REPRESENTATIVE FOR PETITIONER:
Christopher D. Oakes, Cox, Oakes, and Associates, Ltd.

REPRESENTATIVE FOR RESPONDENT:
Joseph Taylor, Field Deputy, Ross Township

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Chapelle Le Grande Apartments, Limited Partnership,	)	Petition Nos.:	45-026-06-1-5-00045 45-026-06-1-5-00046
Petitioner,	)	Parcel Nos.:	008-08-15-0115-0112 008-08-15-0115-0113
v.	)		
Lake County Assessor,	)	County:	Lake
Respondent.	)	Assessment Year:	2006

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

October 24, 2011

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has 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 values of the Petitioner's properties are over-stated for the 2006 assessment year.

PROCEDURAL HISTORY

2. The Petitioner initiated its assessment appeals by filing Form 130 Petitions with the Lake County Property Tax Assessment Board of Appeals (PTABOA) seeking a review of its properties' assessments on October 15, 2007. The PTABOA issued its assessment determinations on January 28, 2011.

3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner filed Form 131 Petitions for Review of Assessment on March 14, 2011, petitioning the Board to conduct an administrative review of the properties' 2006 assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on August 15, 2011, in Crown Point, Indiana.

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

For the Petitioner:

Kevin J. Donohoe, Equity Property Management, LLC

For the Respondent:

Joseph Taylor, Field Deputy, Ross Township.[1]

[1] Nicole Ooms, Field Deputy, Ross Township, and Robert W. Metz, Lake County Hearing Officer, were also present and sworn, but did no t testify.

6. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Chapelle Le Grande Apartments' Income Statement Summary for 2003, 2004 and 2005,
Petitioner Exhibit 2 – Chapelle Le Grande Apartments' income capitalization valuation,
Petitioner Exhibit 3 – Chapelle Le Grande Apartments' 2003 Financial Statements,
Petitioner Exhibit 4 – Chapelle Le Grande Apartments' 2004 Financial Statements,
Petitioner Exhibit 5 – Chapelle Le Grande Apartments' 2005 Financial Statements,
Petitioner Exhibit 6 – Capitalization rate sales comparable data.

7. The Respondent presented the following exhibits:

Respondent Exhibit 1 – A sales disclosure form for the subject property, an income approach valuation of the property, capitalization rate derivation, and Chapelle Le Grande Apartments' income statement summary for 2006, 2007, and 2008.[2]

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

Board Exhibit A – Form 131 Petitions,
Board Exhibit B – Notices of Hearing dated June 7, 2011,
Board Exhibit C – Hearing sign-in sheet.

[2] The Petitioner's counsel objected to the Respondent's documentary evidence and testimony on the grounds that the Respondent failed to timely submit its list of witnesses and evidence fifteen business days before the hearing as required by 52 IAC 2-7-1(b)(2) and failed to submit a summary of witness testimony five business days before the hearing. *See* 52 IAC2-7-1(b)(1). The Petitioner, however, received copies of the Respondent's evidence on August 8, 2011, which is within the statutory time frame required by 52 IAC 2-7-1(b)(1). More importantly, the Respondent's witness did not testify to any matter outside of the documents that were provided to the Petitioner in accordance with the Board's rules. Therefore, the Board finds that the Petitioner's case was not prejudiced by the failure of the Respondent to timely exchange the list of witnesses and exhibits as the Respondent's documentary evidence was exchanged in a timely manner.

9. The subject properties are an apartment complex located at 210-331 West 75th Street and a vacant parcel located at approximately 7509 Madison Street, in Merrillville, Indiana.[3]

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

11. For 2006, the PTABOA determined the assessed value of Parcel No. 008-08-15-0115-0112 to be $407,700 for the land and $4,592,300 for improvements, for a total assessed value of $5,000,000; and the assessed value of Parcel No. 008-08-15-0115-0113 to be $20,000 for the land. There are no improvements on Parcel No. 008-08-15-0115-0113.

12. The Petitioner contends the total assessed value for both parcels under appeal should be $4,042,000 for the 2006 assessment year.

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, (3) property tax exemptions, and (4) property tax credits 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

14. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals 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*

[3] The parties presented evidence as if both parcels were used as a single property. The Board therefore assumes the vacant parcel is adjacent to the parcel on which the apartment complex is located. However no maps were submitted and neither witness specifically testified regarding the relationship of the two parcels.

