

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

Petition #: 53-009-02-1-4-00514N
Petitioner: Brandon Court Apts. of Bloomington
Respondent: Perry Township Assessor (Monroe County)
Parcel #: 015-70135-02
Assessment Year: 2002

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 an assessment appeal with the Monroe County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 9, 2003.
2. Notice of the decision of the PTABOA was mailed to the Petitioner on February 13, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on March 10, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated April 28, 2004.
5. The Board held an administrative hearing on June 29, 2004, before the duly appointed Administrative Law Judge Debra Eads.
6. Persons that were sworn in and testified at the hearing:
 - a) For Petitioner: Carla Bishop, Taxpayer representative
 - b) For Respondent: Judith Sharp, Monroe County Assessor
Travis Vencel, Licensed Appraiser

Facts

7. The property is classified as commercial apartments, as is shown on the property record card for parcel # 015-70135-02.

determined by the Petitioner's representative. *Respondent Exhibit I.*

- c) The capitalization rate utilized in the Respondent appraisal was determined by direct market extraction for the Bloomington market, rates published in CB Richard Ellis, and nationally published rates for the Bloomington market. Vencel utilized a capitalization rate higher than the rate indicated strictly by the Bloomington market due to the high maintenance cost associated with the subject property. *Vencel testimony.*
- d) Vencel questioned the appropriateness of the capitalization rate utilized in the Petitioner's estimate of value because it was based on market extraction from sales of other Cardinal properties and therefore not limited to the Bloomington market area. *Vencel testimony.*
- e) Vencel testified the expenses and the capitalization rate included in the Petitioner's estimate of value were higher than reasonable for the subject property. He further stated national and local data indicate that expenses should be between 40% and 50% of effective gross income and the reported expenses for the subject property are in excess of normal expenses in the Bloomington market. *Vencel testimony.*

Record

13. The official record for this matter is made up of the following:

- a) The Petition, and all subsequent pre-hearing and post-hearing submissions by either party.
- b) The tape recording of the hearing labeled BTR # 5906.
- c) Exhibits:

- Petitioner Exhibit 1: Summary of issues and property information.
- Petitioner Exhibit 2: Income Approach Worksheet (**Confidential**).
- Petitioner Exhibit 3: Statement of Operations (**Confidential**).
- Petitioner Exhibit 4: Rent Roll as of December 31, 2002 (**Confidential**).
- Petitioner Exhibit 5: Excerpt from the CB Richard Ellis Investor Survey.
- Petitioner Exhibit 6: Comparable Property Expense Documentation.
- Petitioner Exhibit 7: Comparable Sales Information.
- Petitioner Exhibit 8: Comparable Assessment Information.
- Petitioner Exhibit 9: Copy of the Form 131 Petition.
- Petitioner Exhibit 10: Information Concerning Equity Residential.
- Respondent Exhibit 1: Estimated Value Based on Limited Income Analysis.

- 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, by a preponderance of the evidence, 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).
 - 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. 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”).
 - 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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner presented sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
- a) Petitioner presented an income approach analysis utilizing actual income, expense, and vacancy information. *Pet'r Ex. 1-4*. Petitioner testified expenses for the subject property exceed what may be considered normal due to the unique nature of the construction, the shorter economic life of the improvement and the maintenance cost associated with keeping the property at an acceptable level of income and occupancy. *Bishop testimony*.
 - b) Petitioner selected the high end of the published capitalization rate range (10.5% - Petitioner Exhibit 5) due to the limited economic life of the asset based on quality of construction and capital expenditures necessary to maintain the property. *Bishop testimony*.
 - c) Petitioner stated the expenses for the subject property are comparable to other Cardinal properties of a similar construction and quality and therefore not excessive for the property type. *Petitioner Exhibit 6*.
16. Respondent rebutted Petitioner's evidence. This conclusion was arrived at because:
- a) The Petitioner's estimate of value utilized actual income and expenses for 2000; therefore, the resultant value is affected by specifics of the individual property. *Vencel testimony*. These specifics may or may not be representative of the market in general. It is not clear why the Petitioner used the expense amount and expense percentages shown in Petitioner's Exhibit 2 (Income Approach Worksheet), as they do not match the amounts shown in Petitioner's Exhibit 3 (Statement of Operations). Further, the capitalization rate applied in the Petitioner's estimate of value was not limited to conditions in the Bloomington market area. *Loveless Construction Co. v. State Bd. of Tax Comm'rs*, 695 N.E.2d

1045 (Ind. Tax 1998) (Finding that “Although [evidence] may have shown a regional office space glut, [it] did not show an office space glut in the New Castle area.”).

- b) In support of the value determined by the Monroe County PTABOA, the Respondent commissioned a limited income analysis from a local Bloomington area appraiser. *Resp’t Ex. 1.*
- c) The opinion of value submitted in the limited income analysis of the property by the Respondent utilized the knowledge of a licensed appraiser familiar with the market in the Bloomington area. *Vencel testimony.*
- d) Data available to the appraiser concerning customary expenses and income for the subject property type as well as the appropriate capitalization rate for the subject area must be considered superior to the expense and income information and capitalization rate applied by the Petitioner’s representative. For example, Vencel pointed out several unique circumstances affecting the Bloomington market that are not accounted for in the Petitioner’s analysis. *Vencel testimony.*
- e) This appraisal supports the current assessed value of the property and rebuts the income analysis offered by Petitioner.

Conclusion

16. The Petitioner presented a prima facie case regarding the assessed value of the property. The Respondent rebutted Petitioner’s evidence through the submission of an opinion of value by a licensed appraiser based on local market conditions. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.