New Albany, Indiana.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2002, the PTABOA determined the assessed values of the property to be \$769,700 for the land and \$5,606,200 for the improvements for a total assessed value of \$6,375,900.
11. For 2002, the Petitioner contends the assessed values of the property should be \$769,700 for the land and \$3,028,680 for the improvements for a total assessed value of \$3,798,380.
12. At the hearing, the Respondent presented revised evidence based on Petitioner's appraisal (Petitioner's Exhibit 1). In turn, the Petitioner requested information about the data the Respondent used to determine their revisions so that the Petitioner could verify the Respondent's data. *Board Exhibit D*. The Respondent was given until May 9, 2005, to submit this information and the Respondent responded in a timely manner. *See Respondent's Exhibit 2*.

JURISDICTIONAL FRAMEWORK

13. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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.

ANALYSIS

Whether the assessed value of the subject property exceeds its market value.

17. The Petitioner contends that the assessed value of the subject property exceeds the market value of the property based on an appraisal. *Poore testimony; Petitioner’s Exhibit 1.*
18. The Respondent contends that the appraisal did not use 1999 data. The Respondent submitted a sales comparison and income approach to value using 1999 data to determine the value of the subject property. *Simons testimony; Respondent Exhibit 1.*
19. The Petitioner presented the following evidence and testimony in regard to this issue:
 - A. The Petitioner established a value for the subject property using an appraisal dated April 21, 2005. *Galloway testimony.* The effective dates of the appraisal were as of March 1, 2002, and January 1, 1999. *Id.*
 - B. The sales comparison approach valued the subject property at \$4,500,000 for 2002 and \$4,200,000 for 1999 using a 2% appreciation rate. *Galloway testimony; Petitioner’s Exhibit 1.* The sales comparison used the sale of multi-family properties from New Albany, Indiana and Clarksville, Indiana built in the 1970s. *Id.* These sales occurred in 2003 and 2005 to determine a value for the subject property as of March 1, 2002. The 2002 estimated value, then, was time-adjusted for the 1999 valuation date. *Galloway testimony.* The appraisal also purported to adjust for the “comparable” properties’ location, size, age and condition and utility, although only size resulted in an actual adjustment by the Petitioner. *Petitioner’s Exhibit 1.*
 - C. Under the income capitalization approach, the appraisal estimated the value of the subject property to be \$4,900,000 in 2002 and \$4,700,000 for 1999. *Galloway testimony; Petitioner’s Exhibit 1.* In support of these values, the Petitioner used 2002 expenses which totaled 44.74% of income to determine the subject properties’ 2002 values and assumed a 2% appreciation rate to determine the 1999

value. *Id.*¹ However, in its calculations, the Petitioners used a “projected” expense rate of 46.00% and “projected” rents. The Petitioner also provided historic income and expense data from 1999 to 2003. *Petitioner’s Exhibit 1*. The expenses for the subject property ranged from 38.89% in 2000 to 52.81% in 2003.

D. According to the Petitioner, no value for the property was determined by the cost approach due to the age of the property. The Petitioner alleged that, if the cost approach had been included, it would have shown a significant amount of economic obsolescence due to differences between value as indicated by the cost approach and the sales and income approaches. *Id.*

20. The Respondent presented the following evidence and testimony in regard to this issue:

A. According to the Respondent, the subject property is the “Cadillac” of the county as it relates to quality. The Respondent alleged that the Petitioner’s comparables are below the quality of the subject. For example, the Respondent alleged that Petitioner’s third comparable property had to move some of its residents out in order to do repairs. *Simons testimony*.

B. Further, the Respondent argued, there were sales available during the time period of 1996 through 1999 that should have been used in the Petitioner’s sales comparison approach. *Simons testimony; Respondent’s Exhibit 1*. The Petitioner’s appraiser performed the appraisal in April 2005. The Respondent noted that the appraiser would have had access to sales for those earlier time frames and could have performed a retrospective appraisal using the appropriate years of sales and not relying on a factor to trend data from 2003 and 2005. These earlier sales were available to the appraiser, and would have given a more accurate value for the subject property for the January 1, 1999, valuation date. *Simons testimony*.

C. The Respondent submitted a sales comparison using four allegedly “comparable” properties that were sold between 1996 and 1999. From this data, the Respondent determined the value of the subject property to be \$5,700,000. *Simons testimony; Petitioner’s Exhibit 1 at 3 and 13*. The Respondent testified that the comparable sales used by it are from the time frame of 1996 through 1999. They are not beyond the year of appeal in question (2002), as are the Petitioner’s “comparable” sales. There were two-percent (2%) adjustments made for trending on the units. There were also good income and expense statements on these buildings. *Id.; Respondent’s Exhibit 1 at 1 thru 8*. According to the Respondent, the subject property falls within the limits of the rental rates of the comparable properties. *Id.; Respondent’s Exhibit 1 at 9 and 10*.

