

REPRESENTATIVE FOR PETITIONER: Adam Shields and Matthew Carr, Attorneys-at-Law

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney-at-Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Shelby's Landing-II, LP,)	Petitions:	73-002-06-1-4-72402
)		73-002-06-1-4-72403
Petitioner,)		
)	Parcels:	73-11-04-300-095.000-002
)		73-07-09-300-087.000-012
v.)		
)	Shelby County	
Shelby County Assessor,)	Addison Township	
)	2006 Assessment	
Respondent.)		

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

February 18, 2010

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUES

Based on an appraisal's income approach to value trended to January 1, 2005, did the Petitioner prove the 2006 assessment for its new, Section 42 housing project (Shelby's Crest Apartments) should be lowered from \$7,434,600 to \$3,100,000?

Based on an appraisal's income approach to value trended to January 1, 2005, did the Petitioner prove the 2006 assessment for its newly renovated, Section 42 housing project (Shelby's Landing Apartments) should be lowered from \$1,761,200 to \$642,500?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject properties are housing projects located in Shelbyville. Shelby's Crest Apartments (Parcel 73-11-04-300-095.000-002) is located at 810 Saraina Road. Shelby's Landing Apartments (Parcel 73-07-09-300-087.000-012) is located at 4284 North Morristown Road.
2. The parties stipulated that Shelby's Crest and Shelby's Landing are Section 42 low-income housing projects.
3. The Petitioner initiated assessment appeals with the Shelby County Property Tax Assessment Board of Appeals (PTABOA) for both of those properties. The PTABOA mailed its decisions on September 23, 2008. The Petitioner then timely filed a Form 131 for each parcel with the Board.
4. The PTABOA determined the total assessed value for Shelby's Crest is \$7,434,600 (land \$536,600 and improvements \$6,898,000).
5. The PTABOA determined the total assessed value for Shelby's Landing is \$1,761,200 (land \$182,900 and improvements \$1,578,300).
6. The Petitioner contends the total assessed value should be \$3,100,000 for Shelby's Crest and \$642,500 for Shelby's Landing.
7. Administrative Law Judge Kay Schwade held a hearing for these petitions on October 27, 2009. There was no on-site inspection of the subject properties by the Administrative Law Judge or the Board.

8. Rick Deckard, Sean O'Connor, and Jay Allardt testified as witnesses for the Petitioner. Bradley A. Berkemeier and Jeff Wuensch were witnesses for the Respondent.

9. The Petitioner presented the following exhibits:
 - Petitioner Exhibit 1 – Section 42 Low Income Housing Tax Credit Application (Conditional Application 2003),
 - Petitioner Exhibit 2 – Section 42 Low Income Housing Tax Credit Application (Conditional Application 2003),
 - Petitioner Exhibit 3 – Indiana Housing Finance Authority 2003 Conditional Rental Housing Tax Credit Commitment,
 - Petitioner Exhibit 4 – Indiana Housing Finance Authority Carry Over Agreement Allocation of the 2003 Rental Housing Tax Credit Carry Over Agreement,
 - Petitioner Exhibit 5 – Gauthier & Kimmerling Audit Reports,
 - Petitioner Exhibit 6 – PNC Bank Mortgage including Sixth Modification and Extension Agreement,
 - Petitioner Exhibit 7 – PNC Bank Funding Summary and Schedule of Draws,
 - Petitioner Exhibit 8 – Shelby's Crest Temporary Certificates of Occupancy,
 - Petitioner Exhibit 9 – Shelby's Landing Occupancy Certificate and Building Permit,
 - Petitioner Exhibit 10 – Section 42 Low Income Housing Tax Credit Application (Final Application),
 - Petitioner Exhibit 11 – Shelby's Crest Form 8609 (Low Income Housing Credit Allocation and Certification),
 - Petitioner Exhibit 12 – Shelby's Landing Form 8609 (Low Income Housing Credit Allocation and Certification),
 - Petitioner Exhibit 13 – Shelby's Crest Consolidated Annual Beneficiary Report,
 - Petitioner Exhibit 14 – Shelby's Landing Consolidated Annual Beneficiary Report,
 - Petitioner Exhibit 15 – List of rental applications for both properties,

