

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

Petition #: 04-004-02-1-4-00004
Petitioner: Country Place Apartments IV
Respondent: Center Township Assessor (Benton County)
Parcel #: 08154421700004
Assessment Year: 2002

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Benton County Property Tax Assessment Board of Appeals (PTABOA) by written document dated September 29, 2003.
2. Notice of the decision of the PTABOA was mailed to the Petitioner on April 16, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on May 5, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated June 9, 2004.
5. The Board held an administrative hearing on July 19, 2004, before the duly appointed Administrative Law Judge Joan L. Rennick.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Eugene Stuard, Consultant on Low Income Housing.
Christopher Stuard, Certified Tax Representative.
 - b) For Respondent: Janet C. Guimond, Benton County Assessor.
Phyl Olinger, Center Township and Benton County Representative.
Kelly Rose, Benton County Reassessment Director.
7. The Petitioner requested that the income and expense information presented in evidence be kept confidential.

Facts

8. The property is classified as commercial/apartments, as is shown on the property record card for parcel # 08154421700004. The subject property is a low income subsidized apartment complex consisting of twenty-four (24) one (1)-bedroom apartments. There are three (3) identical apartment buildings (each has 8 apartments) and an additional building which contains the office, laundromat, and storage. There are 1.363 acres of land.
9. The Administrative Law Judge did not conduct an inspection of the property.
10. Assessed Value of subject property as determined by the Benton County PTABOA:
Land \$24,800 Improvements \$668,900 Total \$693,700.
11. Assessed Value requested by Petitioner on the Form 131 petition:
Land \$24,800 Improvements \$425,200 Total \$ 450,000.

Issue

12. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) There are seven differences between conventional apartments and low income subsidized apartments: 1) income has limitations; 2) occupancy is restricted; 3) use is restricted; 4) profits are limited; 5) sales are extremely rare; 6) highest and best use is restricted; and 7) buyers will not pay for an income stream that they cannot receive as related to the conventional market. *E. Stuard Testimony and Petitioner's Exhibit 3.*
 - b) The current assessment is based on the Cost Approach that, at best, is flawed due to the difficulty in estimating depreciation. Also, the current assessment does not consider the economic obsolescence in these type properties that is easily defined. *Petitioner's Exhibit 1.*
 - c) The Sales Approach is not reliable because of a lack of sales of similar properties. Market studies indicate that Low Income Subsidized Apartments do not demand a typical market, but when sales do occur, they are generally not arm's-length transactions and sell for less than the indicated value in the Form 131. *Petitioner's Exhibit 1.*
 - d) The Petitioner presented a copy of a Department of Local Government Finance (DLGF) memorandum dated November 12, 2003, and titled "Overview of the Income Approach to Valuation." The memorandum states the income approach is most applicable to properties that are leased and held for investment, such as apartments. *Petitioner's Exhibit 5.*
 - e) The Petitioner contracted with a consultant, Charles W. Wallis, IFAC, to develop assessment values based on the Income Approach utilizing several methodologies, including Discounted Cash Flow, Building Residual, International Association of Assessing Officers (IAAO) published methodology specifically relating to Low Income Subsidized Apartments, and the Kentucky Revenue Cabinet's Guidelines for Assessing Low Income Housing established in the year 2000. The indicated values range from \$320,839 to \$458,352. The Petitioner noted that the methodology utilized by the consultant does give consideration to all benefits and

all restrictions related to the property including rental assistance and interest subsidy. Mr. Wallis is an Indiana Certified General Appraiser and a Level II Assessor. *Petitioner's Exhibit 1 (Form 131, pages 5, 12-16).*

