

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

REPRESENTATIVE FOR RESPONDENT:
Mary Beth Lemings, Noble County Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Albion Limited, d/b/a)	Petition Nos: 57-002-07-1-4-00005
Brandonwood Apartments,)	57-002-08-1-4-00005
)	
Petitioner,)	Parcel No: 57-13-24-100-196.000-002
)	
v.)	
)	County: Noble
Noble County Assessor,)	Township: York
)	
Respondent.)	Assessment Years: 2007 and 2008

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

January 19, 2011

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 of the Petitioner's Section 515 apartment complex is overstated for the 2007 and 2008 tax years based on the property's appraised values for those years.

PROCEDURAL HISTORY

2. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner's representative Edwin K. DeWald, DeWald Property Tax Services, initiated an appeal for 2007 by written document dated October 22, 2008. Mr. DeWald initiated an appeal for the 2008 tax year by written document dated September 29, 2009. The Noble County Property Tax Assessment Board of Appeals (the PTABOA) issued its determinations denying the Petitioner's 2007 and 2008 appeals on March 2, 2010. On March 29, 2010, Mr. DeWald filed Form 131 Petitions for Review of Assessment with the Board, requesting a review of the PTABOA's 2007 and 2008 determinations.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ), conducted a hearing on November 4, 2010, in Albion, Indiana.
4. The following persons were sworn and presented testimony at the hearing:¹

For the Petitioner:

Phillip D. Johns, Appraiser, The Value Company, Inc.
Edwin K. DeWald, DeWald Property Tax Services

¹ Mr. Robert A. Borgmann, DeWald Property Tax Services, and Mr. David Button, PTABOA Member, were also in attendance for the Petitioner and Respondent respectively but were not sworn in as witnesses to give testimony for their parties.

For the Respondent:

Mary Beth Lemings, Noble County Deputy Assessor
Anthony Garrison, Nexus Group, Inc.²

5. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – 2007 summary appraisal report prepared by Phillip D. Johns of The Value Company, Inc., dated October 26, 2010,
Petitioner Exhibit 2 – 2008 summary appraisal report prepared by Phillip D. Johns of The Value Company, Inc., dated October 26, 2010.

6. The Respondent presented the following exhibits:³

Respondent Exhibit 1 – Petitioner for Correction of Error – Form 133 (Form 133 petition) for March 1, 2006, for Albion Limited; income analysis and financial statements for Brandonwood Apartments and Drake Terrace II; electronic mail messages from Tony Garrison, Nexus Group, Inc., to Kim Gephart, Noble County Assessor, dated October 1, 2010; sales comparison approach and income approach

² The Petitioner’s counsel objected to Mr. Garrison representing the Respondent because, Mr. Hasler argues, Mr. Garrison is not an attorney, tax representative or county employee. *Hasler argument.* However, he was clearly identified as a witness by the Respondent in her witness and exhibit list. There is no evidence the Petitioner was prejudiced by Mr. Garrison’s actions in testifying at the hearing. Further, the Assessor was properly represented by Ms. Lemings, who is a Deputy Assessor. *See* 52 IAC 2-2-4. To the extent that the Respondent intended Mr. Garrison to represent her at the hearing, the Respondent is reminded that Mr. Garrison must comply with the Board’s representation rules. Thus, he must submit written verification that he is a “professional appraiser” approved by the Department of Local Government as required by 52 IAC 1-1-3.5 and he must file a power of attorney with the Board as required by 52 IAC 2-3-2. *See* 52 IAC 1-1-3.5.

³ The Petitioner’s counsel objected to much of Respondent’s Exhibit 1 as irrelevant because the Respondent failed to present any testimony regarding certain pages of the exhibit. *Hasler argument.* However, Mr. Hasler’s objection goes to the weight of the evidence rather than its admissibility. The Board therefore admits the entirety of Respondent’s Exhibit 1 over objection. Mr. Hasler also objected to Respondent’s Exhibit 2 because the Respondent failed to timely provide a copy of the exhibit pursuant to the Board’s exchange of evidence requirement. *Hasler argument.* In plenary appeals such as this one, parties must exchange a list of witnesses and exhibits at least fifteen business days prior to the hearing date. 52 IAC 2-7-1. They must also exchange summaries of witness testimony and copies of documentary evidence at least five business days prior to the hearing. *Id.* The purpose of this requirement is to allow both parties to be informed, to avoid surprises, and to ensure a more organized, efficient and fair consideration of the issues. The Respondent’s witness acknowledged Respondent’s Exhibit 2 was not provided to the Petitioner prior to the hearing. *Lemings testimony.* The Board, therefore, sustains the Petitioner’s objection and will not consider Respondent’s Exhibit 2 in making its determination.

