

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-4-00138
Petitioner: Waltham Building Corp.
Respondent: The Department of Local Government Finance
Parcel #: 007-26-34-0040-0001
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held January 20, 2004. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$510,900 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated July 19, 2005.
4. Special Master Kathy J. Clark held a hearing at 10:00 A.M. on September 9, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 234 Waltham Street, Hammond. The location is in North Township.
6. The subject property consists of a three-story brick, multi-family, commercial apartment building.
7. The Special Master did not conduct an on-site visit of the property
8. Assessed value of subject property as determined by the DLGF:
Land \$37,700 Improvements \$473,200 Total \$510,900.
9. Assessed value requested by Petitioner:
Total \$266,296.

10. Persons sworn in as witnesses at the hearing:
Robert G. White, Tax Representative, Uzelac & Associates,
James S. Hemming, DLGF.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
- a) All income and expense information was available to local assessing officials at the time of the assessment and the income approach better represents the subject property's value than one derived from a market approach to value. *White testimony.*
 - b) Using the Petitioner's Federal Income Tax Returns for the years 2003 and 2004 an average annual income of \$71,576 is determined. (This figure is after deductions for vacancy and credit loss.) The average annual expenses for 2003/2004 are \$34,188, subtracting the two year expense average from the two year income average results in a net operating income (NOI) of \$37,388 for that time period. *Petitioner Exhibits 1 through 3; White testimony.*
 - c) The Investor Survey for the first quarter of 2003 (a national publication found at RealtyRates.com) determined that, for all types of apartments within the United States, an overall annual capitalization rate of 8.98% was the norm at that time. *Petitioner Exhibit 5; White testimony.*
 - d) Combining the annual capitalization rate of 8.98% with the local tax rate of 5.06% establishes an overall capitalization rate of 14.04%. By dividing the NOI of \$37,388 by the 14.04% capitalization rate an income value of \$266,296 is determined. *Petitioner Exhibit 3; White testimony.*
 - e) The owner reduced the rents in order to keep the building fully occupied and to accommodate the area, which is a lower income area. *White testimony.*
12. Summary of Respondent's contentions:
- a) It would appear from Petitioner Exhibits 1 and 2 that the rental rate charged per unit either decreased from 2003 to 2004 or a problem occurred with increased vacancy. The reason for the decrease in annual income is not clear from the materials provided. *Id; Hemming testimony.*
 - b) The Petitioner used a general capitalization rate for all apartment types across the United States when a regional rate for apartment types similar to the subject may greatly increase or decrease the income value. *Petitioner Exhibits 3 and 5; Hemming testimony.*

Record

13. The official record for this matter is made up of the following:
- a) The Petition,
 - b) The tape recording of the hearing labeled Lake County 1856,
 - c) Exhibits:
 - Petitioner Exhibit 1 – 2003 Form 1120S,
 - Petitioner Exhibit 2 – 2004 Form 1120S,
 - Petitioner Exhibit 3 – C.A.P. value work sheet,
 - Petitioner Exhibit 4 – Property record card,
 - Petitioner Exhibit 5 – U.S. Income Averages for all types of apartments,
 - Respondent Exhibit 1 – Subject property record card,
 - Respondent Exhibit 2 – Subject photograph,
 - Respondent Exhibit 3 – Incremental/Decremental Land Summary,
 - Respondent Exhibit 4 – Plat map,
 - Board Exhibit A - Form 139L,
 - Board Exhibit B - Notice of Hearing,
 - Board Exhibit C – Hearing Sign in Sheet,
 - d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a) 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).
 - b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *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”).
 - c) 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.

15. The Petitioner failed to provide probative evidence sufficient to establish a prima facie case. This conclusion was determined due to the following:
- a) The Petitioner submitted a calculation of value using the income capitalization approach to value. The value determined by this approach was based on the averaging of income and expenses from 2003 and 2004 and using a national capitalization rate from 2003 combined with the local tax rate.
 - b) The 2002 Real Property Assessment Manual (MANUAL) provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party providing evidence to establish the market value-in-use of a property must provide some explanation as to how that value demonstrates or is relevant to the property's value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property).
 - c) The Petitioner failed to relate the value determined to the valuation date of January 1, 1999. Furthermore, the Petitioner's representative testified that the rents were reduced for 2004 in order to keep the building occupied. The Board also notices a significant increase in operating expenses for 2004. The income and expenses used in the Petitioner's calculation are not indicative of the 1999 financials for the subject property.
 - d) Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. V. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to establish a prima facie case. The Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

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>.