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

Petition Nos.: **45-023-08-1-4-00001**
45-023-09-1-4-00001
Petitioner: **Lake County Trust #5812**
Respondent: **Lake County Assessor**
Parcel No.: **45-02-01-477-025.000-023**
Assessment Years: **2008 and 2009**

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 its assessment appeals with the Lake County Property Tax Assessment Board of Appeals (PTABOA) by written request on November 13, 2009, for the 2008 assessment year and on November 6, 2010, for the 2009 assessment year.

2. The PTABOA issued notice of its decision for both years on August 19, 2011.

3. The Petitioner filed its Form 131 petitions with the Board on September 30, 2011. The Petitioner elected to have its appeals heard pursuant to the Board's small claims procedures.

4. The Board issued a notice of hearing to the parties dated September 26, 2012.

5. The Board held an administrative hearing on November 14, 2012, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.

6. The following persons were present and sworn in at hearing:

   For Petitioner: Dirk Abe Rivera, taxpayer's representative,

   For Respondent: LaTonya Spearman, Lake County hearing officer.

Facts

7. The property under appeal is an apartment building located at 1538-42 Warwick Avenue, in Hammond, Indiana.

8. The ALJ did not conduct an on-site inspection of the property under appeal.

9. For 2008 and for 2009, the PTABOA determined the assessed value of the property to be $33,600 for the land and $716,400 for the improvements, for a total assessed value of $750,000.

10. On its Petitions, the Petitioner requested a total assessed value of $398,900 for 2008 and $386,200 for 2009. At hearing, however, the Petitioner's representative requested a value of $326,400 for 2008 and $350,700 for 2009.

Issues

11. Summary of the Petitioner's contentions in support of the alleged errors in its property's assessments:

    a. The Petitioner's representative contends that the Petitioner's property was over-valued in 2008 and 2009 based on the property's appraised value. *Rivera testimony*. In support of this contention, Mr. Rivera submitted an appraisal prepared by a certified appraiser in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) that valued the property at $375,000 as of March 1, 2009. *Petitioner Exhibit 7*. According to Mr. Rivera, the appraiser developed the sales comparison approach and the income capitalization approach. *Id.; Rivera testimony*. The appraiser determined the property's value to be $475,000 using the income approach. *Id*. For the sales comparison approach, the appraiser determined that the property located at 1418-22 Brown which sold for $350,000 in October of 2008 was the most similar to the subject property and based the subject property's value on that sale. *Id.*

    b. Mr. Rivera further argues that, pursuant to Indiana Code § 6-1.1-4-39(a), the true tax value of an apartment building with more than four units is the lowest value determined from the three generally accepted approaches to value. *Rivera argument.* Therefore, because the property's $350,000 sales comparison value was the lowest value in the property's appraisal, Mr. Rivera contends, the value of the subject property under the law is $350,000 as of March 1, 2009. *Id.* In addition, Mr. Rivera contends, he trended property's March 1, 2009, value to the appropriate valuation dates using the Consumer Price Index (CPI), resulting in a value of $326,400 for the January 1, 2007, valuation date for the March 1, 2008, assessment date and resulting in a value of $350,700 for the January 1, 2008, valuation date for the March 1, 2009, assessment date. *Id.*; *Petitioner Exhibit 8*.

    c. Mr. Rivera also prepared his own income valuation to value the subject property for 2008 and 2009. *Rivera testimony*. According to Mr. Rivera, he used information from the Petitioner's income tax returns and capitalization rates and reserve requirements from the RealtyRates.com Investor Survey for the first quarter of 2007 and 2008. *Id.; Petitioner Exhibit 4*. Mr. Rivera testified that he also loaded the property's tax rate into the capitalization rate, resulting in a capitalization rate of 13.66% for 2008 and 12.81% for 2009. *Id.* Based on these rates, Mr. Rivera estimated the value of the property to be $420,000 for the March 1, 2008, assessment

date and $450,960 for the March 1, 2009, assessment date. *Rivera testimony; Petitioner Exhibits 5 and 6.*

