

REPRESENTATIVES FOR PETITIONER:

Michael V. Sakich, Managing Member, Westwood Apartments, LLC  
David F. Kozak, Managing Member, Westwood Apartments, LLC

REPRESENTATIVES FOR RESPONDENT:

Hank Adams, St. John Township Assessor  
Melody K. Kikkert, Real Estate Deputy, St. John Township

---

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Westwood Apartments, LLC	)	Petitions: 45-036-03-1-4-00006A
	)	45-036-04-1-4-00010A
Petitioner	)	Parcel: 009-20-13-0303-0001
	)	
	)	Petitions: 45-036-03-1-4-00007A
	)	45-036-04-1-4-00009A
	)	Parcel: 009-20-13-0303-0002
v.	)	
	)	Petitions: 45-036-03-1-4-00008A
Lake County Assessor	)	45-036-04-1-4-00008A
	)	Parcel: 009-20-13-0303-0003
Respondent	)	
	)	Petitions: 45-036-03-1-4-00009A
	)	45-036-04-1-4-00007A
	)	Parcel: 009-20-13-0303-0004
	)	
	)	Petitions: 45-036-03-1-4-00010A
	)	45-036-04-1-4-00006A
	)	Parcel: 009-20-13-0303-0005
	)	
	)	County: Lake
	)	Township: St. John
	)	Assessment Years: 2003 and 2004

---

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

---

**October 19, 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. In this assessment appeal, the Petitioner’s witness, Michael Sakich, used the income approach to estimate the subject property’s market value at significantly less than the amount for which it was assessed. Mr. Sakich, however, relied almost exclusively on data from 2003-2005. Because Mr. Sakich failed to explain how his valuation opinion related to the subject property’s market value-in-use as of the relevant January 1, 1999, valuation date, the Petitioner failed to make a prima facie case for reducing the property’s assessment.

**PROCEDURAL HISTORY**

2. The Petitioner contested the March 1, 2003, and March 1, 2004, assessments for five parcels that it owns and operates as a single apartment complex. On November 21, 2007, the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations denying the Petitioner the relief it had requested.
3. On December 21, 2007, the Petitioner filed Form 131 petitions with the Board seeking review of those 2003 and 2004 assessments.

## HEARING FACTS AND OTHER MATTERS OF RECORD

4. On August 4, 2009, the Board's designated Administrative Law Judge, Ellen Yuhan ("ALJ"), held a hearing on the petitions.
  
5. The following persons were sworn at the hearing:
  - For the Petitioner: Michael V. Sakich, Managing Member, Westwood Apartments, LLC  
David F. Kozak, Managing Member, Westwood Apartments, LLC
  
  - For the Respondent: Hank Adams, St. John Township Assessor  
Melody K. Kikkert, Real Estate Deputy
  
6. The Petitioner presented the following exhibits<sup>1</sup>:
  - Petitioner Exhibit I – Financial Summary, Loaded Cap Rate Analysis, Unloaded Cap Rate Analysis, Assessed Value Summary
  - Petitioner Exhibit II – Supporting Income Statements 2004, 2005
  - Petitioner Exhibit III – Evidence of Market Cap Rate (9%), CB Richard Ellis Indianapolis, CB Richard Ellis Chicago, Real Capital Analytics, National Real Estate Index
  - Petitioner Exhibit IV – Memorandum (2 pages), Loaded Cap Rate Assessor Comparison (2 pages), Rent Rolls (2 pages).
  
7. The Respondent presented the following exhibits:
  - Respondent Exhibit 1 – Summary of the Three Approaches to Value
  - Respondent Exhibit 2 – Westwood Apartments Assessed Values
  - Respondent Exhibit 3 – Westwood Apartments Property Record Cards
  - Respondent Exhibit 4 – Pictures of Westwood Apartments
  - Respondent Exhibit 5 – Guidelines for the Income Approach
  - Respondent Exhibit 6 – Fair Market Rent Survey
  - Respondent Exhibit 7 – Westwood Apartments Consolidated Statements
  - Respondent Exhibit 8 – Westwood Apartments Income Approach for 2003
  - Respondent Exhibit 9 – Westwood Apartments Income Approach for 2004
  - Respondent Exhibit 10 – Westwood Apartments Income Approach for

---

<sup>1</sup> The Petitioner offered a description of its exhibits with corresponding exhibit numbers. Other than Exhibit IV, however, the Petitioner did not separately label its exhibits.

