

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions (Small Claims Docket)

**Petition #:** 53-009-02-1-5-00088B  
**Petitioner:** David R. Pollock  
**Respondent:** Perry Township Assessor (Monroe County)  
**Parcel #:** 015-31700-81  
**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 Monroe County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 9, 2003.
2. The Petitioner received notice of the decision of the PTABOA on June 19, 2003.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on July 24, 2003.
4. The Board issued a notice of hearing to the parties dated January 14, 2004.
5. The Board held an administrative hearing on February 19, 2004, before the duly appointed Administrative Law Judge, Rick Barter.
6. Persons present and sworn in at hearing:
  - a) For Petitioner: David R. Pollock, Owner
  - b) For Respondent: Judith Sharp, Monroe County Assessor  
Ken Surface, Contract employee of Monroe County Assessor

## **Facts**

7. The property is classified as residential condominium, as is shown on the property record card for parcel #015-31700-81.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Monroe County PTABOA:  
Common \$10,810 Improvements \$40,000.
10. Assessed Value requested by Petitioner: Common \$10,810 Improvements \$33,690.

## **Issue**

11. Summary of Petitioner's contentions in support of alleged error in assessment:
  - a) The Petitioner argued on his Form 131 that his condominium unit's assessed value is higher than its market value in use, and higher than the sales prices of comparable properties.
  - b) Petitioner cites sales disclosure forms demonstrating sales of comparable, and in half the cases, identical units in the complex in the first half of 2001 selling for \$43,000 and \$44,000. He provided:
    - 3156 Covenanter Dr. sold for \$44,000 on 2/13/2001  
2002 AV is \$46,200, assessed as Multi-unit Row.
    - 3136 Covenanter Dr. sold for \$42,250 on 6/15/2001  
2002 AV is \$46,200, assessed as Multi-unit Row.
    - 944 or 3162 E. Covenanter Dr. sold for \$43,000 on 2/13/2001  
2002 AV is \$50,810, assessed as Duplex Row.
    - 3325 E. Covenanter Dr. sold for \$43,000 on 2/13/2001  
2002 AV is \$50,810, assessed as Duplex Row.
    - 3168 E. Covenanter Dr. sold for \$43,000 on 2/13/2001  
2002 AV is \$50,810, assessed as Duplex Row.
    - 962 E. Clarizz Dr. sold for \$44,000 on 6/15/2001  
2002 AV is \$50,810, assessed as Duplex Row.
  - c) Petitioner also presented a list of net income from the two units in question and two additional units he owns in the same complex for the years 1993-2003.
  - d) Petitioner stated that an investment management company has purchased a number of units in the complex and in 2003 offered him \$45,000 for each of his four units.
  - e) Petitioner cited the Department of Local Government Finance's Overview of the Income Approach to Valuation dated November 12, 2003. He quoted "...The sales approach is the most applicable to those properties, such as residential properties, that are bought and sold regularly in the open market..." and "...the resulting value from a properly applied income approach will be substantially the same as a properly applied...comparable sales approach."

12. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent pinned its case on the income approach to value. It did not attempt to refute the sales of identical and similar units in the same complex, some adjoining the Petitioner's units.
- b) The Respondent offered as evidence a copy of a 1999 multiple listing service (MLS) information sheet taken from a real estate company's website. The document concerns a unit that both parties agreed is identical in size and location to the subject units. The sheet indicates a monthly rent of \$780. The unit was listed for \$45,900 and is marked "sold" but there is no evidence of the actual selling price.
- c) Respondent's witness, Ken Surface, testified that the \$780 figure is "market rent" for a two-bedroom, two-bath unit used for student rentals in Monroe County.
- d) The parties disagree on whether the condominium complex is primarily aimed at student rentals. The county assessor testified that at times, the university offered shuttle buses between the complex and Indiana University campus.
- e) Mr. Surface testified that Monroe County's capitalization rate is 7% to 8%. He used 7% in his calculations. Using that rate and the market rent he alluded to previously, he calculated the value of the subject units at "about \$90,000" each.
- f) Respondents argued that the value of the units must be calculated using the income approach with the current prevailing area capitalization rate and the current area market rent. Even allowing for a lower rental rate, the Respondents pointed out that the \$50,810 assessed value of the subject units is below market value. For instance, using the \$650 rent rate currently being quoted by a management company in the same complex and assuming a 30% expense reduction, the value of a unit using Mr. Surface's calculations would be approximately \$78,000. Using the \$500 figure proposed by the Petitioner and the county's capitalization rate would yield a value of about \$60,000, which is nearly \$10,000 more than the 2002 assessed value of the subject units.

