

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition Nos.: 45-030-07-1-4-00001
45-030-07-1-4-00002
45-030-07-1-4-00003
45-030-07-1-4-00004
45-030-07-1-4-00005
45-030-07-1-4-00006
45-030-07-1-4-00007
45-030-07-1-4-00008
45-030-07-1-4-00009

Petitioner: Hickory Ridge Lake Apartments, LLC

Respondent: Lake County Assessor

Parcel Nos.: 45-12-05-276-012.000-030
45-12-05-276-013.000-031
45-12-05-276-011.000-030
45-12-05-276-010.000-030
45-12-05-276-009.000-030
45-12-05-276-008.000-030
45-12-05-276-007.000-030
45-12-05-276-004.000-030
45-12-05-233-020.000-030

Assessment Year: 2007

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner initiated its assessment appeals with the Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated March 9, 2009.
2. The PTABOA issued its determinations on March 31, 2011.

3. The Petitioner filed Form 131 petitions with the Board on April 8, 2011. The Petitioner elected to have its cases heard pursuant to the Board's small claims procedures.¹
4. The Board issued notices of hearing to the parties dated June 7, 2011.
5. The Board held an administrative hearing on August 15, 2011, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Rex D. Hume, Tax representative,

For Respondent: Joseph Taylor, Field Deputy, Ross Township,
Nicole Ooms, Field Deputy, Ross Township,
Robert W. Metz, Lake County Hearing Officer.

Facts

7. The subject properties comprise an apartment complex with 395 units located on nine parcels in Merrillville, Indiana.²
8. The ALJ did not conduct an on-site visit of the property.
9. For 2007, the PTABOA determined the assessed value of Parcel No. 45-12-05-276-012.000-030 (Parcel 12), located at approximately 5618 Hayes Street, to be \$50,100 for the land; the assessed value of Parcel No. 45-12-05-276-013.000-031 (Parcel 13), located at 1630-1650 West 57th Avenue, to be \$150,100 for the land and \$778,400 for the improvements, for a total assessed value of \$928,500; the assessed value of Parcel No. 45-12-05-276-011.000-030 (Parcel 11), located at 5544 Hayes Street, to be \$882,200 for the land and \$6,433,500 for the improvements, for a total assessed value of \$7,315,700; the assessed value of Parcel No. 45-12-05-276-010.000-030 (Parcel 10), located at 5542 Rear Cleveland, to be \$237,200 for the land; the assessed value of Parcel No. 45-12-05-276-009.000-030 (Parcel 9), located at 5659 Cleveland Street, to be \$302,100 for the land and \$2,548,500 for the improvements, for a total assessed value of \$2,850,600; the assessed value of Parcel No. 45-12-05-276-008.000-030 (Parcel 8), located at 1820 West 57th Avenue, to be \$499,200 for the land and \$2,497,100 for the improvements, for a total assessed value of 2,966,300; the assessed value of Parcel No. 45-12-05-276-007.000-030 (Parcel 7), located at approximately 5646 Cleveland Street, to be \$2,900 for the land; the assessed value of Parcel No. 45-12-05-276-004.000-030 (Parcel 4), located at 5565 Rear Cleveland, to be \$53,200 for the land; and the assessed value of Parcel No. 45-12-05-

¹ While typically small claims procedures are reserved for appeals of parcels with an assessed value not in excess of one million dollars, the Respondent did not object to the Petitioner's election of the small claims docket nor exercise its option to remove these matters from the Board's small claims docket.

² The apartments are operated as a single entity and the parties both valued the properties as a single entity. Therefore, the Board in its order will refer to the nine parcels at issue as the Petitioner's property.

233-020.000-030 (Parcel 20), located at approximately 5618 Hayes Street, to be \$139,500 for the land. The total assessed value for all nine parcels was \$14,574,000 for the March 1, 2007, assessment year.³