2005

- Respondent Exhibit 11 – Capitalization Rates
- Respondent Exhibit 12 – Westwood Apartment Rent Roll
- Respondent Exhibit 13 – Sales Comparison Approach
- Respondent Exhibit 14 – Indiana Board of Tax Review Case
- Respondent Exhibit 15 – Notice of St. John Township Assessor Representation.

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

- Board Exhibit A – Form 131 petitions
- Board Exhibit B – Notices of hearing dated May 20, 2009
- Board Exhibit C – Sign-in sheet.

9. The five parcels under appeal contain four apartment buildings with a total of 48 units plus paving. They are located at 81<sup>st</sup> Place and Westwood Court in Crown Point, Indiana. The Petitioner operates the parcels as a single property, and both parties treated them as a single property for valuation purposes. Thus, unless otherwise indicated, the Board will address them collectively as the “subject property.”

10. The ALJ did not conduct an on-site inspection of the subject property

11. The PTABOA determined the following values for the subject property:

Parcel Number	Land	Improvements	Total
009-20-13-0303-00001	\$93,500	\$384,400	\$477,900
009-20-13-0303-0002	\$93,500	\$384,400	\$477,900
009-20-13-0303-0003	\$96,100	\$384,400	\$480,500
009-20-13-0303-0004	\$99,000	\$384,400	\$483,400
009-20-13-0303-0005	\$162,900	\$0	\$162,900
			\$2,077,200

12. The Petitioner requests a total assessment of \$1,151,091.

## JURISDICTIONAL FRAMEWORK

13. 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

14. A petitioner seeking review of an assessing official's determination 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).
15. In making its case, the 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”).
16. 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

17. The Petitioner offered the following evidence and argument to support its claim for reducing the subject property's assessment:
- A. Michael Sakich, one of the Petitioner's managing members, used the income approach to estimate the subject property's value. He based his analysis on the property's actual income and expenses for 2004-2005, which he took from the property's income statements for those years. He did not use income from 2003 because the Petitioner did not own the property on March 1, 2003, and the St. John Township Assessor had previously told Mr. Sakich that the Petitioner could not appeal that year's assessment. In any event, 2003 was the Petitioner's worst year, so using income from that year would have only lowered Mr. Sakich's value conclusions. *Sakich testimony*. Mr. Sakich calculated two different versions of the property's operating income for each year (2004 and 2005)—one that included property taxes as an expense and one that did not. *Id.*; *Pet'r Exs. I-II, IV*.
- B. Mr. Sakich contrasted his approach to the Respondent's approach, which used an estimate of market rent rather than the property's actual rents. The Respondent's approach was purely hypothetical and did not account for conditions on the ground. For example, the Respondent conducted a telephone survey of apartment complexes. But the subject property does not have the same amenities as some other complexes. And many apartment communities offer a free month's rent. Actual net market rent is therefore lower than the quoted rent. *Sakich testimony*.
- C. The results of the Respondent's own telephone survey illustrate how actual rent differs from quoted rents. That survey showed the subject property's one-bedroom apartments as renting for \$603, whereas they actually rented for \$550 to \$590. Similarly, the survey showed the subject property's two-bedroom apartments as renting for \$771 while the highest rent in place was

\$705. *Id.*; *Resp't Ex. 6*. Thus, the Respondent's hypothetical rents were less reliable than the actual rents charged by the Petitioner, which has 20 years of experience owning and managing apartments, and which has owned and operated the subject property for six years. *Sakich testimony*.

