

REPRESENTATIVE FOR PETITIONER:
Sandra Bickel, Attorney

REPRESENTATIVE FOR RESPONDENT:
Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

RCR Properties LLC,	)	Petition No.:	53-009-02-1-4-00303
	)	Parcel:	015-04421-03
Petitioner,)		
)		
v.)		
	)	County:	Monroe
Perry Township Assessor,	)	Township:	Perry
	)	Assessment Year:	2002
Respondent.)		

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

[DATE OF ISSUANCE]

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) has reviewed the facts and the evidence in this matter. The Board now enters the following findings and conclusions on the issues that were presented.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board was:

Did the appraisals and other evidence establish that the 2002 assessment exceeds the market value of the Steeplechase Apartments in Bloomington?

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-1, RCR Properties LLC, filed a Form 131 Petition for Review of Assessment, petitioning the Board to conduct an administrative review of the above petition. RCR filed the Form 131 on November 20, 2003. The Monroe County PTABOA issued its determination on October 23, 2003.

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 June 29, 2004, in Bloomington, Indiana before Debra Eads, the duly designated Administrative Law Judge (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:

John Graham, Director of Accounting, Steeplechase Apartments
Jarret Marshall, Property Manager for Steeplechase Apartments
Leo Lichtenberg, Senior Appraiser for Will Stump & Associates

For the Respondent:

Judith Sharp, Monroe County Assessor
Travis Vencel, Appraiser for Vencel Appraisal Services, LLC

5. The following exhibits were presented on behalf of the Petitioner:
 - Petitioner Exhibit 1 – Integra Realty Resources appraisal of subject property
 - Petitioner Exhibit 2 – Application and certificate for payment for subject property
 - Petitioner Exhibit 3 – 2004 rent schedule for The Fields
 - Petitioner Exhibit 4 – Rent schedule for Steeplechase Apartments
 - Petitioner Exhibit 5 – “Distinctions and Luxuries” of The Fields
 - Petitioner Exhibit 6 – Property Record Card for The Fields
 - Petitioner Exhibit 7 – Letter regarding insurance coverage for Steeplechase Apartments
 - Petitioner Exhibit 8 – Income and expense information for Steeplechase Apartments
 - Petitioner Exhibit 9 – Vacancy information for Steeplechase Apartments
 - Petitioner Exhibit 10 – Transcript of the July 21, 2003, PTABOA hearing for Steeplechase Apartments
 - Petitioner Exhibit 11 – Stump and Associates appraisal of the subject property
 - Petitioner Exhibit 12 – Appraisal review of the Vencel appraisal

6. The following exhibits were presented for the Respondent:
 - Respondent Exhibit 1 – Vencel Appraisal Services appraisal of the subject property

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – The 131 Petition
 - Board Exhibit B – Notice of Hearing dated April 28, 2004

8. The subject property is an apartment complex located at 3400 S. Sare Rd. in Bloomington.

9. The ALJ did not conduct an on-site inspection of the subject property.

10. For 2002, the PTABOA determined the assessed value of the property to be:

Land: 1,156,000	Improvements:	12,892,200.
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11. For 2002, the Petitioner contends the assessed value of the property should be:

Land: 1,156,000	Improvements:	11,344,000.
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JURISDICTIONAL FRAMEWORK

12. 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; 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

13. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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).
14. 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”).
15. 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 OF THE ISSUE

Did the appraisals and other evidence establish that the 2002 assessment exceeds the market value of the Steeplechase Apartments in Bloomington?

16. Petitioner contends the appraisal completed by Will Stump and Associates (Stump appraisal) establishes the appropriate valuation of the subject property at \$12,780,000 for the 2002 assessment. Petitioner further contends the valuation of \$13,000,000 established by the Integra Realty Resources appraisal (Integra appraisal) is the appropriate valuation for assessment dates subsequent to 2002. *Petitioner Exhibits 1, 11.*
17. Respondent contends the appraisal completed by Vencel Appraisal Services (Vencel appraisal) establishes the appropriate valuation of the subject property at \$13,300,000 for the assessment date. *Respondent Exhibit 1.*
18. The Petitioner presented the following evidence and testimony in regard to this issue:
 - A. The Integra appraisal for the subject property indicated the market value was \$13,000,000 as of February 28, 2002. This appraisal report is dated April 24, 2002. *Graham testimony; Petitioner Exhibit 1.*
 - B. The Integra appraisal is a complete, self-contained appraisal report intended to comply with the reporting requirements set forth under Standards Rule 2-2(a) of the UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE. *Petitioner Exhibit 1 at 6.*¹ It was prepared for a group of investment and insurance companies for use as

¹ Standards Rule 2-2 states in part:

Each written real property appraisal report must be prepared under one of the following three options and prominently state which option is used: Self-Contained Appraisal Report, Summary Appraisal Report, or Restricted Use Appraisal Report.