- f) The Petitioner opined that the Kentucky Revenue Cabinet (KRC) Guideline method was the best method. The KRC Guideline resulted in an indicated assessed value of \$458,352 for the subject property. *Petitioner's Exhibit 1 (Form 131, page 15 of attachments).*
 - g) The Petitioner explained that all income and rent assistance is included in the Gross Actual Income. *Petitioner's Exhibit 1 (Form 131, page 15 of attachments; Form 130, page 29 of attachments).* The Interest Subsidy is a calculated number based on the United States Department of Agriculture (USDA) rate and the 1% mortgage interest rate. *Petitioner's Exhibit 1 (Form 131, page 15 of attachments).* The operating and maintenance expenses include real estate taxes. *Petitioner's Exhibit 1 (Form 131, page 15 of attachments; Form 130, page 30 of attachments).* The Petitioner added the real estate taxes back to the net operating income for the calculation. The Capitalization (CAP) Rate was adjusted to include the real estate tax rate. *Petitioner's Exhibit 1 (Form 131, page 15 of attachments). Testimony of E. Stuard.*
 - h) The Petitioner presented Exhibit 8 to clear up the confusion about the real estate taxes. The Petitioner explained that when real estate taxes are included in the operating expenses, the CAP rate does not include a tax rate. When real estate taxes are not included in the operating expenses, the CAP rate does include a tax rate. *Petitioner's Exhibit 8; Testimony of E. Stuard.*
13. Summary of Respondent's contentions in support of the assessment:
- a) The Respondent contends the Petitioner willingly entered into the USDA loan agreement and was knowledgeable of the terms and conditions inherent to the loan. Therefore, the Respondent contends the deed restrictions created a financial benefit to the Petitioner.
 - b) The Respondent contends the Petitioner included real estate taxes twice when computing the Net Operating Income. The Respondent contends that correcting this mathematical error would change the Indicated Assessment to \$651,907. *Respondent's Exhibit 6.* The Respondent stated that the corrected Indicated Assessment of \$651,907 is 95% of the total assessed value of \$693,700.
 - c) The Respondent maintains that, although the Cost Approach method was used to arrive at the valuation, it is very reflective of the Income Approach to Value considering the Income Approach has an indicated assessment of \$651,907 and the Cost Approach method indicates a value of \$693,700.
 - d) The Respondent contends the Township Assessor arrived at the assessed values following the instructions outlined in the 2002 Version A - Real Property Assessment Guidelines.

Record

14. The official record for this matter is made up of the following:
- a) The Petition, and all subsequent pre-hearing and post-hearing submissions by either party.
 - b) The tape recordings of the hearing labeled BTR # 6007 & 6008.

c) Exhibits:

Petitioner's Exhibit 1: Form 131 filed May 6, 2004, and attachments including the Form 130.

Petitioner's Exhibit 2: Board-Presentation Guide-Summary of Contents.

Petitioner's Exhibit 3: Low Income Subsidized Housing "There is a Difference."

Petitioner's Exhibit 4: Overall Capitalization Rate Study.

Petitioner's Exhibit 5: DLGF Memo titled "Overview of the Income Approach to Valuation" dated November 12, 2003.

Petitioner's Exhibit 6: Research on Low Income Subsidized Housing Sales-U.S. Housing and Urban Development Publication.

Petitioner's Exhibit 7: A copy of the Tax Court decision, *Meridian Towers East & West v Washington Township Assessor*, 805 N.E.2d 475 (Ind. Tax Ct. 2003).

Petitioner's Exhibit 8: Summary of Indicated Assessment.

Respondent's Exhibit 0: Center Township Assessor Response to Form 131 Petition Issues.

Respondent's Exhibit 1: Letter of Authorization allowing Ms. Phyl Olinger to represent the Center Township Assessor.

Respondent's Exhibit 2: Copy of Subject 2002 Property Record Card.

Respondent's Exhibit 3: Copy of Form 115, Notice of Final Assessment Determination.

Respondent's Exhibit 4: Copy of pages 54-59, "Subsidized Housing: An Assessor's Viewpoint," *Assessment Journal*, July/August 1997.

Respondent's Exhibit 5: Copy of Indiana Tax Court decision, *Pedcor Investments-1990-XIII, L.P. v. State Board of Tax Commissioners*, 715 N.E.2d 432 (Ind. Tax Ct. 1999).

