

REPRESENTATIVES FOR PETITIONER:

Stephen H. Paul, Baker & Daniels LLP
Vicki L. Norman, Baker & Daniels LLP
Jon Laramore, Baker & Daniels LLP

REPRESENTATIVE FOR RESPONDENT:

Beth H. Henkle, Schuckit & Associates, P.C.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

WOODS EDGE APARTMENTS, LP,)	Petition Nos.:	18-032-04-1-4-00134
)		18-032-05-1-4-00134
Petitioner,)		
)	Parcel:	18-07-31-301-007.000-050
v.)		
)	County:	Delaware
CENTER TOWNSHIP ASSESSOR,)	Township:	Center
)		
Respondent.)	Assessment Year:	2004 and 2005

Appeal from the Final Determination of
Delaware Property Tax Assessment Board of Appeals

September 25, 2007

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

ISSUES

1. The issue presented for consideration by the Board was whether the assessed value of the subject property in 2004 and 2005 exceeded its market value-in use.

PROCEDURAL HISTORY

2. The Delaware County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determination upholding the Center Township Assessor's 2005 assessment of the subject property on December 9, 2005. The PTABOA issued its determination upholding the Center Township Assessor's 2004 assessment of the subject property on February 15, 2006.¹
3. Pursuant to Ind. Code § 6-1.1-15-1, the Petitioner filed a Form 131 Petition for Review of Assessment on January 9, 2006, petitioning the Board to conduct an administrative review of the subject property's 2005 assessment. The Petitioner filed a Form 131 on March 2, 2006, petitioning the Board to conduct an administrative review of the property's 2004 assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Carol Comer, held a hearing on May 17, 2007, in Indianapolis, Indiana.
5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Bonnie Mitchell, Mitchell Appraisals, Inc., Appraiser

¹ From the records submitted by the parties, it appears that the Form 115 "Notification of Final Assessment" for 2005 preceded the Form 115 for 2004.

For the Respondent:

Jay Allardt, Appraiser
Charles Ward, PSC, Consultant to Delaware County

6. The Petitioner presented the following exhibits:²

Petitioner's Exhibit 1 – Petitioner's Brief,
Petitioner's Exhibit 1A – Center Township Property Record Card,
Petitioner's Exhibit 1B – MAI Complete Appraisal Summary Report,
Petitioner's Exhibit 1D³ – Excerpts from Indiana Code

7. The Respondent presented the following exhibits:⁴

Respondent's Exhibit 1 – Appraisal of subject property prepared by Jay Allardt,
Respondent's Exhibit 2 – Appraisal of subject property prepared by Bonnie Mitchell in 2003,
Respondent's Exhibit 3 – Capitalization Rates from Integra Realty Resources,
Respondent's Exhibit 4 – Low Income Housing Tax Credit Application,
Respondent's Exhibit 5 – Petitioner's Rent Rolls,
Respondent's Exhibit 6 – Market Condition Analysis,⁵
Respondent's Exhibit 7 – Mitchell Report corrections,
Respondent's Exhibit 8 – Code of Professional Ethics and Standards of Professional Appraisal, Standard Number 3,
Respondent's Exhibit 9 – Delaware County, Census 2000 statistics,
Respondent's Exhibit 10 – Treasury Note Rates for 1999- 2005,
Respondent's Exhibit 11 – Request to Withdraw Petition for 2006 assessment,⁶
Respondent's Exhibit 12 – Notice of Assessment, Form 11, for March 1, 2006, assessment

² The parties agreed Petitioner's Exhibit 1 is confidential. The parties presented a redacted version of this document for the record.

³ The Petitioner did not submit an exhibit designated Petitioner's Exhibit 1C.

⁴ The parties agreed Respondent's Exhibits 1, 2 and 7 are confidential. The parties presented redacted versions of these documents for the record.