Petitioner Exhibit 16 – Rent Rolls for both properties dated June 28, 2007, and June 30, 2008,

Petitioner Exhibit 17 – Summary Appraisal Report by Jay E. Allardt, SRA for Shelby’s Crest,

Petitioner Exhibit 18 – Summary Appraisal Report by Jay E. Allardt, SRA for Shelby’s Landing,

Petitioner Exhibit 19 – Adjustment of appraised valuations to January 1, 2005.

10. The Respondent presented the following exhibits:

Respondent Exhibit A – Property Record Card for Shelby’s Crest,

Respondent Exhibit B – Property Record Card for Shelby’s Landing,

Respondent Exhibit C – Contract/Change Order with Funding Summary,

Respondent Exhibit D – Three Sales Disclosure Forms,

Respondent Exhibit E – Capitalization Rate Calculations and Indicated Income Approach Value,

Respondent Exhibit F – Parts of IAAO training manual,

Chapter 1 Assessment & Appraisal Theory,

Chapter 3 Development of Capitalization Rates,

Chapter 4 Contemporary Capitalization Methods,

Respondent Exhibit G – Petitioner’s Response to Respondent’s First Request for Production of Documents,

Respondent Exhibit H – Withdrawn,

Respondent Exhibit I – Withdrawn,

Respondent Exhibit J – Resolution Approving Tax Abatement,

Respondent Exhibit K – UPS Shipment Receipt,

Respondent Exhibit L – UPS Confirmation of Delivery.

11. The following additional items are recognized as part of the record:

Board Exhibit A – The Form 131 petitions,

Board Exhibit B – Notices of Hearing,

Board Exhibit C – Hearing Sign-In Sheet,

Board Exhibit D – Notice of Appearance on behalf of Petitioner,
Board Exhibit E – Notice of Appearance on behalf of Respondent,
Board Exhibit F – Petitioner’s Motion In Limine,
Board Exhibit G – Petitioner’s Motion to Withdraw Motion In Limine,
Board Exhibit H – Motion for Withdrawal of Appearance,
Board Exhibit I – Hearing Transcript (Transcript),
Board Exhibit J – Petitioner’s Post-hearing Brief,
Board Exhibit K – Respondent’s Post-hearing Brief.

OBJECTIONS

12. The Petitioner filed a Motion In Limine And To Strike the Respondent’s evidence based on a purported failure to comply with the Board’s exchange of evidence rule found in 52 IAC 2-7-1(b)(1). The Respondent, however, provided evidence that the documents for exchange were shipped, overnight, via UPS on Monday, October 19, 2009. Additionally, following the hearing, the Respondent provided the UPS Delivery Confirmation showing that the documents had been delivered on October 20, 2009. The Petitioner subsequently withdrew this motion. Therefore, it requires no ruling.
13. The Respondent objected to recalling Jay Allardt as a rebuttal witness claiming that all his testimony should have been offered when the Petitioner presented its case in chief. Nevertheless, Mr. Allardt was permitted to testify as a rebuttal witness and almost all of his additional testimony was well within the bounds of appropriate rebuttal to the evidence the Respondent offered. Therefore, this objection is overruled.