Respondent's Exhibit 6: Copy of Petitioner's Exhibit 1, pages 13 and 30, with Respondent's notes/computations.

Respondent's Exhibit 7: Copy of "Comparing the Costs of Federal Housing Assistance Programs," U.S. General Accounting Office Report, FRBNY Economic Policy Review / June 2003.

Respondent's Exhibit 8: Township Rebuttal to evidence received July 13, 2004.

d) These Findings and Conclusions.

Analysis

15. The most applicable governing cases are:

- a) The Board will not change the determination of the County Property Tax Assessment Board of Appeals (PTABOA) unless the Petitioner has established a prima facie case and, by a preponderance of the evidence, proven both the alleged errors in the assessment and specifically what assessment is correct. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E.2d 765 (Ind. Tax Ct. 1997).

- b) 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 East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003).
16. The Petitioner did provide sufficient evidence to support its contentions. This conclusion was arrived at because:
- a) The Petitioner computed the assessment using the income approach. The Petitioner notes that the DLGF indicates that the income approach is most applicable to properties that are leased and held for investment, such as apartments. *Petitioner's Exhibit 5*.
 - b) The Petitioner used an income approach method accepted and recognized by the KRC for low income housing. The Petitioner stated that this method recognized all benefits and restrictions of low income housing. This method results in a value of \$458,352 for the improvements. *Petitioner's Exhibit 1 (Form 131, page 15); Testimony of E. Stuard*.
 - c) The Respondent initially disputed the calculations used by the Petitioner in the IAAO valuation of subsidized housing method. The Respondent contends the real estate taxes were included twice in the computing of the net operating income. The "corrected" calculations used by the Respondent made the bottom line closer to the assessed value determined by the Respondent. *Respondent Exhibit 6*.
 - d) However, in response to the Respondent's question on the inclusion of real estate taxes, the Petitioner explained the calculation and presented an exhibit to clarify the calculations. *Petitioner's Exhibit 8*. The Petitioner questioned the Respondent to see if the explanation was understood and the questions on the real estate taxes had been answered. The Respondent answered affirmatively.
 - e) The Petitioner asked the Respondent if the Respondent was aware of any income or expenses that the Petitioner missed. The Respondent answered "no."
 - f) The Petitioner asked the Respondent if it would agree that the Petitioner took all benefits into consideration. The Respondent answered "yes."
 - g) The Petitioner computed the assessment using the income approach method and provided support for that method. The Petitioner provided relevant evidence in support of its method and has established a prima facie case.
 - h) Accordingly, the Respondent must rebut the Petitioner's prima facie case with substantial evidence.
 - i) The Respondent contended that the property was assessed according to the Version A – Real Property Assessment Guideline (Guideline). The cost approach is a generally recognized method of valuing property. However, the cost approach to value contained in the Guideline is not the only acceptable means of determining a property's true tax value for the 2002 reassessment. (*Guideline, Introduction, page 2*) (Stating that both the comparable sales approach and the capitalized income approach may be used, if applicable).
 - j) The Board must therefore evaluate all of the evidence presented to determine which methodology is better supported in this appeal.

- k) The Petitioner's methodology takes into consideration the benefits and restrictions related to low income subsidy housing. The Respondent questioned only the portion of the calculation concerning the inclusion of real estate taxes. The Respondent subsequently acknowledged that it understood the Petitioner's explanation of this portion of the calculation. Further, the Respondent agreed that there were no income or expense amounts that were not included in the calculation. The Respondent additionally agreed that all benefits of the low income housing agreement were included in the calculation. The Respondent therefore failed to rebut the Petitioner's prima facie case of error.
- l) After evaluating all of the evidence, the Board finds the Petitioner's methodology to be the more persuasive in this appeal.

Conclusion

17. For the reasons set forth, the Board finds in favor of the Petitioner. The Board determines the value of the improvements to be \$458,352. The land value, which was not disputed, is \$24,800. The total assessed value for the March 1, 2002 assessment date is \$483,152. There is a change in the assessment.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

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.