Comment: When the intended users include parties other than the client, either a Self-Contained Appraisal Report or a Summary Appraisal Report must be provided. When the intended users do not include parties other than the client, a Restricted Use Appraisal Report may be provided.

The essential difference among these three options is in the content and level of information provided.

An appraiser must use care when characterizing the type of report and level of information communicated upon completion of an assignment. An appraiser may use any other label in addition to, but not in place of, the label set forth in this Standard for the type of report provided.

- possible collateral for a federally related loan transaction. It acknowledges that the report and estimated values in it will be relied upon in connection with a contemplated consolidation of certain affiliated limited partnerships and the issuance of limited partnership interests as part of such a consolidation. *Petitioner Exhibit 1.*
- C. The Integra appraisal considers the three traditional approaches to value: Cost Approach, Sales Approach, and Income Capitalization Approach. Integra confirms that it took appropriate steps to ensure reliability in gathering, confirming, and analyzing the data for its appraisal, specifically including inspecting the subject property and surrounding neighborhood as well as collecting factual information about the subject and surrounding market from various sources. The income capitalization analysis establishes that Integra used both data from the subject property and market data. *Petitioner Exhibit 1.*
- D. Summary Of Integra’s Conclusions:
- | | |
|------------------------------|---------------------|
| Cost | \$13,310,000 |
| Sales Comparison | \$13,090,000 |
| <u>Income Capitalization</u> | <u>\$13,000,000</u> |
| Final Conclusion of Value | \$13,000,000 |
- E. Construction costs associated with the subject property were \$10,659,728. *Petitioner Exhibit 2.*
- F. Evidence concerning the apartment complex known as “The Fields” was submitted as a comparable with superior amenities to the subject property. *Graham testimony.*
- G. Rent schedules for “The Fields” and the subject property were submitted for comparison purposes. *Petitioner Exhibits 3, 4.*
- H. A listing of the amenities for “The Fields” was submitted. *Petitioner Exhibit 5.* They are superior to the subject property. *Graham testimony.*
- I. The Grade Factor assigned to “The Fields” apartment buildings is C+1. *Petitioner Exhibit 6.*
- J. The improvements of the subject property were insured at a replacement cost of \$10,309,000 for the policy year March 27, 2003, to March 27, 2004. Marshall testified that the amount of insurance coverage would have been less in 1999. *Petitioner Exhibit 7; Marshall testimony.*

- K. Income and expense information for Steeplechase Apartments (subject property) was submitted for 1998 through 2002. *Petitioner Exhibit 8.*
- L. Vacancy rates for the subject property were submitted for 1998 through 2003. *Petitioner Exhibit 9.*
- M. A transcript of the Monroe County PTABOA hearing was submitted to support the Petitioner’s contention that the PTABOA indicated an appraisal was only one person’s opinion of value and that an appraisal from January 1, 1999, would be a more suitable indication of value for the 2002 general reassessment. *Petitioner Exhibit 10.*
- N. The Stump appraisal indicates a market value of \$12,780,000 as of January 1, 1999, and a market value of \$13,100,000 as of November 1, 1999. That appraisal would allocate \$162,000 of the value to personal property. *Petitioner Exhibit 11.*
- O. The Stump appraisal is a summary appraisal report intended to comply with the requirements of Standard Rule 2-2(b) of the UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE. *Petitioner Exhibit 11.* It was prepared to estimate the retrospective market value, as of the valuation date, of the subject property. It was prepared only for use in developing an opinion of market value for appealing real estate taxes. “Use of this report by third parties is not intended by the appraiser. *** It is not intended for any other use.” *Petitioner Exhibit 11 at 8.*
- P. Summary Of Stump’s Conclusions:
- | | |
|--|---------------------|
| Cost | \$13,230,000 |
| Sales Comparison | \$13,400,000 |
| <u>Income Capitalization</u> | <u>\$13,090,000</u> |
| | |
| Conclusion of Value
as of November 1, 1999 | \$13,100,000 |
| <u>Stabilization adjustment</u> | <u>- 320,000</u> |
| | |
| Final Conclusion of
Value as of January 1, 1999 | \$12,780,000 |
- Q. Stump’s reconciliation of the three value indicators states “[a]ll three approaches provide reasonable estimates for the subject property as stabilized. The strongest approach is considered to be the income approach to value. Most weight is placed on

this approach, tempered somewhat by the cost and sales comparison approaches.”