d. In response to the Assessor's case, Mr. Rivera argued that the property's purchase price in December of 2006 was not indicative of the market value of the property because it was part of a 1031 exchange.[1] *Rivera argument*; *citing General Auto Outlet of Evansville, LLC v. Vanderburgh County Assessor,* Ind. Bd. of Tax Rev., Petition No .82-027-07-1-4-01150 *et al* (Sept. 16, 2010). In support of this contention, the Petitioner submitted the closing statement for the subject property which shows a charge for a "1031 exchange fee." *Petitioner Exhibit 2*. Mr. Rivera also cited to the appraisal which stated "The current owners were not represented by a real estate broker in the purchase of the subject property. They were also under some time constraints as far as identifying a property so as not to lose the tax benefits of the 1031 exchange." *Petitioner Exhibit 7.* Further, Mr. Rivera contends, the property was not listed for sale but was purchased from an acquaintance of the Petitioner. *Rivera testimony.* Mr. Rivera also argues that the Respondent did not verify the circumstances of the property's previous sale in 2004, so he contends the terms of that sale are unknown. *Id*.

e. Mr. Rivera also contends that the Respondent's two comparable sales were not comparable to the subject property in age, construction, or in unit mix. *Rivera testimony.* According to Mr. Rivera, the subject property was built in 1928, has steam heat and consists of all one-bedroom apartments; whereas 6112 Hohman was built in 1970 and 219 Kenwood was built in 1971. *Id.; Respondent Exhibits 8 and 9.* In addition, both properties have a superior unit mix and forced air heat. *Id*.

12. Summary of the Respondent's contentions in support of the property's assessed value:

a. The Respondent's representative contends that the property's assessed value was correct for 2008 and 2009 based on the property's purchase price.[2] *Spearman testimony; Respondent Exhibit 3.* According to Ms. Spearman, the property sold in December of 2006 for $750,000 and no special or unusual circumstances were noted on the sales disclosure form. *Id.* Further, Ms. Spearman contends, a prior sale of the property in 2004 for $650,000 provides additional support for the $750,000 market value. *Id.; Respondent Exhibit 4.*

b. Ms. Spearman argues that $750,000 was the most "indicative" value of the property for the 2009 assessment year also. *Spearman argument.* According to Ms. Spearman,

[1] "Under Section 1031 of the United States Internal Revenue Code (26 U.S.C. § 1031), the exchange of certain types of property may defer the recognition of capital gains or losses due upon sale, and hence defer any capital gains taxes otherwise due." http://en.wikipedia.org/wiki/Internal_Revenue_Code_section_1031.

[2] Ms. Spearman testified that the Assessor corrected the number of units from 28 apartments to fourteen apartments. *Spearman testimony*. According to Ms. Spearman, changing the number of units had minimal effect on the property's value. *Id.*

"after looking at the market closely, sales remained relatively the same in the time frame." *Id.*

c. The Respondent's representative testified the Assessor does not dispute that the Petitioner purchased the property as part of a 1031 exchange. *Spearman testimony*. Ms. Spearman argues, however, that a 1031 exchange would not motivate a prudent buyer to purchase a property that is allegedly worth less than half of its purchase price. *Id*.

d. Ms. Spearman further argues that the Petitioner's appraisal should be given little weight. *Spearman argument.* First, Ms. Spearman argues, the appraisal does not meet USPAP standards. *Spearman testimony*. According to Ms. Spearman, the appraiser did not indicate which type of report he prepared despite the USPAP requirement that this information be prominently stated in the report. *Id.* The appraisal also states that the only intended users are the taxpayers and the intended use is for the purpose of protesting the assessment; but the appraisal does not show assessing officials as intended users. *Id*. In addition, the appraiser failed to state that he prepared a retrospective appraisal. *Id*. Ms. Spearman argues that these appraisal defects were recognized by the Board in its *Waterford Development Corp. and Hoogenboom Nofziger Realty Corp. v. Elkhart County Assessor* determination. *Id*.