SUMMARY OF THE PETITIONERS’ CASE

14. Shelby’s Crest and Shelby’s Landing are Section 42 low-income housing projects rented at levels below market rent with the federal government setting the maximum rent based on Shelby County’s median income. Shelby’s Crest has ninety-eight family units. Shelby’s Landing has twenty-two senior units. *Pet’r Ex. 17, 18.*

15. Jay E. Allardt, an Indiana Certified General Appraiser, prepared Summary Appraisal Reports for both Shelby's Crest and Shelby's Landing in compliance with the Uniform Standards of Professional Appraisal Practices (USPAP). These appraisals conform to the requirements of Ind. Code § 6-1.1-4-40, Ind. Code § 6-1.1-4-41, and generally accepted appraisal practice. *Allardt testimony; Pet'r Ex. 17, 18, 19.*
16. Mr. Allardt considered all three approaches to value. The sales approach was unreliable because there are few sales of Section 42 housing projects. The cost approach was also unreliable because of the high external obsolescence associated with these types of properties. The income approach is ideal for valuing income producing property such as Shelby's Crest and Shelby's Landing because it derives the market value based on what an investor would pay to purchase the income stream such a property produces. *Allardt testimony.*
17. Because he did not find a significant number of sales involving Section 42 low-income housing projects, Mr. Allardt used market data for conventional market rent apartment complexes to calculate a market capitalization rate for his income approach. This is appropriate because Shelby's Crest and Shelby's Landing are a subset of all apartment properties and the fundamentals for purchasing apartments are similar regardless of whether a property is a conventional market property or a Section 42 property. A purchaser is interested in the potential income stream the property will produce. After reviewing several market transactions and giving emphasis to newer constructed properties, Mr. Allardt determined the market capitalization rate was 8.75%. *Allardt testimony; Pet'r Ex. 17, 18.*
18. To check that capitalization rate, Mr. Allardt also looked at the band of investment method. Following a Department of Local Government Finance Memorandum titled "Overview of the Income Approach to Valuation," Mr. Allardt determined that typical market financing terms provided for an allocation of 75% debt to 25% equity reflecting what investors, not the current owners, would pay for Shelby's Crest and Shelby's Landing. The band of investment method resulted in a capitalization rate of 8.72% and supports the market capitalization rate of 8.75%. *Allardt testimony; Pet'r Ex. 17, 18.*

19. In order to develop an overall “loaded” capitalization rate, Mr. Allardt added the local final tax rate to the market capitalization rate.¹ The loaded capitalization rate for Shelby’s Crest was 11.05% (8.75% + 2.3%). The loaded capitalization rate for Shelby’s Landing was 10.28% (8.75% + 1.53%). *Allardt testimony; Pet’r Ex. 17, 18.*
20. The net operating income for the properties was developed from the 2008 rents and the expenses for 2007 and part of 2008. The appraiser chose this method because the properties were not occupied on March 1, 2006. After analyzing the financial statements for the properties, Mr. Allardt estimated the net operating income for Shelby’s Crest at \$368,048 and Shelby’s Landing at \$75,130. Those figures do not include property tax expenses. *Allardt testimony; Pet’r Ex. 17, 18.*
21. Using those net operating incomes and loaded capitalization rates in a direct capitalization calculation, the estimated market value was \$3,331,000 for Shelby’s Crest and \$731,000 for Shelby’s Landing as of March 1, 2008—a point when occupancy had stabilized for both properties. Then the appraisal adjusted those values to account for several months of negative cash flow during the lease-up periods that correspond with the assessment date of March 1, 2006.² Finally, Mr. Allardt trended those values to January 1, 2005, using the Consumer Price Index and the median income levels in Shelby County. He concluded that the market value-in-use for Shelby’s Crest was \$3,100,000 and for Shelby’s Landing it was \$642,500 as of January 1, 2005. *Allardt testimony; Pet’r Ex. 17, 18, 19.*
22. The Respondent incorrectly interpreted the International Association of Assessing Officials (IAAO) publication regarding the use of comparables. The IAAO cautions against comparing substantially different properties, such as long term lease properties (like a Wal-Mart) to apartments, not against using conventional apartments as

¹ The tax abatement for Shelby’s Crest was not factored into the effective tax rate. Valuation by the income approach is based on a stabilized net operating income continuing through perpetuity. Because the tax abatement was for a three-year period, factoring in the abated taxes would distort the calculations. *Allardt testimony.*

