

REPRESENTATIVE FOR PETITIONER:

Shawn Pittman, Deloitte Tax LLP

REPRESENTATIVE FOR RESPONDENT:

Sandra Greubel, Gibson County Chief Deputy Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Ashford Hospitality Trust,	)	Petition No.: 26-028-05-1-4-00001
	)	Parcel No.: 019-04046-00
Petitioner,	)	
	)	
v.	)	
	)	Gibson County
Patoka Township Assessor,	)	Patoka Township
	)	2005 Assessment
Respondent.	)	

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

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**November 7, 2007**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence presented in this case. The Board now enters its findings of fact and conclusions of law on the following issue:

*Is the subject property assessed at a higher value than its market value-in-use?*

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

1. On September 6, 2005, the Gibson County Property Tax Assessment Board of Appeals (PTABOA) issued its determination. On October 6, 2005, Ashford Hospitality Trust (Petitioner) filed a Form 131 Petition for Review of Assessment, requesting the Board to conduct an administrative review.
2. The Administrative Law Judge authorized by the Board, Kay Schwade, held the hearing in Princeton on August 21, 2007.
3. The following persons were sworn as witnesses at the hearing:
  - For the Petitioner – Shawn Pittman, Deloitte Tax LLP,  
Shirley Hornig, Deloitte Tax LLP,
  - For the Respondent – Juanita Beadle, Gibson County Assessor,  
Sandra Greubel, Chief Deputy County Assessor and  
PTABOA President.
4. The Petitioner presented the following exhibits:
  - Petitioner Exhibit A – Form 130 Petition,
  - Petitioner Exhibit B – Form 131 Petition,
  - Petitioner Exhibit C-1 – Subject property’s income and expense data for 2001, 2002, 2003, and 2004 with computations for income approach to value for 2002, 2003, 2004, and 2005,
  - Petitioner Exhibit C-2 – Subject property’s income and expense data for 2001, 2002, 2003, and 2004,
  - Petitioner Exhibit C-3 – Korpacz Real Estate Investor Survey for the third quarter of 2004,
  - Petitioner Exhibit C-4 – Lodging replacement reserves and management fees sections, page 5, from the Korpacz Survey,
  - Petitioner Exhibit D – Bulk purchase price allocation.

5. The Respondent presented following exhibits:
  - Respondent Exhibit 1 – Form 130 Petition,
  - Respondent Exhibit 2 – Income and capitalization workpaper,
  - Respondent Exhibit 3 – Notification of Final Assessment Determination (Form 115),
  - Respondent Exhibit 4 – Form 131 Petition,
  - Respondent Exhibit 5 – Interrogatory, preliminary witness and exhibit list,
  - Respondent Exhibit 6 – Property Record Cards for the subject and comparable properties.
  
6. The following additional items are recognized as part of the record:
  - Board Exhibit A – Form 131 Petition,
  - Board Exhibit B – Notice of Hearing,
  - Board Exhibit C – Hearing Sign In Sheet,
  - Board Exhibit D – Letter of Authorization from the Patoka Township Assessor.
  
7. The subject property is a Fairfield Inn located at 2828 Dixon Street in Princeton, Indiana.
  
8. The Administrative Law Judge did not conduct an on-site inspection.
  
9. The PTABOA determined the total assessed value is \$1,854,100.
  
10. The Petitioner asserted the total assessed value should be \$1,149,000.

#### **PETITIONER’S CONTENTIONS**

11. The current assessment does not reflect the market value-in-use when compared to the value derived using the income approach or the allocated purchase price. *Pittman argument.*
  
12. The subject property is a limited use hospitality property. Hospitality properties are income producing properties that are purchased to realize future profits. The best and most commonly used method to value such properties is the income approach. *Hornig testimony.*

13. The cost approach is the weakest method to value hospitality properties because these properties are particularly vulnerable to physical deterioration, functional changes, and uncontrollable external factors. The replacement cost has little bearing on an investment decision when the primary purpose of ownership is the potential return on equity. *Hornig testimony.*
14. The Petitioner prepared four value analyses for the years 2002 through 2005 using basic, commonly accepted concepts of the income approach with particular emphasis on the concepts taught by the Department of Local Government Finance, the International Association of Assessing Officers, and the Institute of Professional Taxation. *Hornig testimony.* Those income approach analyses used actual income and expenses from the prior year. For example, the March 1, 2002, analysis is based on 2001 data. *Hornig testimony; Pet'r Ex. C-1, C-2.*
15. The use of actual income is preferred in the income approach. Estimated income determined by obtaining a rate quote over the telephone would not take into consideration any discounts typical in the hospitality industry. *Pittman testimony.*
16. The 12 percent capitalization rate for economy/limited service lodging properties was obtained from the Korpacz Real Estate Investor Survey, a widely accepted source for capitalization rate information. *Hornig testimony.*
17. The indicated value of the subject property is \$1,133,952 for March 1, 2002. The indicated value of the subject property is \$1,932,854 for March 1, 2003. The indicated value of the subject property is \$1,254,633 for March 1, 2004. The indicated value of the subject property is \$1,257,839 for March 1, 2005. *Pet'r Ex. C-1.* The indicated value for March 1, 2003, is high because the subject property was listed for sale in 2003. It is common practice to minimize expenses when there is a pending sale. *Hornig testimony.* Further, the indicated values for 2002, 2003, and 2004 are inflated because personal

