

REPRESENTATIVES FOR PETITIONER:

Michael V. Sakich, Managing Member, Harvest Manor Apartments, LLC
David F. Kozak, Managing Member, Harvest Manor 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**

Harvest Manor Apartments, LLC	)	Petitions: 45-036-03-1-4-00004A
	)	45-036-04-1-4-00003A
Petitioner	)	Parcel: 009-20-13-0284-0006
)	
	)	Petitions: 45-036-03-1-4-00001A
	)	45-036-04-1-4-00002A
	)	Parcel: 009-20-13-0284-0019
v.)	
	)	Petitions: 45-036-03-1-4-00003A
Lake County Assessor	)	45-036-04-1-4-00001A
	)	Parcel: 009-20-13-0284-0007
Respondent)	
	)	Petitions: 45-036-03-1-4-00002A
	)	45-036-04-1-4-00005A
	)	Parcel: 009-20-13-0284-0017
)	
	)	Petitions: 45-036-03-1-4-00005A
	)	45-036-04-1-4-00004A
	)	Parcel: 009-20-13-0284-0018
)	
	)	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

INTRODUCTION

1. In this assessment appeal, the Petitioner’s witness, Michael Sakich, used the income approach to estimate the subject property’s market value at approximately \$500,000 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 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 September 26, 2007, the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations denying the Petitioner the relief that it had requested.
3. On October 25, 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 those petitions.

5. The following persons were sworn at the hearing:
 - For the Petitioner: Michael V. Sakich, Managing Member, Harvest Manor Apartments, LLC
David F. Kozak, Managing Member, Harvest Manor Apartments, LLC

 - For the Respondent: Hank Adams, St. John Township Assessor
Melody K. Kikkert, Real Estate Deputy

6. The Petitioner presented the following exhibits¹:
 - Petitioner Exhibit I – Financial Summary, Loaded Cap Rate Analysis, Unloaded Cap Rate Analysis, Assessed Value Summary
 - Petitioner Exhibit II – Supporting Income Statements 2003, 2004, 2005
 - Petitioner Exhibit III – Property Description
 - Petitioner Exhibit IV – Evidence of Market Cap Rate (9%), CB Richard Ellis Indianapolis, CB Richard Ellis Chicago, Real Capital Analytics, National Real Estate Index
 - Petitioner Exhibit V – Evidence of Information to Assessor
 - Petitioner Exhibit VI – Memorandum (2 pages), Loaded Cap Rate 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 – Harvest Manor's Assessed Values
 - Respondent Exhibit 3 – Harvest Manor's Property Record Cards
 - Respondent Exhibit 4 – Pictures of Harvest Manor
 - Respondent Exhibit 5 – Guidelines for the Income Approach
 - Respondent Exhibit 6 – Fair Market Rent Survey
 - Respondent Exhibit 7 – Harvest Manor's 8825 Tax Returns for 2003-2005

 - Respondent Exhibit 8 – Harvest Manor's Consolidated Statements
 - Respondent Exhibit 9 – Harvest Manor Income Approach for 2003

¹ The Petitioner offered a description of its exhibits with corresponding exhibit numbers. Other than Exhibit VI, however, the Petitioner did not separately label its exhibits. Based on the description provided by the Petitioner, the Board has attached exhibit stickers for exhibits I through V.

Respondent Exhibit 10 – Harvest Manor Income Approach for 2004
 Respondent Exhibit 11 – Harvest Manor Income Approach for 2005
 Respondent Exhibit 12 – Capitalization Rates
 Respondent Exhibit 13 – Harvest Manor Rent Roll
 Respondent Exhibit 14 – Sales Comparison Approach
 Respondent Exhibit 15 – Indiana Board of Tax Review Case
 Respondent Exhibit 16 – 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 three apartment buildings with a total of 36 units plus paving, fencing, and a shed. They are located on Woodview Drive and Grandview 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 refer to the parcels 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
009-20-13-0284-0006	\$52,900	\$424,300	\$477,200
009-20-13-0284-0007	\$52,900	\$2,700	\$55,600
009-20-13-0284-0017	\$52,100	\$410,200	\$462,300
009-20-13-0284-0018	\$52,900	\$4,900	\$57,800
009-20-13-0284-0019	\$57,200	\$427,100	\$484,300
			\$1,537,200

12. The Petitioner requests a total assessment of \$1,028,738.

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 a 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 2003-2005, which he took from the property's income statements for those years. He calculated two different versions of the property's operating income for each year—one that included property taxes as an expense and one that did not. *Sakich testimony; Pet'r Exs. I-II, VI.*

 - B. Mr. Sakich contrasted his approach to the Respondent's approach, which used an estimate of market rent. According to Mr. Sakich, the property's actual income and expenses more closely show its value, especially given that the Petitioner is in the business of owning and operating apartment complexes and has owned and operated the subject property for 15 years. The Petitioner manages both the subject property and another apartment complex known as Westwood as a single operation.² That allows the Petitioner to cut expenses by having only one manager and one maintenance supervisor. Also, attempting to determine market rent can be misleading. The subject property does not have the same amenities as some other complexes, so the Petitioner tries to position it slightly below the bigger communities. And because of competition from home sales, many apartment communities offer a free month's rent. Actual net market rent is therefore lower than the monthly rent that apartment complexes often quote in telephone surveys. *Sakich testimony.*

² The Petitioner also appealed Westwood's 2003-2004 assessments. The Board addresses those appeals in a separate determination.

- C. 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.*
- D. To get his unloaded rate of 9%, Mr. Sakich looked first to 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. IV.* Mr. Sakich then used additional information to see how those rates compared to capitalization rates statewide. *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.*
- E. Thus, Mr. Sakich performed six calculations—he applied loaded and unloaded rates to the appropriate versions of the subject property’s net operating income for each year from 2003 to 2005.³ The Petitioner asked for an assessment of \$1,028,738, which was the average value from those six calculations. *Pet’r Ex. I.*
- F. Mr. Sakich’s conclusions under the income approach were lower than the property’s 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:

³ 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.

- 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 estimate under each approach 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.*
- C. To determine fair market rent for the subject property, the Respondent's office consulted several sources, including other apartment complexes, management companies, and materials published by the Department of Housing and Urban Development. Ms. Kikkert then subtracted 7% of the property's potential gross rental income to account for vacancy and collection losses. That amount was similar to the amount used by Mr. Sakich in his analyses. *Id.*
- D. Ms. Kikkert performed two different calculations to determine the amount of expenses to subtract from the subject property's effective gross income. In one calculation, she used the expenses listed in the Petitioner's Form 8825 federal tax returns and in the other, she used the expenses from the Petitioner's income statements. *Kikkert testimony; Resp't Exs. 10-12.* Thus, she arrived at two different net operating incomes for each year from 2003 to 2005.
- 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 various net operating incomes that she had calculated for each from 2003 to 2005. *Kikkert testimony; Respondent Exhibits 9-11*. In each instance, the result 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 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 \$1,608,012. That estimate differed slightly (\$1,629,180) when she used the average per-unit price. *Id.* Once again, those estimates were within 10% of the subject property's assessment. *Kikkert testimony*.

ANALYSIS

19. 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).
20. 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.

21. 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).
22. 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.
23. 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.

24. 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

25. The Petitioner failed to make 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>>