

REPRESENTATIVE FOR PETITIONER: Brad Hasler, Dentons Bingham Greenebaum LLP

REPRESENTATIVE FOR RESPONDENT: Jess Reagan Gastineau, Office of Corporation
Counsel

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

GHM, L.P.,)	Petition No.	49-101-18-1-4-00709-19
)		
Petitioner,)	Parcel No.:	1063220
)		
v.)	County:	Marion
)		
Marion County Assessor,)	Assessment Year:	2018
)		
Respondent.)		

June 16, 2020

FINAL DETERMINATION

The Indiana Board of Tax Review (the “Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

INTRODUCTION

1. GHM, L.P. owns Glenn Howard Senior Apartments (“Glenn Howard”) in Indianapolis. The Assessor and GHM agreed that Glenn Howard qualifies as low-income housing under Indiana Code § 6-1.1-4-41. GHM argued that Glenn Howard was used to provide Medicaid assisted living services in 2018 under Ind. Code § 6-1.1-4-41(c). The Assessor contended that the complex did not qualify as an assisted living facility and applied Ind. Code § 6-1.1-4-41(b) instead. Because the subject property is not used to provide Medicaid assisted living services, and GHM failed to meet its burden of proving another value, we order no change to the assessment.

PROCEDURAL HISTORY

2. GHM contested the subject property's 2018 assessment of:
Land: \$28,400 Improvements: \$986,800 Total: \$1,015,200
3. GHM appealed to the Board. The Board's designated Administrative Law Judge, Jennifer Thuma, held a hearing on November 21, 2019 in Marion County. Louis Schiesz, GHM Managing Member and Kim Bandy, RMC employee and Site Manager for Glenn Howard, were sworn as witnesses and testified for GHM. Jeffrey Hill, Commercial and Industrial Valuation Analyst for the Marion County Assessor, was sworn and testified for the Assessor.
4. The following exhibits were admitted into the record without objection:¹

Petitioner Exhibit 1:	Glenn Howard letter to prospective applicants
Petitioner Exhibit 3:	Screenshot from Federal Health and Human Services website
Petitioner Exhibit 4:	Survey of Glenn Howard residents ²
Petitioner Exhibit 6:	Brochure for Elite Home Rehab & Healthcare
Petitioner Exhibit 7:	Brochure for physical therapy services
Petitioner Exhibit 8:	Income statement for Glenn Howard ³
Petitioner Exhibit 9:	Property tax bill for 2019
Petitioner Exhibit 10:	On-line tax estimator
Petitioner Exhibit 11:	Table of 2018 assessed value calculation
Petitioner Exhibit 12:	Photos of Glenn Howard
Respondent Exhibit 1:	Value reconciliation summary
Respondent Exhibit 2:	Description of income approach methodology
Respondent Exhibit 3;	Income capitalization approach data
Respondent Exhibit 4:	Tikijian Associates market report
Respondent Exhibit 5:	Resume of Jeffrey Hill
Respondent Exhibit 7:	Correction of error
5. The record also includes the following: (1) all pleadings, briefs and documents filed in the current appeals; (2) all orders and notices issued by the Board or our ALJ; and (3) a digital recording of the hearing.

¹ GHM did not offer Exhibits 2 or 5. The Assessor did not offer an Exhibit 6.

² Includes confidential information.

³ Includes confidential information.

OBJECTIONS

6. The Assessor objected to Petitioner's Ex. 4, a survey of residents of the subject property, on the basis that it was hearsay. Our procedural rules allow us to admit hearsay, provided we do not solely base our determination on it. In this case, we will overrule the objection and admit the exhibit, but we do not rely on it in reaching our determination.
7. The Assessor objected to Petitioner's Ex. 10, a screenshot from the property tax estimator on the Department of Local Government Finance's ("DLGF") website, on the grounds that it was misleading because the value shown represented an amount before the Auditor made a correction. As the corrected value is clear in the record, the objection is overruled.
8. GHM objected to a question from the Assessor to Mr. Schiesz regarding the application of Ind. Code § 6-1.1-4-41 arguing that it was beyond the scope of the direct examination. We disagree and overrule the objection.
9. The Assessor objected to GHM's questions to Ms. Bandy about the frequency of visits to the property by service providers. Ms. Bandy stated that she was guessing to try to answer the questions. This testimony indicated Ms. Bandy did not have sufficient personal knowledge to answer the questions, thus we sustain the objection
10. GHM objected to the Assessor's question to Ms. Bandy asking whether Glenn Howard was a "housing with services establishment" under Ind. Code § 12-10-15-3 on the grounds that it called for a legal conclusion. We agree and sustain the objection.
11. GHM objected to a question the Assessor posed to Ms. Bandy regarding whether GHM was listed on the Indiana State Department of Health website as a residential care facility on the grounds that no foundation was laid as to whether Ms. Bandy had personal knowledge to answer the question. We agree and sustain the objection.

