

REPRESENTATIVE FOR PETITIONER:
Ralph Campbell, Property Valuation Services, Inc.

RESPONDENT:
Ray Loheider, Knox County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Vincennes Properties, L.P.,	)	Petition No.:	42-022-07-1-4-00001
)		
Petitioner,)		
	)	Parcel No.:	022-012-UP07-004-006
v.)		
	)	County:	Knox
Knox County Assessor,	)	Township:	Vincennes
)		
Respondent.	)	Assessment Year:	2007

Appeal from the Final Determination of
Knox Property Tax Assessment Board of Appeals

May 7, 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:

ISSUES

1. The issue presented for consideration by the Board is whether the assessed value of the Section 515 apartment complex exceeds its market value-in-use based on the Petitioner's income-approach valuation.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-1, Ralph Campbell of Property Valuation Services, Inc., on behalf of Vincennes Properties Limited Partnership, filed a Form 130 Petition for Review of Assessment on August 1, 2008, petitioning the Knox County Property tax Assessment Board of Appeals (the PTABOA) to conduct an administrative review of the property's 2007 assessment. The PTABOA issued its determination on September 5, 2008. Pursuant to Ind. Code § 6-1.1-15-1, Mr. Campbell filed a Form 131 Petition for Review of Assessment on October 7, 2008, petitioning the Board to conduct an administrative review of the property's 2007 assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Rick Barter, held a hearing on February 10, 2009, in Vincennes, Indiana.
4. The following persons were sworn and presented testimony at the hearing:
 - For the Petitioner:
 - Ralph Campbell, Property Valuation Services, Inc.
 - For the Respondent:
 - Ray Loheider, Knox County Assessor
5. The Petitioners presented the following evidence:
 - Petitioner Exhibit 1 – Petitioner's summary of issues,
 - Petitioner Exhibit 2 – Summary of income approach to value,
 - Petitioner Exhibit 3 – Income approach computation,
 - Petitioner Exhibit 4 – Source financial information,
 - Petitioner Exhibit 5 – Evidence documentation,
6. The Respondent presented no evidence.

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 with attachments,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing sign-in sheet.
8. The appealed property is an improved commercial apartment complex located on College Avenue in Vincennes Township, Knox County, Vincennes, Indiana.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2007, the PTABOA determined the assessed value of the property to be \$61,600 for the land and \$1,089,000 for the improvements, for a total assessed value of \$1,150,600.
11. At the Board hearing the Petitioner requested total assessed value of \$1,001,100.

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 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).

14. In making its case, taxpayers 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 value of the property for 2007 is no more than \$1,001,100 based on an income approach valuation. *Campbell testimony*. In support of this contention, the Petitioner presented the following evidence:
 - A. The Petitioner argues the property is a Section 515 apartment complex constructed under a federal U.S. Department of Agriculturally-sponsored program providing mortgage loans for rural rental housing. *Petitioner Exhibit 1; Campbell testimony*. According to the Petitioner’s representative, the property is restricted by who can be tenants and how much can be charged for rent. *Id*. In addition, Mr. Campbell argues, there are compliance reporting requirements and the Petitioners are restricted to earning a maximum of eight percent profit on its five percent investment. *Id*.
 - B. The Petitioner’s representative testified that on November 12, 2003, the Indiana Department of Local Government Finance issued its “Overview of the Income Approach to Valuations” which said in pertinent part, “The income approach is most

applicable to properties that are leased and held for investment, such as apartments, shopping centers, warehouses and office buildings.” *Petitioner Exhibit 1, Campbell testimony*. Therefore, Mr. Campbell testified, he used the income approach to value to estimate the 2007 market value-in-use of the property. *Id.*

C. In developing his income approach valuation, Mr. Campbell testified that he used the property’s actual potential rent because it was the only rent that was legally permissible for the property. *Petitioner Exhibit 2, Campbell testimony*. Further, he applied a 2.9% vacancy loss because it was the average vacancy loss for Section 515 properties in Region 5. *Id.* Mr. Campbell then compared the property’s actual expenses to the expenses typical for a Section 515 property and determined that the actual expenses were lower than the average expenses for similar properties. *Id.* Finally, Mr. Campbell used the band of investment method to determine the capitalization rate based on the property’s one percent mortgage interest rate and eight percent return on investment. *Id.* Using the income approach method of valuation, Mr. Campbell calculated the property’s value to be \$1,001,100. *Id.* Mr. Campbell supported his calculation with the property’s financial data for 2004, 2005, and 2006. *Petitioner Exhibits 3 and 4;*¹ *Campbell testimony*.

17. The Respondent offered no testimony or exhibits. *Loheider testimony*. According to Mr. Loheider, he did not “contest” the Petitioner’s evidence, but he did not stipulate or agree to the value. *Id.*

ANALYSIS

18. Real property is assessed based on its “true tax value.” True tax value is “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, for the property.” Ind. Code c 6-1.1-31-6(c); 2002 REAL

¹Petitioner’s exhibits three and four contain site specific financial data and are deemed confidential as a result of a stipulation between all parties.

PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual's definition of true tax value, such as actual cost, appraisals, or sales information regarding the subject property or comparable properties that are relevant to the property's market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5.

19. Regardless of the approach used to prove the market value-in-use of a property, a 2006 assessment is required to reflect the value of the property as of 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 of how it demonstrates or is relevant to, the value of the property as of that required valuation date. *See Long v. Wayne Township Assessor*, 821 at N.E.2d 466, 471 (Ind. Tax Ct. 2005).
20. The income approach to value is a generally accepted method of appraising. *See* MANUAL at 14. It 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." *Id.* Under the income approach to value, fair market value can be determined by capitalizing the net income that the property produces, more specifically by converting the net income at a reasonable rate of return to give an indication of value. *See Lacy Diversified Indus., Ltd. v. Dep't Local Gov't. Fin.*, 799 N.E.2d 1215, 1223 (Ind. Tax Ct. 2003); *Lucre Corp. v. County of Gibson*, 657 N.E.2d 150, 153 (Ind. Ct. App. 1995), *trans. denied*. Here, the Petitioner presented an income approach valuation. The Petitioner's representative sufficiently explained his calculation and the underlying data upon which he relied. Thus the Petitioner raised a prima facie case that its 2007 is over-stated.
21. 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). To rebut or impeach the Petitioners' case, the

Respondent has the same burden to present probative evidence that the Petitioners faced to raise their prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005). Here the Respondent offered nothing to support its assessment and, in fact, testified that he did not “contest” the Petitioner’s value. Thus the Respondent failed to rebut or impeach the Petitioner’s case.

SUMMARY OF FINAL DETERMINATION

- 22. The Board finds in favor of the Petitioner and holds that the 2007 assessed value of the subject property is \$1,001,100.

FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines the assessment should be changed.

ISSUED: _____

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

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>.