

REPRESENTATIVE FOR PETITIONERS:

Edwin K. DeWald, DeWald Property Tax Services

REPRESENTATIVE FOR RESPONDENT:

Nilah Aschliman, Wells County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Howard E. & Mary C. Myers, d/b/a)	Petition No.:	90-005-07-1-4-00066
Lakeside Villa Apartments,)		
)	Parcel No.:	90-05-34-100-004.000-005
Petitioners,)		
)		
v.)	County:	Wells
)		
Wells County Assessor,)	Township:	Lancaster
)		
Respondent.)	Assessment Year:	2007

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

December 4, 2009

FINAL DETERMINATION

The Indiana Board of Tax Review (“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

Introduction

1. In this assessment appeal, the Petitioners offered a valuation opinion from a tax representative who previously had been a certified appraiser with experience in valuing low-income housing projects like the subject property. While his opinion was not overly

persuasive, it was sufficiently reliable to make a prima facie case and the Respondent did not attempt to impeach or rebut it. The Board therefore finds for the Petitioners.

Procedural History

2. On July 2, 2008, the Petitioners filed notice with the Wells County Assessor contesting the subject property's 2007 assessment. On July 16, 2008, the Wells County Property Tax Assessment Board of Appeals ("PTABOA") lowered that assessment, but not to the level the Petitioners had requested. As a result, on July 31, 2008, the Petitioners filed a Form 131 petition with the Board. The Board has jurisdiction over the Petitioners' appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

Hearing Facts and Other Matters of Record

3. On September 10, 2009, the Board's Administrative Law Judge, Joseph Stanford ("ALJ"), held a hearing on the Petitioners' appeal. Neither the Board nor the ALJ inspected the subject property.
4. The following people were sworn in as witnesses:

For the Petitioners:
Edwin K. DeWald, DeWald Property Tax Services
Randall C. Warner

For the Respondent:
Nilah Aschliman, Wells County Assessor
5. The Petitioners submitted the following exhibits:

Petitioners Exhibit E – Market value-in-use calculations (Confidential)
Petitioners Exhibit F – Photographs of subject property
Petitioners Exhibit G – Photographs of comparable properties
Petitioners Exhibit J – Randall C. Warner's resume
6. The Respondent did not submit any exhibits.

7. The Board recognized the following additional items as part of the record of proceedings:
 - Board Exhibit A – The Form 131 petition
 - Board Exhibit B – Notices of hearing
 - Board Exhibit C – Hearing sign-in sheet
8. The subject property is located at 28 Sunset Drive, Bluffton, Indiana. It is a 14-unit apartment complex that the Petitioners operate under a federal program that Messrs. Warner and DeWald identified as “Section 515.”¹ According to Mr. DeWald, the United States Department of Agriculture administers the Section 515 program to provide mortgage loans for low-income multi-family housing in rural areas.
9. The PTABOA determined the following values:

Land: \$29,000 Improvements: \$172,700 Total: \$201,700.
10. At hearing, the Petitioners requested an assessment of \$133,000.²

Administrative Review and the Parties’ Burdens

11. A taxpayer seeking review of an assessing official’s determination must make a prima facie case proving both that the current assessment is incorrect and what the correct assessment should 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).
12. In making its case, the taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*,

¹ Mr. Dewald did not cite to the statute under which the Section 515 program operates. The Board assumes that it is Title V, Section 515 of the 1949 Housing Act.

² On their Form 131 petition, the Petitioners requested values of \$29,000 for the land and \$32,500 for the improvements, for a total assessment of \$61,500.

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”).

13. If the taxpayer establishes a prima facie case, the burden shifts to the respondent to offer evidence to rebut or impeach the taxpayer’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Analysis

Parties’ Contentions

A. The Petitioners’ contentions

14. To support their claim that the subject property was over-assessed, the Petitioners offered market-value-in-use calculations prepared by Randall C. Warner. *Pet’rs Ex. E*. Although Mr. Warner had been a certified general appraiser earlier in his career, he no longer has an appraiser’s certification or license. He is, however, certified by the Department of Local Government Finance as a tax representative. And he has worked with the Department of Housing and Urban Development valuing low-income apartment complexes like the subject property. *Warner testimony; Pet’rs Ex. J*.
15. In his analysis, Mr. Warner used two generally accepted valuation methods—the sales-comparison and income approaches. *Warner testimony; Pet’rs Ex. E*. In his sales-comparison analysis, Mr. Warner looked at all the Section 515 complexes that sold in Indiana from 2005 to 2007. *Id*. He compared those properties to the subject property along several lines, including market conditions, location, and various physical characteristics. *Id*. In his view, four of those properties were inferior to the subject property, two were similar, and two were superior. *Id*. Mr. Warner then arrayed the sales as follows:

Comparable Sales	Price/Unit	Overall Comparability
Sale 8	\$6,129	Similar
Sale 7	\$7,667	Similar
Sale 2	\$7,813	Inferior
Subject	\$9,500	Equal
Sale 5	\$9,781	Similar
Sale 6	\$13,916	Superior
Sale 1	\$14,737	Superior
Sale 4	\$14,830	Superior
Sale 3	\$18,657	Superior

Pet'rs Ex. E at 2.

