

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: **57-005-03-1-4-00005**
 57-005-03-1-4-00006
 57-005-03-1-4-00007
Petitioner: **R & L Apartments LLC**
Respondent: **Allen Township Assessor (Noble County)**
Parcels: **57-09-27-200-193-000.005**
 57-09-27-200-245-000.005
 57-09-27-200-246-000.005
Assessment Year: **2003**

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

Procedural History

1. The Petitioner initiated the assessment appeals with the Noble County Property Tax Assessment Board of Appeals (PTABOA) by written documents dated December 14, 2004.
2. The PTABOA mailed the Notices of Decision to the Petitioner on February 15, 2005.
3. The Petitioner appealed to the Board by filing Form 131 petitions with the county assessor on March 9, 2005. The Petitioner elected to have these appeals heard according to small claim procedures.
4. The Board issued notices of hearing to the parties dated January 25, 2006.
5. The Board held an administrative hearing on March 28, 2006, before the duly appointed Administrative Law Judge Patti Kindler.
6. The following persons were sworn as witnesses at the hearing:
For Petitioner – Richard Yarian, member, R & L Apartments LLC,
For Respondent – Kim Gephart, Noble County Assessor,
John F. Huelsenbeck, Allen Township Assessor,
George L. Clifford, PTABOA,
Mary B. Lemings, PTABOA,
Delbert W. Linn, PTABOA.

Facts

7. The three parcels in this case have multi-family residential apartment units. Parcel 57-09-27-200-193-000.005 (lot 193) is a 1.1638 acre lot with two apartment buildings on it. Parcel 57-09-27-200-245-000.005 (lot 245) is a two-story apartment building on a .5159 acre site. Parcel 57-09-27-200-246-000.005 (lot 246) is a two-story apartment building on .5658 acres.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The assessed values determined by the PTABOA are:

lot 193	land \$28,400	improvements \$467,500	total \$495,900,
lot 245	land \$20,900	improvements \$250,000	total \$270,900,
lot 246	land \$23,000	improvements \$218,600	total \$241,600.
10. The Petitioner contends the assessments should be:

lot 193	total \$414,000
lot 245	total \$216,000
lot 246	total \$200,000.

Issues

11. Summary of the Petitioner's contentions in support of alleged error in the assessment:
 - a) The apartment complex consists of ten parcels. *Pet'r Ex. 15*. The prior owner, Main Street Apartments, Inc., purchased the property in May 2001 for a total of \$2,249,200 (rounded). *Resp't Ex. 3*. R & L Apartments LLC purchased the property from Main Street Apartments, Inc. for \$2,100,000 in February 2004. *Yarian testimony; Resp't Ex. 1*. R & L Apartments LLC continues to operate the apartments under the business name of Main Street Apartments. *Yarian testimony; Pet'r Exs. 14, 15*.
 - b) A market value appraisal prepared by Brodie L. Allred, Indiana licensed trainee appraiser, and John B. Good, MAI, Indiana certified general appraiser, valued the property as of December 19, 2003. *Pet'r Ex. 4 at 2*. Using only the income approach, the appraisers estimated the total value of the three subject parcels and two additional contiguous parcels (not at appeal) was \$2,100,000. *Pet'r Ex. 5*.¹ The Petitioner purchased the property in February 2004 for the appraised price. *Yarian testimony*. The total assessment for the complex should not be more than \$2,100,000 established by the appraisal and the Petitioner's purchase price. *Id*.
 - c) The 2004 assessed values of the appealed properties divided by the 2004 net operating income results in a deflated capitalization rate of 8.38%. *Pet'r Ex. 15*. The appropriate capitalization rate should be between 9% and 12%, according to

¹ The appraisal states that it is for five parcels. *Pet'r Ex. 4 at 7*. The Petitioner contended the appraised value represents ten parcels, rather than five. *Pet'r Ex. 2 at 1*. No explanation was offered for this contradiction.

the certified appraisers' reconciliation of capitalization rates described in the appraisal report. *Pet'r Ex. 5*. The 2005 net operating income was \$187,954, which supports the 2004 net income data used in the appraisal. *Yarian testimony*.