⁵ The Petitioner objected to Respondent's Exhibit 6 on the basis that the document is hearsay. The Respondent argued that hearsay is admissible before the Board. Further, according to the Respondent, experts may rely on hearsay in forming their expert opinion. 52 IAC 2-7-3 states that hearsay evidence "may be admitted." If the evidence is objected to and does not fall within a recognized exception to the hearsay rule, however, "the resulting determination may not be based solely upon the hearsay evidence." The ALJ admitted this Exhibit over objection.

⁶ The Petitioner also objected to Respondent's Exhibit 11 and 12 on the basis that the exhibits address a different tax year based on a different assessment system. As each tax year stands alone and as the 2006 assessment incorporates trending, which the 2004 and 2005 assessment years did not, the ALJ did not admit Exhibits 11 and 12 into evidence.

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:⁷

Board Exhibit A – The Form 131 Petitions,
Board Exhibit B – Notices of Hearing

9. The Petitioner submitted its “Petitioner’s Post-Hearing Memorandum” (Petitioner’s Brief) on June 4, 2007. The Respondent submitted its “Respondent’s Post-Hearing Memorandum” (Respondent’s Brief) on June 24, 2007. On July 10, 2007, the Petitioner filed a “Verified Motion for Leave to Submit Additional Authority” offering a copy of a Department of Local Government Finance (DLGF) document entitled “Valuation of the Lake County Industrial Facilities Greater than \$25 M in Value for the 2002 General Reassessment.”
10. The subject property is a 112 unit multi-family, low income housing apartment complex located at 4200 West Woods Edge, Muncie, Indiana in Delaware County, Center Township.
11. The ALJ did not conduct an on-site inspection of the subject property.
12. For 2004 and 2005, the PTABOA determined the assessed value of the property to be \$572,900 for the land and \$3,927,100 for the improvements, for a total assessed value of \$4,500,000.
13. For 2004, the Petitioner contends the property should be assessed for \$2,300,000 and for 2005, the Petitioner contends the property should be assessed for \$2,576,000.

⁷ The ALJ recorded the hearing in this matter. Through an inadvertent error, however, 45 minutes of the hearing went unrecorded. The missing portion of the hearing includes the completion of the testimony of Petitioner’s witness and her cross examination by counsel.

JURISDICTIONAL FRAMEWORK

14. 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

15. 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 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).
16. 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. Wash. 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”).
17. 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.

FACTS AND CONTENTIONS

18. The Petitioner contends that the subject property is over-valued based on an appraisal.

19. The Petitioner presented the following evidence in support of its contentions:
- A. The Petitioner contends that the subject property is Section 42 housing. *Mitchell testimony*. According to the Petitioner's witness, Section 42 allows a builder to build quality housing to rent to individuals and families with 30%, 40%, 50% and 60% of local median income. *Id.* The Petitioner's appraiser testified that, while she looked at all three approaches to value, she only used the cost and income approaches because there had been no sales of Section 42 housing at the time of the appraisal. *Mitchell testimony*.
- B. In developing the income approach, the appraiser testified that she relied on the rent rolls of the subject property and average rents from CB Richard Ellis.⁸ *Mitchell testimony; Petitioner's Exhibit 1*. According to Ms. Mitchell, when she annualized the average rents for the property, the rents were less than the income reported on the Petitioner's financial statement which suggested that a rent increase had occurred during the year. *Mitchell testimony*. Thus, the appraiser testified, she prepared the income approach using the higher income reported on the financial statements. *Id.; Ex. 1, p. 43*. In response to questioning, Ms. Mitchell admitted that, when she calculated the average rents for the market, she used all types of units, including those unit types that the subject property did not have. *Id.; Ex. 1, pg. 42-43*. When she calculated the average for the subject property, Ms. Mitchell testified that she only used the unit types that the subject had. *Id.*
- C. The next step in the income approach valuation, Ms. Mitchell testified, is to deduct a vacancy rate from the income. *Mitchell testimony*. According to Ms. Mitchell, the subject property's vacancy was higher than the market vacancy rate, so she used the market rate obtained from CB Richard Ellis. *Id.* Similarly, the appraiser testified, the property's expenses were higher than the market. *Id.* Thus, she reduced the

⁸ CB Richard Ellis completes a market overview on apartments every year. *Petitioner's Exhibit 1, pg. 33*.

expenses based on the expenses typical to other properties that Ms. Mitchell had appraised. *Id.*; *Petitioner's Exhibit 1*, pg. 56- 57.