- D. Also, the Respondent used slightly different expenses than those reflected on the Petitioner's income statements. The Petitioner bought the subject property so that it could manage it and Harvest Manor, another property that it already owned, essentially as a single operation.<sup>2</sup> That allowed the Petitioner to cut expenses by having only one manager and one maintenance supervisor. The Petitioner, however, would not have bought the subject property at the price that it paid had it not been looking to find efficiencies in operating Harvest Manor. In fact, the subject property needed both interior and exterior renovations when the Petitioner bought it. The property's assessment does not appear to account for those issues. *Sakich testimony*.
- E. Having calculated the subject property's actual net operating income, Mr. Sakich next determined an appropriate capitalization rate to apply to that income. He determined two different rates—an "unloaded rate" that did not include property taxes and a "loaded" rate that included those taxes. *Sakich testimony; Pet'r Ex. I*.
- F. To get his unloaded rate of 9%, Mr. Sakich relied on information supplied by CB Richard Ellis, Inc, which derived capitalization rates from 17 apartment-complex sales across northern Indiana. Those sales occurred in 2002-2003. *See Sakich testimony; Pet'r Ex. III*. Out of those sales, Mr. Sakich focused most heavily on the ones from Lake and Porter Counties. *Id.* Mr. Sakich's unloaded rate was about .5% higher than the rate that the Respondent used. *Sakich testimony; see also Pet'r Ex. I, Resp't Exs. 9-11*. But Mr. Sakich

---

<sup>2</sup> The Petitioner also appealed Harvest Manor's 2003-2004 assessments. The Board addresses those appeals in a separate determination.

looked at a broader sampling of sales—17 as compared to the Respondent’s five. *Sakich testimony; Pet’r Ex. III; Resp’t Ex. 11.*

G. Thus, Mr. Sakich performed four calculations—he applied his loaded and unloaded rates to the appropriate versions of the subject property’s net operating income for 2004 and 2005.<sup>3</sup> The Petitioner asked for an assessment of \$1,151,091, which was the average value from those four calculations. *Sakich testimony; Pet’r Ex. I.*

H. Mr. Sakich’s conclusions under the income approach were lower than the property’s current assessment. And Mr. Sakich understood that the Petitioner was entitled to have its assessment reflect the lowest of the three approaches to value. *Sakich testimony.*

18. The Respondent offered the following evidence and argument to support the subject property’s assessment:

A. Melody Kikkert, a St. John Township deputy assessor, used the income and sales-comparison approaches to estimate the subject property’s market value-in-use. Her estimates under those approaches supported the property’s cost-approach-based assessment. *Kikkert testimony.*

B. In performing her income-approach analysis, Ms. Kikkert did not use the actual rent reflected on the Petitioner’s income statements. According to Ms. Kikkert, market rents, rather than actual rents, are always used for ad valorem appraisals. To support that proposition, she pointed to part of a document from the Department of Local Government Finance titled “The Income Approach to Valuation I” and to portions of materials published by the International Association of Assessing Officers (“IAAO”). *Kikkert testimony; Resp’t Ex. 5.*

---

<sup>3</sup> Mr. Sakich applied the loaded rate to net-operating-income calculations that excluded property taxes as an expense and the unloaded rate to the calculations that included those taxes as an expense. *Pet’r Ex. I.*



- C. To determine fair market rent for the subject property, the St. John Township Assessor's office consulted several sources, including other apartment complexes, management companies, and materials published by the Department of Housing and Urban Development ("HUD"). *Kikkert testimony; Resp't Ex. 6*. She ultimately relied on the HUD information. That information excluded substandard housing, apartments built within the last two years, and public housing. *Id.* Ms. Kikkert then subtracted 7% of the property's potential gross rental income to account for vacancy and collection losses. *Id.*
- D. Although Ms. Kikkert questioned some of the expenses listed on the Petitioner's income statements, she largely used those reported expenses in her calculations. She subtracted those expenses from the property's effective gross income to arrive at its net operating income. *Kikkert testimony; Resp't Exs. 8-10*.
- E. Next, Ms. Kikkert extracted a capitalization rate from the sales of five similar properties in the area. Those sales all occurred in 2003. The median rate was 8.52%, which Ms. Kikkert loaded with the appropriate tax rates for the years under appeal. Ms. Kikkert then applied her loaded capitalization rate to the net operating incomes that she had calculated for each year from 2003 to 2005. *Kikkert testimony; Respondent Exhibits 8-11*. The average of those results was within 10% of the property's assessment. According to Ms. Kikkert, that meets the standard set by the IAAO and the 2002 Real Property Assessment Manual. *Kikkert testimony; Resp't Ex 1*.
- F. For her sales-comparison analysis, Ms. Kikkert looked at sales of four properties that were similar to the subject property in terms of building age, design, and condition. *Kikkert testimony; Resp't Ex. 14*. The sales were from 2002-2003. Using the median per-unit price from those sales, Ms. Kikkert estimated the subject property's value at \$2,144,016. That estimate differed

slightly (\$2,172,240) when she used the average per-unit price. *Id.* Once again, those estimates were within 10% of the subject property's assessment. *Kikkert testimony.*