² “[A] person buying something when it is completed, but not occupied to a stabilized level *** say[s] what expenses am I going to incur in marketing and operating this property until I get it up to a point where I have a positive cash flow?” *Allardt testimony, Tr. at 27.* One hundred percent occupancy is not expected on the first day of business. There was a standard, ordinary lease up period for both properties. *Deckard testimony.*

comparables to Section 42 apartments. Conventional market apartments can be used as comparative property for Section 42 apartments because the differences in the income streams between these properties do not impact the capitalization rates. *Allardt testimony.*

23. The Department of Local Government Finance's November 12, 2003, memorandum "Overview of the Income Approach to Value" explains that income related data must be extracted from the marketplace and applied to comparable investment real estate because the income approach measures the actions of buyers and sellers. The Respondent's band of investment method used to calculate a capitalization rate is flawed because it uses the actual debt/equity allocation of the subject properties. This allocation is significantly different than the allocation commonly found in the market place because of the federal tax credits associated with Section 42 housing. *Allardt testimony; Pet'r Ex. 17, 18.*
24. The Respondent's band of investment calculation includes the value of the tax credits in the equity portion of the calculation contrary to Ind. Code § 6-1.1-4-40. *O'Connor testimony.* The Respondent's band of investment calculation also considered an equity return at .5%, which is too low. Because a mortgage investment is much less management intensive and is risk-free when compared to the equity ownership of an apartment property, the typical expectation in the marketplace is for the equity return constant to be higher than the return on a mortgage. Using an appropriate debt/equity allocation, the band of investment calculation should result in a capitalization rate of 8.452%, which is very close to the appraisal's capitalization rate of 8.75%. *Allardt testimony.*
25. Construction costs are not a good indicator of value for Section 42 housing projects. The tax credits help offset construction costs that would not otherwise be justified with the rent restrictions that also go along with Section 42 housing. *O'Connor testimony.*

26. The Respondent's use of the actual construction cost in an "IRV"³ calculation to derive a capitalization rate is improper. In Section 42 housing projects, cost is not equal to value due to the federal tax credits. Using actual construction cost as the value variable in "IRV" in order to determine a capitalization rate for the income approach improperly manipulates the calculation. It effectively includes the value of the federal tax credits in violation of Ind. Code § 6-1.1-4-40. *O'Connor testimony*.
27. The Respondent's remaining capitalization rate calculations used inappropriate debt/equity breakdown or include the value of tax credits. If these flaws were corrected, the Respondent's net income ratio method and debt/equity ratio method would result in capitalization rates similar or higher than those calculated in the appraisals. *Allardt testimony*.
28. The Board's decision in *Aspen Meadows* (Petition No. 88-022-05-1-4-00016) provides assurance that Mr. Allardt's calculations are reasonable. In *Aspen Meadows*, the Board accepted an income approach as a proper method for valuing a Section 42 housing property, accepted a capitalization rate of 10.78%, and accepted an equity constant return of 14%. The capitalization rate accepted in *Aspen Meadows* is very similar to those utilized in the appraisals for Shelby's Crest (11.05%) and Shelby's Landing (10.28%). The equity return constant accepted in *Aspen Meadows* is closer to the appraisal's 10% equity return constant than the .5% equity return constant the Respondent proposed. The *Aspen Meadows* case addressed a 2005 assessment, but what the Board accepted in that case demonstrates the reasonableness of Mr. Allardt's work and conclusions. *Shields argument*.

SUMMARY OF THE RESPONDENT'S CASE

29. The total construction cost for both Shelby's Crest and Shelby's Land was approximately \$8 million. The combined value from both appraisals is approximately \$3 million, a valuation that is based on the income approach. When looking at newly constructed

³ In the Respondent's case it was explained that "IRV" is a valuation formula where I stands for income, R stands for rate, and V stands for value.