- D. Finally, Ms. Mitchell testified that she developed a capitalization rate based on comparable sales and the band of investment method using mortgage and equity techniques. *Mitchell testimony*; *Petitioner's Exhibit 1*, pg. 49-55. Based on these methods, Ms. Mitchell selected a capitalization rate of 9.7% for 2004 and 9.2% for 2005. *Id.* Loaded with the tax rate, this came to a capitalization rate of 12.8816% for 2004 and 12.5717 % for 2005. *Id.*, *Ex. 1*, pg. 54-55.
- E. According to Ms. Mitchell, using the income approach to value, she appraised the property for \$2,710,000 as of March 1, 2004. *Id.* Further, she trended the value to 1999 for \$2,300,000. *Id.* Similarly she appraised the property for \$3,250,000 for 2005 and trended the value to 1999 for \$2,576,000. *Id.* The Petitioner argues that its appraiser trended the property value to January 1, 1999, using CB Richard Ellis' change in rents from 1999 to 2005 for the income approach valuation. *Petitioner's Brief*, pg. 5.
- F. The Petitioner's appraiser testified that she also prepared a cost approach valuation for the property. *Mitchell testimony*. After applying obsolescence, Ms. Mitchell determined the value of the property to be \$3,081,000 for 2004 and \$3,782,000 for 2005. *Id.*; *Petitioner's Exhibit 1*, pg. 41. The appraisal trended the valuation obtained from the cost approach back to January 1, 1999, using factors from Marshall Valuation Services. *Petitioner's Brief*, pg. 5. Ms. Mitchell testified, however, that she gave little weight to the cost approach valuation in her final reconciliation because the income approach was a better measure of the property's value. *Mitchell testimony*.

- G. In the Petitioner's Brief, the Petitioner argued that the parties agree that the assessed value of \$4,500,000 is incorrect. *Petitioner's Brief at 1*. Thus, the Petitioner argues, the assessment cannot be "presumed" correct. *Id.*
- H. The Petitioner further argues that the Respondent's appraiser failed to consider the property's condition as of the assessment date. *Id. at 2*. According to the Petitioner, the Respondent calculated a value for January 1, 1999, for both the March 1, 2004, and March 1, 2005, assessments. *Id.* To the extent that the Respondent could be considered to have "trended" its values, the Petitioner contends that the method used by the Respondent was improper. *Petitioner's Brief at 6*. According to the Petitioner, the Respondent's appraiser used a "snapshot" of the property in 1999 and a "snapshot" of the property in 2004. *Id.* The Petitioner argues that this approach takes no account of inflation or market trends. *Id. at 7*.
- I. Finally, the Petitioner argues, the Respondent's method uses only volatile property-specific information rather than market data. *Petitioner's Brief at 7*.
20. The Respondent presented the following evidence in support of its contentions:
- A. The Respondent admits that the current assessment of the subject property is too high. *Allardt testimony*. The Respondent argues that the subject property should be valued at \$2,767,000 for 2004 and 2005. *Id.*
- B. The Respondent's appraiser developed both a cost and income approach valuation, but, like the Petitioner, relied only on the income approach in its final valuation determination. *Allardt testimony*. Unlike the Petitioner, however, the Respondent relied upon 1999 data. *Id.* According to Mr. Allardt, retrospective appraisal standards require using data proximate to the valuation date. *Id.; Respondent's Exhibit 8*. In its "Respondent's Post-Hearing Memorandum" (Respondent's Brief), the Respondent argues that the Petitioner is incorrect in claiming that the Board "must