¹ Petitioner’s summary of historic income and expenses shows that income from 1999 was virtually identical to income in 2002 (\$950,608 vs. \$950,235). Further, expenses in 1999 were lower than 2002 (\$365,759 versus \$425,129). Thus, the income approach suggests that the property’s 1999 value is, in fact, higher than the projected 2002 value by the income capitalization rate.

- D. The income approach to value was also considered by the Respondent. The 1999 market rents along with the 1999 typical expenses were analyzed. Under Respondent's "model," the subject property's net operating income was calculated to be \$735,937. Further, using a capitalization rate of 12.4261% (which includes the tax rate from 2002 payable 2003), Respondent estimated the final value for the subject property to be \$5,900,000. *Simons testimony; Respondent's Exhibit 1 at 9 thru 13.*
21. In rebuttal, the Petitioner alleged the following:
- A. The Petitioner questioned the capitalization rate used by the Respondent. The Respondent used a tax rate of 3.461% and the Petitioner used 2.343%. According to the Petitioner, using the Respondent's tax rate in determining the capitalization rate would change the outcome of the Petitioner's final value for 2002 to \$4,500,000 under the income approach. *Poore testimony.*
- B. The Petitioner further alleged that the Respondent used sales comparisons that were not truly comparable. According to the Petitioner, Respondent's second and third comparable sales should be disregarded due to the age of the respective properties. The Petitioner alleged that the first and fourth comparables are the "most comparable" considering the age of the structures. According to the Petitioner, these two comparables would bracket where the Petitioner was going with the requested assessment. *Id.*
- C. According to the Petitioner, the Petitioner's comparables are in the same competitive market as the subject and in the same age bracket – built in the 70s and 80s. *Galloway testimony.*
- D. Further, the Petitioner alleged, the expenses used by the Respondent are significantly lower than the property's actual expenses. *Respondent Exhibit 2.* The Petitioner alleged that the data in the Respondent's calculations are questionable. According to the Petitioner, the apartment expenses are operating at an acceptable expense ratio of four-percent (4%). *Poore testimony.*
22. Real property in Indiana is assessed on the basis of its "true tax value". See I.C. § 6-1.1-31-6(c). "True tax value" is defined as "[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 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter "MANUAL"). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Washington Township Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005).
23. Regardless of the approach used to prove the market value-in-use of a property, Indiana's assessment regulations provide that for the 2002 general reassessment, a property's

assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *Id.*

24. 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*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003). Here, the Petitioner provided an appraisal for the subject property dated April 21, 2005. The appraisal indicated that the effective dates for the subject property were as of the March 1, 2002, assessment date and the January 1, 1999, valuation date. The appraisal was based on both the sales approach and the income approach to value. *Petitioner's Exhibit 1*. The Petitioner used 2003 and 2005 sales for the sales comparison approach, and 1999 through 2003 historical income and expenses for the income approach. *Id.* The subject property was also valued as of the March 1, 2002, assessment date and the January 1, 1999, valuation date for the income approach to value. The appraiser concluded that the "final true tax value" of the subject property is \$4,600,000. *Id.* at 14. Therefore, the Petitioner raised a prima facie case that the property's value is \$4,600,000 and that the current assessment is over-valued.
25. 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. In response, the Respondent submitted its sales comparison and income approach to value in support of the current assessment. *Respondent's Exhibit 1*.
26. In its sales comparison, the Respondent used sales of apartment complexes from September 1996, November 1997, June 1998, and two sales from March 1999 respectively. In order for the Respondent to adjust each sale for the different mix of unit types for each complex, the contributing value of each unit type to the total sales price was extracted from the sales price based upon the unit's percentage of contribution to the sales net operating income. *Respondent's Exhibit 1 at 1 thru 8*. The comparable sales were analyzed for any differences in the conditions of the sales, financing, condition of the structures, location, age, market conditions and quality. *Simons testimony*.
27. The Respondent also submitted two grids: an Improved Apartment Sales Grid and a Market Adjustment Grid. *Respondent Exhibit 1 at 2 and 3*. The Improvement Grid compared the sales price, the building size, the sales price per square foot, the overall unit cost, the unit mix and unit type, the sales price per unit, and monthly rents of the comparable properties. *Id.*, at 2. The Market Adjustment Grid took the unit type cost for each comparable and determined the sales price per square foot. A total market condition adjustment was applied to both the unit type cost and the sales price per square foot. Location, age and condition, and quality adjustments were also made to determine a square foot indicated value and a unit indicated value. This information was then applied to the subject property to determine a market value of \$5,700,000. *Id.*, at 3.