- d) A grid of comparable properties shows the assessments of three similar two story buildings constructed by the same builder, using the same grade of materials, the same interior and exterior finishes and similar square footages. *Yarian testimony; Pet'r Ex. 7*. Property record cards of the comparable properties establish the similarities between the subject and the comparable apartment buildings. *Pet'r Exs. 8, 9*. The assessments of the comparable buildings are between \$34.53 and \$35.47 per square foot, while the assessments of the Petitioner's buildings range from \$35.91 to \$41.49 per square foot. This difference is possibly due to an excessive grade factor. *Yarian testimony*.
- e) The grade of three of the subject buildings should be "D+2," the same as the grade applied to the Main Street Apartment units. *Id.; Pet'r Ex. 1b*. A "D" grade or below should apply to building 1 on lot 193, however, based on settling of the structure's foundation. The settling is shown in photographs and described in a letter from the builder. *Pet'r Ex. 2b - d*. The condition classification of this structure, currently average, should be below average. *Yarian testimony*.²
- f) The sales disclosure forms submitted by the Respondent include 24 units that are not part of this appeal and that do not reflect the Petitioner's purchase of the property. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:

- a) The Respondent submitted a grid showing the sales prices of purportedly comparable apartment buildings that range from \$22,920 to \$43,500 per unit. *Gephart testimony; Resp't Ex. 2*.
- b) The Petitioner's December 2003 certified appraisal is flawed because it is not trended to the valuation date, January 1, 1999. Additionally, personal property that is not a part of the real estate is included in the appraisal value. *Gephart testimony*.
- c) Sales disclosure forms establish that in 2001 the subject property sold for \$2,249,200. *Resp't Ex. 3*. After reductions granted by the PTABOA, the ten parcels are currently assessed for \$2,243,000. *Gephart testimony*.
- d) The subject property is assessed in the same manner as all other apartment units in the county. Because the assessment is within ten percent of the purchase price of the property, the county officials are not required to change it. *Id.*

² Commercial condition classifications are "excellent," "good," "average," "fair," "poor," and "very poor." GUIDELINES, app. F at 23. The Petitioner did not specify which of those condition classifications it is seeking.

Record

13. The official record for this matter is made up of the following:
- a) The Form 131 Petitions,
 - b) The digital recording of the hearing,
 - c) Petitioner Exhibit 1 - The Form 131 Petitions,
Petitioner Exhibit 2 - Supplement to the Form 131 Petitions,
Petitioner Exhibit 3 - Letter from the De Kalb County Assessor dated May 11, 2005,
Petitioner Exhibit 4 - Appraisal report pages 1-21,
Petitioner Exhibit 5 - Income Approach from pages 22-end of the appraisal,
Petitioner Exhibit 6 - Certification of value from the appraisal, page 26,
Petitioner Exhibit 7 - A grid showing the subject buildings in comparison to three apartment buildings,
Petitioner Exhibit 8 – Page 3 of property record card showing improvements for parcel 57-12-19-400-216.000-002 owned by Gage Development Company (see Bd. Ex. A),
Petitioner Exhibit 9 – Pages 2 and 3 of property record card showing improvements for parcel 57-09-04-300-040.000-004 owned by Main Street Apartments, Inc. (see Bd. Ex. A),
Petitioner Exhibit 10 – Pages 2 and 3 of property record card showing improvements for lot 193 (see Bd. Ex. A),
Petitioner Exhibit 11 – Page 2 of property record card showing improvements for lot 245 (see Bd. Ex. A),
Petitioner Exhibit 12 – Page 2 of property record card showing improvements for lot 246 (see Bd. Ex. A),
Petitioner Exhibit 13 - PTABOA hearing minutes dated February 9, 2005,
Petitioner Exhibit 14 - Subject 2005 annual property operating data (2 pages),
Petitioner Exhibit 15 - Capitalization rate and assessment data for ten parcels owned by the Petitioner,
Respondent Exhibit 1 - PTABOA minutes regarding the subject property,
Respondent Exhibit 2 - Sales grid for other apartment properties,
Respondent Exhibit 3 - Sales disclosure forms dated May 10, 2001 (4 pages),
Board Exhibit A - Form 131 Petitions with attachments,
Board Exhibit B - Notices 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. *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.