- take into account the market conditions” as of the assessment date. *Respondent’s Brief at 3.* According to the Respondent, because the property has not changed physically since January 1, 1999, “there is no need to value the [p]roperty as of March 1, 2004[,] and March 1, 2005[,] and trend back.” *Id.* at 5.
- C. For the cost approach, the Respondent’s appraiser determined the land value to be \$544,500 through a sales comparable valuation. *Allardt testimony; Respondent’s Exhibit 1, pg. 26.* The appraiser then valued the improvements and calculated a total value of \$3,890,000. *Id., pg. 38.*
- D. For the income approach, the Respondent’s appraiser looked at income and expenses for the property from 2000 to 2004. *Allardt testimony.* According to Mr. Allardt, he determined the trend of the property’s expenses and used an actual expense value for each category of expenses, except for wages and the management fee which he deemed too high based upon other appraisals he had performed. *Id.; Respondent’s Exhibit 1, pg. 41-44.*
- E. The Respondent’s appraiser developed a capitalization rate for the property of 11.93% using market sales and a mortgage equity analysis. *Allardt testimony; Respondent’s Exhibit 1, pg. 45-47.* Mr. Allardt concluded the value of the property using the income approach was \$2,765,000 as of March 1, 2004. *Id.; Ex. 1, pg. 48.* Mr. Allardt testified that he did not perform a calculation for March 1, 2005. *Allardt testimony.*
- F. Reconciling the cost and income approach values, the Respondent’s appraiser estimated the property’s value to be \$2,800,000 as of March 1, 2004. *Allardt testimony; Respondent’s Exhibit 1, pg. 48.* Mr. Allardt trended the 2004 value to 1999 by performing an income approach calculation for January 1, 1999, in which he concluded the value of the property was \$2,767,000 as of 1999. *Id.*

- G. The Respondent's witness argues that the Petitioner used only rents in its trending analysis. *Allardt testimony*. According to Mr. Allardt, while rents went up, so did expenses resulting in a consistent net operating income (NOI) over time. *Id.* Thus, Mr. Allardt argues, the change in NOI is a better indication of the property's relative value in 1999 and 2004. *Id.*
- H. Finally, the Respondent's witness argued that the Petitioner's comparable properties were improper. *Allardt testimony*. According to Mr. Allardt, the Petitioner's appraiser should have compared the market rent of only those units which the Petitioner had in its apartments. *Id.* The Respondent argues that, the Petitioner's method of including all units in its analysis, such as a high-value efficiency unit, skewed the resulting average. *Id.*

ANALYSIS

21. Real property in Indiana is assessed on the basis of its "true tax value." *See* Ind. Code § 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 2 (2001) (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter the 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. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
22. 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. MANUAL at 4, 8; *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). This is also true for succeeding assessment years through 2005. *See* MANUAL at 2 (stating that the Manual contains the rules for assessing real property for the March 1, 2002, through March 1, 2005, assessment dates); *see also* Ind. Code § 6-1.1-4-4.5 (requiring the DLGF to adopt rules

for annually adjusting assessments to account for changes to value in years since general reassessment, with such adjustments to begin in 2006). Consequently, a party relying on evidence concerning a property's market value as of a date substantially removed from the relevant valuation date of January 1, 1999, must explain how that evidence demonstrates or is relevant to the property's value as of January 1, 1999. *Id*