Petitioner Exhibit 11 at 100.

- R. The Stump appraisal attributes its stabilization adjustment to abnormal obsolescence. It states “[t]he subject was still in absorption on January 1, 1999, and did not become fully stabilized until on or around November 1, 1999. Accordingly, to arrive at a value estimate as of January 1, 1999, the value conclusion ... needs to be adjusted for rent loss due to absorption and additional marketing expenses.” *Petitioner Exhibit 11 at 101.* This calculation reduces the value because the market had not fully adjusted to the increased supply of new apartment units and the new Steeplechase Apartments had not yet reached a normal occupancy level. *Petitioner Exhibit 11; Lichtenberg testimony.*
- S. An appraisal review of the Vencel appraisal was submitted. In that review, Leo Lichtenberg states several factors that bring the opinion of value in the Vencel appraisal into doubt. For example:

The transmittal letter [for the Vencel appraisal] states a limited summary, then states a limited restricted, as well as an appraisal review. The Scope of the Appraisal suggests limited restricted and appraisal review, where the client and appraiser agreed on applying the income approach to value. A cost approach and sales comparison approach to value were never developed. However, in the reconciliation, the appraiser reconciled with the sales and cost approach of another appraisal....

[A]ccording to the scope of work, this [Vencel appraisal] is a limited appraisal, limiting to the income approach only. The appraiser should not have reconciled with the cost approach if the cost approach was not developed.

Even though a sales estimate was not developed, the appraiser reports “\$55,000 per unit” in the reconciliation. *** The appraiser should not have reconciled with the sales approach if the sales approach was not developed.

Under the subsection of the appraisal “Estimated Market Rent/Potential Gross Income”, the appraiser mentions and stresses the “contract rents”, but a rent roll was not provided to determine if these are correct. Moreover, it is likely that the street rents were applied not contract rents (street rents are the current asking rents that a leasing agent quotes).

Petitioner Exhibit 12 at 2, 4. Lichtenberg ultimately opined that the value conclusion arrived at in the Vencel appraisal was “not appropriate and reasonable given the data and analyses presented.” *Petitioner Exhibit 12.*

19. The Respondent presented the following evidence and testimony in regard to this issue:
 - A. The Vencel appraisal was submitted. It utilized some information contained in the Integra appraisal. Market value determined in the Vencel appraisal was \$13,300,000 as of March 1, 2002. *Respondent Exhibit 1; Vencel testimony.*
 - B. The Vencel appraisal is a limited restricted report. “This report is in compliance with the UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP), 2004 Edition, rules 1-2(f) and 2-2(c), with a departure from Standards rule 1-4.” *Respondent Exhibit 1 at 8.* The opinion of value is based only on the income approach. *Vencel testimony; Respondent Exhibit 1.* “This report is limited to the income analysis at the request of the client and upon the consideration of the appraiser.” *Respondent Exhibit 1 at 17.*
 - C. Data collection for the Vencel appraisal included a personal inspection of the subject property; however, apparently only an exterior inspection for this analysis. “The appraiser has made interior inspections of some of these units and the common and office areas over the last five years, however, did not make a specific interior inspection of the property for this analysis.” *Respondent Exhibit 1 at 10.*
 - D. The Vencel appraisal utilized a capitalization rate extracted from the market in the Bloomington area, which was determined to be 8.5 percent. *Vencel testimony; Respondent Exhibit 1.*
 - E. Vencel testified that he used an effective date of March 1, 2002, for his appraisal because that is the assessment date for the 2002 general reassessment in the Real Property Assessment Guideline – Version A. *Vencel testimony.*
 - F. Vencel testified that unlike other areas of the state and nationally, in the Bloomington area the apartment market had been experiencing a low vacancy rate because of an expanding student body. Vencel also testified that much of the leasing there was from August of one year to the next. Therefore, when Steeplechase missed target and