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).

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

PETITIONER'S CONTENTIONS

17. The Petitioner's counsel argues that the properties are over-valued for the 2006 assessment year based on the income approach to value. *Oakes argument.* In support of this contention, the Petitioner presented an income capitalization valuation estimating the properties' market value to be $4,042,000 for the March 1, 2006, assessment. *Petitioner Exhibit 2*.

18. The Petitioner's witness, Mr. Donohoe, testified that in preparing his income approach calculation he considered all sources of income for the properties for 2003, 2004, and 2005, and the sources that detracted from income, such as vacancy, the employee apartment, rent concessions, and collection losses. *Donohoe testimony; Petitioner Exhibit 1*. According to Mr. Donohoe, he used a three-year average of the properties' income, or $899,029.67, in his analysis. *Donohoe testimony*. Similarly, Mr. Donohoe testified, he used a three year average of the properties' expenses, or $418,834.67. *Id.* According to Mr. Donohoe, the ratio of expenses to income for this time period was approximately 37% for 2003, approximately 46% for 2004, and approximately 50% for

2005. *Id*. Mr. Donohoe argues that the usual and customary ratio of expenses to income for apartment complexes in the area is between 47% and 53%. *Id*. In fact, he contends, the Institute of Real Estate Management's published data indicates the average ratio is 48% for the upper Midwest region, including Indiana. *Id*.

19. Mr. Donohoe then subtracted the properties' average expenses from the properties' average income and determined that the net operating income for the property was $480,195. *Donohoe testimony*. According to Mr. Donohoe, he did not include real estate taxes, financial expenses or capital expenses in calculating the NOI. *Id.; Petitioner Exhibit 1*. In response to the Respondent's arguments, Mr. Donohoe argues that the employee apartment expense was an appropriate deduction because it was part of the employee's salary, or income. *Donohoe testimony.* According to Mr. Donohoe, if the amount was not deducted from the income, it would increase overall payroll expense on a dollar-for-dollar basis. *Id.*

20. In order to capitalize the net income, Mr. Donohoe testified that he reviewed the sales of four comparable properties in northwest Indiana. *Donohoe testimony; Petitioner Exhibit 6*. From those sales, Mr. Donohoe calculated a capitalization rate of 9%. *Id.* Mr. Donohoe then added the effective tax rate, resulting in an overall capitalization rate of 11.88%. *Donohoe testimony*. Applying the 11.88% capitalization rate to the NOI, Mr. Donohoe contends, results in a value of $4,042,045.45 for both parcels at issue in this appeal. *Id.; Petitioner Exhibit 2*.

21. The Petitioner's counsel argues that the properties' assessed values should be given little weight because they were "a classic example of sales chasing." *Oakes argument*. According to Mr. Oakes, the Ross Township Assessor did not assess the properties until September 2007, which is approximately six months after the sale. *Id*. Moreover, the sale occurred 27 months after the valuation date. *Id*. Thus, Mr. Oakes argues, the Petitioner's purchase of the subject properties in 2007 is not relevant to the properties' values for the 2006 assessment year. *Id.*

22. Similarly, Mr. Oakes argues, the Respondent's income valuation, which is based on income and expenses from 2006, 2007, and 2008, is irrelevant because the evidence also postdates the January 1, 2005, valuation date for the March 1, 2006, assessment date. *Id.* Further, Mr. Oakes argues, the Respondent submitted no documentation to support the 10.6% capitalization rate it used in its "recreated" income approach; nor has the Respondent submitted documentation to support its contention that a 30% to 40% range is normal for an income to expenses ratio. *Id.* According to Mr. Oakes, a property may have higher or lower expenses "based on its operations."[4] *Id.*

23. Finally, Mr. Oakes argues that Indiana law requires rental properties to be assessed at the lowest value determined by applying the three approaches to value: the cost approach, the sales comparison approach, and the income capitalization approach. *Oakes argument.* Mr. Oakes contends that the only approach before the Board is the income capitalization approach because the Respondent failed to submit any valuation based on the cost approach or the sales comparison approach for the properties at issue in this appeal. *Id.*

RESPONDENT'S CONTENTIONS

24. The Respondent's representative contends that the properties were correctly assessed based on their sales price. *Taylor testimony*. According to Mr. Taylor, the property sold on December 12, 2006, for $5,250,000. *Id*. In support of this contention, the Respondent submitted the sales disclosure form for the subject property. *Respondent Exhibit 1, pp.1-3*. Mr. Taylor contends that, although the sale occurred almost two years past the valuation date for the 2006 assessment, it gives weight to the properties' 2006 assessed values. *Taylor testimony*.

