

REPRESENTATIVE FOR PETITIONER:

Sandra Bickel, Ice Miller

REPRESENTATIVE FOR RESPONDENT:

Marilyn Meighen, Meighen & Associates

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

BBR-Vision I LP,	)	Petition No.:	33-016-04-1-4-00006
	)	Parcel:	030-09233-00
Petitioner,)		
)		
v.)		
	)	County:	Henry
Judith Bummer,	)	Township:	Henry
Henry Township Assessor	)	Assessment Year:	2004
Respondent.)		

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

March 12, 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

ISSUE

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

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, Sandra Bickel of Ice Miller filed a Form 131 Petition for Review of Assessment on August 1, 2005, petitioning the Board to conduct an administrative review of the above petition. The Henry County Property Tax Assessment Board of Appeals issued its determination on June 29, 2005.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Debra Eads, held a hearing on December 12, 2006, in New Castle, Indiana.

4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Duane Reindl, Petitioner Representative
Liza Mutzl, Appraiser
Melanie Reusze, Witness

For the Respondent:

Frank Kelly, Nexus Group¹

5. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Indiana Housing Finance Authority application,
Petitioner Exhibit 2 – Financial statements for 2000 thru 2005,

¹ Penny York and Tabatha Thompson, Henry Township Deputy Assessors; Catherine Marquis and Judy Taylor, PTABOA members; and Jodie Brown, Henry County Assessor observed the hearing.

Petitioner Exhibit 3 – Appraisal of subject property dated January 1, 1999.

6. The Respondent presented the following exhibit:
Respondent Exhibit A – Market Value-In-Use Report of 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 Form 131 Petition,
Board Exhibit B – Notice of Hearing dated October 12, 2006,
Board Exhibit C – Notice of Appearance for Marilyn Meighen,
Board Exhibit D – Notice of County Assessor Representation,
Board Exhibit E – Hearing sign-in sheet,
Board Exhibit F – Documents submitted for judicial notice.
8. The subject property is a 72-unit, Section 42 low-income, apartment complex located at 100 Autumn Oaks Boulevard in New Castle, Indiana.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2004, the PTABOA determined the assessed value of the property to be \$115,300 for the land and \$3,369,900 for the improvements, for a total assessed value of \$3,485,200.
11. For 2004, the Petitioner contends the total assessed value of the subject property should be \$1,050,000 as indicated in the Petitioner’s appraisal.

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 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).
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. 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”).
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

16. The Petitioner contends the value of the subject property is over-stated based on the \$1,050,000 value determined in its appraisal. *Bickel argument*.
17. In support of its value, the Petitioner presented the following evidence:
 - A. Elizabeth C. Mutzl of Mitchell Appraisals, Inc., on behalf of the Petitioner, prepared an appraisal of the subject property in November 2006.² *Petitioner Exhibit 3; Mutzl testimony*. The appraiser determined the value of the subject property as of March 1, 2004, to be \$1,380,000 under the cost approach and \$1,380,000 under the income

² The appraisal value includes parcels 030-82827-00 and 030-82823-00. These parcels adjoin the subject and are part of the apartment complex property, but are not a part of this appeal.

approach to value. *Id.* Ms. Mutzl testified that she did not use the sales comparison approach to value due to the lack of market sales of Section 42 properties. *Id.* According to Ms. Mutzl, reported sales of Section 42 properties generally are sales of business interest rather than real estate sales and are not applicable to use as a comparable sale. *Id.* The Petitioner's appraiser further testified that she adjusted the March 1, 2004, appraised value to January 1, 1999, based on the change in allowable rent of affordable housing in Henry County between March 2004 and January 1999 as determined by the Indiana Housing Authority. *Id.* According to Ms. Mutzl, this adjustment resulted in an estimated value of \$1,050,000 for the property. *Id.*

- B. In her cost approach analysis, Ms. Mutzl argues that an obsolescence adjustment applies to the property. *Mutzl testimony.* According to the Petitioner, the cost to construct is more than the income stream will cover. *Bickel argument.* In response to questioning, the Petitioner's witness testified that the cost to construct the subject improvements was approximately \$4.8 million and the sale of the tax credits generated approximately \$3.6 million for the owner. *Reindl response to Meighen cross-examination.*
- C. The Petitioner's witness testified that the property was built in 2000 and has not performed as well as anticipated. *Reindl testimony.* According to Mr. Reindl, the area's depressed economy due to plant closings and the development of additional tax-credit communities has impacted demand and supply. *Id.* Further, the property is required to remain as affordable housing for a period of forty years. *Id.; Petitioner Exhibit 1 at 7(C).* The property leases 24 units at 60% of the area median income, 29 units at 50% of the area median income, 15 units at 40% of the area median income and 4 units at market rent. *Id.* According to the Petitioner, the property has experienced a net loss between \$121,341 and \$236,190 from 2000 through 2005. *Petitioner Exhibit 2.* The Petitioner's appraiser, however, admitted that statistics show there is a shortage of low income housing in the New Castle area and that rents charged by the Petitioner may not be the maximum allowable rents for the units. *Mutzl response to Meighen cross-examination.*