Section 42 housing projects, there seems to be a large disconnect between the cost approach to value and the income approach to value. *Wuensch testimony*. “[T]hat large disconnect between the cost approach and the income approach that was provided [in the appraisals] ... showed a huge disparity between the two approaches and so what we did agree on was the net operating income so the only difference between the two would be the appropriate capitalization rate....” *Wuensch testimony, Tr. at 46*. The Petitioner’s method of calculating a capitalization rate is invalid. *Wuensch testimony*.

30. Income capitalization rates can be calculated from comparable properties that have sold. The Petitioner emphasized that method using conventional market rent apartments, even though Section 42 housing and market rent apartments are not appropriate comparables. *Wuensch testimony*.

31. There are alternative methods for calculating capitalization rates. The “IRV” formula can be used to develop a capitalization rate when the net operating income and the value of a property are known.⁴ This formula is better suited to valuing the subject properties. The net operating income for Shelby’s Crest and Shelby’s Landing is not in dispute. Typically, the value variable in “IRV” would be sale price, but there are few (if any) sales of Section 42 housing. In the absence of sale data, an alternate value must be identified. Following the principle of substitution—that no one would pay more to build something than it would cost to buy an equivalent property—the actual construction cost plus land cost for Shelby’s Crest and Shelby’s Landing can represent value. This formula is the simplest, most objective method of calculating the capitalization rate because it does not introduce subjectivity of investor expectations, anticipated equity or dividends. Furthermore, it tells everything about discount recapture and effective tax rate. *Wuensch testimony*.

32. Using the IRV method with the net operating income and the construction cost plus land cost to represent value, and then adding an effective tax rate indicates the loaded capitalization rate is 4.8%. This method is the most objective way to determine the

⁴ According to IAAO training materials, one of the generic IRV capitalization formulas states that dividing income by value equals the capitalization rate. *Resp’t Ex. F at 1/10*.

relationship between the net operating income of the subject properties and their value. *Wuensch testimony; Resp't Ex. C, D, E, F.*

33. The capitalization rates in the appraisals are flawed because they were derived through a market sales transaction approach, or sales comparison approach that did not use valid comparables. The IAAO lays out criteria to follow if using comparable sales to develop a capitalization rate. The comparable sales need to have the same economic lives, operating expense ratios, physical conditions and land to value ratios. The Petitioners comparable sales do not have the same economic lives as the subject properties. The properties to be compared must have comparable income streams with the same characteristics of risk, timing, stability, and income projection pattern. The income streams of conventional market apartments are not the same as those of Section 42 apartments due to the rent restrictions. The properties must also have comparable terms and types of financing. In Shelby County, conventional market rent apartments have a debt in a range of 75% to 85%. But equity in the subject properties is about 72% (reflective of the tax credits) and the debt held by the owner or investor is about 28%. The terms of financing between conventional apartments and Section 42 apartments are dissimilar. The IAAO says that if the criteria for comparability cannot be met, the overall capitalization rate cannot be derived directly from market sales. *Wuensch testimony; Resp't Ex. F.*
34. Furthermore, the loaded capitalization rates in the appraisals are flawed because they used a net tax rate, not an effective tax rate. An effective rate actually is the total tax divided by the assessed value. An effective tax rate reflects particular circumstances related to a property's tax burden in terms of deductions, exemptions, or, as is the case now, abatements. Net tax rates and effective tax rates are not necessarily the same. *Wuensch testimony.*
35. With the 4.8% capitalization rate applied to the net operating incomes provided in the appraisals, the result is close to the current assessed values. *Wuensch testimony.*

ANALYSIS

36. A Petitioner who seeks review of a determination of an assessing official has the burden to establish a prima facie case proving 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). In making its case, a Petitioner must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington 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”).
37. There is no dispute that Shelby’s Crest and Shelby’s Landing are Section 42 low income housing projects. Therefore, two statutes are particularly relevant to this dispute:

Indiana Code § 6-1.1-4-40

The value of federal income tax credits awarded under Section 42 of the Internal Revenue Code may not be considered in determining the assessed value of low income housing tax credit property.