25. The Respondent's representative further contends that the properties are assessed correctly based on their income value. *Taylor testimony.* Mr. Taylor testified that the

[4] Mr. Donohoe testified that the expenses went down after its purchase of the properties because rental income increased and the Petitioner began managing the property. *Donohoe testimony.* According to Mr. Donohoe, the Petitioner "brought certain economies of scale to bear on the expenses with regard to administrative, advertising and so forth…" *Id.*

assessor prepared an income approach valuation by altering some of the values used by the Petitioner's witness in the Petitioner's income approach valuation. *Id.; Respondent Exhibit 1, p.4*. Mr. Taylor first argues that the Petitioner's deduction for an employee apartment was not an appropriate adjustment because it was not necessary to operate the facility. *Taylor testimony*. Thus, the Respondent omitted the employee apartment adjustment from the Petitioner's income. *Id.*

26. Mr. Taylor also contends that the Petitioner's expenses are too high for the area. *Taylor testimony.* According to Mr. Taylor, expense ratios of 30% to 40% are normal for apartments in Ross Township. *Id*. In fact, Mr. Taylor argues that the Petitioner's own evidence supports a lower expense ratio. *Id.* According to Mr. Taylor, expenses dramatically increased from 38.49% in 2003 to 52.78% in 2005; but later data shows that the expense ratios dropped back down to 38.6% and 41.9% for 2007 and 2008 after the Petitioner purchased the properties. *Id.* Mr. Taylor contends that the data for later years is relevant because it shows at what expense ratio the property can operate. *Taylor cross-examination.*

27. Based on the omission of the "employee apartment adjustment" and applying a 40% expense ratio, Mr. Taylor argues, the properties' net operating income for the 2006 assessment year was $545,781, rather than the $480,195 calculated by the Petitioner. *Taylor testimony; Respondent Exhibit 1, p.4*. Mr. Taylor testified that he divided the properties' sale price by the estimated net operating income to calculate a capitalization rate, which resulted in a loaded capitalization rate of 8.93%. *Id.* However, Mr. Taylor contends that, because there was such a discrepancy between the capitalization rate determined by the properties' sale price and the capitalization rate applied in the Petitioner's income analysis, he used a 10.6% capitalization rate, which he argues is more accurate for Ross Township, resulting in an income value of $5,148,900 for the properties for the 2006 assessment year. *Id.*

ANALYSIS

28. The 2002 Real Property Assessment Manual defines "true tax value" 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 at 2 (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. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.

29. While a property's assessment under the Guidelines is generally presumed to accurately reflect its true tax value, *see* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005)*; P/A Builders & Developers, LLC,* 842 N.E.2d 899 (Ind. Tax 2006), 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: the cost approach, the sales comparison approach, or the income capitalization approach. Ind. Code § 6-1.1-4-39(a).

30. In addition, for the March 1, 2006, assessment, the valuation date was January 1, 2005. 50 IAC 21-3-3. Thus, a party must 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). .

31. The Petitioner's counsel contends that the Petitioner's properties were over-valued in 2006 based on the properties' income value. *Oakes argument*. "The income approach to

value is based on the assumption that potential buyers will pay no more for the subject property…than it would cost them to purchase an equally desirable substitute investment that offers the same return and risk as the subject property." MANUAL at 14. The income approach considers the property as an investment and therefore values the property based on the rent it will produce for its owner. *Id.* Thus, the income approach focuses on the intrinsic value of the property, rather than upon the operation of the property because property-specific rents or expenses may reflect elements other than the value of the property "such as quality of management, skill of work force, competition, and the like." *Thorntown Telephone Company, Inc. v. State Board of Tax Commissioners*, 588 N.E.2d 613, 619 (Ind. Tax Ct. 1992). *See also* MANUAL at 5 ("[C]hallenges to assessment [must] be proven with aggregate data, rather than individual evidence of property wealth….[I]t is not permissible to use individual data without first establishing its comparability or thereof to the aggregate data").