**Record**

13. 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 recording of the hearing labeled BTR #5848.
- c) Exhibits:
  - Petitioner Exhibit 1: Sales disclosure and property record card for 3156 E. Covenanter Drive, Bloomington.
  - Petitioner Exhibit 2: Sales disclosure and property record card for 3136 E. Covenanter Drive, Bloomington.
  - Petitioner's Ex. 3: Sales disclosure for 3325, 3162, and 3168 E. Covenanter Drive, Bloomington, and property record card for 944 E. Covenanter Drive, Bloomington.
  - Petitioner's Ex. 4: Sales disclosure for 962 S. Clarizz, Bloomington, and property record card for 960 E. Covenanter Drive.

Petitioner's Ex. 5: Department of Local Government Finance's "Overview of the Income Approach to Valuation" dated November 12, 2003.

Petitioner's Ex. 6: Ten-year list of net income history for the subject units and two other units owned by the Petitioner, copy of page 14 of the 2002 Real Property Assessment Manual.

Petitioner's Ex. 7: Subject property record card.

Respondent's Ex. 1: Subject property record card.

Respondent's Ex. 2: Subject Form 130.

Respondent's Ex. 3: Subject Form 115.

Respondent's Ex. 4: Notice of Appearance by Attorney Marilyn Meighen.

Respondent's Ex. 5: Transcript of the Monroe County PTABOA hearing.

Respondent's Ex. 6: MLS listing page from "homefinder.com" for 3167 Covenant Drive, Bloomington, purportedly for an unknown date in 1999.

Respondent's Ex. 7: Copy of the cover and pages 243 and 244 from *Property Assessment Valuation, Second Edition* published by the International Association of Assessing Officers.

Respondent's Ex. 8: Copy of page 14 of the Real Property Assessment Manual.

d) These Findings and Conclusions.

### Analysis

14. The most applicable governing rules and cases are:

a) **Ind. Code § 6-1.1-31-6(c), Ind. Code § 6-1.1-31-7(d), 50 IAC 2.3 (True tax value defined)**

"True tax value does not mean fair market value." "True tax value is the value determined under the rules of the Department of Local Government Finance." True tax value is defined 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, less that portion of use value representing subsistence housing for its owner."

b) The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. *See generally, Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).

c) 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).

15. The Petitioner did provide sufficient evidence to support his contentions. This conclusion was arrived at because:

- a) Petitioner submitted comparable sales for several similar or identical properties. The sales comparison evidence showed that the assessment may be incorrect, and that the correct assessment the Petitioner seeks, \$44,500, is likely correct. The Petitioner has made a prima facie case, and the burden shifts to the Respondent to rebut the Petitioner's case. *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind. Tax 2001); *Blackbird Farms Apartment, LP v. Department of Local Government Finance*, 765 N.E. 2d 711 (Ind. Tax 2002).
- b) The Respondent relied totally on the income approach to valuation. However, the township did not present even one sale of an identical or similar unit in the complex bearing out the values as computed under the income approach. Additionally, the evidence submitted not only does not show such a sale, the sale of the MLS-listed property at about 50% of the value calculated through the income approach cannot be ignored. The Respondent failed to explore the difference between the apparent \$45,900 sales price of the unit listed on MLS sheet (Respondent's Ex. 6), and the "about \$90,000" figure produced by Mr. Surface as the market value of each unit.
- c) The Respondent failed to rebut the Petitioner's prima facie case. Thus, the Petitioner must prevail.

### **Conclusion**

16. The Petitioner made a prima facie case. The Respondent did not rebut Petitioner's evidence. The Board finds in favor of Petitioner.

### **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: \_\_\_\_\_

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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.**