- D. Similarly, the Petitioner's appraiser determined the value of the subject property to be \$1,380,000 under the income approach to value. *Petitioner Exhibit 3*. Ms. Mutzl testified that she used a capitalization rate derived by examining nine sales of apartment complexes in central Indiana. *Mutzl testimony; Petitioner Exhibit 3 at 43*. Further, Ms. Mutzl testified that she used a second technique, the mortgage equity/band of investments technique, to support the overall capitalization rate calculated by the comparable sales technique. *Id.*
- E. In its rebuttal argument, the Petitioner contends that, based on knowledge of customary arrangements in tax credit property partnership agreements, the sale of 99% interest in the Arlington Park property was probably an investment in the remaining value of the tax credits, rather than an interest in the real property. *Reusze testimony*. The Petitioner argues that the market value-in-use report prepared by the Respondent's witness appears to be determining a tax credit value rather than a real property value. *Bickel argument*. According to the Petitioner the Indiana General Assembly determined that the value of the tax credits is not to be included in the value of the real property. *Id.*
18. The Respondent contends that its market value-in-use report establishes the value of the subject property to be \$2,000,000. *Respondent Exhibit A*.
19. The Respondent presented the following evidence in regard to this issue:
- A. The Respondent argues that a market value-in-use report for the subject property determines the value of the property to be \$2,000,000 for March 1, 2004, and January 1, 1999.³ *Respondent Exhibit A; Kelly testimony; Meighen argument*. According to

³ Ms. Bickel objected to the report because it was not prepared by an individual with the appropriate qualifications to prepare an appraisal. Mr. Kelly, the author of the report, has a Ph.D. in economics. Economics is defined as the study of prices and markets. Mr. Kelly testified that he has studied prices and markets related to Indiana property assessments for the past ten years. The report was not purported to be an appraisal and the qualifications of the preparer go to the weight of the evidence rather than its admissibility. The Petitioner's objection is over-ruled.

- the Respondent's witness, market value-in-use differs from market value-in-exchange, in that value-in-use relates to the value of the property as it is being used. *Kelly testimony*. Market value-in-exchange contemplates the sale price of the property in the open market. *Id.*
- B. In its market value-in-use report, the Respondent's witness determined the value of the property to be \$3,534,000 through the cost approach, \$3,636,000 through the sales comparison approach, and \$1,800,000 through the income approach to value. *Respondent Exhibit A (p. 20); Kelly testimony*. Mr. Kelly reconciled these three values to a final estimated value of \$2,000,000. *Id.*
- C. The Respondent's witness testified that he developed the capitalization rate used in the market value-in-use report by using the sale of a low-income, tax credit property, (LITC), Arlington Park Apartments, in Bloomington, Indiana. *Kelly testimony*. According to the Respondent, a 99% ownership was sold. *Id.* The remaining 1% was not transferred in the sale so as not to affect the tax credit stream. *Id.* According to the Respondent's witness, using the net operating income (NOI) of the sale property results in a discount and recapture rate of 4.646% and a loaded capitalization rate of 7.168%. *Respondent Exhibit 1 at 18 & Attachment 1; Kelly testimony*. Mr. Kelly concludes that the value of the subject property using the income approach to value is \$1,800,000. *Id.* The Respondent argues that the use of the sale of a tax credit property in the calculation process is far less speculative than the use of market rent property sales when establishing the appropriate capitalization rate. *Meighen argument*. Mr. Kelly admitted, however, that he is unfamiliar with the partnership agreement related to the ownership of the Arlington Park property. *Kelly response to cross-examination by Bickel*.
- D. The Respondent's witness also used the sale of Arlington Park Apartments as a comparable property in the sales comparison approach. *Kelly testimony*. According to Mr. Kelly, the location and nature of the Bloomington property is similar to the subject property. *Id.* The Respondent's witness contends that this sale establishes a

value of \$50,505 per unit. *Respondent Exhibit 1 at 17 & 18; Kelly testimony.* Thus, Mr. Kelly concludes, the value of the subject property using the sales comparison is \$3,636,360 (\$50,505 x 72 units). *Id.*

