

REPRESENTATIVE FOR PETITIONER:

Vickie L. Norman, Attorney, Baker & Daniels, LLP

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Rensselaer Real Estate	)	Petition No.:	37-027-06-1-3-00001
Investors, LLC	)		
	)	Parcel:	018-01595-00
Petitioner,	)		
	)		
v.	)		
	)	County:	Jasper
Jasper County Assessor	)	Township:	Marion
	)		
Respondent	)	Assessment Year:	2006

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Appeal from the Final Determination of  
Jasper County Property Tax Assessment Board of Appeals

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**January 28, 2009**

**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:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**ISSUE**

1. The issue presented for consideration by the Board was whether the assessed value of the subject property is excessive when compared to the property's appraised value.

## **PROCEDURAL HISTORY**

2. The Jasper County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determination upholding the Marion Township Assessor's 2006 assessment of the subject property on March 18, 2008.
3. Pursuant to Ind. Code § 6-1.1-15-1, the Petitioner filed a Form 131 Petition for Review of Assessment on April 14, 2008, petitioning the Board to conduct an administrative review of the subject property's 2006 assessment.

## **HEARING FACTS AND OTHER MATTERS OF RECORD**

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on November 18, 2008, in Rensselaer, Indiana.

5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Michael C. Lady, Appraiser, Integra Realty Resources  
Leslie F. Weisenbach, Appraiser, Integra Realty Resources

No one appeared for the Respondent.

6. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Petitioner's Brief,  
Petitioner Exhibit 1-A – Property record card showing March 1, 2006,  
assessment,  
Petitioner Exhibit 1-B – MAI appraisal report prepared by Integra Realty  
Resources (Addendum C redacted),  
Petitioner Exhibit 1-C – Purchase and Sale Agreement, January 2006  
(redacted).

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
  - Board Exhibit A – Form 131 Petition,
  - Board Exhibit B – Notice of Hearing dated September 26, 2008,
  - Board Exhibit C – Sign-in Sheet,
  - Board Exhibit D – Proof of mailing.
8. The subject property is a senior housing, skilled nursing facility located at 1309 E. Grace Street, Rensselaer, in Jasper County.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2006, the PTABOA determined the assessed value of the property to be \$177,100 for the land and \$8,880,100 for the improvements, for a total assessed value of \$9,057,200.
11. The Petitioner contends the assessed value should be \$120,000 for the land and \$3,460,000 for the improvements, for a total assessed value of \$3,580,000.

#### **JURISDICTIONAL FRAMEWORK**

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

#### **ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN**

13. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case

proving, by a preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would 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).

14. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
15. 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*, 805 N.E.2d at 479.

#### **PARTIES’ CONTENTIONS**

16. The Petitioner contends that the subject property should be assessed at \$3,580,000 and presented the following evidence in support of its contentions:
  - A. The Petitioner first contends that it was improper for the assessor to use the 2006 sale of the subject property to establish the property’s assessed value. *Norman argument*. According to the Petitioner, the sale was part of a bulk transaction involving sixteen properties in six states in which the seller allocated the values to the individual properties involved in the transaction. *Id.*; *Petitioner Exhibit 1-C*. The Petitioner further argues that the local officials recognized the Petitioner’s purchase of the subject property was not a market transaction because the sales disclosure form indicates on its face that the transaction was not a market sale. *Id.*; *Petitioner Exhibit 1-B, Addendum*

C. The Petitioner also argues that the sale occurred in January 2006, which is outside the time limit for sales used for the January 1, 2005, valuation date. *Norman argument.*

- B. The Petitioner next contends the assessed value of the subject property is over-stated when compared to the property's appraised value. *Norman argument.* In support of this contention, the Petitioner presented a summary appraisal report prepared by Leslie F. Weisenbach and Michael C. Lady, MAI, Indiana certified general appraisers. *Petitioner Exhibit 1-B.* Mr. Lady testified that they prepared the appraisal according to the Uniform Standards of Professional Appraisal Practice (USPAP) and valued the property as of January 1, 2005. *Lady testimony; Id.* The appraisers developed an estimate based on three approaches to value: the cost approach, the sales comparison approach, and the income approach to value. *Id.*
- C. The appraisers first developed an opinion of value for the land using the sales comparison approach. *Lady testimony.* Mr. Lady testified that there were no comparable land sales in the Rensselaer area so the appraisers looked at other areas in northern Indiana. *Id.; Petitioner Exhibit 1-B at 31.* According to Mr. Lady, he and Ms. Weisenbach identified four comparable sales that ranged in price from \$15,000 per acre to \$32,512 per acre. *Id.* Mr. Lady testified that after making adjustments they arrived at a value of \$22,000 per acre, or \$120,000 for the land. *Lady testimony; Petitioner Exhibit 1-B at 33.* The Petitioner argues this is lower than the property's current land assessment of \$177,100. *Norman argument.*
- D. In calculating the property's value through the cost approach, Mr. Lady testified that the appraisers used Marshall Valuation Service to estimate the replacement cost new of the improvements. *Lady testimony.* According to Mr. Lady, the replacement cost new of the buildings, furniture, fixtures, equipment, with the indirect costs and site improvements totaled \$8,388,944

as of January 1, 2005. *Id.*; *Petitioner Exhibit 1-B at 34-37*. The appraisers estimated that, after the deferred maintenance costs and depreciation are deducted, the depreciated replacement cost of the improvements was \$4,350,000. *Id.* The appraisers then added the land value of \$120,000 to the improvement value and calculated an estimated value of \$4,370,000, rounded to \$4,500,000, for the property under the cost approach. *Id.*

