

REPRESENTATIVE FOR PETITIONER:

Ralph Beam, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Kelly Ewoldt, Montgomery County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

LHC Partners, LLC,)	Petition No.:	54-009-08-1-5-00043
)		
Petitioner,)	Parcel No.:	54-16-18-441-057.000-009
)		
v.)		
)		
Montgomery County Assessor,)	County:	Montgomery
)		
Respondent.)	Assessment Year:	2008

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

December 3, 2012

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 Petitioner's property was over-valued for the 2008 assessment year.

PROCEDURAL HISTORY

2. The Petitioner, LHC Partners, LLC,¹ through its owner, Ralph Beam, initiated its assessment appeal by filing a Form 130 Petition with the Montgomery County Property Tax Assessment Board of Appeals (the PTABOA) on May 12, 2009. The PTABOA issued its determination on March 5, 2010.
3. Pursuant to Indiana Code § 6-1.1-15-1, Mr. Beam filed a Form 131 Petition for Review of Assessment with the Board on April 19, 2010, petitioning the Board to conduct an administrative review of the Petitioner's appeal.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on September 13, 2012, in Crawfordsville, Indiana.
5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Ralph Beam, Owner, LHC Partners

¹ The Petition was filed in the name of "LHC Properties, LLC," rather than "LHC Partners, LLC," but the property record card reflects the property is owned by LHC Partners, LLC, and the Form 115 was issued in that name.

Beth S. Downey, Appraiser, Real Estate Valuations

For the Respondent:

Kelly Ewoldt, Montgomery County Assessor
Brian Thomas, Expert Witness

6. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Petitioner’s reconstructed operating statement,
Petitioner Exhibit 2 – List of six sales of multi-family residential properties with more than five units,
Petitioner Exhibit 3 – Property listing reports for various units of the Petitioner’s condominiums,
Petitioner Exhibit 4 – Petitioner’s discounted cash flow analysis.

7. The Respondent presented the following exhibits:

Respondent Exhibit A – Two pages from an appraisal prepared by Beth S. Eldridge, dated October 22, 2007,²
Respondent Exhibit B – LoopNet multiple listing sheet, sale history sheet and photographs of the subject property

8. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing, dated August 1, 2012,
Board Exhibit C – Hearing sign-in sheet.

9. The subject property is comprised of sixteen individual single-family apartment/condominium units located at 1001 East Main Street, Ladoga, in Montgomery County. Fourteen of the units are at issue in this appeal.³

² Ms. Downey testified that her name was Beth S. Eldridge at the time the appraisal was prepared.

³ One unit was sold and one unit was given to Mr. Beam’s son. While it is not clear on the record whether those two units were assessed individually to their owners or were included as a part of the subject property’s assessed value, the Petitioner raised no claim that the assessed value of the property included two units that he did not own.

10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2008, the PTABOA determined the assessed value of the property to be \$41,500 for the land and \$973,780 for the improvements, for a total assessed value of \$1,015,280.
12. For 2008, the Petitioner requested an assessed value of \$41,500 for the land and \$679,500 for the improvements, for a total assessed value of \$721,000.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits 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 Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONER'S CONTENTIONS

14. The Petitioner's witness, Ms. Downey, testified that the subject property was originally constructed as a nursing home facility. *Downey testimony*. The Petitioner purchased the property on December 3, 2004, for \$150,000 and renovated it; converting the property into a condominium with sixteen units. *Id.*; *Board Exhibit A*. Upon completion of the project, Ms. Downey testified, the Petitioner sold one unit and then gave a second unit to Mr. Beam's son. *Downey testimony*. The Petitioner requested that the subject property be valued at \$721,000 or \$51,500 per unit, which was the median sale price in Ladoga and the South Montgomery school district in 2007 and 2008. *Id.*

15. Ms. Downey testified that the Petitioner made several attempts to advertise and market the condominiums; however, the property was not well received in the small community of Ladoga. *Downey testimony*. In support of this contention, Ms. Downey submitted 2009 and 2010 property listing reports.⁴ *Petitioner Exhibit 3*. Because there was no demand for condominiums, Ms. Downey argues, the Petitioner started renting the units. *Downey testimony*.
16. Ms. Downey contends that the property under appeal was over-valued in 2008 based on its income value. *Downey testimony*. According to Ms. Downey, she calculated the value of the Petitioner's property by using two methods of the income approach: direct capitalization and cash flow analysis.⁵ *Id.*
17. Under the direct capitalization method, Ms. Downey testified that she valued the Petitioner's property as a multi-family rental property. *Downey testimony*. In her calculation, Ms. Downey assumed a market rent for the property of \$800 per unit or \$134,400 per year for the fourteen units and she used a vacancy and collection loss of 20% or \$26,880. *Downey testimony; Petitioner Exhibit 1*. Ms. Downey testified that she subtracted the Petitioner's actual expenses of \$39,535 and she also prepared a second calculation where she assumed expenses based on a reduction in real estate taxes of \$28,706, resulting in net operating incomes of \$67,985 and \$78,814, respectively. *Id.* Applying a capitalization rate of 9.75%, Ms. Downey estimated the property's value to be between \$700,000 and \$810,000. *Id.*
18. Under the discounted cash flow analysis, Ms. Downey projected that two units would sell per year over a seven year period. *Downey testimony; Petitioner Exhibit 4*. Using an average sales price of \$89,200 per unit for the first three years starting in 2008 and then

