

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

Petitions: 41-026-09-1-4-01614A
41-026-10-1-4-01614
41-026-09-1-5-01615
41-026-10-1-5-01616
Petitioner: LRM, LLC
Respondent: Johnson County Assessor
Parcels: 41-02-29-032-009.000-026
41-02-29-032-010.000-026
Assessment Years: 2009 and 2010

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

Procedural History

1. The Petitioner initiated assessment appeals with the Johnson County Property Tax Assessment Board of Appeals (PTABOA) by filing undated Forms 130.
2. The PTABOA mailed notices of its decision regarding Petitions 41-026-10-1-4-01614, 41-026-09-1-5-01615, and 41-026-10-1-5-01616, Forms 115, on April 18, 2011. Notice of the PTABOA decision regarding Petition 41-025-09-1-4-01614A, Form 115, was mailed on April 19, 2011.
3. The Petitioner appealed the determinations to the Board by timely filing four Form 131 Petitions on June 1, 2011. The Petitioner elected to have these cases heard according to small claims procedures. The Petitioner is appealing the 2009 and 2010 assessments.
4. Administrative Law Judge Paul Stultz held the Board's administrative hearing on July 9, 2013. He did not inspect the property.
5. Marshall Welton, certified tax representative, represented the Petitioner. County Appraiser Michael Watkins represented the Respondent. Both were sworn as witnesses.

Facts

6. Both parcels, located at 805 through 811 Riverside Drive, Pleasant Township, Greenwood, Indiana, have apartment buildings on them.

7. The PTABOA determined that parcel number 41-02-29-032-009.000-026 has an assessed value of \$48,000 for the land and \$163,000 for the improvements (total of \$211,000) for 2009 and 2010.
8. The PTABOA determined that parcel number 41-02-29-032-010.000-026 has an assessed value of \$23,900 for the land and \$145,000 for the improvements (total of \$168,900) for 2009 and 2010.
9. The combined assessed value for both parcels is \$379,900 for both 2009 and 2010.

Record

10. The official record for this matter contains the following:
 - a. The Form 131 Petitions,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit A – Map of the parcels and surrounding area,
Petitioner Exhibit B1 – Photograph of the property,
Petitioner Exhibit B2 – Photograph of the property,
Petitioner Exhibit C – Unit description of type of apartments, assessed values prior to the PTABOA hearing, and income approach to value with income and expense statements for 2008, 2009, and 2010,
Petitioner Exhibit D – Indiana Code 6-1.1-4-39,
Respondent Exhibits – None,
Board Exhibit A – Form 131 Petitions,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,
 - d. Board’s Findings and Conclusions (contained herein).

Contentions

11. Summary of the Petitioner’s case:
 - a. The property is located in an area of the county with lower market values and the parcels appear to be in a flood plain due to a nearby creek. *Welton testimony; Pet’r Ex. A.*
 - b. The two parcels function as one property and should be considered as a single economic unit. The complex has ten rental units. They have one or two bedrooms, limited parking area, no amenities, and rent in the \$450 to \$500 range. *Welton testimony; Pet’r Exs. B1, B2, and C.*

- c. According to Indiana Code 6-1.1-4-39, rental properties of four or more units are entitled to be assessed at the lower of the three approaches to value, which are the cost approach, the sales comparison approach, and the income capitalization approach. The income capitalization approach presents the lowest value in these appeals and that method should be used to value the parcels. *Welton testimony; Pet'r Ex. D.*
- d. The income and expenses for both properties were prepared by the property manager. The income, less acceptable operating expenses and management fees, determines the net income. The average net income for 2008, 2009, and 2010 is \$20,000. The management fees are normally ten percent of gross income. The market capitalization rate is nine percent, based on other transactions in which Mr. Welton has been involved. Applying the nine percent rate results in a combined market value of \$220,200 for both parcels. *Welton testimony; Pet'r Ex. C.*

12. Summary of the Respondent's case:

- a. The Petitioner has not submitted any evidence that requires a response or established a *prima facie* case that any of the assessments are incorrect. Consequently, the assessments should not be changed. *Watkins testimony.*
- b. The Petitioner's income approach to value calculation is not reliable. Mr. Welton did not explain how the 2008 income and expenses were annualized, or how he determined the market capitalization rate of nine percent. *Watkins testimony.*

Analysis

13. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its correct assessment should 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). In 2011, the Indiana General Assembly enacted a statute that, in some cases, shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