analysis for Albion Limited; cost approach and income approach analysis for Drake Terrace II; Form 133 petitions for March 1, 2004, and March 1, 2006, for Drake Terrace II; and the United States Department of Agriculture (USDA) – Rural Development Multi-Family Housing Rental website pages for Drake Terrace II and Brandonwood Apartments,
Respondent Exhibit 2 – The Noble County Assessor’s position regarding Brandonwood Apartments and Drake Terrace II appeals.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 131 petitions with attachments,
Board Exhibit B – Notice of Hearing, dated September 21, 2010,
Board Exhibit C – Hearing sign-in sheets.
8. The subject property is a seventeen unit apartment complex on 1.581 acres located at 325 West Hazel Street, Albion, York Township, in Noble County.
9. The ALJ did not conduct an on-site inspection of the property.
10. For 2007 and 2008, the PTABOA determined the assessed value of the property to be \$43,500 for the land and \$620,000 for the improvements, for a total assessed value of \$663,500.
11. The Petitioner requested a total assessed value of \$267,500 for 2007 and \$274,100 for 2008.

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 Indiana 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 case. *Id; Meridian Towers*, 805 N.E.2d at 479.

PETITIONER'S CONTENTIONS

16. The Petitioner’s counsel contends the assessed values of the Petitioner’s seventeen-unit apartment complex are over-stated for 2007 and 2008, based on the property’s appraised values for those years. *Hasler argument*. In support of its contention, the Petitioner presented appraisal reports for 2007 and 2008 prepared by Phillip D. Johns, of The Value Company, an Indiana Certified General Real Property Appraiser. *Petitioner Exhibits 1 and 2*. The appraiser certified his reports were prepared in conformance with the

Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation and the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. *Id.* In his appraisal, Mr. Johns testified that he developed the depreciated replacement cost approach and the income capitalization approach to value the property. *Johns testimony; Petitioner Exhibits 1 and 2 at 17.* Mr. Johns testified, he considered the sales comparison approach unreliable because there are few sales of subsidized apartments in rural markets and it is difficult to make meaningful adjustments for financing. *Id.*

17. The subject property is a Section 515 apartment complex constructed under a federal United States Department of Agriculture (USDA) sponsored program providing loans for rural rental housing. *Johns testimony; Petitioner Exhibits 1 and 2.* According to the Petitioner's witness, the property is restricted to qualified low-income tenants and the government sets the maximum allowable rents under a restricted use agreement. *Johns testimony; Petitioner Exhibits 1 and 2 at 19.* According to Mr. Johns, when an insufficient number of qualified low-income tenants are available, the owner may rent the units to higher income tenants, but any rent collected by the owner above the basic rent level must be repaid to the government as an overage payment. *Id.* Thus, Mr. Johns argues, there is no benefit to the owner to charge above the basic rent level. *Id.* In addition, Mr. Johns testified there are compliance reporting requirements, loan prepayment restrictions and the property owner is restricted to earning a maximum of eight percent profit on a three or five percent investment. *Id.*
18. For 2007, Mr. Johns developed an income valuation for the property using an effective gross income of \$79,920 and a net income of \$31,390. *Johns testimony; Petitioner Exhibit 1.* According to Mr. Johns, he estimated the property's income from its actual rental income in 2004, 2005, and 2006 because the property is rent restricted. *Id.* He then analyzed the subject's property's actual expenses for 2004, 2005, and 2006 and compared those expenses to expense data published by the Institute of Real Estate Management. *Id.* The appraiser also considered expense data from thirteen Section 515

projects in northern Indiana. *Id.* Based on this information, Mr. Johns projected reasonable expenses to be \$3.34 per gross square foot area and \$2,855 per rental unit. *Id.*