10. The Petitioner requested an assessed value totaling \$12,809,700 for all nine parcels.

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in its properties' assessed values:
 - a. The Petitioner's representative contends that rental property is assessed according to the lowest of the three approaches to value. *Hume argument*. Therefore, despite the property's purchase price, Mr. Hume argues, the property is over-assessed based upon the income approach to value for the 2007 assessment year. *Id.* In support of this contention, the Petitioner presented an income capitalization valuation estimating the property's market value to be \$12,809,700. *Petitioner Exhibit 1*.
 - b. The Petitioner's representative contends that he surveyed a group of Lake County properties that included heat and hot water in the rent and compared their rents per square foot to determine if the subject property's rents were typical of market.⁴ *Hume testimony; Petitioner Exhibit 1*. According to Mr. Hume, because the subject property is at the median market rent for units with one bathroom and slightly above market for two-bedroom, two-bath units, he used the subject property's actual rents in his income analysis.⁵ *Id.* Mr. Hume then reviewed income statements from other properties and determined that the expected vacancy rate for comparable apartments was 7% to 10% and the average collection/incentive loss was 5%. *Id.* Mr. Hume therefore used the subject property's vacancy rate of 8% and its collection/incentive loss rate of 5%. *Id.* Mr. Hume testified that he also used the property's actual figures for "other income" because the value-added services offered can be quite different for other properties. *Id.* Based on these figures, Mr. Hume calculated an effective gross income of \$2,855,600 for the property. *Id.*
 - c. The Petitioner's representative further testified that he used the property's 48% expense ratio in his income analysis. *Hume testimony; Petitioner Exhibit 1*. According to Mr. Hume, the property's expense ratio included replacement reserves

³ The Petitioner's representative identifies the total assessed value of the nine parcels as \$13,974,000. *Petitioner Exhibit 1*. However, Mr. Hume recorded the assessed value of Parcel 13 as \$150,100 for the land and \$178,400 for the improvements; rather than \$150,100 for the land and \$778,400 for the improvements as determined by the PTABOA and issued in the Form 115. *Id.*

⁴ Mr. Hume testified that although he used 2006 values, the property's owner said that the performance in 2007 was the same as in 2006. *Hume testimony*.

⁵ Mr. Hume admitted that the property's rent per unit was lower than other properties. *Hume testimony*. However, he argues, the property's units are smaller than most of its direct competitors and therefore should be considered on a square foot basis for each type of unit. *Id.*

and management fees, but he testified the ratio did not include property taxes. *Id.* While Mr. Hume acknowledged that the property's expense ratio was high, he argued that it was because the Petitioner's property is older than other apartments in the area. *Id.* In addition, the property includes heat and hot water in its rent. *Id.* According to Mr. Hume, he had detailed information for one other property that had a 51% expense ratio for 2006. *Hume testimony.* Mr. Hume testified that the only other properties for which he had sufficiently detailed information were properties such as Section 8 and Section 42 apartments where the expense ratios are expected to be higher than normal. *Id.* However, those properties had utility expenses in the range of 15% to 18%, which he contends supports the subject property's utility expense of 17%. *Id.* Based on these figures, Mr. Hume calculated operating expenses of \$1,370,600, and a net operating income of \$1,484,816 for the property. *Id.* In response to the Respondent's arguments, Mr. Hume contends that the expenses reported on the Petitioner's tax forms will not match his figures because his expenses were based on 2006 and the Form 8825 was for 2007. *Id.* Mr. Hume further contends that the Petitioner did not include any cost in its operating expenses that was paid out of the property's replacement reserves account. *Id.*

- d. Mr. Hume testified that he used multiple sources for determining the capitalization rate, including local appraisers, national surveys, and a band of investment calculation using information from local bank officers. *Hume testimony; Petitioner Exhibit 1.* According to Mr. Hume, he talked to local appraisers and reviewed appraisal reports from early 2006 that used capitalization rates that were generally clustering around 9%. *Id.* Further, Mr. Hume found one sale in May 2006 with a reported capitalization rate of 8.66%. *Id.* Mr. Hume testified that the RealtyRates Investor Survey for the first quarter of 2006 reported an average overall rate of 8.88% with a range between 5.91% and 13.44%. *Id.; Petitioner Exhibit 4.* Mr. Hume also contends that he surveyed local bank commercial officers and determined that the lowest possible financing for typical commercial loans with a loan-to-value ratio of 75% would have interest rates of 8.25%, an equity rate of 10%, and a recapture rate of 2%, or an overall rate of 10.3%. *Hume testimony; Petitioner Exhibit 1.* Based on this information, Mr. Hume testified that he used the 8.88% from RealtyRates Investor Survey because the property was not recently owned, sold, or purchased by a local entity, but was on the national market.⁶ *Id.* Mr. Hume then added the property's effective tax rate of 2.7113% resulting in a loaded capitalization rate of 11.5913%. *Id.* Using this rate, Mr. Hume calculated an income value of \$12,809,700 for the Petitioner's property for 2006. *Id.*
- e. Finally, Mr. Hume argued that the Board should give little weight to the property's purchase price. *Hume testimony.* According to Mr. Hume, the transaction was a large financing transaction wherein multiple properties were purchased and properties that were already owned by the Petitioner were refinanced. *Id.* Mr. Hume argues that the bank that financed the transaction allocated the amount of the purchase price to

⁶ In his rebuttal argument, Mr. Hume noted that the Respondent's capitalization rate from the Loopnet listing was virtually identical to the capitalization rate he used in his calculation. *Hume argument citing Respondent Exhibit 2.*

the subject property. *Hume testimony*. Mr. Hume also argues that the agreement signed by a representative of the Petitioner settling the property's 2006 assessment stands on its own and has no bearing on the property's 2007 assessment. *Hume argument*.