e. Moreover, the Respondent's representative contends that only two of the properties used in the Petitioner's appraiser's sales comparison analysis are comparable to the subject property. *Spearman testimony*. According to Ms. Spearman, the first property is in the same market area, has a similar number of units and sold for $770,000, which, she argues, supports the purchase price of the subject property. *Id*. Another property is also in Hammond and has a similar number of units. *Id*. However, Ms. Spearman contends that the property in Gary is not comparable to the subject property based on the number of units it has, its amenities and the economic environment in its location. *Id.* In addition, Ms. Spearman argues, no adjustments were made for any differences between the subject property and the comparable properties. *Id.*

f. The Respondent's representative also argues that the sale of two other apartment buildings in the area were better comparable properties than those used by the Petitioner's appraisers. *Spearman argument.* According Ms. Spearman, a property at 6112 Hohman Avenue with fifteen rental units sold for $475,000 on May 29, 2004, and a property at 219 Kenwood Street with eighteen rental units sold for $700,000. *Spearman testimony; Respondent Exhibits 7 and 8.*

g. Finally, Ms. Spearman contends that the Petitioner's income information is insufficient to develop a stabilized income for the assessment years under appeal. *Spearman testimony*. According to Ms. Spearman, the Petitioner should have submitted the property's 2005, 2006, and 2007 Schedule E forms; but instead the Petitioner's representative only submitted the Petitioner's 2007 and 2008 schedules.

Id. Ms. Spearman further contends that Mr. Rivera used rents from the subject property in his income approach instead of market rents and market vacancies. *Id*.

Record

13. The official record for this matter is made up of the following:

a. The Form 131 petition,

b. A digital recording of the hearing labeled 45-023-08-1-4-00001 Lake County #5812,

c. Exhibits:

Petitioner Exhibit 1 – Subject property's property record card,
Petitioner Exhibit 2 – December 1, 2006, closing statement for the sale of the subject property,
Petitioner Exhibit 3 – Schedule E for the property for 2007, 2008, and 2009,
Petitioner Exhibit 4 – RealtyRates.com Investor Survey, 2007 and 2008 1st quarter capitalization rates,
Petitioner Exhibit 5 – 2007 and 2008 Average Income Analysis,
Petitioner Exhibit 6 – 2007, 2008, and 2009 Average Income Analysis,
Petitioner Exhibit 7 – PRS Consulting Appraisal for the subject property,
Petitioner Exhibit 8 – Trending Analysis,
Petitioner Exhibit 9 – *General Auto Outlet of Evansville, LLC v. Vanderburgh County Assessor*, Petition No .82-027-07-1-4-01150 *et al.*, (September 16, 2010),

Respondent Exhibit 1 – Notice of Hearing,
Respondent Exhibit 2 – Subject property's property record card,
Respondent Exhibit 3 – Sales disclosure form for the December 1, 2006, sale of the subject property
Respondent Exhibit 4 – Sales data for the May 28, 2004, sale of the subject property,
Respondent Exhibit 5 – Form 115,
Respondent Exhibit 6 – Copy of the PRS Consulting Appraisal as received by Ms. Spearman,
Respondent Exhibit 7 – Photograph of the subject property,
Respondent Exhibit 8 – MLS listing summary for 6112 Hohman Avenue,
Respondent Exhibit 9 – MLS listing summary for 219 Kenwood Street,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of hearing, dated September 26, 2012,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Burden of Proof

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its property's assessment is wrong and what the 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). Effective July 31, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and reenacted as Indiana Code § 6-1.1-15-17.2.[3] That statute shifts the burden of proof to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment. Here, because the property's 2008 assessed value increased by more than 5% over its previous assessment, the Respondent has the burden of proof. For 2009, however, the assessment did not change from 2008 to 2009. Therefore, the Petitioner has the burden of proof for that year.

Objections

15. The Respondent's representative objected to Petitioner's submission of the PRS Consulting Appraisal on the grounds that the Petitioner failed to exchange the complete exhibit prior to hearing. The Petitioner's representative testified that he e-mailed the exhibit to Ms. Spearman and, in fact, Ms. Spearman had a copy of the appraisal. The Respondent's copy of the appraisal, however, had approximately 1½ inches missing from the top and the bottom of the appraisal report. The Addendum, however, was fully intact. Ms. Spearman testified that she notified Mr. Rivera she had not received the full appraisal and the parties discussed the email exchange between them on November 7, 2011. Mr. Rivera testified that he emailed a complete copy of the appraisal the next day. And, in fact, Ms. Spearman admitted that "I see where you did try to send it, but again I never received it." Similarly she testified "I have proof that you think you've sent it." Notably neither party entered evidence of its email messages. Thus from the evidence, the Board can only conclude that the Respondent brought the error to the Petitioner's representative's attention and that the Petitioner's representative believed he corrected the error.

