

REPRESENTATIVE FOR PETITIONER:

Joseph D. Calderon, Bose, McKinney & Evans LLP

REPRESENTATIVES FOR RESPONDENT:

Jan Stroud, Decatur Township Appraisal Deputy Assessor

Tara Acton, Decatur Township Chief Deputy Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Camby Crossing Apartments, LP	)	Petition No.:	49-200-02-1-4-00366
	)	Parcel:	2010752
Petitioner,	)		
	)		
v.	)		
	)	County:	Marion
Jason Holliday, Decatur Township	)	Township:	Decatur
Assessor	)	Assessment Year:	2002
	)		
Respondent.	)		

Appeal from the Final Determination of  
Marion County Property Tax Assessment Board of Appeals (PTABOA)

**MARCH 27, 2006**

**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 is whether the assessed value exceeds the market value-in-use of the subject property.

### **PROCEDURAL HISTORY**

2. Pursuant to Ind. Code section 6-1.1-15-3, Joseph Calderon on behalf of Camby Crossing Apartments, LP, its Form 131 Petition for Review of Assessment on June 21, 2004, petitioning the Board to conduct an administrative review of the above petition. The PTABOA issued its determination on May 21, 2004.

### **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 September 26, 2005, in Indianapolis, Indiana.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Joseph Calderon - Attorney for Petitioner  
Steven Shoup – Managing Member of the General Partner, Camby  
Housing Partners LLC  
Jill Schreck – representing the limited partner  
Bonnie Mitchell – representing Mitchell Appraisals, Inc.

For the Respondent:

Jan Stroud - Decatur Township Deputy Assessor  
Tara Acton - Decatur Township Chief Deputy Assessor

5. The Petitioner presented the following exhibits:

- Petitioner Exhibit 1 – Summary Appraisal Report for subject property completed by Mitchell Appraisals, Inc.
- Petitioner Exhibit 2 – Financial documents pertaining to 2000, 2001 and 2002
- Petitioner Exhibit 3 – Regulatory agreement and declaration of restrictive covenants for the subject property dated December 1, 1999
- Petitioner Exhibit 4 – Letter to Decatur Township Assessor from Assessment Advisors, Inc. dated February 6, 2004
- Petitioner Exhibit 5 – Response to Respondent’s post hearing submission dated October 11, 2005

6. The Respondent presented the following exhibits:

- Respondent Exhibit 1 – Form 130 and Form 131 Petitions
- Respondent Exhibit 2 – February 6, 2004, letter from Assessment Advisors, Inc. to the Decatur Township Assessor
- Respondent Exhibit 3 – Undated Sales disclosure of subject property and construction cost spreadsheet for the subject property
- Respondent Exhibit 4 – Land use restriction agreement for subject property dated September 1, 1998; and Regulatory Agreement and Declaration of Restrictive Covenants for the subject property dated December 1, 1999
- Respondent Exhibit 5 – Recorded Mortgage document for the subject property
- Respondent Exhibit 6 – Regulatory agreement for multi-family housing projects document for the subject property dated December 1, 1999
- Respondent Exhibit 7 – Response to the Petitioner’s appraisal submitted at the hearing, including letter from Assessment Advisors, Inc. dated October 5, 2005

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 on Petition dated August 11, 2005
- Board Exhibit C – Sign-in Sheet

8. The subject property is a Section 42 low income housing apartment complex containing 120 units with rent restrictions for a period of thirty years.

9. The ALJ did not conduct an on-site inspection of the subject property.

10. For 2002, the PTABOA determined the assessed value of the property to be \$257,300 for the land and \$5,742,700 for the improvements, for a total assessed value of \$6,000,000.
11. For 2002, the Petitioner contends the total assessed value of the property should be \$3,225,000.
12. At the hearing, the Respondent requested additional time to review the Petitioner's appraisal. The ALJ gave the Respondent until October 5, 2005, to review the appraisal and submit rebuttal evidence. The Respondent did so in a timely manner. The Respondent also made available to the Petitioner a copy of the Respondent's rebuttal of the Petitioner's appraisal. In turn, the Petitioner submitted their response to the Respondent's rebuttal. The Respondent's rebuttal to the Petitioner's appraisal and the Petitioner's response to said rebuttal were entered into the record and labeled as Respondent Exhibit 7 and Petitioner Exhibit 5, respectively.