G. Finally, on September 10, 2003, the Petitioner bought the subject property in an arm's-length transaction for \$2,300,000. That sale price is the strongest evidence of the property's value, and when adjusted for time, it closely supports the property's assessment. *Adams testimony; Resp't Ex. 13.*

## ANALYSIS

### Assessment Years Being Appealed

19. The record reflects some confusion about the years under appeal. On each appeal petition, the Petitioner listed 2003, 2004, and 2005 as the assessment years under appeal. Those petitions, however, attached Form 115 determinations from the PTABOA only for 2003 and 2004. *See Board Ex. A.* Thus, 2003 and 2004 were the only assessments before the Board. The Petitioner apparently acknowledged that fact given that it voiced no objection when, at the hearing's outset, the ALJ said that the parties agreed that those were the two years under appeal.
20. Also, while Mr. Sakich testified that the St. John Township Assessor had previously told him that the Petitioner could not appeal the subject property's 2003 assessment, the Respondent did not make that claim at the hearing. And it appears that there would be no grounds for such a claim given Mr. Sakich's testimony that, as part of its agreement with the seller, the Petitioner was responsible for paying the taxes based on that 2003 assessment. *See 52 IAC 2-2-13* (defining a party as, among other things, "the taxpayer responsible for the property taxes payable on the subject property.")

## Merits of the Petitioner's Claims

21. Indiana assesses real property based on its “true tax value,” 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.” 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost, sales comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (incorporated by reference at 50 IAC 2.3-1-2).
  
22. A property’s market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N. E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. Such evidence includes actual construction costs, sales information for the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
  
23. Regardless of the approach that a taxpayer uses to rebut an assessment’s presumed accuracy, the taxpayer must explain how its evidence relates to the property’s market value-in-use as of the relevant valuation date. Otherwise, that evidence lacks probative value. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct.2005) (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, 2003, and March 1, 2004, assessments at issue in this appeal, that valuation date was January 1, 1999. *See* MANUAL at 2, 4, 12

- (establishing January 1, 1999, as the valuation date for the March 1, 2002, general reassessment and providing that the Manual contains the rules for assessing real property for the March 1, 2002, through the March 1, 2005, assessment dates).
24. The Petitioner failed to make a prima facie case to rebut the presumption that the subject property was accurately assessed. The Petitioner relied solely on Mr. Sakich's valuation opinion, which he formed using the income approach to value. Unfortunately, Mr. Sakich based his opinion almost exclusively on data from 2003 forward without explaining how his conclusions related to the subject property's value as of the relevant January 1, 1999, valuation date. His valuation opinion therefore lacks probative value.
  25. Mr. Sakich also claimed that the subject property should be assessed for the lowest amount yielded by the three generally accepted approaches to value. Mr. Sakich may have been referring to Ind. Code § 6-1.1-4-39(a), which defines the true tax value of an apartment complex that (1) has more than four rental units, and (2) is regularly used to rent for periods of 30 days or more, as the lowest valuation determined by applying the cost, sales-comparison, and income-capitalization approaches. But that section applies only to assessment dates after February 28, 2005. Ind. Code § 6-1.1-4-39(a). Thus, for the March 1, 2003, and March 1, 2004, assessments at issue in this appeal, the Petitioner was not necessarily entitled to the most advantageous of the three valuation approaches. Of course, that point is moot given the Petitioner's failure to offer any probative evidence to show a value different from the property's assessment.
  26. Where a petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus., LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

**SUMMARY OF FINAL DETERMINATION**

27. The Petitioner failed to establish a prima facie case of error. The Board finds for the Respondent. No change in the assessment is warranted.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first 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, 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>>