⁴ The property listing sheets show the fourteen condominium units were listed for sale in 2009 from \$66,385 to \$114,000. *Petitioner Exhibit 3*. In 2010, the fourteen condominium units were listed for sale from \$72,000 to \$89,900. *Id.*

⁵ In response to questioning, Ms. Downey testified that she is a certified general appraiser with 20 years experience. *Downey testimony*.

increasing the average sale price 2% per year thereafter, Ms. Downey estimated a potential gross income of \$1,285,201. *Id.* Next, Ms. Downey subtracted the operating expenses for each of the seven years to arrive at a net “cash flow” for the year. *Id.* Ms. Downey then capitalized the total revenue using discount rates of 10%, 12% and 14%, to estimate a value of \$680,000, \$724,000, and \$774,000 for the property. *Id.*

19. Finally, Ms. Downey contends that the Petitioner’s property’s assessment is over-valued compared to the sale prices of similar multi-family residential properties. *Downey testimony.* In support of this contention, Ms. Downey submitted a list of six multi-family properties with more than five units that sold between 2005 and 2007. *Petitioner Exhibit 2.* According to Ms. Downey the sale prices ranged from \$21,875 per unit to \$40,956 per unit; whereas the Petitioner’s property was assessed for \$1,015,280 or \$72,520 per unit. *Downey testimony; Petitioner Exhibit 2.*

20. In response to questioning, Ms. Downey admitted that she appraised the Petitioner’s property on October 5, 2007, for \$1,015,000. *Downey testimony.* However, she argues, her value in that appraisal was based on an untested market for condominiums, the sale price of only one unit and an estimated “absorption period” of two years. *Id.* According to Ms. Downey, she assumed the property would be “received by the market,” but by “clearly looking into the future,” the property was not worth the appraised value. *Id.* Ultimately, Ms. Downey agreed that based on the information available to her at the time, the Petitioner’s property should be assessed at \$1,015,000 for 2008. *Id.* For the 2009, 2010, 2011, and 2012 assessment years, however, the county assessor should reduce the property’s assessment to reflect its market value. *Id.*

RESPONDENT’S CONTENTIONS

21. The Respondent’s witness, Mr. Thomas, argues that the Petitioner’s property was not over-valued in 2008 based on the property’s appraised value and its listing price. *Thomas testimony.* In support of this contention, Mr. Thomas submitted two pages from an

appraisal report prepared by Beth S. Eldridge now Beth Downey, a multiple listing sheet and photographs of the subject property and listing histories for various individual condominium units. *Respondent Exhibits 1 and 2.*

22. Mr. Thomas argues that Ms. Downey prepared an appraisal in conformance with Uniform Standards of Professional Appraisal Practice, whereby she estimated the fee simple value of the property to be \$1,015,000 on October 5, 2007. *Thomas testimony; Respondent Exhibit 1.* According to Mr. Thomas, the Petitioner's valuation was within the proper time frame for the 2008 assessment. *Id.* As a result of an appeal of the property's 2008 assessment, Mr. Thomas testified, the PTABOA accepted the October 5, 2007, appraisal report as evidence of the property's market value-in-use and lowered the property's assessed value to \$1,015,280 for 2008. *Id.*

23. Similarly, Mr. Thomas argues, a LoopNet listing history shows that in October of 2008, the subject property was listed for sale for \$1,650,000 and in July of 2012, its listing price was still \$1,200,000. *Thomas testimony; Respondent Exhibit 2.* According to Mr. Thomas, on the January 1, 2007, valuation date for the March 1, 2008, assessment, the Petitioner's property was assessed for less than its 2008 and 2012 listing prices. *Id.* Thus, he argues, the Petitioner's property was not over-assessed. *Id.*

Burden of Proof

24. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its property's assessment is wrong and what its correct assessment should 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-

enacted as Indiana Code § 6-1.1-15-17.2.⁶ That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment. Here because the property's assessed value did not increase more than 5% over its previous year's assessment, the Petitioner retains the burden of proof.