16. The information that was cut off from the Respondent's copy of the appraisal included some of the appraiser's income analysis and the addresses of the comparable properties the appraiser used in his sales comparison approach. However, the parcel number of each property was clearly visible in the appraisal and the property addresses, as well as a map of their locations, were included in the Addendum to the appraisal. The missing information for the income approach is more problematic because some of the appraiser's analysis was included in the part of the appraisal that was cut off. In addition, the appraiser's estimate of value under the income approach was missing from the analysis; however the income value of the property was reported in the "reconciliation and value

[3] HEA 1099 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

conclusion" later in the appraisal. Ultimately, the Respondent made no attempt to bring this matter to the Board's attention prior to hearing. Nor did she ask for a continuance to review the newly obtained information. Moreover, the Respondent presented no impeachment evidence related to the Petitioner's income calculation; nor did the Respondent attempt to prepare an income approach of its own. Therefore, the Board overrules the Respondent's objection to the Petitioner's appraisal.

17. The Respondent's representative also objected to the admission of Petitioner Exhibit 9, the *General Auto Outlet of Evansville, LLC v. Vanderburgh County Assessor* decision issued by the Board on September 16, 2010. However, the Board may take notice of its own decisions. *See* Indiana Evidence Rule 201(b) (a court may take judicial notice of the law which includes decisional, constitutional, and public statutory law). Therefore, the Respondent's objection to the admission of the Board's decision is also overruled.

Analysis

18. The Respondent established a prima facie case that the property's assessment was correct for the March 1, 2008, assessment date and the Petitioner established a prima facie case that the subject property was over-assessed for the March 1, 2009, assessment date. The weight of the evidence supports the property's income value for both assessment years. The Board reached this decision for the following reasons:

    a. In Indiana, assessors generally value real property based on the property's market value-in-use, 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." MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *Id*. However, a residential rental property with more than four units receives the benefit of Indiana Code § 6-1.1-4-39(a), which provides that its true tax value is the lowest valuation determined from the three generally accepted approaches to value: the cost approach, the sales comparison approach, or the income capitalization approach. The Petitioner claims to qualify for this statute and nobody disputed that the subject property is the type of property to which this provision applies. Consequently, by statute, the market value-in-use for this kind of property is proven based on whichever of those three approaches produces the lowest value. Nothing in the Assessment Manual or Assessment Guidelines changes or limits that specific statutory authority.

    b. Here, the Respondent submitted the sales disclosure form from the purchase of the subject property for $750,000 on December 1, 2006, which is only one month from the January 1, 2007, valuation date for the March 1, 2008, assessment date. The Respondent also submitted evidence that the property previously sold in 2004 for $650,000 to support the reliability and credibility of the $750,000 sale price in 2006. The purchase price of a property is often the best indication of the property's value. *See Hubler Realty, Inc. v. Hendricks County Assessor*, 938 N.E.2d 311, 314 (Ind. Tax Ct. 2010) (the Tax Court upheld the Board's determination that the weight of the evidence supported the property's purchase price over its appraised value). The

Petitioner's representative argued, however, that the purchase of the property was part of a 1031 exchange. Likewise, the appraisal reports that the purchasers were "under some time constraints as far as identifying a property so as not to lose the tax benefits of the 1031 exchange." However, the appraiser also suggested that the Petitioner's purchase price simply reflected the market at the time: "at the time of the purchase in 2006 market prices of apartment properties were being pushed up by speculation that later proved to be lacking in sound market fundamentals." Thus, the Board can conclude that the price the Petitioner paid for the subject property was as much the result of the existing market conditions as it was related to any 1031 exchange credits. More importantly, the sales disclosure form, signed under penalties of perjury by Mr. Bosnjak, affirmatively represents that "no conditions apply" when asked to "describe any unusual or special circumstances related to the sale." Therefore, because neither the purchasers, nor the sellers, appeared at the hearing to testify that the purchase of the subject property was anything other than an arms-length transaction, the Board finds that the evidence of the property's sales price in 2006 is sufficient to raise a prima facie case that the property was correctly assessed for the March 1, 2008, assessment date.[4]