Indiana Code § 6-1.1-4-41

(a) For the purposes of this section:

- (1) “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; and

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

38. The Tax Court has recognized that a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practices (USPAP), is often the best way to prove what an accurate value-in-use is. *See O’Donnell v. Dep’t*

of Local Gov't Fin., 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006); *Kooshtard Prop. VI, LLC. v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).

39. The Petitioner presented such a case with two certified appraisals and Mr. Allardt's testimony. They are certified to conform to USPAP requirements. They provide a retrospective market value-in-use for each of the subject properties. Both appraisals explain that they used only the income approach:

The State of Indiana has recognized that the Income Capitalization Approach is the only reliable indicator of value for a Section 42 or Low Income Housing Tax Credit apartment development. The appraiser agrees with this statement and therefore the Income Capitalization Approach is the only approach to value that will be developed in this appraisal assignment.

Pet'r Ex. 17 at 37; Pet'r Ex. 18 at 22. With specific statutory direction in Ind. Code § 6-1.1-4-41(b)(1) to use the income capitalization approach, that limitation is justified and appropriate for these properties.

40. The appraiser determined the 2008 market value-in-use for Shelby's Crest would have been \$3,331,000 and for Shelby's Landing it would have been \$731,000. The appraiser used 2008 income (when occupancy had stabilized) because during 2006 and 2007 many of the new apartments were not yet rented. The appraiser adjusted to account for the negative cash flows created during the lease up period in 2006 and 2007. One appraisal determined the market value-in-use of Shelby's Crest was \$3,219,000 as of the assessment date. The other appraisal determined the market value-in-use of Shelby's Landing was \$665,000 as of the assessment date.
41. The required valuation date, however, is January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Mr. Allardt satisfied that requirement by trending the appraisal valuations based on the Consumer Price Index and also the median income levels for Shelby County. His letter dated September 28, 2009, summarizes how he determined values as of January 1,

2005. He concluded that trended to January 1, 2005, the value was \$3,100,000 for Sheby's Crest and \$642,500 for Shelby's Landing.

42. This evidence is sufficient to make a prima facie case for changing the assessments. *See Blackbird Farms Apartments v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 713 (Ind. Tax Ct. 2002) (defining a prima facie case as one in which the evidence is sufficient to establish a given fact and which if not contradicted will remain sufficient). "Although the burden of proof never shifts, once the taxpayer presents a prima facie case, the duty to go forward with the evidence shifts, and it is incumbent on the ... [Respondent] to rebut the taxpayer's evidence and support ... [the assessment] with substantial evidence. *Id.*
43. The Respondent did not attempt to support the existing assessments for either property with an appraisal. Rather, much of the Respondent's case was directed at various reasons to disregard the two appraisals by Mr. Allardt.
44. According to Mr. Wuensch's testimony, there was no dispute about the net operating income of these two properties. He indicated that he agreed with the net operating income from the appraisals. He explained that income was one of the known factors that justified using the IRV formula as a better way to determine an appropriate capitalization rate. Nevertheless, the Respondent's Post-Hearing Brief argued that "the ... appraisals inappropriately used only income data from the subject properties and inappropriately discounted for the lease up period." The inconsistency diminishes the impact of the purported weaknesses with how the appraisals determined income. Assuming, *arguendo*, that somebody could have done a better job of determining what the income from the subject properties really was, the Respondent made no attempt to prove a more credible, more accurate income number. Despite the Respondent's criticisms, figuring the rental income from 2008 rather than 2006 appears to have been a reasonable and accurate approach for the appraiser to take. The appraisals might have been better if income data from other similar Section 42 projects had been presented. But significantly, the Respondent presented absolutely no probative evidence that the potential income from rents allowed at Shelby's Crest and Shelby's Landing was inaccurate or would be

different if other Section 42 rents were considered. Under these circumstances, the purported weaknesses with how income was determined are not fatal flaws in the appraisal. They merely go to the weight of the evidence.