#### **JURISDICTIONAL FRAMEWORK**

13. 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**

14. 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 Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

15. 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”).
16. 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

17. The Petitioner contends that the value of the subject property should be \$ 3,225,000 as reflected in the appraisal prepared by Bonnie Mitchell of Mitchell Appraisals, Inc.  
*B. Mitchell testimony; Petitioner Exhibit 1; Calderon argument.*
18. In support of this value, the Petitioner presented the following evidence and testimony:
  - A. The Petitioner testified that the construction of the subject improvements was begun in September 1998, and completed in 2000 with a total construction cost of \$5,400,000. *Shoup testimony*. According to the Petitioner, after payment of expenses, the project has not had a positive cash flow since its construction. *Id.*
  - B. Mitchell Appraisals, Inc. completed an appraisal of the subject property with an effective date of January 1, 1999, based on the condition of the property on March 1, 2002. The appraisal estimated the value of the subject property at \$ 3,225,000. *Petitioner Exhibit 1*. According to the Petitioner’s appraiser, the sales approach to value was not considered applicable to the subject property due to the lack of market data for low income housing property. *B. Mitchell testimony*. Therefore, the sales approach method of valuation was not developed in the appraisal report. *Id.* The cost and the income approaches to value were fully developed in the appraisal report and reconciled to the final value of \$3,225,000. *Id.*
  - C. The Petitioner’s appraiser testified that the cost approach to value was determined utilizing the Marshall & Swift Cost Service data and classifying the subject improvements as “Class D (wood frame) Average.” *Petitioner Exhibit 1, at 26; B. Mitchell testimony*. The Marshall & Swift cost estimate was adjusted to January 1, 2000 (when the improvement construction was completed), by using the cost

- multipliers published by Marshall & Swift. *B. Mitchell testimony; Petitioner Exhibit 1.*
- D. Further, the Petitioner's appraiser testified, the income approach to value was determined by using the potential income of the property, a market derived vacancy percentage and an expense amount asserted by the appraiser to be representative of the subject improvements. *B. Mitchell testimony; Petitioner Exhibit 1.* According to the Petitioner's appraiser, the expense amount is based upon the HUD requirements for loan applications. *B. Mitchell testimony.* These expenses include administration costs, operating costs, maintenance costs and taxes. *Id.* In order to determine the reasonableness of the subject property expenses, the appraiser compared them to the average expenses of fifty other apartment complexes whose expenses were known to the appraiser. *Petitioner Exhibit 1, at 38; B. Mitchell testimony.* The real estate taxes of the subject property were not included as an expense; rather the tax rate was included as part of the capitalization rate of the subject property. *B. Mitchell testimony.* According to the Petitioner's appraiser, the capitalization rate applied to net operating income of the property was determined by using the band of investment method. *Id.* The resultant capitalization rate was determined to be 8.9% adjusted to a final capitalization rate of 11.02% by the addition of the 2.7594% tax rate. *Petitioner Exhibit 1, at 46.* Application of the capitalization rate of 11.02% to the net operating income of \$376,883 (2002) and \$355,405 (2000) resulted in a value via the income approach to value of \$3,224,000. *Petitioner Exhibit 1, at 46; B. Mitchell testimony.* A final reconciliation of value for the subject property determined in the Mitchell Appraisal is \$3,225,000. *Petitioner Exhibit 1, at 48; B. Mitchell testimony.*
- E. In response to questioning, the Petitioner testified that Section 42 Tax Credits were awarded to the project in 1999 and as of March 1, 2002, they had a value of \$1,769,366 applicable for a ten year time period. *B. Mitchell testimony.* The Petitioner argued that any value associated with the Section 42 tax credits is not available to the property in the event of a negative cash flow or shortages. *Id.*
- F. Further, in response to the post submission of Respondent Exhibit 7, the Petitioner stated that the reference to the growth and development of the subject area "did not have an impact on the appraiser's concluded value for the real estate". *Petitioner Exhibit 5.* The Petitioner also contended that an adjustment in the land value of the appraisal would result in a reduction in the value of the improvements based on the return to the land calculation on page 29 of the appraisal. *Id.*
- G. Finally, the Petitioner disputed the classification of the subject property as "special use" due to the presence of a "going concern" as indicated in the text of Respondent Exhibit 2. *B. Mitchell testimony.* The Petitioner also disputed that the cost approach is the best method of valuation for the subject property. *Id.* The Petitioner concluded that the trending factor asserted by the Respondent is "without any foundation evidence" and that any perceived discrepancy in capitalization rate is sufficiently detailed in the appraisal. *Id.*