12. The Assessor objected to a question GHM posed to Ms. Bandy regarding whether a physical therapist who visited the property accepted only Medicaid payments on the grounds that it called for hearsay. Our procedural rules allow us to admit hearsay, provided we do not solely base our determination on it. In this case, we will overrule the objection and admit the testimony, but we do not solely rely on it in reaching our determination.
13. GHM objected to a portion of the Assessor's closing statement referencing the DLGF guidelines on the grounds that it was beyond the scope of the testimony. The DLGF Guidelines, as administrative regulations from an agency with rulemaking authority, do not have to be entered into evidence in order to be cited to. Thus, the objection is overruled.

BURDEN OF PROOF

14. Generally, a taxpayer seeking review of an assessing official's decision has the burden of proving that its property's assessment is wrong and what its correct assessment should be. *See Meridian Towers East & East v. Washington Twp. Assessor*, 805 N.E. 2d 475, 478 (Ind. Tax Ct. 2003). Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances--where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. Ind. Code § 6-1.1-15-17.2 (b) and (d).
15. GHM's assessment decreased in 2018 from the prior year and therefore the exception does not apply. GHM and the Assessor agreed that GHM had the burden of proof. We agree and find the burden rests with GHM.

FINDINGS OF FACT

16. Glenn Howard is an apartment complex located at 605 West 27th Street in Indianapolis which provides housing to low income individuals when at least one member of a

household is 55 years of age or older. Eligibility for residency is partially dependent upon income and age. *Schiesz testimony; Bandy testimony.*

17. GHM and the Assessor stipulated that Glenn Howard qualifies as low-income housing for the purposes of Ind. Code § 6-1.1-4-41 (a).
18. Glenn Howard is similar to other apartment complexes except that baths and common area toilets are equipped with grab bars. There are also common areas for use by all residents for socializing, to do laundry, play games, use computers and to exercise. Residents sometimes use common areas for physical therapy. *Pet'r Ex. 12; Bandy testimony; Schiesz testimony.*
19. GHM contracts with RMC, a property management company, to operate Glenn Howard. Ms. Kim Bandy is an RMC employee and serves as property manager. She reviews applications for residency, maintains residence files, collects rent and oversees the day to day operations. She also gathers information about residents' income levels each year for purposes of maintaining Glenn Howard's eligibility for Federal Section 42 income tax credits. *Bandy testimony; Schiesz testimony.*
20. Ms. Bandy attempts to keep residents at Glenn Howard as long as they are physically able to live on the property by encouraging, promoting and facilitating a healthy lifestyle through physical activity and social events. *Bandy testimony.*
21. In addition, Ms. Bandy facilitates connections to residents with outside service providers by arranging presentations and placing fliers in common areas. Some residents contract individually for services with these providers for services such as therapy, bathing, and other forms of assistance. Neither GHM nor RMC collect any fees for providing services for assisted living, healthcare, long-term care, nor are they involved in coordinating appointments. They are not licensed to provide direct services of any kind. *Bandy testimony; Schiesz testimony.*

22. Neither GHM nor RMC regularly gather information or know if residents receive benefits from government support programs, nor do they maintain files with information related to an individual's health provider benefits. *Bandy testimony; Schiesz testimony.*
23. GHM provided a valuation based on Ind. Code § 6-1.1-4-41. In the fiscal year prior to the assessment date GHM received [REDACTED] in gross rent, 5% of which is [REDACTED]. Using the tax rates for Marion County, GHM determined that a tax liability of [REDACTED] would result in a true tax value of [REDACTED], which it requested for the subject property. *Pet'r Ex. 11; Schiesz testimony.*
24. The Assessor also presented an income capitalization approach prepared by Jeffrey Hill, a certified Level III Assessor-Appraiser. Hill estimated gross potential rent of \$306,478, and vacancy of 4%. After applying other income, he arrived at an effective gross income of \$303,027. He estimated operating expenses of \$193,104, resulting in a net operating income of \$109,923. To develop his capitalization rate, he looked to rates extracted from resolved tax appeals. This resulted in a rate of 7.00%, which he loaded with the effective tax rate. After applying this rate to his net income, he arrived at a value of \$1,171,603. *Resp't Ex. R-3; R-4; Hill testimony.*

CONCLUSIONS OF LAW

25. Property in Indiana is assessed at its true tax value. For certain types of low-income rental property like the subject, the legislature has specifically defined true tax value in Ind. Code § 6-1.1-4-41, which reads:
- (a) For purposes of this section, "low income rental property" means real property used to provide low income housing eligible for federal income tax credits awarded under Section 42 of the Internal Revenue Code, including during the time period during which the property is subject to an extended low income housing commitment under Section 42(h)(6)(B) of the Internal Revenue Code."
- (b) For assessment dates after February 28, 2006, the true tax value of low income rental property is the greater of the true tax value:
- (1) determined using the income capitalization approach; or

(2) that results in a gross annual tax liability equal to five percent (5%) of the total gross rent received from the rental of all living units in the property for the most recent taxpayer fiscal year that ends before the assessment date.”