c. Once the Respondent establishes a prima facie case, the burden shifts to the Petitioner to rebut or impeach the Assessor's evidence. Here the Petitioner's representative submitted an appraisal of the subject property prepared by a certified appraiser who attested that he prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). The appraiser estimated the value of the subject property as of March 1, 2009, to be $350,000 using the sales comparison approach and to be $475,000 using the income approach to value and the appraiser reconciled those values to $375,000 for the property. The valuation date for the 2008 assessment was January 1, 2007, and the valuation date for the 2009 assessment was January 1, 2008. The Petitioner's representative trended the appraised value to the proper valuation dates using the Consumer Price Index. Therefore, the Petitioner provided sufficient evidence to rebut the Respondent's prima facie case that the property was properly assessed for the 2008 assessment date and raised a prima facie case that the subject property was over-valued for the 2009 assessment date.

d. Both the purchase evidence presented by the Respondent and the appraisal presented by the Petitioner are sufficient to raise a prima facie case. Therefore, the Board must weigh the evidence presented in this matter. But the Petitioner's appeals must be determined from the rule specified in Indiana Code § 6-1.1-4-39(a). In other words, because the lowest value indicated by the cost approach, the income capitalization approach, or the sales comparison approach is required, the credibility of the purchase

[4] To the extent that the Respondent's evidence of the sales of 6112 Hohman Avenue and 219 Kenwood Street could be considered a comparable sales analysis, the Board finds that the evidence is insufficiently probative to be evidence of the property's value. *See Long*, 821 N.E.2d at 470 (conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties being examined).

price offered by the Respondent must be weighed against the credibility of the sales comparison approach and the income approaches offered by the Petitioner. But there are no general rules that one type of evidence is more credible than another.

e. Here, the lowest value estimated for the subject property presented to the Board was the Petitioner's appraisal's "sales comparable approach" value of $350,000. The Petitioner's appraiser used three comparable properties in his sales comparison approach. But despite noting differences between each of the comparable properties and the subject property, the appraiser made no quantitative adjustments to any of the comparable sales. Nor did he make any qualitative adjustments. The appraiser merely concluded that "Comp 3 has a similar location, similar condition, slightly superior unit mix and a similar tenant appeal" and estimated the subject property's value to be identical to the sale price of that property. In order to effectively use the sales comparison approach as evidence in property assessment appeals, 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 properties being examined. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on the sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of the purportedly comparable properties. *See id*. at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. *Id*. Although it is within an appraiser's expertise to choose the properties that he or she deems most comparable to the subject property and to make adjustments to those properties, failing to make any qualitative or quantitative adjustments despite noting differences between the subject property and the properties being used as comparable sales lacks reliability and credibility. The Board therefore finds the appraiser's sales comparable analysis has insufficient probative value to support a reduction in the property's assessed value to $350,000.

f. In addition, the Petitioner's appraiser performed an income analysis and estimated the property's value to be $475,000. The appraiser estimated the property's rent to be $100,440 minus a vacancy rate of 9%, resulting in an effective gross annual rent of $91,400. After subtracting the forecasted expenses of $55,997, including real estate taxes, the appraiser arrived at a net operating income of $35,403. The appraiser reported that the overall capitalization rates were "estimated to be between 7% and 8%" and concluded that the value of the subject property was $505,757 with a 7% capitalization rate and $442,537 with an 8% capitalization rate, which he then averaged for an estimated value of $475,000, as of March 1, 2009. The appraiser stated in his report that the intended use of the appraisal was to protest the 2009 assessed value of the subject property. But when valuing property for ad valorem tax purposes, subtracting real estate taxes as an expense "distorts the final estimate of value." *Millennium Real Estate Investment, LLC v. Benton County Assessor,* 979 N.E.2d 192, 197 (Ind. Tax Ct. 2012) (upholding Board's decision to assign less weight to appraisal deducting real estate taxes as an expense). Further, as noted above, the appraiser did not select a specific capitalization rate. He merely found that

a range of capitalization rates applied at the time. Despite the fact that some issues are apparent in the appraiser's income analysis, however, the Board finds the appraiser's income approach sufficiently reliable to be some evidence of the property's market value.

g. The Petitioner's representative also presented an income approach to value the subject property. In his analysis, Mr. Rivera used the site-specific income and expenses. But 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 thus focuses on the intrinsic value of the property, not upon the Petitioner's operation of the property. *See 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 assessments [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"). Because Mr. Rivera provided no evidence to demonstrate that the property's income and expenses were typical for comparable properties in the market, any low 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).