Total Market Value-in-use

15. The Petitioner did not make a prima facie case regarding total market value-in-use.
- a) Real property is assessed on the basis of 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 (hereafter 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) (hereafter GUIDELINES). 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.

- b) For the 2002 reassessment, an assessment is to reflect value of the property as of January 1, 1999. MANUAL at 4. Should a Petitioner present any evidence of value relating to a different time, the Petitioner is required to provide some explanation how those values demonstrate, or are relevant to, the subject property's value as of January 1, 1999. See *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c) The Petitioner presented an appraisal estimating the value of five parcels was \$2,100,000 as of December 19, 2003. *Pet'r Ex. 4*.³ The appraisal presented only an income approach to value that was computed using financial data from 2004 and 2005. The Petitioner did not provide any substantial explanation about how the appraisal value demonstrates, or is relevant to, the value as of January 1, 1999. Therefore, this evidence does not prove an error in the current assessment or prove what the assessed value should be. *Long* at 471.
- d) Although the parcel numbers are different, the Board notes that the three petitions identify lots 2, 4, and 5 of the Watercrest Addition. Assuming, *arguendo*, that the differing parcel numbers could be explained, a problem with using the appraisal as a basis for the assessments remains because the appraisal values five parcels, but the Petitioner appealed only three. The appraised value (\$2,100,000) exceeds the current total assessed value (\$1,008,400) for those three parcels. The Petitioner did not explain how that appraisal relates to the three parcels in this appeal or supports its proposed assessed values.
- e) The actual sale price of property is often the best indication of market value. To support the current assessment, the Respondent introduced four sales disclosures forms showing that ten parcels were purchased in May 2001 for a total price of \$2,249,200. *Resp't Ex. 3*. Some of the property included in those sales, however, is not part of the subject property in this appeal. The Respondent failed to relate the sale price to the valuation date, January 1, 1999. The fact that these forms lack signature also is problematic. For all these reasons, the sales disclosure forms lack probative value in this case. The total sale price shown on those sales disclosures is not relevant or probative evidence regarding the subject property.
- f) Respondent does not provide any authority for the conclusion that there is an acceptable market range for establishing the value of the property for assessment. This conclusory statement does not qualify as probative evidence. Furthermore, because the taxpayer is specifically permitted to offer evidence relevant to the market value-in-use of a property that includes actual construction costs, sales and

³ The appraisal states that it is for five parcels. "The parcel numbers are as follows: 011-1300-3900, 011-1301-5019, 011-1300-6600, 011-1301-5018, 001-1301-5020. The legal description for the subject property is Lots #1 through #5 of the Watercrest Addition, Sections #1 and #2, Town of Avilla." *Pet'r Ex. 4* at 7. The evidence in this case fails to establish what, if any, correlation there might be between the property that was the subject of the appraisal and the property that is the subject of this appeal. This failure leaves the appraisal with little or no probative value. See *Indianapolis Racquet Club*, 802 N.E.2d at 1022.

appraisals, Respondent's argument that the current assessment is somehow close enough to be acceptable appears to be wrong. MANUAL at 5

- g) The evidence fails to establish that the assessed value should be changed to conform to overall market value-in-use. Accordingly, the Board will address the Petitioner's alternative contention regarding grade.

