REPRESENTATIVE FOR PETITIONER:
Bradley D. Hasler, Bingham McHale, LLP

REPRESENTATIVE FOR RESPONDENT:
Jim Davis, Washington County Property Tax Assessment Board of Appeals

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BEFORE THE
INDIANA BOARD OF TAX REVIEW

Aspen Meadows, LP,	)	Petition No.: 88-022-05-1-4-00016
	)	Parcel: 88-24-21-331-001.000-022
Petitioner,	)	
	)	
v.	)	
	)	Washington County
Washington Township Assessor,	)	Washington Township
	)	2005 Assessment
Respondent.	)	

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

February 12, 2008

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence presented in this case. The Board now enters its findings of fact and conclusions of law on the following issue: Is the subject property assessed at a higher value than its market value-in-use?

Hearing Facts and Other Matters of Record

1. The subject property is an apartment complex with five buildings on 3.7 acres located at 1017 Aspen Drive in Salem.

2. On February 7, 2006, the Washington County Property Tax Assessment Board of Appeals (PTABOA) issued its determination regarding the assessment. On March 9, 2006, Aspen Meadows filed a Form 131 Petition requesting that the Board conduct an administrative review.

3. Kay Schwade, the Board's designated Administrative Law Judge, held the hearing on November 15, 2007. She did not conduct an on-site inspection of the property.

4. The PTABOA determined the 2005 assessed value is $2,312,700.

5. The Petitioner claims the total assessed value should be $666,100.

6. The following persons were sworn as witnesses at the hearing:

    For the Petitioner – Randall Warner, DeWald Property Tax Services,
    Phillip Johns, certified general appraiser,

    For the Respondent – Eugene Trueblood, Washington County Assessor,
    Jim Davis, PTABOA member,
    William Lane, certified general appraiser,
    David Bower, Washington Township Assessor.

7. The Petitioner presented following exhibits:

    Petitioner Exhibit 1 – An appraisal of Aspen Meadows, LP,

    Petitioner Exhibit 2 – A Department of Local Government Finance publication, *Overview of the Income Approach to Valuation*, dated November 12, 2003,

    Petitioner Exhibit 3 – The corrected Page 33 of the appraisal report,

    Petitioner Exhibit 4 – The corrected Page 35 of the appraisal report.

8. The Respondent presented following exhibits:

Respondent Exhibit 1 – A market value appraisal of Aspen Meadows, LP,
Respondent Exhibit 2 – An article published in *The Salem Democrat*,[1]
Respondent Exhibit 3 – The subject property record card.

9. The following additional items are recognized as part of the record:

Board Exhibit A – Form 131 Petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet.

PETITIONER'S CONTENTIONS

10. This 48-unit apartment complex was constructed in 2004. It was developed as part of the Indiana Housing and Community Development Authority's (HCDA) Rental Housing Tax Credit (RHTC) program authorized under Section 42 of the Internal Revenue Code. The RHTC program provides tax credits for construction and rehabilitation of rental housing for low-income individuals. In exchange for tax credits, the HCDA imposes restrictions on the use, transfer, and operation of the subsidized portion of the property. *Johns testimony; Pet'r Ex. 1 at 7*. The restrictive-use agreement requires that apartments with subsidized rents be leased to qualified low-income tenants. This restriction remains on the property for forty years. *Johns testimony; Pet'r Ex. 1 at 9*.

11. A certified general appraiser, Philip Johns, appraised the property. His appraisal value is based on a direct capitalization of the subject property's net operating income. *Johns testimony; Pet'r Ex. 1 at 23*. He did not employ the cost approach or the sales comparison approach. He considered the cost approach unreliable because of high external obsolescence. He considered the sales comparison approach unreliable because

[1] The Petitioner objected to Respondent Exhibit 2 because the Respondent failed to provide a copy of the document prior to the hearing as required by 52 IAC 2-7-1(b)(1). The Respondent acknowledged that fact. That objection is sustained—Respondent Exhibit 2 will not be considered in making this decision.

there are few sales of this type of property with similar restrictions. *Johns testimony; Pet'r Ex. 1 at 22*.

12. Because of the rent restrictions, low-income tenants are the market for this property. Using the median income levels in Washington County, the government sets the maximum allowable rents for the apartments under the restricted use agreement. *Johns testimony; Pet'r Ex. 1 at 23*.

13. Charging the maximum allowable rents would result in an annual potential gross income (PGI) of $280,896. The maximum allowable rents, however, are rarely the actual rents received. When the supply of low-income housing meets or exceeds the demand, competition for tenants results in lower rents. The subject property is in that situation. *Johns testimony; Pet'r Ex. 1 at 24, 25*. The stabilized occupancy rate, excluding all forms of collection loss, is approximately 92% to 95%. This occupancy rate indicates the current rents are at market levels. The Petitioner cannot collect the maximum allowable rents. As a result, the property's market rents will yield a PGI of $240,060 annually. *Johns testimony; Pet'r Ex. 1 at 26*.