ANALYSIS

25. In Indiana, assessors value real property based on the property's market value-in-use, which the 2002 Real Property Assessment Manual defines 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." MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *Id.* A market value-in-use appraisal prepared according to USPAP will often be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501,506 n. 6. (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
26. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2008, assessment date, the valuation date was January 1, 2007. 50 IAC 21-3-3.

⁶ HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

27. Ms. Downey calculated the value of the Petitioner’s property by using two methods of the income approach: direct capitalization and cash flow analysis. *Petitioner Exhibit 1 and Exhibit 4*. According to Ms. Downey, based on the direct capitalization method the property’s value would be between \$700,000 and \$810,000. *Downey testimony*. And the cash flow analysis shows the value of the property to be \$680,000, \$724,000 or \$774,000, depending on the discount rate applied. *Id.*
28. “The income approach to value is based on the assumption that potential buyers will pay no more for the subject property ... than it would cost them to purchase an equally desirable substitute investment that offers the same return and risk as the subject property.” MANUAL at 14. The income approach thus focuses on the intrinsic value of the property; rather than the Petitioner’s operation of the property because property-specific rents or expenses may reflect elements other than the value of the property “such as quality of management, skill of work force, competition and the like.” *Thorntown Telephone Company, Inc. v. State Board of Tax Commissioners*, 588 N.E.2d 613, 619 (Ind. Tax Ct. 1992). See also MANUAL at 5 (“[C]hallenges to assessments [must] be proven with aggregate data, rather than individual evidence of property wealth. ... [I]t is not permissible to use individual data without first establishing its comparability or lack thereof to the aggregate data”). Here, Ms. Downey used property-specific expense information, including a deduction for real estate taxes.⁷ In addition, Ms. Downey provided no support for the capitalization rates she used in her calculations. Ultimately, Ms. Downey failed to show that her income approach methodology conformed to the Uniform Standards of Professional Appraisal Practice (USPAP) or any other generally accepted standards. Consequently, Ms. Downey’s income calculations lack probative value in this case. See *Inland Steel Co. v. State Board of Tax Commissioners*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser’s opinion lacked probative value

⁷ When valuing property for ad valorem tax purposes, subtracting real estate taxes as an expense “distorts the final estimate of value.” *Millennium Real Estate Investment, LLC v. Benton County Assessor*, Cause No. 49T10-1008-TA-42 (Ind. Tax Ct. Nov. 5, 2012).

where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).

29. Ms. Downey also contends that the Petitioner's property was over-valued based on the sale prices of other multi-family residential properties. *Downey testimony; Petitioner Exhibit 2*. In support of this contention, Ms. Downey submitted a list of six multi-family properties with more than five units that sold between 2005 and 2007. *Petitioner Exhibit 2*. In making this argument, the Petitioner's witness essentially relies on a sales comparison approach to establish the market value-in-use of the property. *See MANUAL* at 3 (stating that the sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.") 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 are not probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must also explain how any differences between the properties affect their relative market value-in-use. *Id.* Here, the Petitioner's witness made no attempt to show that the properties she used were comparable to the Petitioner's property. She merely concluded the subject property was assessed higher than other multi-family properties. Thus, the Petitioner failed to raise a prima facie case that its property was over-valued based on the sale prices of other multi-family properties in Montgomery County.

30. Even if the Petitioner could be seen as raising a minimally-sufficient prima facie case, the Respondent rebutted the Petitioner's evidence. The Respondent presented an excerpt of an appraisal report prepared by Ms. Downey, whereby she estimated the value of the Petitioner's property to be \$1,015,000 as of October 5, 2007. *Thomas testimony; Respondent Exhibit 1*. While Ms. Downey explained that "clearly looking into the

future” the Petitioner was unable to sell the property, she confirmed that her appraisal was based on the best market information available at the time. *Downey testimony*. And, in fact, Ms. Downey ultimately agreed that the property was correctly assessed at \$1,015,000 for 2008.⁸

SUMMARY OF FINAL DETERMINATION

31. The Petitioner failed to raise a prima facie case that its property was over-valued for the 2008 assessment year. The Board finds in favor of the Respondent and holds that the property’s assessed value should not be changed.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

⁸ To the extent that the Petitioner’s witness suggests that the Board should reduce the Petitioner’s property’s 2009, 2010, 2011 or 2012 assessed values, those assessment years are not before the Board in this appeal. And the Board has no jurisdiction to change an assessment that is not on appeal before it. *See Whetzel v. Department of Local Government Finance*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001).

IMPORTANT NOTICE

- 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>.