Grade

16. The Petitioner provided sufficient evidence to support its claim regarding grade. This conclusion was arrived at because:
- a) The contested buildings are currently assessed as “C” grade. The Petitioner contended that all of the buildings except one should be assessed as “D+2.” The remaining structure, building 1 on lot 193, should be assessed as “D” grade because the building experienced a problem with the foundation settling. *Yarian testimony*.
 - b) The Petitioner presented a grid where it compared the four R & L Apartment LLC buildings under appeal to similarly situated apartment buildings. Two of the comparable properties are identified on the grid as Main Street Apartments, Inc. These apartments and the Petitioner’s buildings were built by the same contractor with the same kind of materials and interior and exterior finishes. The Petitioner described the similarities among these properties, such as square footage, the years of construction, condition classifications, true tax values, and prices per square foot. *Pet’r Ex. 7*. In addition, the Petitioner provided the improvement section of the property record cards for the comparable properties and the subject property, brochures for the comparable apartments, and photographs. *Pet’r Exs. 8 – 12; Bd. Ex. A*. These comparable structures are graded “D+2.” *Yarian testimony; Pet’r Ex. 7*.
 - c) The Petitioner’s grid also described an apartment building owned by the Gage Development Company. Although that structure is currently graded “C,” the assessed values per square foot of both the Gage Development Company and Main Street Apartments, Inc. units range from \$34.53 to \$35.47. In contrast, the assessed values of the Petitioner’s four buildings range from \$35.91 to \$41.89 per square foot. Reducing the grade of the Petitioner’s buildings from a “C” to a “D+2” would result in a square foot value comparable to the Gage and Main Street apartment buildings. *Id.*
 - d) The Petitioner’s evidence is sufficient to establish a prima facie case that the current grade applied to the four apartment buildings is excessive and should be lowered from “C” to “D+2.”
 - e) The Respondent also presented a grid of purported comparable sales to support the current per unit assessment. *Resp’t Ex. 2*. The Respondent failed to explain

the characteristics of the subject property and how those characteristics compare to those of the alleged comparables or how any differences would affect their relative values. Instead, the Respondent offered conclusory testimony that it had reviewed the grade factors and found them to be correct. Those conclusory statements have no probative value. *Long* at 471; *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- f) The Respondent contended no adjustment to the assessment is necessary because it is within ten percent of the purchase price. Again, this assertion is incorrect. No regulations, rules, or statutes support an acceptable range of ten percent for individual assessments.⁴ The Respondent failed to rebut the Petitioner's prima facie case. The Petitioner presented sufficient, probative evidence to establish that grade of these apartment buildings should be reduced from "C" to "D+2."
17. The Petitioner contended that building 1 on lot 193, should receive an additional reduction for grade or condition, but failed to provide sufficient evidence for such a change. This conclusion was arrived at because:
- a) Building 1 is currently assessed as "C" grade and in average condition. *Pet'r Ex. 10*. The Petitioner asserted it should be "D" grade and below average condition because this building had experienced problems with settling that resulted in cracked walls, uneven floors, and doors that did not close properly. *Pet'r Ex. 2*.
 - b) The Petitioner identified no comparable structures that are assessed with "D" grade or below average condition. The Petitioner presented photographs of the exterior of the building and a letter from the contractor regarding the settlement of the foundation. The letter from the contractor dated January 6, 2004, indicates the settling of the building was corrected in September 1995, which is well before the assessment date. *Bd. Ex. A*. Additionally, the appraisal concluded both the exterior and interior features, as well as the structural portions of the building, are all in average condition. *Pet'r Ex. 4 at 8*.
 - c) The evidence does not establish a prima facie case for "D" grade or below average condition for building 1. The Petitioner's evidence is sufficient to reduce the grade of building 1 from "C" to "D+2."

⁴ The Respondent apparently relied upon the instruction that "the overall level of assessment, as determined by the median assessment ratio, should be within ten percent (10%) of the legal level." MANUAL at 21. That statement clearly refers to standards for evaluating the accuracy of the median assessment ratio in the equalization process. It does not grant a ten percent range for individual assessments.

Conclusion

18. With one exception, the Petitioner failed to make a prima facie case. The Petitioner established a prima facie case that the grade of the apartment buildings should be changed from “C” to “D+2.” The Respondent failed to impeach or rebut the Petitioner’s evidence on that point.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to show “D+2” grade for the apartment buildings. There should be no other change in the assessments.

ISSUED: **June 20, 2006**

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>.