32. Here, the Petitioner based its calculation on the properties' own income and expenses. The Petitioner, however, provided no documentation to demonstrate that the income and expenses were typical for comparable properties in the market. Thus, any low rental income or high expense levels may be attributed to the Petitioner's management of the property as opposed to the property's market value. *See Lake County Trust Co. No. 1163 v. State Board of Tax Commissioners*, 694 N.E.2d 1253, 1257-58 (Ind. Tax Ct. 1998) (economic obsolescence was not warranted where taxpayer executed unfavorable leases resulting in a failure to realize as much net income from the subject property). In fact the Petitioner's witness testified that the property's relatively higher expenses at the time of the assessment at issue were related in part to the former owner's management. According to Mr. Donohoe, the Petitioner "brought certain economies of scale to bear on the expenses with regard to administrative, advertising and so forth…"

33. Moreover, the Petitioner's witness failed to adequately support his capitalization rate. A capitalization rate "reflects the annual rate of return necessary to attract investment capital and is influenced by such factors as apparent risk, market attributes toward future inflation, the prospective rates of return for alternative investments, the rates of return

earned by comparable properties in the past, the supply of and demand for mortgage funds, and the availability of tax shelters." *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 275 (Ind. Tax Ct. 2005). Here, Mr. Donohoe based his capitalization rate on four sales from the "Loopnet" website, but he failed to show that the properties were comparable to the subject properties. Moreover, Mr. Donohoe presented no evidence that compared his calculated capitalization rate to published rates as a check on the accuracy of his value. In addition, Mr. Donohoe presented no foundation for his reliance on the "Loopnet" website. While the rules of evidence generally do not apply in the Board's hearings, the Board requires some evidence of the accuracy and credibility of the evidence. It is not sufficient to merely present sales from a website and purport to rely on the data without showing that the website is a credible data service that is typically relied upon by appraisal professionals as representative of the local market.

34. Ultimately, while Mr. Donohoe's assertions may not differ significantly from those made by a certified appraiser in an appraisal report, the appraiser's assertions are backed by his education, training, and experience. The appraiser also typically certifies that he complied with USPAP. Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data, where available, to quantify his adjustments. And where objective data was not available, the Board can infer that the appraiser relied on his education, training and experience to estimate a reliable quantification. Mr. Donohoe, however, is not a certified appraiser. He did not testify that he complied with USPAP in performing his valuation analysis. In addition, as an officer of the property's management company, Mr. Donohoe's opinion of value is less credible than a licensed appraiser with no interest in or relation to the subject properties. The Board therefore will not simply defer to Mr. Donohoe's "market observations" without evidence showing that the data upon which he grounded his observations was accurate and reliable and represented actual market conditions.

35. To the extent that the Petitioner contends that its properties' assessed values were improper because they were based on "sales chasing," the Board finds that the Petitioner similarly fails to raise a prima facie case. "Sales chasing" or "selective reappraisal" is the

"practice of selectively changing values for properties that have been sold, while leaving other values alone." *Big Foot Stores, LLC v. Franklin Township Assessor,* 919 N.E.2d 621, fn. 5 (Ind. Tax Ct. 2009) (citing *County of Douglas v. Nebraska Tax Equalization and Review Comm'n,* 635 N.W.2d 413, 419 (Neb. 2001)).

36. Here, the Petitioner only showed that its properties' 2006 assessed values were nearly identical to the properties' 2007 purchase price. The Petitioner, however, presented no evidence of its properties' prior assessments or evidence of the assessed values of other similar properties. Therefore there is no record that the Petitioner's properties were increased in value to their purchase price while other properties' values remained unchanged. Nor did the Petitioner present any evidence that other properties were not similarly assessed close to their market values. Thus, absent a showing that the Petitioner's properties were somehow assessed differently than other similar properties, the Petitioner has failed to raise any cognizable claim.[5]

37. The Petitioner failed to raise a prima facie case that its properties were over-assessed for the 2006 tax year. Where a Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

38. The Petitioner failed to raise a prima facie case that its properties were over-valued for the 2006 assessment year. The Board finds in favor of the Respondent.

[5] The Board notes that assessing properties at or near their actual market values is the goal of Indiana's market value-in-use system. *See P/A Builders & Developers v. Jennings County Assessor,* 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*"). The harm only comes when other properties are treated differently. And there is no evidence in the record that that is the case here.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review now determines that the assessed values of the Petitioner's properties should not be changed.

ISSUED: _____

_____
Chairman, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

_____
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>