h. Mr. Rivera also failed to adequately support his choice of capitalization rates. Here the entirety of Mr. Rivera's testimony regarding his capitalization rate was that he "used the appropriate cap rate information to determine a 13.66% cap rate" and that he "provided the tax bill to reflect an effective tax rate." In his exhibits, Mr. Rivera included a RealtyRates.com "Investor Survey" and included the following "cap rate derivation" calculation:

Components	**Proportion**	**Rate**	**Product**
Mortgage	75%	6.410%	4.81%
Equity	25%	10.745%	2.69%
Discount			7.49%
Recapture (based on 40 year life)			2.50%
Effective Tax Rate ('08 pay '09)			3.79%
Land	5%		0.564%
Improvements	95%		13.094%
Overall Rate			13.66%

The Investor Survey that Mr. Rivera purports to rely upon shows that mortgage rates ranged from .058661 to .120786 and equity rates ranged from .071400 to .163500 in 2007 and mortgage rates ranged from .052415 to .118662 and equity rates ranged from .074700 to .160100 in 2008. But Mr. Rivera failed to explain the basis for any of the values he used to calculate his capitalization rate. 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. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). And, in fact, Mr. Rivera's capitalization rate differs greatly from the capitalization rate used by the appraiser in his income analysis. Consequently, the Board finds that Mr. Rivera's income analysis is less reliable than the other methods of valuing the property that were offered in the hearing.[5]

i. Finally, the Respondent submitted a sales disclosure form showing that the property was purchased for $750,000 on December 1, 2006. While the purchase is only one month from the January 1, 2007, valuation date for the March 1, 2008, assessment date, it is over a year removed from the January 1, 2008, valuation date for the March 1, 2009, assessment. In addition, the purchase of the property was part of a 1031 exchange. And the appraisal reports that the purchasers were "under some time constraints as far as identifying a property so as not to lose the tax benefits of the 1031 exchange." While the Respondent submitted an earlier sale to "support" the property's 2006 purchase price, the previous purchase occurred in May of 2004 and the Respondent presented no evidence relating that sale to relevant valuation dates for either the Petitioner's 2008 or 2009 appeals. Despite these issues, however, the Board finds the property's 2006 purchase price sufficiently reliable to be some evidence of the property's market value.

j. Each method of valuation offered by the parties to prove the property's value for the 2008 and 2009 assessment dates has its faults, but the Board's obligation in these appeals is to weigh the evidence presented in this matter and apply the appropriate law. Here, the Board finds both the purchase price of the property for $750,000 and the appraiser's income approach estimate of $475,000 to be somewhat reliable estimates of the property's value. But for the reasons stated above, the Board finds the appraiser's sales comparison analysis valuing the property at $350,000 and Mr. Rivera's income calculation to have insufficient reliability and credibility to form a basis for this Board's decision. Because Indiana Code § 6-1.1-4-39(a) requires that the true tax value of an apartment building with more than four units be the lowest value determined from the three generally accepted approaches to value, the Board finds that the value of the subject property for 2008 and 2009 is the property's income value. Trending the $475,000 income value to the relevant valuation dates based on

[5] Moreover, Mr. Rivera, as a certified tax representative, failed to disclose how he was being compensated by the taxpayer. 52 IAC 1-2-4. And, in the absence of such a disclosure, the Board presumes that a contingent fee arrangement exists between the taxpayer and Mr. Rivera. *Id*. The Board therefore presumes Mr. Rivera has a financial stake in the outcome of the Petitioner's appeals. As a result, Mr. Rivera's estimate of the property's value is not as persuasive as a similar analysis made by a non-contingently paid licensed appraiser.

the Petitioner's CPI evidence, results in a value of approximately $442,750 for the 2008 assessment date and approximately $457,865 for the 2009 assessment date.

CONCLUSION

19. The Board finds that the weight of the evidence supports the Petitioner's appraiser's trended income approach valuation and holds that the assessed value of the subject property is $442,750 for 2008 and $457,865 for 2009.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the subject property should be reduced for the 2008 and 2009 assessment years.

ISSUED: February 12, 2013

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>.