19. The Respondent contends that the subject property is correctly valued at \$6,000,000. The Respondent stated that the cost approach utilized by the assessor in determining the value is appropriate due to the age of the improvements and their lack of depreciation. *Acton testimony*.
  
20. The Respondent presented the following evidence and testimony in support of the assessment:
  - A. The Respondent argued that the Petitioner's appraisal under-valued the subject property. According to the Respondent, a typical income analysis is unreliable for low income properties because such an analysis does not address unusual revenue sources such as subsidies on mortgage rates, depreciation benefits and tax credits. *Respondent Exhibit 2*.
  
  - B. The Respondent also contended that the appraisal used inappropriate values and made unsupported assumptions. First, the Respondent disputed the vacancy percentage applied in the Petitioner's appraisal. *Stroud testimony*. According to the Respondent, multiple apartment complexes in the area of the subject property, including one that began leasing after the subject, have waiting lists for occupancy. *Id.* Further, the Respondent disputed the assertion in the Petitioner's appraisal (page 13) that "the neighborhood is considered to be within a slow growth and development stage of its life cycle." *Id.*; *Respondent Exhibit 7*. In addition, the Respondent argued that the appraisal should have used the actual sales price of the subject land (\$400,000) rather than the value determined by the assessor (\$257,300) in its determination of value. *Id.* The Respondent also questioned the selection of the capitalization rate and the net operating income determined by the appraiser and asserted that a 97.5% adjustment is appropriate to trend a multi-family property from a 2002 value to a 1999 value. *Id.*
  
  - C. Finally, the Respondent argued that the value determined by the assessor utilizing the cost approach, is the best indicator of value for the subject property due to the lack of sales information for Section 42 apartment complexes and due to inconsistencies in the expenses generally reported to the assessor. *Stroud testimony*.
  
21. 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 (MANUAL) at 12 (2001 (incorporated by reference at 50 IAC 2.3-1-2)). 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 “sales comparison approach.” *Id.* The sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” *Id.*

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. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
23. Here, the Petitioner submitted into evidence a fair market value appraisal for the subject property with an effective date of January 1, 1999. The appraisal was prepared by a licensed appraiser according to the requirements and guidelines of the Uniform Standards of Professional Appraisal Practices (USPAP). 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 (Ind. Tax Ct. 2003).
24. 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.
25. In the case at bar, the burden shifted to the Respondent to produce evidence to impeach or rebut the Petitioner’s appraisal. Here the Respondent argued that the Petitioner used an incorrect vacancy rate and capitalization rate in its income approach value. The Respondent also contended that the neighborhood was not a “slow growth area.” However, merely criticizing various calculations in an appraisal



as “flawed” or “suspicious” ... “falls well short of the substantial evidence” the Respondent must present to rebut an appraisal prepared by a licensed appraiser. *See Hometowne Associates v. Maley*, 839 N.E.2d 269, 280 (Ind. Tax Ct. 2005). It is not sufficient to make conclusory statements that the wrong values were used by the Petitioner. *Id.* The Respondent needed to provide evidence of the variables it contends are the proper value and how use of such “proper” values would change the appraised value offered by the Petitioner. Here, the Respondent must have presented evidence as to what it contends the correct value of the vacancy and capitalization rates and how the area not being a “slow growth area” would impact the value of the property or the appraised value. *Id.* This, the Respondent failed to do.