23. Here the Petitioner submitted an appraisal prepared by a certified licensed appraiser. *Petitioners Exhibit 1*. The Petitioner's appraiser testified that she compiled her data in accordance with generally accepted appraisal principles. *Mitchell Testimony*. Ms. Mitchell testified that she used both the income and cost approaches to value to estimate the market value-in-use of the property as of the March 1, 2004, and March 1, 2005, assessment dates. *Id*. Finally, Ms. Mitchell testified that she trended the 2004 and 2005 values to the January 1, 1999, valuation date by using the change in market rents during that period. *Id*. The Petitioner contends that the market value-in-use of its property is \$2,300,000 for the March 1, 2004, assessment date and \$2,576,000 for the March 1, 2005, assessment date.
24. An appraisal performed in accordance with generally recognized appraisal principles is sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003). Thus, the Board finds that the Petitioner has raised a prima facie case that the subject property is over-valued.
25. Once the Petitioner establishes a prima facie case, the burden then shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Respondent offered its own appraisal to rebut the Petitioner's evidence. *Respondent's Exhibit 1*. The Respondent's appraisal valued the subject property at \$2,767,000 for 2004 and 2005. *Id. at 62*.
26. The Petitioner and the Respondent both submitted USPAP appraisals to value the subject property. The Petitioner's appraisal, using the income approach, valued the property at \$2,710,000 for 2004, while the Respondent's appraisal, using the same income approach,

valued the property at \$2,767,000. Thus, the difference in the appraised value for 2004 is nominal.

27. The parties, however, trended the appraised values back to the required January 1, 1999, valuation date using different methods of trending, subsequently coming up with different valuations. The Petitioner's appraiser determined the market value-in-use of the subject property to be \$2,300,000 for the March 1, 2004, assessment date and \$2,576,000 for the March 1, 2005, assessment date. The Respondent's appraisal valued the subject property at \$2,767,000 for both 2004 and 2005. Thus, trending the 2004 values to the January 1, 1999, valuation date resulted in a \$467,000 difference for the 2004 assessment year and a \$191,000 difference for the 2005 assessment year.⁹
28. The question, then is whether the Petitioner's or the Respondent's method of trending is more persuasive. The issue raised here has only recently been presented to this Board. Thus far, the Board has expressed no preferred method or means by which to trend an assessment back to January 1, 1999. So long as a property's valuation was trended by some means, any evidence has for the most part been accepted.
29. The Indiana Tax Court has suggested the same policy regarding trending valuations back to January 1, 1999. In *Long v. Wayne Twp. Assessor* the Court said "Indiana's assessment regulations state that for the 2002 general reassessment, a property's assessment was to reflect its value as of January 1, 1999. The insurance policy and the independent appraisal, however, indicate property values for 2003 and 2004. Consequently, the Longs were required to provide *some explanation* as to how these values demonstrate, or are relevant to the subject property's value as of January 1, 1999. Because the Longs provided no such explanation, these documents likewise do not carry any probative value." 821 N.E. 2d 466 (Ind. Tax 2005). See also *Bank of Highland Trust 13-3085 v. Dept. of Local Gov't Finance*, 861 N.E. 2d 27 (Ind. Tax 2007)(appraisal was

⁹ In light of the fact that the assessed value of the property is \$4,500,000, we question why the parties were unable to bridge the small difference between their appraised values and resolve this matter without the expense of hearing. We encourage the parties to work toward resolution in the future.

not sufficient probative evidence because it failed to establish a January 1, 1999, market value-in-use for the property), and *O'Donnell v. Dept. of Local Gov't Finance*, 854 N.E.2d 90 (Ind. Tax 2006) (evidence regarding the value of the property in 1997 and 2003 has no bearing upon 2002 assessment values without *some explanation* as to how these values relate to the January 1, 1999 value).

30. Recently the Board was confronted with this issue in *Edward Rose of Indiana, LLC v. Pleasant Township Assessor of Johnson County*, Petition No. 41-026-02-4-00239. In that case, the assessor argued that the 2002 assessment should use the 1999 economic conditions. The taxpayer argued that 2002 market conditions represent the appropriate valuation criteria, and the appraisal should only be indexed to reflect 1999 costs. The Board, in an order granting partial summary judgment, stated:

The Manual defines both the valuation date and the appraisal date as follows, '[t]he date as of which the true tax value of the property is estimated. In the case of the 2002 general reassessment, this would be January 1, 1999.' The [Department of Local Government Finance] has held that for the 2002 general reassessment, real property should be valued taking into account its physical condition and the market factors in existence on 3/1/02. This value should then be trended to reflect the property's market value-in-use on 1/1/99. In other words, what would have a potential purchaser have paid on 1/1/99 for the property as it physically looked on 3/1/02 given the market conditions that existed on 3/1/02.¹⁰

31. No statute, regulation or case has identified any single way to relate values from later assessment dates back to the January 1, 1999, valuation date. Further, the Board has accepted many methods in past determinations. Thus, while the Board may have accepted either the Petitioner's method or the Respondent's method, standing alone, here the Board must determine which method more accurately reflects the value on January 1, 1999, with the goals of the 2002 reassessment regulations in mind.