E. The Respondent contends that the risk associated with ownership of LITC properties is not statistically different than the risk associated with other real estate asset classes. *Respondent Exhibit A (p.13) and Kelly testimony.* The Respondent also argues that the application of obsolescence to the value determination through the cost approach in the Petitioner's appraisal is not reasonable considering that in 1999 the property was not yet built and therefore could not reasonably have incurred any obsolescence. *Kelly testimony.* According to Mr. Kelly, consideration of the economic circumstances on the March 1, 2004, assessment date would affect the values obtained through income approach and the sales comparison approach, but not the value of the cost approach. *Id.*

20. 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 similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL (the MANUAL) at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal method as evidence consistent with the Manual's definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property's market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Thus, a taxpayer may establish a prima facie case based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. *See Meridian Towers*, 805 N.E.2d at 479.

21. Regardless of the approach used to prove the market value-in-use of a property, Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *Long v. Wayne Township Assessor*, 821 N.E.2d 466,471 (Ind. Tax Ct. 2005); MANUAL at 4. Consequently, a party

relying on market value evidence to establish the market value-in-use of a property must provide some explanation as to how the sales or appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *Id.*

22. Here, the Petitioner submitted into evidence a fair market value appraisal for the subject property with an effective date of January 1, 1999. *Petitioner Exhibit 3*. The appraisal was prepared by a licensed appraiser according to the requirements and guidelines of the Uniform Standards of Professional Appraisal Practices (USPAP). The appraiser determined the value of the subject property as of March 1, 2004, to be \$1,380,000 under the cost approach and \$1,380,000 under the income approach to value. *Id.* Further, the Petitioner's appraiser testified that she adjusted the March 1, 2004, appraised value to January 1, 1999, resulting in an estimated value of \$1,050,000 for the property. *Id.* An appraisal performed in accordance with generally recognized appraisal principles is enough to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d 475, 479.
23. 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 rebut's the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N. E. 2d at 479. Here, the Respondent submitted a market value-in-use report for the property. *Respondent Exhibit 1*. The report uses the cost approach, the sales comparison approach and the income approach and estimates the value of the property to be \$2,000,000.
24. Upon due consideration of the evidence, we find the Petitioner's income approach valuation to be the most persuasive evidence of value of the property. We give little weight to the Petitioner's cost approach because, according to the Petitioner's appraisal, "The first step [in the cost approach to value] is to estimate the value of the land by comparing it to other similar land sales and making adjustments when appropriate to the comparable prices." *Petitioner Exhibit 3*, p.26. Here, Ms. Mutzl did not do a sales comparison, but simply used the \$163,200 assessed value of the land. Thus, Ms. Mutzl failed to follow the requirements that she set forth in her appraisal. This is particularly

troublesome to the credibility of the valuation because the evidence shows that the property at issue was purchased in 1999 for \$225,000. There is no better evidence of the property's 1999 market value than its 1999 purchase price. We will not allow a petitioner to cherry pick its assessment and accept those values it believes are beneficial to the taxpayer and dispute those values it believes are too high.

25. We are also not persuaded by Mr. Kelly's income or sales comparable valuation because his calculations are based on a single sale. Further, Mr. Kelly had no personal knowledge of the partnership agreement of the Arlington Park apartment partners. Nor did he have any specifics of the apartment's sale. Therefore, the Respondent's value-in-use report is insufficient to rebut the income approach valuation prepared by the Petitioner's appraiser and, in fact, supports the Petitioner's contention that the assessed value is over-stated.

SUMMARY OF FINAL DETERMINATION

26. The Petitioner raised a prima facie case that the subject property is over-valued on the basis of its appraisal. The Respondent provided rebuttal evidence. The Board finds the weight of the evidence supports the Petitioner's income approach valuation. The Board, therefore, finds in favor of the Petitioner and determines that the true tax value of the subject property is \$1,050,000.⁴

⁴ The appraised value of \$1,050,000 includes three parcels, two of which the Petitioner did not appeal. The Petitioner contends that the Board should "back out" the assessed value of the two unappealed properties to arrive at a value of approximately \$1,020,000 for the appealed parcel. The Petitioner is mistaken in its approach. In Indiana, properties are assessed according to their true tax value. MANUAL at 1. True tax value "does not mean fair market value." *Id.*; Ind. Code § 6-1.1-31-6(c). Removing the assessed value of the adjoining parcels from the appraised value of all three properties does not establish the "market" value of the property at issue. The Petitioner has presented no evidence of the market value of the individual parcel. Therefore, the only determination that can be made from the Petitioner's evidence is that, given the appraised value, the parcel on appeal can have no greater value individually than the estimated value of the three parcels together.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review 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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.