- did not complete construction until December 1997 it had already missed the biggest part of the leasing market for that year. *Vencel testimony*.
- G. Vencel opined that his personal knowledge of the Bloomington apartment market renders his appraisal superior to the other appraisals submitted as evidence. *Vencel testimony*.
- H. Vencel gave the other appraisals a cursory review. *Vencel testimony*.
- I. Vencel's testimony pointed out that while the assessment guideline specifically allows for the possibility of obsolescence, allowing it must be reevaluated on an annual basis. *Vencel testimony; Real Property Assessment Guideline – Version A, Book 2, Appendix F at 4*.
- J. The market value of the subject property as of March 1, 2002, would be “a little bit higher” than \$12,780,000, the value the Stump appraisal established for January 1, 1999. *Lichtenberg testimony*.
20. The specifics of what transpired at the PTABOA hearing have no bearing on the appeal proceedings at the state level. Therefore, the transcript of the PTABOA hearing, Petitioner Exhibit 10, has no effect on this finding.
21. Evidence regarding the construction cost of the improvement, the comparative data of “The Fields” apartment complex and the amount of insurance coverage of the subject property are perhaps some general indication that the PTABOA's assessment of \$14,048,200 is too high. The parties only discussed those points in a cursory manner, leaving the bulk of the testimony to deal with the appraisals.
22. The Integra appraisal, the Stump appraisal, and the Vencel appraisal monopolized the testimony and overshadowed all other probative evidence. Therefore, appropriate valuation of the subject property hinges on the opinion of value established by three different licensed appraisers on three different appraisal dates. Each of those opinions falls within a fairly narrow range and it is significant to note than none of them supports the value set by the PTABOA.

23. Construction on the Steeplechase Apartments started in 1996 and was completed in December 1997. *Graham testimony*. The Integra appraisal states they were built in 1997. *Petitioner Exhibit 1*. The property insurance is based on “year built 1997.” *Petitioner Exhibit 7*. The Vencel appraisal states they were built in 1996. *Respondent Exhibit 1*. After weighing all the evidence, it is the Board’s conclusion that construction was completed sometime around the end of 1997, with 1998 being the first full year of operations. *Graham testimony*.
24. In the case of income producing properties where the income approach to value is superior to the sales and cost approaches, multiple years of income and expense are often averaged in order to establish a stabilized stream of income and expense. This common appraisal practice allows for inclusion of data for multiple years when establishing an appropriate value.
25. Counsel for both parties stipulated to 8.5 percent as the capitalization rate to use in this matter. *Bickel, Meighen during Vencel testimony*.
26. While the Integra appraisal used 8.75 percent as the capitalization rate and that difference might have some effect on the value indicated, neither party has presented evidence that establishes what that amount might be. The Board will not speculate or attempt to recalculate that amount for the parties. Furthermore, based upon the evidence that was presented it does not appear that a slight difference in the capitalization rate would make any real difference to the final conclusion of value as reconciled in the Integra appraisal. If either party expected the Board to conclude otherwise, they should have provided clear and detailed evidence showing the difference, which they did not do. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.
27. Petitioner argued that January 1, 1999, the basis for the Stump appraisal opinion, is appropriate because it is the date indicated in the Real Property Assessment Guideline as the Appraisal Date for the 2002 general reassessment. Respondent argued that March 1, 2002, is more appropriate for an appraisal opinion in this case because the assessor would

reflect any changes to improvements (new construction, demolition, occupancy rates, etc.) between January 1, 1999, and March 1, 2002, in making the 2002 assessment.

28. Apparently because the values established in the Real Property Assessment Guidelines for 2002 – Version A are based on estimated construction costs for Indianapolis on January 1, 1999,² there is disagreement among the three appraisals and the parties about what the correct date should be for their market value opinions. The assessment date in this appeal is March 1, 2002, and Ind. Code §6-1.1-2-1 clearly provides in pertinent part that “all tangible property which is within the jurisdiction of this state on the assessment date of a year is subject to assessment and taxation for that year.” Therefore, the goal is to consider the property *as it physically exists on March 1, 2002*, (including whatever changes might have taken place up until that date) and then set an assessed value in terms of what its market value would have been on January 1, 1999.