¹⁰ The Board, in that case, found that the use of a Consumer Price Index factor applied to a current valuation was an acceptable means to trend the value back to the required January 1, 1999, date. According to the Board, that method captured the value of a property as it physically existed on the assessment date but related that figure to January 1, 1999, dollars.

32. The Petitioner values the property for 2004 and 2005 by the income approach. To trend the 2004 and 2005 valuations to 1999, the Petitioner applied a factor derived from the change in rents from 1999 to 2005. The Petitioner also applied a Marshall and Swift cost adjustment factor to support its valuation. The Respondent argues that the Petitioner's appraisal does not reflect the value of the subject property because Petitioner's appraisal uses effective gross income with out taking into account expenses or different expense ratios from 1999. Also, the Respondent argues, the Petitioner's appraisal uses figures from the CB Richard Ellis Reports that are reflective of unit types which do not exist at the subject property.
33. We share the Respondent's concern. Using only the change in rents in the area to trend the 2004 and 2005 valuations to 1999 is a very narrow measure of value. As the Respondent notes, the Petitioner's factor does not take into account corresponding changes in expenses or vacancy or other factors that impact the value of a property. Further, while the Petitioner argues that we must take into account the change in market from 1999 to 2004 or 2005, applying a factor based on changes in rents to a 2004 or 2005 valuation appears to simply negate such an attempt. The Petitioner seems to be arguing on the one hand that we must value the market changes, but then applies a factor that appears to eliminate the change in market on the other hand.
34. The Respondent valued the property for 2004 based on an income approach valuation. It also valued the property as of 1999 and argued that the property's value did not change between 1999 and 2004. The Respondent contends that the proper valuation of the property is the 1999 valuation. Again, we are not convinced. As we found in *Edward Rose of Indiana, LLC v. Pleasant Township Assessor of Johnson County*, Petition No. 41-026-02-4-00239, real property should be valued taking into account its physical condition and the market factors in existence on assessment date, trended to reflect the property's market value-in-use on statutory valuation date of January 1, 1999. Thus, to the extent that the Respondent argues that valuing the property as of January 1, 1999, is the better

approach, we disagree. Such a method ignores the market factors in existence on the assessment dates.

35. To the extent that the Respondent is arguing that, by performing an income valuation for both the 1999 valuation date and the 2004 assessment date, it has shown that there is no change in the market, we again are not convinced. Without a showing that approximately \$2.8 million in 1999 is the same as approximately \$2.8 million in 2004, the Respondent has not sufficiently shown that the property's value in 1999 reflects the market in 2004. Moreover, the Respondent made no attempt to value the property for the 2005 assessment date.
36. While we find neither the Petitioner's, nor the Respondent's trending method ideal, we hold that the Petitioner's attempt to account for the property's condition and its market in 2004 and 2005 draws closer to the goals and intent of the assessment regulations.

SUMMARY OF FINAL DETERMINATION

37. The Board concludes that the Petitioner established a prima facie case that the current assessment of the subject property's improvements exceeds its market value-in-use, based on the Petitioner's appraisal. Further the Board concludes that the Petitioner's method to trend the 2004 and 2005 appraised values more accurately represents the true tax value of the subject property on the January 1, 1999, valuation date, while still taking into account the relevant 2004 and 2005 market. As a result, the Board finds the subject property should be assessed at \$2,300,000 for 2004 and \$2,576,000 for 2005.

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

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>>