property was not deducted. The value of personal property was deducted from the calculation for March 1, 2005. *Hornig testimony; Pet'r Ex. C-1.*

18. The subject property was purchased in September 2004 as part of a portfolio purchase that included several hospitality properties located in Indiana and Kentucky. The allocated purchase price of the subject property was \$1,212,594. The allocated purchase price of each property involved in the sale was based on its capitalized net operating income. *Hornig testimony; Pet'r Ex. D.*
19. The subject property sold again in February 2007. This sale price is not a good indicator of value because the sale occurred two years after the 2005 assessment date. Additionally, substantial changes had occurred in the hospitality industry, resulting in a strong market with low capitalization rates. *Hornig testimony.*
20. The insurable value of a hospitality property is not a good indicator of value because it covers replacement cost of the building and improvements before depreciation, the contents of the building, and the loss of revenue. *Hornig testimony.*

#### **RESPONDENT'S CONTENTIONS**

21. Sales of the subject property in 2004 and 2007 support the current assessment. The allocated price for the subject property in 2004 should be \$1.9 million. The sale in 2007 was for \$3.25 million. *Greubel testimony.*
22. The current assessed value, which was established using the replacement cost method, is correct. It is supported by the assessed values of similar properties. The subject property's current assessed value is \$22,732 per unit. The assessed value of the Hampton Inn in Jasper is \$31,330 per unit. The assessed values for the Ashford Hotels in Evansville are \$30,770 and \$34,784 per unit. *Greubel testimony; Resp't Ex. 6.*

23. The capitalized income for the subject property indicates the subject property's value is \$1,973,985. The income was estimated using a daily room rate quoted by the Petitioner over the telephone. The capitalization rate was developed by a local appraiser. *Greubel testimony; Resp't Ex. 2.*

#### **ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN**

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 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).
25. 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”).
26. 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**

27. Real property is assessed based on its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income

approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

28. The income approach is based on the assumption that potential buyers will pay no more for a property than it would cost them to purchase an equally desirable substitute investment that offers the same risk and return. MANUAL at 14. This methodology calls for consideration of data that is specific to the property in question within the context of what is typical for similar properties. Doing so helps to eliminate distortions of value that might result from bad business judgments such as establishing an unreasonable rent or incurring unnecessary expenses.
29. In this case, the Petitioner's income analysis relied entirely on the income and expenses of the subject property, failing to submit probative evidence that might support that data as being within typical parameters. The Respondent also submitted an analysis based on an income approach, but it has weaknesses regarding evidence to support basic data.<sup>1</sup> Neither party submitted an actual appraisal for the subject property. Neither income analysis is presented with the kind of supporting facts and explanation that are required to establish any significant weight as probative evidence.
30. The 2005 assessment is to reflect the value of the property as of January 1, 1999. MANUAL at 4. If evidence of value relates to a different time, there also must be some

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<sup>1</sup> Compare Petitioner's Exhibit C-1 and Respondent Exhibit 2.

explanation about how the evidence demonstrates, or is relevant to, the subject property's value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

31. The Petitioner presented value analyses of the subject property for the 2002 through 2005 assessment dates, but failed to explain how that evidence demonstrates, or is relevant to, the subject property's value as of January 1, 1999. Thus, the Petitioner's value analyses are not probative of the alleged error. *Long*, 821 N.E.2d at 471.
32. The Petitioner also argued that the September 2004 allocated purchase price for the subject property is representative of the correct assessed value for March 1, 2005. Although the parties presented conflicting evidence about what the 2004 allocated purchase price should be, it is unnecessary for the Board to determine which of the allocations is more credible. Again, there was no explanation of how the 2004 allocated purchase price is relevant to the subject property's value as of January 1, 1999. Therefore, the allocated purchase price is not probative evidence. *Long*, 821 N.E.2d at 471.
33. When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. See *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### **SUMMARY OF FINAL DETERMINATION**

34. The Board finds in favor of the Respondent. The assessment will not be changed.

This Final Determination of the above captioned matter is issued on the date first written above.



**- 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>>