12. Summary of the Respondent's contentions in support of the assessments:

- a. The Respondent's representative contends that the Petitioner's property's assessed value is correct based on the property's purchase price. *Taylor argument*. In support of this contention, Mr. Taylor submitted a sales disclosure form showing that the property was purchased for \$14,500,000 on October 25, 2006. *Respondent Exhibit 1*. Mr. Taylor contends that the property was listed for \$15 million on April 12, 2005, and sold for \$14,500,000 less than twenty months later. *Taylor testimony; Respondent Exhibit 2*.
- b. Mr. Taylor further contends that the Board should give little weight to the Petitioner's income approach. *Taylor argument*. According to Mr. Taylor, the expenses that the Petitioner reported on its federal tax forms do not match the numbers in the Petitioner's analysis. *Taylor testimony*. Further, Mr. Taylor argues, the utility costs increased from 2007 to 2008, while the property's vacancy increased. *Id.; Respondent Exhibit 1*. Mr. Taylor argues that an increase in vacancy should result in a decrease in utility costs. *Taylor argument*. Mr. Taylor further contends the amount used for replacement reserves are too high at \$395 per unit. *Taylor testimony; Respondent Exhibit 1*. According to Mr. Taylor, in his experience reserves should be between \$300 and \$330 per unit. *Id.* Moreover, Mr. Taylor argues that a portion of the maintenance expenses are considered in the replacement reserves. *Id.* Because the Petitioner's representative made no adjustment for these, Mr. Taylor argues, some expenses have been counted twice. *Id.*
- c. The Respondent's representative argues that the property's assessment is correct based on his income calculation. *Taylor argument*. According to Mr. Taylor, the lowest rents he found in Ross Township were \$590 for a one-bedroom apartment and \$690 for a two-bedroom apartment. *Taylor testimony; Respondent Exhibit 1*. Mr. Taylor used those figures to calculate a potential gross income of \$3,219,000 for the subject property. *Id.* Further, Mr. Taylor argues expenses in the range of 30% to 40% are common in the market. *Id.* Because 40% was well within the range of expenses for apartments that supplied heat and hot water, Mr. Taylor argues that he used a 40% expense ratio in his analysis. *Id.* Based on these figures, Mr. Taylor calculated the property's net operating income to be \$1,868,855. *Id.; Respondent Exhibit 1*. Mr. Taylor then capitalized the net operating income at 10.6%, resulting in a market value of \$17,630,994 for the Petitioner's property for 2007. *Taylor testimony*.
- d. Finally, Mr. Taylor argues that the Petitioner agreed to an assessed value of \$14,500,000 for the March 1, 2006, assessment and that agreement should apply to the March 1, 2007, assessment also. *Taylor testimony*.

Record

13. The official record for this matter is made up of the following:
- a. The Petition,
 - b. The compact disk recording of the hearing labeled Hickory Ridge Lake Apts.,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Narrative description of the issues and proposed pricing,⁷
 - Petitioner Exhibit 2 – The subject property’s income statement,
 - Petitioner Exhibit 3 – Market Survey – March 2006,
 - Petitioner Exhibit 4 – Investor Survey 1st quarter 2006,
 - Petitioner Exhibit 5 – Prime rate history,

 - Respondent Exhibit 1 – The Respondent’s summary of evidence; the properties’ 2006 stipulated assessed value; a print out from Loopnet.com; the Form 8825 for the subject property; and the Petitioner’s original income approach submitted to the township,
 - Respondent Exhibit 2 – Loopnet.com listing for the subject property,

 - Board Exhibit A – Form 131 petitions,
 - Board Exhibit B – Notices of Hearing dated June 7, 2011,
 - Board Exhibit C – Hearing sign-in sheet,
 - d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a. 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b. 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. Washington*

⁷ While Petitioner Exhibits 1 and 2 are stamped “Confidential,” the Petitioner’s representative did not request that the documents remain confidential; nor did he submit a redacted copy of the documents as required by 52 IAC 2-7-5.