19. Next the appraiser developed the overall capitalization rate (OAR) using conventional apartment data, including actual sales, investor survey data, the mortgage equity band of investment technique and the debt coverage ratio technique. *Johns testimony; Petitioner Exhibit 1.* According to Mr. Johns, he gave the most weight to the OAR indicated by the extraction of sales method which ranged from 8.75% to 9.25%. *Id.* However, because the property suffers from use restrictions, Mr. Johns testified that he applied an adjustment for illiquidity, offset by the rental assistance provided by the government which reduces the risk to the investor. *Id.* Based on his analysis, Mr. Johns determined that an OAR of 9.25% was a reasonable capitalization rate for the subject property for 2007, which when the effective tax rate was added resulted in an adjusted OAR of 11.30%. *Id.* Mr. Johns testified that he considered the below-market mortgage provided by the federal government to be a “benefit to the tenant, not the property owner” and therefore he did not consider the 1% mortgage in his capitalization rate. *Id.* In response to questioning, however, Mr. Johns admitted that nothing specified that the capitalization rate of conventional apartments should be used to value Section 515 or government subsidized apartments. *Johns testimony.*
20. Capitalizing the net operating income of \$31,390 at 11.30%, Mr. Johns estimated the value of the property to be \$277,800 as of March 1, 2007. *Johns testimony; Petitioner Exhibit 1.*
21. Using the same analysis for 2008, the appraiser calculated an income approach valuation using an effective gross income of \$84,630; a net income of \$32,220 based on 2005, 2006, and 2007 expenses; and a capitalization rate of 11.40%. *Johns testimony; Petitioner Exhibit 2.* This resulted in an estimated value of the property of \$282,600 as of March 1, 2008. *Id.*

22. Next, the appraiser estimated the property's value using the cost approach. *Johns testimony; Petitioner Exhibits 1 and 2.* Mr. Johns testified that he used the Marshall Valuation Service's cost data for apartments to value the buildings. *Id.* For 2007, the appraiser estimated a value of \$255,625 for the improvements after adjusting for external obsolescence due to the property's location and rent restrictions. *Johns testimony; Petitioner Exhibit 1.* For 2008, the appraiser calculated a value of \$259,718 for the improvements after adjusting for external obsolescence. *Johns testimony; Petitioner Exhibit 2.* Finally, the appraiser added the \$43,500 assessed value of the land to the improvement values, resulting in an estimated value of the property of \$299,100 for 2007 and \$303,200 for 2008. *Johns testimony; Petitioner Exhibits 1 and 2.*
23. Mr. Johns argues that, under Indiana Code § 6-1.1-4-39, real property regularly rented for residential accommodations, and having more than four units, must be assessed at the lowest value determined by the three appraisal approaches to value: the cost approach, the sales comparison approach and the income approach to value. *Johns testimony; Petitioner Exhibits 1 and 2.* Because he determined the income capitalization approach to be the lowest value, Mr. Johns argues that the value of the property as of March 1, 2007, is \$277,800 and the value of the property as of March 1, 2008, is \$282,600. *Johns testimony; Petitioner Exhibits 1 and 2.* Further, Mr. Johns argues, the property's March 1, 2007, value must be trended to the January 1, 2006, valuation date and the property's March 1, 2008, value must be trended to the January 1, 2007, valuation date. *Johns testimony; Petitioner Exhibits 1 and 2.* Based on the Consumer Price Index for the Midwest Region Housing-Shelter, published by the United States Department of Labor's Bureau of Labor Statistics, Mr. Johns argues, the property's March 1, 2007, value should be reduced by 3.71%, resulting in a true tax value of \$267,500. *Johns testimony; Petitioner Exhibit 1.* Similarly, the property's March 1, 2008, value should be reduced by 3.01%, resulting in a true tax value of \$274,100. *Id.; Petitioner Exhibit 2.*