29. Based upon a review and consideration of all the evidence in this case, the Integra appraisal provides the best, most reliable evidence of value for the Steeplechase Apartments for the 2002 assessment. There are several reasons for the Board’s determination to accept the Integra appraisal of market value for the assessment of the Steeplechase Apartments.
 - A. A licensed Indiana appraiser with credentials and experience sufficient to be considered reliable completed each of the three appraisals. The appraisals from Integra, Vencel and Stump, all support the idea that the income capitalization approach is probably the best indicator of value in this case and all three reach a conclusion of market value for the subject property that falls within a reasonably close range around \$13,000,000.

² “The primary method of valuation outlined in this guideline is the cost approach to value. *** The costs are based on the estimated construction costs for Indianapolis, IN for January 1, 1999. *** The mass appraisal system outlined in this guideline uses the concept of “replacement cost new”. Therefore, the assessor will be estimating the January 1, 1999, cost of constructing a building having the same utility as the building under appraisal.” Real Property Assessment Guidelines for 2002 – Version A, Introduction, at 1-2.

- B. The Integra appraisal was not prepared simply to appeal the assessment of the property, but rather, was prepared as a complete, self-contained appraisal report for a group of investment and insurance companies for use as possible collateral for a federally related loan transaction. It also acknowledges that the estimated values will be relied upon in connection with a contemplated consolidation of certain affiliated limited partnerships and the issuance of limited partnership interests as part of such a consideration. In the balance, these purposes give the Integra appraisal somewhat more credibility.
- C. The Integra appraisal used extensive, reliable data collection methods and sources, including inspecting the subject property and surrounding neighborhood.
- D. The Integra appraisal considers the three traditional approaches to value: Cost Approach, Sales Approach, and Income Capitalization Approach. The income capitalization approach used both data from the subject property and market data. Because the income that can reasonably be anticipated from the subject property is one of the most fundamental considerations with the income capitalization approach, it is significant that Integra used the broadest possible sources to make that determination.
- E. The Stump appraisal (disregarding the stabilization adjustment attributed to abnormal obsolescence) opinion of value is virtually the same as that of the Integra appraisal, providing some verification for value around \$13,000,000. The stabilization adjustment it made, however, is wrong because it incorrectly attempts to value the property as of January 1, 1999, or at least it is not sufficiently justified in this case. *See ¶ 28, supra.* For that reason the final conclusion in the Stump appraisal is not given any weight in making this assessment determination. The fact that the assessment guidelines are based on construction costs on January 1, 1999, does not lead to a 2002 assessment that somehow takes everything back to that date. *Id.* In addition, Petitioner failed to establish that such an adjustment is consistent with the income capitalization approach, which should use a broad range of data to predict what a stable anticipated income from the property would be. Furthermore, the record does not establish that any abnormal obsolescence should be allowed for this

- new apartment complex. Specifically, the Board cannot accept the argument that a new apartment complex suffers from any kind of obsolescence just because it is so new that it still has some vacancies. That situation is normal and should be anticipated by almost any similar apartment complex.
- F. The credibility of the Vencel appraisal is less because it is only a limited restricted report and from the beginning the client (the assessor) only wanted it to be based on the income capitalization approach.
- G. Obviously the assessor requested the Vencel appraisal to support the PTABOA assessment determination, which at the time was over \$14,000,000, but it did not do so. While this fact demonstrates that the assessor did not control Vencel and probably did not get the result she hoped for, it is not enough to convince the Board that the Vencel appraisal is the most reliable one offered.
- H. The credibility of the Vencel appraisal is also less because the appraiser did not make a specific interior inspection of the property for this analysis, and merely stated “the appraiser has made interior inspections of some of these units and the common and office areas over the last five years....” *Respondent Exhibit 1 at 10*.
- I. Vencel’s opinion that his appraisal is superior because he knows the Bloomington area better than the other appraisers who offered opinions in this case is entitled to no weight whatsoever. Such conclusory statements are not probative evidence and are of no value to the Board in its evaluation of the evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

SUMMARY OF FINAL DETERMINATION

30. Petitioner and Respondent submitted substantial, probative evidence in support of their respective positions. Ultimately, this issue is determined by evaluating the three appraisals and the appraisal review submitted as evidence. In this particular case, the Integra appraisal is entitled to the most weight and provides the best guidance in establishing the market value of the property. It has established that the total assessed value for the subject property will be changed to \$13,000,000 as of March 1, 2002.

The Indiana Board of Tax Review issues this Final Determination of the above captioned matter on the date first written above.

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.