Township 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”).

- c. 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 478.
15. The Petitioner raised a prima facie case for a reduction in the assessed value of its property for 2007. The Board reached this decision for the following reasons:
- a. The 2002 Real Property Assessment Manual defines “true tax value” 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 at 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 approach, the sales-comparison approach and the income approach to value. *Id.* at 3, 13-15. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
 - b. While a property’s assessment under the Guidelines is generally presumed to accurately reflect its true tax value, *see* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006), for assessment dates after February 28, 2005, the legislature promulgated specific rules for the valuation of rental property and mobile homes. *See* Ind. Code § 6-1.1-4-39. Under Indiana Code § 6-1.1-4-39(a), a rental property with more than four units is to be assessed according to the lowest valuation determined from the three generally accepted approaches to value: the cost approach, the sales comparison approach, or the income capitalization approach. Ind. Code § 6-1.1-4-39(a).
 - c. Here, the Petitioner’s representative contends that the Petitioner’s property was over-valued for the 2007 assessment date based on the properties’ income value. *Hume argument*. “The income approach to value 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.” MANUAL at 14. The income approach considers the property as an investment and therefore values the property based on the rent it will produce for its owner. *Id.*
 - d. Mr. Hume testified that he used the property’s actual income and expenses, which he compared to other apartment complexes to determine if the property’s income and expenses were a reasonable estimate of market values, and he based his capitalization rate on values he obtained from real estate brokers, finance professionals, an actual

- sale, and published rates. *Hume testimony, Petitioner Exhibits 2 through 5*. While Mr. Hume was being compensated on a contingent fee basis and therefore his estimate of value is not as persuasive as a similar analysis made by a non-contingently paid licensed appraiser, Mr. Hume supported his calculation with verifiable market evidence. Thus, Mr. Hume's valuation opinion is sufficient to raise a prima facie case that the subject property's assessed value should be reduced to \$12,809,700.
- e. 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 Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner's evidence, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Court 2005).
- f. Here, the Respondent argues that the Petitioner's income valuation is flawed and that the actual income value of the property was \$17.6 million for 2007. *Taylor testimony*. According to Mr. Taylor, the property's expenses were too high and its income too low for the local market. *Id.* Mr. Taylor argues that a more reasonable estimate of the property's potential income is based on \$590 for a one-bedroom apartment and \$690 for a two-bedroom apartment. *Id.* Similarly, Mr. Taylor argues that a 30% to 40% expense ratio is more typical of the market. *Id.* Mr. Taylor, however, provided no support for any of his values. Instead, he based his argument on his knowledge of the market. While the rules of evidence generally do not apply in the Board's hearings, the Board requires some evidence of the accuracy and credibility of the evidence. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). Thus, despite Mr. Taylor's experience, his opinion of value, without further support is insufficient to rebut the Petitioner's prima facie case.
- g. The Respondent also contends the property is correctly assessed based on the property's sale for \$14.5 million in 2006. The purchase of a property is often the best evidence of a property's value. *See Hubler Realty Co. v. Hendricks County Ass'r.*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) (The Board's determination assigning greater weight to the property's purchase price than its assessed value was proper and supported by the evidence). However, under Indiana Code § 6-1.1-4-39(a), a rental property is to be assessed according to the *lowest* valuation. Ind. Code § 6-1.1-4-39(a). Therefore, despite the fact that the property's sale price is probative market

evidence of its value, the Board must value the property according to the Petitioner's income approach.⁸

Conclusion

16. The Petitioner raised a prima facie case that its property was over-valued for the March 1, 2007, assessment year. The Respondent failed to rebut or impeach the Petitioner's evidence. The Board finds in favor of the Petitioner and determines that the property's assessed value for 2007 is \$12,809,700.

Final Determination

In accordance with the findings of fact and conclusions of law, the Indiana Board of Tax Review now determines that the assessed value of the Petitioner's property should be changed.

ISSUED: _____

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

⁸ The Respondent also presented a settlement agreement between the Petitioner's representative, Mr. Galinson, and the Ross Township Assessor for the March 1, 2006, assessment date. However, that agreement is not probative evidence of what the basis for future assessments should be. Indiana's Supreme Court has held that "[t]he law ... prohibits the use of settlement terms or even settlement negotiations to prove liability for or invalidity of a claim or its amount." *Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227, (Ind. 2005). The strong policy justification for denying settlements precedential effect in a property tax case is that allowing parties to use the settlement as evidence would have a chilling effect on the incentive of the parties to resolve cases outside of the courtroom. *Id.* at 1228.

- 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>.