RESPONDENT'S CONTENTIONS

24. The Respondent's witness, Mr. Garrison, similarly developed an income approach valuation using data from the Petitioner's appraisals to calculate a value for the property under appeal. *Garrison testimony; Respondent Exhibit 1 at 10.* Mr. Garrison testified that the Petitioner's average effective gross income over 2005, 2006 and 2007 was \$84,604 and the average expenses were \$52,175. *Id.* According to Mr. Garrison, this results in a net income of \$32,429. *Id.*
25. Mr. Garrison testified that he calculated a band of investments capitalization rate using the 1% mortgage rate for 95% of the project's cost and an 8% return on the 5% of the project's cost that was invested. *Garrison testimony; Respondent Exhibit 1 at 10.* Thus, Mr. Garrison concluded, for the fourteen rental units receiving rental subsidies, the OAR was 5.22%. *Id.* For the three rental units not receiving rental subsidies, Mr. Garrison calculated an OAR of 10.81% based on the capitalization rate for conventional apartments, resulting in a weighted capitalization rate of 6.21%. *Id.*
26. Mr. Garrison multiplied his estimated net operating income of \$32,429 by his weighted capitalization rate and determined the value of the subject property to be \$522,500 for the March 1, 2008, assessment date. *Garrison testimony; Respondent Exhibit 1 at 10.* Mr. Garrison testified that he used the same calculation to determine the property's value was \$471,700 for the March 1, 2007, assessment date. *Garrison testimony; Respondent Exhibit 1 at 9.*
27. Mr. Garrison also testified that he developed a sales comparison approach to value based on the listing prices of two Section 515 properties. *Garrison testimony; Respondent Exhibit 1 at 9.* According to Mr. Garrison, a 44-unit property in Latah, Idaho, with twelve one-bedroom units, twenty-eight two-bedroom units and four three-bedroom units, was listed for \$700,000. *Id.* Similarly, a 42-unit property in Sullivan, New York, with sixteen one-bedroom units and twenty-six two-bedroom units was listed for

\$496,000. *Id.* Mr. Garrison argues that both properties are similar in age and style to the Petitioner's property. *Id.* Extrapolating from the listing prices, Mr. Garrison calculated the value of a one-bedroom unit to be \$11,100, the value of a two-bedroom unit to be \$13,200, and the value of a three-bedroom unit to be \$58,000. *Id.* Applying these values to the Petitioner's property, Mr. Garrison argues, the property's value was \$386,800 for 2007 and 2008. *Id.*

28. Finally, Mr. Garrison testified that the cost approach value of the property, as shown on the property record cards, was \$592,900 for 2007 and \$663,500 for 2008. *Garrison testimony; Respondent Exhibit 1 at 9.*
29. Because the lowest value for the property resulted from the sales comparison approach, Mr. Garrison testified that he gave the greatest weight to that approach. *Garrison testimony.* In response to questioning, however, Mr. Garrison admitted that he was not an appraiser and that his estimates of the property's values were not prepared in compliance with the Uniform Standards of Professional Appraisal Practice.

ANALYSIS

30. Indiana assesses real property based on its "true tax value," which the 2002 Real Property Assessment Manual defines as "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." 2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property's market value: the cost approach, the sales comparison approach, and the income approach to value. *Id.* at 3, 13-15.
31. Indiana assessing officials generally use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (the GUIDELINES). However, for assessment dates after February 28, 2005, the legislature promulgated specific rules for the valuation of rental property and mobile homes. *See*

Ind. Code § 6-1.1-4-39. Under Indiana Code § 6-1.1-4-39(a), a rental property with more than four units is to be assessed according to the lowest valuation determined from the three generally accepted approaches to value. Ind. Code § 6-1.1-4-39(a).

32. A party must also explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment date, the valuation date is January 1, 2006. 50 IAC 21-3-3. Similarly, for the March 1, 2008, assessment, that valuation date is January 1, 2007. *Id.*
33. Here, the Petitioner contends its property's assessment is over-valued in 2007 and 2008 based on the property's appraised values. *Johns testimony*. In support of this contention, the Petitioner presented appraisal reports prepared by Phillip Johns. *Petitioner Exhibits 1 and 2*. Mr. Johns is an Indiana Certified Appraiser who testified that he prepared his appraisal reports in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP). *Johns testimony*. In addition, Mr. Johns is experienced in the valuation of Section 515 housing. *Id.*
34. Mr. Johns testified that he valued the subject property using both the cost approach and the income approach and determined that the income approach produced the lowest value for the Petitioner's property for both tax years.⁴ *Id.* After adjusting the values to the correct valuation dates, Mr. Johns calculated the market value-in-use of the property to be \$267,700 for 2007 and \$274,100 for 2008. *Petitioner Exhibit 1*. Appraisals performed in accordance with generally recognized appraisal principles are often sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479. The Board therefore finds that the Petitioner raised a prima facie case that the property is over-valued for 2007 and 2008.

⁴ Mr. Johns explained that because there were very few sales of Section 515 apartment complexes, he did not develop the sales comparison approach. *Johns testimony; Petitioner Exhibits 1 and 2*.