26. The Respondent further argued that the Petitioner’s appraisal failed to address the subject property’s value derived from the tax credits associated with the subject property. *Respondent’s Exhibit 2*. The loss of income due to the deed restrictions on the rent for the subject apartments affects any value determined through the income approach to value. Thus, we agree that the tax credits gained for those deed restrictions cannot be ignored when determining the property value<sup>1</sup>.

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<sup>1</sup> The Indiana General Assembly recently amended Ind. Code section 6-1.1-4-41 to add a section regarding the valuation of Section 42 properties. P.L. 199-2005, Sec. 4. The statute now provides:

- (a) For purpose of this section:
- (1) “low income rental property” means real property used to provide low income housing eligible for federal income tax credits awarded under Section 42 of the Internal Revenue Code; and
  - (2) “rental period”, means the period during which low income rental property is eligible for federal income tax credit award under Section 42 of the Internal Revenue Code.
- (b) For assessment dates after February 28, 2006, except as provided in subsection (c),”the true tax value of low income rental property is the greater of the true tax value:
- (1) determined using the income capitalization approach; or
  - (2) that results in a gross annual tax liability equal to five percent (5%) of the total gross rent received from the rental of all units in the property for the most recent taxpayer fiscal year that ends before the assessment date.
- (c) The department of local government finance may adopt rules under IC 4-22-2 to implement this section.

I.C. § 6-1.1-4-41. This statute, on its face, is not applicable to the present appeal from the subject property’s 2002 assessment.

27. The Indiana Tax Court addressed this issue in *Pedcor Investments v. State Board of Tax Commissioners*, 715 N.E. 2d 432 (Ind. Tax Ct. 1999). The Tax Court recognized that the deed restrictions affected the income producing ability of the property, and thus, its value. *Id.* at 437. Nonetheless, the Tax Court also recognized that:

[T]he deed restrictions also allow Pedcor to take advantage of certain federal tax incentives. These tax incentives provide financial benefits to Pedcor's partners, thereby counteracting the decreased rental income. Accordingly, these federal tax incentives must be taken into consideration when evaluating whether the deed restrictions do, in fact, cause the apartment complex to experience obsolescence.

*Id.* at 437. The Tax Court rejected Pedcor's argument that it could not consider the effect of the tax incentives because those benefits ultimately went to Pedcor's partners rather than to Pedcor itself. *Id.* at 438. In so holding, the Tax Court noted that the benefits created by the deed restrictions could not be ignored simply because those benefits passed through Pedcor to its partners. *Id.* The court ultimately held that the State Board's finding that the federal tax incentives made up for any loss in rental income attributable to the deed restrictions was a rational conclusion based on the evidence in the record, and that Pedcor did not present unrebutted evidence to the contrary. *Id.*

28. Pursuant to the Indiana Tax Court's ruling in *Pedcor* that both the rent restrictions and tax credits associated with ownership of a Section 42 property should be considered in determining the market value of that property, we determine that the \$1,769,366 value of the tax credits as testified to by the Petitioners, must be added to the \$3,225,000 appraised value determined by the Petitioner's appraiser using the income approach to value. Thus, the evidence in the case at bar supports the conclusion that the market value-in-use of the subject property is \$4,994,400. ( $\$1,769,366 + \$3,225,000 = \$4,994,366$ )

## SUMMARY OF FINAL DETERMINATION

Whether the assessed value exceeds the market value-in-use of the subject property.

30. The Petitioner made a prima facie case for a reduction in the assessment. The Respondent failed to rebut the Petitioner's evidence. The evidence submitted demonstrates that the current assessment is incorrect, and that the correct assessment should be \$4,994,400. The assessment is changed as a result of this issue.

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

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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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.**