28. In its income approach to value, the Respondent analyzed four comparable complexes in the subject's competing market area using actual market rents from 1999. *Simons testimony; Respondent Exhibit 1 at 9 and 10.* According to the Respondent, all of the comparables included the same utilities and services provided by the subject. *Id.* The Respondent compared the unit types, the square foot sizes, the number of units, the rent per unit, the percentage of occupancy, whether the comparable was inferior or superior to the subject and the year built. *Respondent's Exhibit 1 at 10.* The monthly rental range for comparables units was \$410 to \$725 per month. *Id.* Based on the comparable rents analysis the Respondent determined the market rents for the subject's units. The total market rent was calculated to be \$89,155 per month. The gross potential income for the subject for January 1, 1999, was determined to be \$1,069,860. *Respondent's Exhibit 1 at 11.* Vacancy and credit loss was estimated at five-percent (5%) of the Potential Gross Income. This figure was estimated through an analysis of the complexes used in the rental analysis. *Respondent's Exhibit 1 at 11 and 12.* Based on the comparables' actual expenses (1999 comparable expense summary), the typical expense per square foot for insurance, management/administration, salaries, maintenance, utilities, advertising and replacement reserves would be \$1.58 per square foot or \$280,430. *Respondent's Exhibit 1 at 13.* Using this model, the Respondent determined that the estimated net operating income of the subject property was \$735,937 and the value of the subject property was \$5,900,000. *Respondent's Exhibit 1 at 12.*
29. Both the Petitioner's and Respondent's evidence show that the subject property is over-valued. Thus, the Board finds that the current assessment of \$6,375,900 is in error. However the Petitioner values the property at \$4,200,000 to \$4,900,000 and the Respondent values the property at \$5,700,000 to \$5,900,000. The Board must, therefore, determine from the evidence an appropriate value for the subject property.
30. The Respondent did not present an appraisal in response to Petitioner's evidence. In support of its assessment, the Respondent based its sales comparison value on five properties. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, 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.* Only two of Respondent's properties were arguably comparable in age to the subject property - Respondent's first comparable, built in 1981 and Respondent's fourth comparable built in 1977. These properties had 126 and 182 units and sold for \$4,325,000 in March of 1999 and \$4,075,000 in November 1997 respectively. The other three complexes were virtually new construction at the time of the assessment. In addition, two of "comparables" were small apartment complexes with only 57 and 28 units respectively. Unlike Petitioner, no

adjustment was made for the number of units.² Further, while the Respondent identified the amenities offered by each “comparable” no adjustment in value was made for having additional amenities or lacking the amenities of the subject property. Lumping all of these properties together, then, the Respondent purported to determine both a value per square foot of \$33.85 and a unit value which it then applied to the subject property to obtain a value of \$5,700,000. The Board rejects this gross “average” of properties that are lacking in comparability to the subject property as most representative of the subject property’s value.

31. Again, although no appraisal was presented, the Respondent submitted an income approach to value. Using “market” rents, the Respondent obtained an income value of \$1,069,860, which is virtually identical to Petitioner’s projected income of \$1,073,063. However, Respondent’s “market” expenses estimated an expense value of only \$280,430, which is approximately half of Petitioner’s actual expenses. Although the “comparable” properties identified by the Respondent in its Expense Summary are similarly sized (104 units, 120 units and 200 units respectively), the Respondent presented no information regarding the condition or age of the “comparable” properties or the amenities offered by each of the properties. 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. Without evidence regarding the comparability of the properties that Respondent chose as “comparable,” the Board finds that Respondent’s income approach to value is, similarly, not probative of the subject property’s value.
32. The Board, therefore, finds that the Respondent failed to impeach or rebut Petitioner’s evidence that the subject property’s value is \$4,600,000.

SUMMARY OF FINAL DETERMINATION

Whether the assessed value of the subject property exceeds its market value.

48. The Petitioner made a prima facie case that the subject property’s assessment was incorrect. The Respondent’s evidence, similarly, showed and the subject property was over-valued. Based on the evidence submitted by the Parties, the Board determines that the subject property’s value is \$4,600,000.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

² The Petitioner adjusted the sales price 5% for every 25 unit difference. *See Petitioner’s Exhibit 1 at 7.* Therefore, a property with 57 units like Respondent’s second comparable received a -19% adjustment to its sales price for its small size in the Petitioner’s analysis. *Id.* This adjustment makes sense. Just as a large parcel of land would have a lower per acre value than a small parcel of land, an apartment complex with many apartments would sell for comparatively less per unit than an apartment complex with a small number of apartments.

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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.