E. Next, the appraisers estimated the value of the property based on the sales comparison approach. *Lady testimony*. According to Mr. Lady, the appraisers located four sales of nursing homes in Indiana and adjusted those sales for characteristics that differed from the subject property. *Id.*; *Petitioner Exhibit 1-B at 40-44*. The appraisers calculated an average per unit value of \$24,848, and rounded that value to \$25,000 per unit. *Id.* Mr. Lady testified that they estimated the value of the property to be \$4,200,000 under the sales comparison approach. *Id.* The Petitioner argues that the appraised unit value is significantly lower than the assessed value of \$54,235 per unit. *Norman argument*.

F. In the income capitalization approach, the appraisers calculated an effective gross income (EGI) of \$7,124,361 based on an 80% occupancy level. *Weisenbach testimony*; *Lady testimony*; *Petitioner Exhibit 1-B at 49 and 50*. The appraisers then analyzed the operating expenses. *Lady testimony*. According to Mr. Lady, the appraisers looked at the actual expenses and the industry standards for each item. *Id.*; *Petitioner Exhibit 1-B at 51-56*. Mr. Lady testified that they projected the total expenses at \$6,453,790, which resulted in a net operating income (NOI) of \$670,571. *Id.* In addition, Mr. Lady testified that the appraisers developed their capitalization rate based on comparable sales, senior housing financial indicators, and the band of investment method, and selected a capitalization rate of 14%, or 15.6% when loaded with the tax rate. *Lady testimony*; *Petitioner Exhibit 1-B at 57-59*. Mr. Lady estimated the value of the property to be \$4,300,000 under the

income approach. *Lady testimony; Petitioner Exhibit 1-B at 59 and 60.*  
According to Mr. Lady, the income capitalization approach is considered the most applicable value for a nursing home. *Id.*

G. The appraisers reconciled the values estimated under the cost approach, the sales approach and the income approach to value and determined the value of the subject property to be \$4,300,000. *Lady testimony.* Mr. Lady testified, however, that the \$4.3 million dollar estimate also contained the furniture, fixtures, and equipment (FF&E) and a business value because the property is a going concern. *Id.* According to Mr. Lady, the appraisers calculated the value of the FF&E to be \$420,000 and the business value to be \$300,000. *Id.; Petitioner Exhibit 1-B at 60 and 61.*<sup>1</sup> Thus, the appraisers concluded the value of the real estate as of January 1, 2005, was \$3,580,000. *Id.*

#### ANALYSIS

17. Real property in Indiana is assessed on the basis of its “true tax value.” *See* Ind. Code § 6-1.1-31-6(c). “True tax value” is defined as “[t]he 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.” 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (2001) (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter the MANUAL). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466,469 (Ind. Tax Ct. 2005).
18. Regardless of the approach used, the taxpayer must explain how its evidence relates to the property’s market value-in-use as of the relevant valuation date. *See*

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<sup>1</sup> The Board notes, however, that while the appraisers estimated the Petitioner’s personal property to be \$420,000, the Petitioner failed to present any evidence that it reported that amount on its personal property return.

- Long*, at 466, 471 (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment). For the March 1, 2006, assessment, that date is January 1, 2005. 50 IAC 21-3-3.
19. Here the Petitioner submitted an appraisal prepared by certified licensed appraisers. *Petitioner Exhibit I-B*. Mr. Lady testified that he and Ms. Weisenbach prepared the appraisal according to USPAP standards. *Lady testimony*. Further, the appraisers used three approaches to value to estimate the market value-in-use as of January 1, 2005. *Id.* An appraisal performed in accordance with generally accepted appraisal principles is sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003). The appraisers estimated the market value-in-use of the property to be \$3,580,000 for the March 1, 2006, assessment date. Thus, the Board finds that the Petitioner raised a prima facie case that the subject property is over-valued.
21. Once the Petitioner establishes a prima facie case, the burden then shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here the Respondent failed to appear at the hearing and present evidence in support of the assessment. The Board reminds the Assessor that to the extent that it believes its assessment is correct, the Assessor should appear at hearing and vigorously defend its assessment. If the Assessor believed the assessment was in error based on the Petitioner's evidence, the Assessor should have stipulated or settled the matter prior to hearing. The Board does not appreciate wasting its resources or those of the Petitioner to hold a hearing where the Respondent does not even appear.

#### **SUMMARY OF FINAL DETERMINATION**

22. The Petitioner raised a prima facie case that its property's 2006 assessment is in excess of the property's market value-in-use. The Respondent failed to appear to



rebut or impeach the Petitioner's evidence. The Board finds in favor of the Petitioner and determines the value of the subject property is \$3,580,000 for the March 1, 2006, assessment date.

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

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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

- 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>>