

REPRESENTATIVE FOR PETITIONER:
Carla Bishop, Meritax Property Tax Consultant

REPRESENTATIVES FOR RESPONDENT:
Susie Majors, Knight Township Real Estate Deputy Assessor
Shirley Reeder, Knight Township Chief Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Heathmoore Apartments,	)	Petition No.:	82-027-02-1-4-00439
	)	Parcel:	09-730-17-140-016
Petitioner,)		
)		
v.)		
	)	County:	Vanderburgh
Al Folz,	)	Township:	Knight
Knight Township Assessor	)	Assessment Year:	2002
)		
Respondent.)		

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

September 25, 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 was whether the assessed value for the subject property exceeds its market value-in-use.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, Carla Bishop on behalf of Heathmoore Apartments of Evansville (the Petitioner), filed a Form 131 Petition for Review of Assessment on September 16, 2004, petitioning the Board to conduct an administrative review of the above petition. The Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on August 13, 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 April 5, 2006, in Evansville, Indiana.

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

For the Petitioner:

Carla Bishop, Tax Representative

For the Respondent: ¹

Susie Majors, Knight Township Real Estate Deputy Assessor

Shirley Reeder, Knight Township Chief Deputy Assessor

5. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Summary of Issues – Property Information

Petitioner Exhibit 2 – Income Approach Worksheet

Petitioner Exhibit 3 – Statement of Operations

Petitioner Exhibit 4 – Rent Roll as of 12-31-00, 12-31-01 and 12-31-02

Petitioner Exhibit 5 – Excerpt from the CB Richard Ellis Investor Survey

¹ Tiffany Collins of the Vanderburgh County Assessor's Office was in attendance but only as an observer.

Petitioner Exhibit 6 – Comparable Property Expense Documentation
Petitioner Exhibit 7 – Comparable Sales Information
Petitioner Exhibit 8 – Comparable Assessment Information
Petitioner Exhibit 9 – Copy of the Form 131 Petition
Petitioner Exhibit 10 – Information Concerning Equity Residential

6. The Respondent did not present any exhibits at the hearing.
7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – The 131 Petition
 - Board Exhibit B – Notice of Hearing dated January 23, 2006
 - Board Exhibit C – Notice of County Assessor Appearance
 - Board Exhibit D – Hearing Sign-In Sheet
8. The subject property is a 74-unit apartment complex located at 2413 S. Green River Road, Evansville, in Knight Township.
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 \$357,500 for the land and \$1,816,700 for the improvements, for a total assessed value of \$2,174,200.
11. For 2002, the Petitioner contends that the assessed value for the subject property should be \$1,413,300.

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 Township 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).
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. Washington Township 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 that the market value-in-use for the two properties that comprise the apartment complex is \$1,700,000 as determined by the income approach to value. *Bishop testimony*. The Petitioner contends that when the \$1,700,000 is adjusted by the assessed value of the adjacent parcel not under appeal, the subject property should be valued at \$1,413,300. *Id*.
17. The Respondent alleges that they are unable to ascertain similarities and/or differences between the subject property and those properties used for comparison by the Petitioner.

Majors testimony. The Respondent, therefore, supports the assessed value as originally determined. *Id.*

18. The Petitioner presented the following evidence and testimony in regard to this issue:
- A. The Petitioner testified that the subject property consists of two adjoining parcels. *Bishop testimony.* According to the Petitioner, the second parcel, which is land only, is not under appeal in this hearing.² *Id.*
 - B. The Petitioner testified that the subject property is a former Cardinal apartment complex consisting of several single-story, pre-fabricated buildings with six units in each building that were built in 1984. *Bishop testimony.* The Petitioner claims that the economic life of the apartment buildings is impacted by its pre-fabricated construction. *Id.* The Petitioner further claims that the property's expense ratio tends to be higher than traditional apartment buildings because of this type of construction. *Id.*
 - C. The Petitioner contends that as an income producing property, the best evidence of value for the subject property is determined by use of the income approach. *Bishop testimony.* The Petitioner analyzed the actual income and expenses for the subject property for 2000, 2001 and 2002, applied a \$280 adjustment per unit reserve for replacement, and used a 10.5% capitalization rate (loaded for property taxes),³ resulting in a value of \$1,700,000 for the subject property and the adjoining parcel. *Bishop testimony; Petitioner Exhibit 2.* The Petitioner argues that the \$1,700,000 value should be reduced by the assessment of the adjoining parcel that is not under appeal, to determine the value of the subject property. *Bishop testimony.* According

² Parcel 09-730-17-140-016 is the only parcel under appeal at this hearing.

³ The Petitioner testified that the Petitioner's capitalization rate of 10.5% is from a CB Richard Ellis investment survey for the 1st quarter of 1999. *Bishop testimony; Petitioner Exhibit 5.* The Petitioner testified that Equity Residential Properties purchased multiple Cardinal properties at the same time the subject property was acquired. *Bishop testimony.* According to the Petitioner, Equity Residential Properties has sold some of those properties and the capitalization rate illustrated by those sales is significantly higher than the rate published in the CB Richard Ellis survey that was used in the Petitioner's market value calculation. *Id.; Petitioner Exhibit 7.*

to the Petitioner, the market value of the subject property is, therefore, \$1,413,300.
Id.