14. The Petitioner has achieved its 92% to 95% occupancy level by offering incentives such as one month free rent. Additionally, in some instances, tenants do not pay the rent they owe. Based on these factors, the appraisal applied a vacancy and collection loss of 9% to the $240,060 PGI. The appraisal also included miscellaneous other income of $12,480. Together they provide an annual effective gross income (EGI) of $230,940. *Johns testimony; Pet'r Ex. 1 at 26*.

15. The appraisal analyzed the subject property's actual expenses for 2004 and 2005. This data is subject to an independent audit. The actual expenses are a good indicator of future expenses. The appraiser also analyzed the expenses of 21 other subsidized housing projects. The subject property's expenses were above average because of higher than average utility costs. Based on that difference, the appraiser reduced the actual per unit

expenses by approximately $200 to $2,833 and the total annual expenses to $136,000. *Johns testimony; Pet'r Ex. 1 at 27- 29.*

16. Using an EGI of $230,940 and expenses of $136,000, the resulting net operating income is $94,940. *Johns testimony; Pet'r Ex. 1 at 29.*

17. Because tax incentives are lost if the subject property is sold, few sales for this type of property occur. It would be impracticable to extract an overall capitalization rate (OAR) from the market. *Valuation Insights and Perspectives*, published by the Appraisal Institute, provides an OAR. For the first quarter of 2005, non-subsidized apartments had an average OAR of 6.74% (the range was 4.50% to 9.25%). This data is taken from a survey of major institutional equity real estate investors. The subject property will likely differ because of location and physical characteristics. These differences, along with the use restrictions, indicate an OAR for the subject property above the average rate and closer to the upper end of the range. Additionally, the net tax rate must be added. The adjusted OAR for the subject property would be between 10.0% and 12.0%. *Johns testimony; Pet'r Ex. 1 at 29 - 30.*

18. The appraiser tested the reasonableness of his OAR range by using the mortgage band of investment method to calculate an OAR from quarterly national market indicators. The Department of Housing and Urban Development multi-family housing mortgage rates tend to be similar to the corporate bond rate for the corresponding period. The March 2005 corporate bond rate was used to develop a mortgage rate. Based on an 80% loan-to-value ratio and an interest rate of 5.40% with a 30-year amortization period, the resulting mortgage constant is 0.0674%. *Johns testimony; Pet'r Ex. 1 at 30 - 31.*

19. The equity component is determined using an 8% return on investment, which represents minimum investment risk based on a guaranteed return on Section 515 subsidized housing. A Section 42 housing project has increased risk to an investor because of illiquidity created by the below market rents. The appraiser selected a 15% to 30% rate of return because this range reflects the rate of return for small domestic stock mutual

funds. Small domestic stock mutual funds represent an alternative investment with a high rate of return and risk. Because the equity position of the subject property is steadier than small domestic stock mutual fund investments, the appraisal used an equity yield rate of 14% in the band of investment calculation. *Johns testimony; Pet'r Ex. 1 at 31 - 32.*

20. For the band of investment method, the weighted average rate is 0.0819. After adjusting for equity build-up of -0.0042 and for change in value of +0.0011, the indicated OAR is 7.9000%. *Johns testimony; Pet'r Ex. 3*. Because the purpose of the appraisal is to determine the true tax value for property taxation, it is necessary to add the effective tax rate of 2.87507% to the indicated OAR for an adjusted OAR of 10.78%. Based on an OAR range of 10% to 12% developed from market survey data and the OAR developed using the band of investment method, a rate of 10% to 12% is reasonable. An OAR of 10.78% was used to determine the true tax value. *Johns testimony; Pet'r Ex. 1 at 34*.

21. Capitalizing the net operating income of $94,940 at 10.78%, the indicated value for the property as of March 1, 2005, is $881,000. This value must be trended to the valuation date of January 1, 1999. Using the January 1999 and January 2005 comparative cost multipliers from the June 2006 Marshall Valuation Service manual, the true tax value of the subject property as of January 1, 1999, should be $666,100. *Johns testimony; Pet'r Ex. 4; Johns testimony; Pet'r Ex. 1 at 36*.

22. The Indiana legislature made it clear that low-income housing tax credits received in exchange for a restrictive use agreement are excluded when determining true tax value. The definition of true tax value explicitly excludes intangible assets. *Hasler argument*. Consequently, the appraisal did not include the value of Section 42 tax credits. *Johns testimony; Pet'r Ex. 1 at 10 – 11*.

23. The Department of Local Government Finance (DLGF) issued a memorandum discussing the use of the income approach to value for certain properties. That memorandum states the direct income capitalization method is the preferred method for valuation. It also

states that the gross income multiplier method is the preferred valuation method for apartments with four or less units. *Pet'r Ex. 2*.

24. The Petitioner claims that the Respondent's appraisal has many faults. It does not address the special circumstances of Section 42 housing. It measures fair market value and not market value-in-use. It does not explain whether the comparable properties are subject to restrictions that are similar to those on the subject property. It does not make any adjustments for variations among the properties. And it is not trended to the appropriate valuation date. According to the Petitioner, the Respondent's appraisal does not rebut the appraisal that Mr. Johns did.