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 Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
36. The Respondent's witness first submitted an income analysis estimating the property's value to be \$471,700 for 2007 and \$522,500 for 2008. *Garrison testimony; Respondent Exhibit 1 at 10*. In his analysis, Mr. Garrison used the average of the property's actual income and expenses and developed a weighted capitalization rate based on a 1% mortgage on 95% of the project's costs and an 8% return on investment on 5% of the project's costs for the fourteen "subsidized" apartments and using market capitalization rates for the three "unsubsidized" apartments. *Id.* The Respondent's witness, however, failed to explain how he determined the "market" capitalization rate. Mr. Garrison merely claims that the "overall cap rate for conventional apartments was 10.81%." *Garrison testimony*. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998). Further, Mr. Garrison applied his "market" capitalization rate to 17.65% of the project because he contends that three of the seventeen apartments were rented at market rates. *Garrison testimony; Respondent Exhibit 1 at 10*. However, he testified that he obtained the information from the USDA website and admitted it was for "the day he looked it up" rather than for March 1, 2007, or March 1, 2008. *Garrison testimony*. Finally, Mr. Garrison failed to explain how his income analysis estimates the property's values as of the January 1, 2006, valuation date for the March 1, 2007, assessment or the January 1, 2007, valuation date for the March 1, 2008, assessment. *See Long v. Wayne Township Assessor*, 812 N.E.2d 466, 469-471 (Ind. Tax Ct. 2005).

37. Mr. Garrison's income valuation, however, raises a troubling issue with the Petitioner's appraisal. Because Mr. Johns assigned the benefit of owning the property – the 1% subsidized mortgage – to the tenant, he ignored the impact of the subsidized mortgage on the property's value. Thus, Mr. Johns chose to value the detriment of owning and operating a Section 515 housing project – namely the restricted rents – but he failed to consider the benefit of owning subsidized property – the mortgage subsidy – on the property's value. In a previous order, the Board cautioned against such a parsing of interests. In *Schooler v. Boone County Assessor*, Petition No. 06-003-071-5-00044 (May 7, 2010), the Board determined that a property should be valued based on its fee simple interest and held that ignoring the lessee's interest in a "below market" lease was not the best evidence of the property's value. It appears the same analysis would apply here. The better evidence in this case would have been to value the property as a whole, rather than to assign the mortgage subsidy to the tenant and ignore it in the property's valuation. However, the Petitioner's appraiser is a licensed appraiser. He is experienced in valuing Section 515 apartments and he certified that he prepared his analysis according to USPAP standards. Thus, while the Board would have found an appraisal that considered the below market financing in its analysis more persuasive, the Respondent's arguments fail to impeach the Petitioner's case.
38. The Respondent's witness also presented a sales comparison analysis to support the property's 2007 and 2008 assessments. *Garrison testimony; Respondent Exhibit 1 at 9*. According to Mr. Garrison, he found two Section 515 properties offered for sale on the USDA website and from those properties he calculated the value of a one-bedroom unit to be \$11,100, the value of a two-bedroom unit to be \$13,200, and the value of a three-bedroom unit to be \$58,000. *Id.* Applying these values to the Petitioner's property, Mr. Garrison argued the property's value was \$386,800 for 2007 and 2008. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties.

Long, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* Here, the Respondent's witness merely argued that the properties were both Section 515 properties that were similar in age and style to the Petitioner's property. This falls far short of the burden to prove that properties are comparable. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972). Further, the properties were listed for sale long after the relevant valuation dates for the tax years at issue in the Petitioner's appeals. *See Long*, 812 N.E.2d at 469-471. Thus, the Respondent's evidence is not probative of the market value-in-use of the property under appeal for 2007 or 2008.

39. In the end, Mr. Garrison testified that he is not an appraiser and his income analysis and sales comparison analyses were not prepared in conformance with USPAP standards. Even with Mr. Johns' failure to consider the subsidized mortgage in his capitalization rate, the Board finds the Petitioner's appraised values more persuasive than the Respondent's income analysis or sales comparison approach.

SUMMARY OF FINAL DETERMINATION

40. The Petitioner raised a prima facie case that the 2007 and 2008 assessed values of its property are overstated. The Respondent presented rebuttal evidence. The Board finds the weight of the evidence supports the Petitioner's case and holds that the property's 2007 true tax value is \$267,500, and the property's 2008 true tax value is \$274,100.

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

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>.