16. As shown by his array, Mr. Warner bracketed the subject property between Sale 2, the only “inferior” property and Sale 5, the highest priced “similar” property. In reaching his estimate of \$9,500 per square foot for the subject property, Mr. Warner explained that it was most similar to Sales 5, 7, and 8. *Id.*; *Warner testimony*. Mr. Warner then multiplied that \$9,500-per-square-foot price by the subject property’s 14 units to arrive at an estimated market value of \$133,000. *Id.*
17. For his analysis under the income approach, Mr. Warner started with the subject property’s actual income and expenses for 2006 and 2007 and used the averages from those two years to compute “stabilized” numbers. He then extracted a capitalization rate from three of the eight sales that he used in his sales-comparison analysis. *Warner testimony*; *Pet'rs Ex. E at 3*. The median rate from those three sales was 12.05% and the average was 12.01%. He settled on a 12% rate, which he applied to the property’s stabilized net operating income to arrive at a market-value estimate of \$140,000. *Id.*
18. Mr. Warner settled on \$133,000 as his final estimate, explaining that Indiana’s assessment rules call for apartment buildings with more than four rental units to be assessed at the lowest value determined under the three generally accepted valuation approaches. *Warner testimony*; *Pet'rs Ex. E at 5*. He applied a trending factor of 1.0 to trend his estimate from a March 1, 2007, value to a value as of January 1, 2006,

explaining that the local market for low-income multi-family housing had not changed during that period. *Id.*

B. The Respondent's Contentions

19. While Ms. Aschliman believes her assessment is correct, she offered no testimony or documentary evidence to support it.

Discussion

20. 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have 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 the mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
21. 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 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. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (“USPAP”) often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

22. Here, the Petitioners offered Mr. Warner's valuation opinion. Mr. Warner, in turn, testified that he used two generally accepted appraisal methods—the sales-comparison and income approaches—to estimate the subject property's market value. Although Mr. Warner's opinion was not entirely conclusory, he did not explain his analyses in great detail either. Thus, Mr. Warner's opinion presents a difficult question: How much support for his underlying judgments and assumptions must a person giving a valuation opinion provide in order for his opinion to carry probative weight? That is necessarily a fact-sensitive question. And on the facts presented in this case, the Board finds that Mr. Warner provided enough support, albeit barely, for his valuation opinion to carry some probative weight.
23. Granted, the amount of detail that Mr. Warner gave to support his opinion may not have differed greatly from what is found in some appraisal reports. But in those reports, appraisers normally certify that they have complied with USPAP. Thus, the Board can infer that the appraiser used objective data in making his adjustments, or if objective data was not available, that the appraiser relied on his education, training and experience. While Mr. Warner testified that he followed standard appraisal practices, he is no longer a licensed or certified appraiser. His assurances therefore are not as persuasive as similar assurances made by someone who is subject to a licensing authority.
24. Nonetheless, Mr. Warner worked as a certified appraiser for a number of years and had significant experience in valuing section 515 properties. The Board therefore gives some weight to his knowledge and experience. Thus, although Mr. Warner's valuation opinion may not be particularly persuasive, it was enough to make a prima facie case for reducing the subject property's assessment.
25. The Board hastens to note that the Respondent did not even try to impeach Mr. Warner's opinion. For example, she did not question Mr. Warner on key points such as how he reconciled his qualitative adjustments or how he extracted the capitalization rate that he used in his income-approach analysis. She likewise failed to explore why Mr. Warner was no longer licensed as an appraiser. Had the Respondent made even cursory attempts to impeach or rebut Mr. Warner's valuation opinion, the result might have been different.

26. Finally, the Petitioners asked for an assessment based on Mr. Warner's conclusions under the income approach, because that was the lowest of his two value conclusions. The Petitioner's request is consistent with Ind. Code § 6-1.1-4-39(a), which generally provides that, for assessment dates after February 28, 2005, the true tax value of an apartment complex with four or more rental units is the lowest valuation determined by applying the three generally accepted valuation approaches. *See* Ind. Code § 6-1.1-4-39(a).³ The Board therefore finds that the subject property's assessment should be reduced to \$133,000.

SUMMARY OF FINAL DETERMINATION

27. The Petitioners made a prima facie case for reducing the subject property's assessment. The Respondent failed to impeach or rebut the Petitioners' evidence. The Board therefore finds for the Petitioners and orders that the subject property's assessment be reduced to \$133,000.

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

³ That statute provides:

(a) For assessment dates after February 28, 2005 . . . the true tax value of real property regularly used to rent or otherwise furnish residential accommodations for periods of thirty (30) days or more and that has more than four (4) rental units is the lowest valuation determined by applying each of the following appraisal approaches

- (1) Cost approach that includes an estimated reproduction or replacement cost of buildings and land improvements as of the date of valuation together with estimates of the losses in value that have taken place due to wear and tear, design
- (2) Sales comparison approach, using data for generally comparable property.
- (3) Income capitalization approach, using an applicable capitalization method and appropriate capitalization rates that are developed and used in computations that lead to an indication of value commensurate with the risks for the subject property use.

Ind. Code § 6-1.1-4-39(a).

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>>