45. For purposes of further analysis, we will accept the position that the center of this dispute really is the capitalization rate. With the support of Mr. Allardt's appraisals, the Petitioner claims the loaded capitalization rate should be 11.05% for Shelby's Crest and 10.28% for Shelby's Landing. On the other hand, the Respondent claims the loaded capitalization rate for both properties should be 4.8%
46. The appraiser used two standard, generally accepted methods to determine the 11.05% and 10.28% rates. One method developed a capitalization rate from market data. The other used the band of investment technique. Both appraisals provide substantial factual support and explanation for these determinations, which call for the kind of professional judgments that appraisers commonly make. The two methods produced very similar results. The Respondent, however, argued that both capitalization rate calculations suffer from a general lack of appreciation for Section 42 housing projects. The market data did not involve sales of Section 42 housing projects and band of investment did not consider financing with the kind of debt/equity ratios that exist with Section 42 projects. Again, these points go to the weight of the evidence.
47. The Respondent presented some evidence that supports a much lower capitalization rate of 4.8%, but it is much less persuasive than what the Petitioner presented. The Respondent's case is not supported by an appraisal or an Indiana Certified General Appraiser such as Mr. Allardt. Although a certified appraisal and a certified appraiser are not requirements for either party to make a case, the presence of such evidence often provides powerful support for a position. The evidence does so in this case. We conclude that a 4.8% capitalization rate is not accurate.
48. The Respondent claims, with apparent incredulity, that the actual cost of the subject properties could not possibly differ so much from a correctly calculated valuation based on the income approach. We remain unconvinced on that point. Where special

considerations such as restricted rents and tax credits are involved, it seems to be quite possible that the usual expectation for the cost approach, the comparable sales approach, and the income approach to produce roughly the same values may not be valid. Perhaps that is the reason for statutorily linking valuation of this kind of property to the income capitalization approach.

49. Fundamentally, the Respondent's position about what the assessed value should be is tied to the actual construction costs for these new Section 42 apartments. The arguments and testimony offered by the Respondent frequently brought up what those costs were. The Respondent tried to establish that the appraisals' conclusions about value based on the income approach must be bad because they are so different from cost. In this case, the Respondent's supposedly better, more reliable method for determining a capitalization rate with the IRV formula (effectively modified so that cost is used for value) amounts to nothing more than repackaging the cost approach with a new name, but no substantial change. If income of the subject property and cost of the subject property were used to determine a capitalization rate as Mr. Wuensch suggests, calling it an "income capitalization approach" would be meaningless and absurd because it would always produce a result equivalent to cost. Such a methodology would be inconsistent with Ind. Code § 6-1.1-4-41(b).
50. This is not a case where an assessor's valuation of a property according to the Assessment Guidelines is presumed to be accurate. This is not a case where an assessor had discretion to choose among the cost method, the comparable sales method, the income capitalization method, or other generally accepted appraisal principles to determine the assessed value of Shelby's Crest and Shelby's Landing because there is a statute that specifies how the assessment valuation must be determined.
51. After considering all of the evidence presented in this matter, it is apparent that the current assessments are not based on a true income approach, but rather, they really are based on cost. Consequently, the current assessments do not meet the requirements of Ind. Code § 6-1.1-4-41(b). On the other hand, the two appraisals present credible

valuations based on generally accepted appraisal practices and the income approach. While the Respondent perhaps raised a few questions about how the appraisals determined the incomes for the subject properties and about how the appraisals determined income capitalization rates, ultimately the weight of the evidence convinces us that the appraisals are the best indication of what the 2006 assessments for these properties should be.

SUMMARY OF FINAL DETERMINATION

52. The Board finds in favor of the Petitioner, who overall presented the more convincing case. The total assessment for Shelby's Crest must be changed to \$3,100,000 and the total assessment for Shelby's Landing must be changed to \$642,500.

This Final Determination for the above captioned matter is issued on the date first written above.

Commissioner, 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, 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>>