

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-4-00140
Petitioner: Park Lane Town House, Inc.
Respondent: Department of Local Government Finance
Parcel #: 007-26-34-0040-0003
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 on January 20, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$702,000 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 Peter Salveson held a hearing on September 9, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 240 Waltham Street, Hammond, in North Township.
6. The subject property is an apartment building on 0.244 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$52,100 for the land and \$649,900 for the improvements, for a total assessed value of \$702,000.
9. The Petitioner requested a total assessed value of \$444,330.
10. Robert G. White, tax representative for the Petitioner, and Steven H. Yohler, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in the assessment:
 - a. The Petitioner contends that the current assessment is higher than the market value of the subject property as indicated by the income capitalization approach. The Petitioner presented an income and expense worksheet which calculates an estimated capitalized value of \$444,330 for the subject property. *R. White testimony; Petitioner Exhibits 3-6.*
 - b. In support of this value, the Petitioner provided its 2003 and 2004 state and federal tax returns and a chart from RealtyRates.com showing the national over-all rate (OAR) for apartment buildings 1st Quarter 2003. *R. White testimony; Petitioner Exhibits 3-6.*

12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent contends that the subject property was valued using the cost approach and presented the property record card in support of the current assessment. *Yohler testimony; Respondent Exhibit 1.*
 - b. The Respondent further argued that the Petitioner should have used a regional capitalization rate and not a national capitalization rate in its income capitalization approach. *Yohler 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 1634,
 - c. Exhibits:
 - Petitioner Exhibit 1: Issues,
 - Petitioner Exhibit 2: Subject property record card,
 - Petitioner Exhibit 3: Income and Expense Recap,
 - Petitioner Exhibit 4: 2003 Form 1120 S,
 - Petitioner Exhibit 5: 2004 Form 1120 S,
 - Petitioner Exhibit 6: Investor Survey OAR Rates,

 - Respondent Exhibit 1: Subject property record card,
 - Respondent Exhibit 2: Subject property photo,
 - Respondent Exhibit 3: Incremental/Decremental Worksheet,

Board Exhibit A: Form 139L Petition,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: 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. *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”).
 - 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 sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a. The Petitioner contends that the market value of the subject property as indicated by the income capitalization approach is lower than the assessed value. In support of this contention, the Petitioner submitted evidence showing a calculated value of \$444,300.
 - b. Real property in Indiana is assessed on the basis of its “true tax value”. See I.C. 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 at 2 (incorporated by reference at 50 IAC 2.3-1-1) (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). One such approach used in the appraisal profession is known as the “income approach.” *Id.* The income approach is used for income producing properties that are typically rented. It converts an estimate of

income, or rent, the property is expected to produce into value through a mathematical process known as capitalization. *Id.*

- c. 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*, at 471; MANUAL at 4. Consequently, a party relying on an income approach to establish the market value-in-use of a property must provide some explanation as to how the value demonstrates or is relevant to the property's value as of January 1, 1999. *Id.*
- d. Here the Petitioner submitted a calculation based on the income approach to value and supplied support documentation for the income, expenses, and OAR. *Petitioner Exhibits 3-6*. However, the Petitioner failed to explain how the value indicated by the income approach related to the January 1, 1999, valuation date. Accordingly, the Board finds that the Petitioner has failed to establish an error in the current assessment of the subject property.
- e. Where the Petitioner has not supported his 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 Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioner did not establish a prima facie case. The Board finds in favor of the Respondent and concludes that the current assessment should not be changed.

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>.