14. In this appeal, the parties agreed the burden shifting provision was not triggered and the Petitioner has the burden of proving both error in the assessment and what the correct assessment should be. *Welton testimony; Watkins testimony.*
15. Here, the Petitioner failed to make a *prima facie* case that the disputed assessments are incorrect and failed to prove what the correct assessments should be.
 - a. Real property is assessed based on its "true tax value," which 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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. *Id.* at 3. To explain the cost approach, Indiana promulgated Guidelines. 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.
 - b. Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2009, assessment date, the valuation date was January 1, 2008. 50 IAC 21-3-3. For the 2010 assessment, the valuation date was March 1, 2010. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. The Petitioner's claim depends on a value calculation purportedly using the income capitalization approach to determine the actual market value-in-use of the subject property. An income capitalization approach *that conforms to generally accepted appraisal principles* would be an acceptable way to prove the market value-in-use of a property and overcome the presumption in favor of the existing assessment. MANUAL at 3.
 - d. Mr. Welton apparently prepared the income capitalization calculation that is shown on Petitioner Exhibit C. The credibility of his work and valuation opinion is critical to the Petitioner's case. Several things, however, negatively impact that credibility. Mr. Welton acknowledged that he is paid on a contingency basis and has a financial interest in the outcome of the appeal. Although he testified that he has completed class work on the income approach and mass appraisal techniques (without providing any details), Mr. Welton is not an appraiser and his

calculations do not purport to be a certified appraisal. Even though his testimony and his income capitalization calculations resemble the kind of processes appraisers commonly perform, under these circumstances the evidence from Mr. Welton does not have the same kind of impact that an independent, professional, certified appraiser/appraisal likely would have.

- e. Further, Mr. Welton failed to prove that the evidence he offered conforms to generally accepted appraisal principles. The failure involves all three major segments of this income capitalization approach: the potential gross income, the net operating income, and the nine percent capitalization rate. Mr. Welton conclusory asserted that the market capitalization rate should be nine percent and provided no underlying support or analysis as to how he arrived at that figure.
- f. Mr. Welton failed to show that the potential gross income in his calculation is consistent with the kind of income similar properties in the market would be expected to bring. *Indiana MCH, LLC. V. Scott County Assessor*, 987 N.E.2d 1182, 1185-86 (Ind. Tax Ct. 2013). Instead, his calculation included actual revenues received by the Petitioner, which casts additional doubt on the credibility of the potential gross income figure that Mr. Welton used.
- g. Considering historic and projected income as well as expense data of the subject property can be appropriate in the income capitalization approach, but it is also necessary to consider data from other comparable properties in order to make accurate, realistic projections about the income stream a property can be expected to produce. Where income and expense data for the subject property is out of step with what the market data shows, generally accepted appraisal principles require further examination and analysis to determine why. Considering both types of income and expense data helps to protect against distortions and inaccurate value estimates that might be caused by extraneous factors (such as bad management or poor business decisions) that have nothing to do with the inherent value of a property. *Id.* at 1184. This point is particularly significant when coupled with the testimony that this data was supplied by the Petitioner's office manager, who would also have an interest in the outcome of the appeal. But here that kind of evidence and comprehensive analysis is lacking. Thus, Mr. Welton's income capitalization approach failed to comply with generally accepted appraisal principles because it did not consider the income and expenses of comparable properties in the market. *Id.* at 1186.
- h. Mr. Welton also failed to establish that his method of determining net operating income satisfies generally accepted appraisal principles. He deducted the actual operating expenses and management fees of the subject property. There is no indication of how those actual operating expenses compare to what is normal for the market. Conclusory statements that expenses are "normal" are not probative. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). If the actual expenses are unusually high (for example, because of

bad management or poor business decisions), it would be inappropriate to consider only the actual expenses in determining a net operating income figure to capitalize. In this case, based on the evidence presented, or lack thereof, it is simply impossible to determine whether the net operating income figure Mr. Welton used conforms to generally accepted appraisal principles. This point is another significant failure in the Petitioner's case.

- i. Selecting an appropriate capitalization rate for this kind of calculation is fundamental to the credibility of the result. Making an appropriate selection, however, is not a simple matter. Nevertheless, in this case the Petitioner offered only limited, conclusory explanation in attempting to support the selected capitalization rate. Mr. Welton's testimony provided no explanation or analysis for his use of nine percent, contending only that the rate was based on other transactions in which he had been involved.
 - j. This explanation is problematic for several reasons. The Petitioner failed to establish when these transactions occurred or the type of properties involved. The record contains nothing to establish comparability with the subject property. Accordingly, it is not clear that Mr. Welton's use of that data conforms to generally accepted appraisal principles. The biggest problem, however, is the complete failure to establish how this data of capitalization rates from other transactions might relate to the relevant valuation dates of January 1, 2008, and March 1, 2010. This failure alone entirely destroys the probative value of Mr. Welton's income capitalization approach. *See Long*, 821 N.E.2d at 471. The Petitioner did not make a case for any assessment change.
16. When a taxpayer fails to provide probative evidence supporting the position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley*, 704 N.E.2d at 1119.

Conclusion

17. The Petitioner failed to make a *prima facie* case for a change in assessed values. The Board finds in favor of the Respondent. The 2009 and 2010 assessments will not be changed for either parcel.

Final Determination

In accordance with the above findings and conclusions the assessments will not be changed.

ISSUED: September 23, 2013

Commissioner, Indiana Board of Tax Review

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- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.