(c) For assessment dates after December 31, 2017, the total true tax value of low income rental property that offers or is used to provide Medicaid assisted living services is equal to the total true tax value that results in a gross annual tax liability equal to five percent (5%) of the total gross rent received from the rental of all living units in the property for the most recent taxpayer fiscal year that ends before the assessment date. The total true tax value shall not include the gross receipts from, or value of, any assisted living services provided.

Ind. Code § 6-1.1-4-41.

26. As discussed above, the parties agreed the subject property is “low income rental property.” The dispute lies in whether subsection (b) or (c) applies. GHM argues that the subject property falls under subsection (c) because it offers or is used to provide Medicaid assisted living services. The Assessor disagrees.
27. “Assisted living services” are defined in Ind. Code § 6-1.1-1-3.1 as “an array of services that may be provided to a recipient residing in a facility eligible to provide home and community based services.” “Home and community based services” are discussed in 455 IAC 2-5-1 and 455 IAC 2-6-1 which state that providers must show proof of licensure, must meet the minimum requirements of a service provider, and must be a provider of an approved nursing facility level of care. Neither GHM nor RMC are licensed by the State of Indiana to provide assisted living services.
28. In addition, Ind. Code § 12-10-11.5-8 defines “assisted living” for purposes of reimbursement under the state’s Medicaid program as those services provided in either (1) a residential care facility licensed under Ind. Code § 16-28 or (2) any other housing with services establishment.
29. As discussed above, Glenn Howard is not a licensed residential care facility. Nor is it a housing with services establishment. Ind. Code § 12-10-15-3 defines “housing with

services establishment” as one which provides sleeping accommodations and one that is offering or providing for a fee, at least one regularly scheduled health service or at least two regularly scheduled supportive services. Neither GHM nor RMC provide any services to residents for a fee and thus Glenn Howard is not a housing with services establishment.

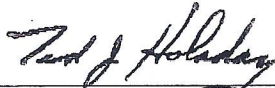
30. GHM argues that the services its residents receive from outside providers fall under a Federal definition for Medicaid assisted living services. It also pointed to the efforts of Ms. Bandy in facilitating residents connections with service providers. While it is the case that some Medicaid services are provided at Glenn Howard, this is insufficient to trigger Ind. Code § 6-1.1-4-41(c) because Indiana Law defines assisted living services as only those services provided in certain types of assisted living facilities. Glenn Howard is not one of those facilities.
31. In addition, the statute itself provides some indication of the legislature’s intent. As the Assessor points out, Ind. Code § 6-1.1-4-41(c) specifically prohibits true tax value from including “the gross receipts from, or value of, any assisted living services provided.” We agree with the Assessor that this is an indication that the legislature intended the statute to apply to entities that provide assisted living services themselves, rather than to facilities where other outside providers may incidentally offer services. Thus, Glenn Howard does not fall under Ind. Code § 6-1.1-4-41(c) because it does not offer nor is it used to provide Medicaid assisted living services as defined by Indiana law.
32. This leaves us to apply subsection (b). It requires the higher of either the value from an income capitalization approach or a true tax value based on a tax liability of 5% of gross rent received. To make a prima facie cast under this section, a party needs to present reliable evidence of each method. This allows us to then determine which method results in a higher value as required by the statute. GHM argues that we should (1) disregard the Assessor’s income approach, and (2) rely solely on the gross rent calculation it provided. This is insufficient to make a prima facie case. By mandating a value based on the higher of two methods, Ind. Code § 6-1.1-4-41(b) is clearly written to

prevent a taxpayer from benefiting from a single low value, exactly what GHM seeks to do. Because GHM failed to present reliable evidence using both methods, it failed to meet its burden to show what the correct assessment should be.⁴

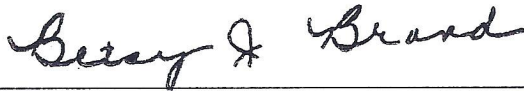
CONCLUSION

33. Glenn Howard does not qualify as a low-income housing property that offers or is used to provide Medicaid assisted living services under Ind. Code § 6-1.1-4-41(c). Nor did GHM provide two reliable valuations that indicated another value as required by Ind. Code § 6-1.1-4-41(b). Thus, we find for the Assessor and order no change to the subject property's 2018 assessment.

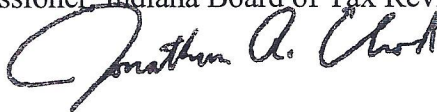
This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.



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 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>.

⁴ We agree with GHM that there are significant problems with Hill's valuation, particularly with his choice to extract capitalization rates from settled tax appeals. But this does not affect our decision because it was GHM's burden to present a prima facie case, which it failed to do.