RESPONDENT'S CONTENTIONS

25. William Lane is a certified general appraiser. He appraised the subject property's fair market value using the cost approach, the sales comparison approach, and the income approach to value. *Lane testimony; Resp't Ex. 1 at 16*. His appraisal conforms to USPAP standards. *Lane testimony*; *Resp't Ex. 1 at 61.*

26. The Lane appraisal used data from the Marshall Valuation Service – Calculator Cost Method. The estimated value of the subject property using the cost approach is $2,963,000. This figure reflects the depreciated replacement cost of the buildings, paving, and estimated land value. *Lane testimony; Resp't Ex. 1 at 35*. The appraiser attributed the least weight to the cost approach due to the difficulty in estimating depreciation. *Lane testimony; Resp't Ex. 1 at 53*.

27. The sales comparison, or market, approach is based on the sale of six similar properties. Multi-family housing units sell infrequently. The Smith Street property (Sale #1) is the closest in proximity to the Petitioner's structure and is in similar condition. The property on NE Water Street (Sale #2) is most similar in the number of buildings, age, and condition. The six comparable sales have a mean sale price per unit of $32,314 and a range of $20,833 to $44,687 per unit. After removing the high and low values, the range

is $24,531 to $41,667 per unit. The indicated per unit sale price is $40,000. On that basis, the indicated value of the subject 48-unit apartment complex is $1,920,000. *Lane testimony; Resp't Ex. 1 at 44*. The appraiser gave the greatest weight to this approach. *Lane testimony; Resp't Ex. 1 at 53*.

28. The income approach uses a gross income multiplier (GIM) to estimate value. The GIM is appropriate because it reflects income, expenses, and vacancy/collection loss. The appraiser developed the GIM from five of the six comparables used for the sales comparison approach. The GIM has a range of 4.340 to 7.178. The property on NE Water Street (Sale #2), with a GIM of 7.178, is given the greatest weight because it is most similar to the Petitioner's property in building count and age. A GIM of 7 is a good indicator for the subject property based on its condition and age. *Lane testimony; Resp't Ex. 1 at 51*. Using estimated rent figures from the Salem and Paoli market area, the estimated income is $235,200. Using a GIM of 7 and an estimated gross income of $235,200, the estimated value of the subject property using the income approach is $1,645,000. *Lane testimony; Resp't Ex. 1 at 52*.

29. The reconciled fair market value of the subject property is $2,000,000 as of August 15, 2007. *Lane testimony; Resp't Ex. 1 at 2, 54*. The weighted mean method corroborates this value. Assigning a weight of 20% to the cost approach, 50% to the sales comparison approach, and 30% to the income approach yields a weighted mean value of $2,046,100. *Lane testimony; Resp't Ex. 1 at 55*.

30. The DLGF memorandum states that the gross rent multiplier is appropriate for apartments with 4 or less units and the gross income multiplier is appropriate for apartments with 4 or more units. It also states that a value derived from a properly applied income approach will result in a value substantially the same as a properly applied cost or sales comparison approach. *Davis testimony; Pet'r Ex. 2*.

31. According to the Respondent, the Petitioner's appraisal is substantially deficient because it fails to value the intangible property (tax credits) that comprises a substantial portion of its value. Excluding the value of the tax credits results in an inordinately low value.

32. The Respondent also claims that the Petitioner's appraisal deviates from standard procedures by mixing actual data with market derived data.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

33. 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).

34. 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").

35. 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

36. 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 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. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2). 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.

37. The 2005 assessment is to reflect the value of the property as of January 1, 1999. MANUAL at 4. If evidence of value relates to a different date, there also must be some explanation about how the evidence demonstrates, or is relevant to, the subject property's value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

38. The Tax Court has determined that "the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP)." *Kooshtard Prop. VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). The Petitioner presented an appraisal prepared in compliance with USPAP by a certified general appraiser. The appraiser thoroughly explained the methodology used to estimate true tax value. The Petitioner trended this result to January 1, 1999. The Petitioner established a prima facie case.

39. The Respondent contended that the Petitioner's appraisal is not probative because it fails to account for the value of federal tax credits. The Respondent is incorrect. Indiana Code § 6-1.1-4-40 provides that the "value of federal income tax credits awarded under Section 42 of the Internal Revenue Code may not be considered in determining the

assessed value of low income housing tax credit property." The Respondent's failure to recognize and apply this statutory provision clearly causes the current assessment to be much too high.

40. The Respondent also provided an appraisal prepared by a certified general appraiser that concluded the fair market value of the property was $2,000,000 as of August 15, 2007. True tax value, however, does not mean fair market value. The Respondent failed to explain how the estimate of fair market value relates to the property's market value-in-use or how this proposed value supports the current total assessment of $2,312,700.

41. Further, the Petitioner did not explain how the August 2007 value relates to the January 1, 1999, valuation date. The Respondent's appraisal is not probative in the determination of the property's 2005 assessed value. *See Long*, 821 N.E.2d at 471.

42. As a result, the Respondent failed to rebut the prima facie case that the correct total assessed value is $666,100.

SUMMARY OF FINAL DETERMINATION

43. The Board finds in favor of the Petitioner. The total assessment should be changed to $666,100.

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

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>