D. The Petitioner claims that Equity Residential Properties is a national Real Estate Investment Trust with extensive experience in managing apartments. *Bishop testimony*. The Petitioner further claims that, because the Trust must answer to stockholders, the subject property is managed to its maximum capacity. *Id.* According to the Petitioner, the percentage of expense to gross potential income of the subject property is less than that of other Cardinal properties also owned by the same Real Estate Investment Trust. *Bishop testimony; Petitioner Exhibit 6.*

E. Finally, the Petitioner argues that the subject property is among the highest per unit value and is significantly higher than the average per unit value of all properties in the Equity Residential Properties portfolio that were acquired in the purchase of Cardinal properties. *Bishop testimony; Petitioner Exhibit 8.*

19. The Respondent presented the following testimony in regard to this issue:

A. The Respondent contends that the assessed value as originally determined is reflective of the appropriate market value in use. *Majors testimony*.

B. The Respondent further contends that the subject property has been assessed in compliance with the 2002 REAL PROPERTY ASSESSMENT GUIDELINES (the GUIDELINES) and that the Petitioner has not submitted sufficient evidence to warrant a change in that assessment. *Majors testimony*.

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 (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).

21. As an income producing property the Petitioner asserts that the best evidence of value for the subject property is determined by use of the income approach. *Bishop testimony; Petitioner Exhibits 2 and 3.* The income approach to value is one such generally accepted method of appraising based on the assumption that potential buyers will pay no more for a property than it would cost them to purchase an equally desirable substitute investment that offers the same risk and return as the subject property. *See MANUAL* at 14. The income approach considers the subject property as an investment and, therefore, its value is based on the rent it will produce for the owner. *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, in order to present probative evidence of the true tax value of the property, a party must explain how the value derived from the application of generally recognized method of appraisal relates back to the property's value as of January 1, 1999. *See Long*, 821 N.E. 2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).

23. Here, the Petitioner presented an income approach calculation using rents and expenses for 2000, 2001 and 2002. *Petitioner Exhibit 2.* The Petitioner provided supporting documentation for its rental rates and expenses and compared those expenses with other Cardinal properties. *Petitioner Exhibits 3 and 4.* Further, the Petitioner described the method by which it determined the capitalization rate and provided the supporting 1999 investor survey. *Petitioner Exhibit 2.* From those figures, the Petitioner estimated the

market value-in-use of the subject property and the adjoining property to be \$1,700,000.⁴ *Id.* The Petitioner has therefore raised a prima facie case that the subject property is over-valued.

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). Here, the Petitioner's case was minimally sufficient to raise a prima facie case. The Petitioner offered rental and expense information solely from Petitioner's data on the subject property and other properties it owns. Had the Respondent produced evidence of the market rent of comparable properties, the Respondent may have shown that the Petitioner was charging or collecting a lower rent than the market would support. Similarly, the Respondent could have shown the Board that the Petitioner's expenses were not reasonable or typical. The Petitioner, itself, testified that its expense ratio is higher than normal, but attributes that to the pre-fabricated construction of the apartments. Had the Respondent provided evidence to demonstrate that the income and expenses were not reasonable or typical for comparable properties in the market, the Respondent may have shown that the Petitioner's low income or high expense levels were attributable to the Petitioner's management of the property as opposed to its market value. *See Thorntown Telephone Company, Inc. v. State Board of Tax Commissioners*, 588 N.E.2d 613, 619 (Ind. Tax Ct. 1992) (property-specific rents or expenses may reflect elements other than the value of the property "such as quality of management, skill of the work force, competition and the like"). Similarly, the Respondent may have presented evidence that the vacancy loss, reserve values or capitalization rate used by the Petitioner were not reasonable values. The Respondent here, however, merely alleged that the property was assessed correctly. In order to carry

⁴ The Petitioner reduced the value determined by the income approach of \$1,700,000 by the assessment assigned to the adjoining property not under appeal and argues that the subject property should be valued at \$1,413,300. *Bishop testimony*. Thus, the Petitioner claims that the subject property is over-assessed on the one hand, and deducts the assessed value of an adjoining parcel on the other hand. The Petitioner cannot have it both ways. As the Manual itself recognizes, "[t]rue tax value does not mean fair market value." MANUAL at 2. Absent evidence relating the assessed value of the adjoining parcel to its market value, the Petitioner's valuation of the adjoining parcel not under appeal is an unsupported conclusory statement that has no weight in establishing the market value of the subject property alone. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

its burden, the Respondent must do more than merely assert that it assessed the property correctly. *See Canal Square v. State Bd. of Tax Comm'rs*, 694 N.E.d2d 801, 808 (Ind. Tax Ct. Apr. 24, 1998) (mere recitation of expertise insufficient to rebut prima facie case).

25. While the property may, in fact, be valued correctly, the Petitioner minimally raised a prima facie case with its property-specific income approach valuation. The Respondent failed to rebut this evidence by showing that the income, expenses or other values used by the Petitioner in its calculation were not reasonable or typical in the market. Therefore, the Board finds that the subject property should be valued at no more than \$1,700,000.

SUMMARY OF FINAL DETERMINATION

26. The Petitioner raised a prima facie case that the property is over-valued. The Respondent failed to rebut the Petitioner's evidence. The Board, therefore, finds in favor of the Petitioner.

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 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>.