

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

Petitions: **48-003-03-1-4-00107** **48-003-03-1-4-00110**
 48-003-03-1-4-00108 **48-003-03-1-4-00111**
 48-003-03-1-4-00109 **48-003-03-1-4-00112**

Petitioner: **Ft. Wayne LTD**
Respondent: **Anderson Township Assessor (Madison County)**
Parcels: **18 42-10B-2Z** **18 42-14-1BZ**
 18 42-8FZ **18 748-4**
 18 42-9AZ **18 41-6A-8-2Z**

Assessment Year: **2003**

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

Procedural History

1. Petitioner initiated assessment appeals with the Madison County Property Tax Assessment Board of Appeals (the PTABOA) by written document.
2. The PTABOA issued notices of its decision on December 10, 2004.
3. Petitioner filed appeals to the Board by filing Forms 131 with the county assessor on January 11, 2005. Petitioner elected to have these cases heard according to small claims procedures.
4. The Board issued notices of hearing to the parties dated October 24, 2005.
5. The Board held an administrative hearing on December 6, 2005, before the duly appointed Administrative Law Judge Paul Stultz.
6. Persons present and sworn as witnesses at the hearing:
 For Petitioner - Denise Praul, tax representative,
 Ronald Bowden, property owner,
 Harry Kennerk, manager,
 For Respondent - Lloyd Brumback, Madison County Deputy Assessor,
 Dave Simmons, Representative for Anderson Township,
 Patricia Davis, Anderson Township Chief Deputy Assessor.

Facts

7. The properties are classified as residential apartments located at 1910 E. 7th Street in Anderson, Indiana.¹
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The assessed values of the subject properties as determined by the PTABOA were:

parcel 18 42-10B-2Z

land \$27,500 improvements \$414,500 total \$442,000,

parcel 18 42-8FZ

land \$24,000 improvements \$408,300 total \$432,300,

parcel 18 42-9AZ

land \$36,000 improvements \$475,300 total \$511,300,

parcel 18 42-14-1BZ

land \$210,000 improvements \$2,238,900 total \$2,448,900,

parcel 18 748-4

land \$10,500 improvements \$206,900 total \$217,400,

parcel 18 41-6A-8-2Z

land \$119,000 improvements \$820,400 total \$939,400².

10. Sometime between the PTABOA hearing and the Board hearing, the parties apparently agreed to change some of the assessed values because at the hearing they agreed the current assessments are as follows:

parcel 18 42-10B-2Z

land \$27,500 improvements \$390,100 total \$417,600,

parcel 18 42-8FZ

land \$24,000 improvements \$383,900 total \$407,900,

parcel 18 42-9AZ

land \$36,000 improvements \$451,400 total \$487,400,

¹ This address appears on both the Form 131 and the property record card attached to the petition. *Board Ex. A.* Documents presented at the hearing alternatively identify the property's address as 1829 E. 8th Street in Anderson. *Pet'r Ex. 4; Resp't Exs. 1, 4.*

² These number correspond to the Form 131, however, they do not correspond to the numbers upon which the parties agreed at the hearing.

<u>parcel 18 42-14-1BZ</u>		
land \$210,000	improvements \$2,109,500	total \$2,319,500,
<u>parcel 18 748-4</u>		
land \$10,500	improvements \$194,800	total \$205,300,
<u>parcel 18 41-6A-8-2Z</u>		
land \$119,000	improvements \$772,000	total \$891,000.

11. The assessed values requested by Petitioner on the Forms 131 are:

<u>parcel 18 42-10B-2Z</u>		
land \$27,500	improvements \$373,914	total \$401,414,
<u>parcel 18 42-8FZ</u>		
land \$24,000	improvements \$373,914	total \$397,914,
<u>parcel 18 42-9AZ</u>		
land \$36,000	improvements \$166,184	total \$202,184,
<u>parcel 18 42-14-1BZ</u>		
land \$210,000	improvements \$1,952,662	total 2,162,662,
<u>parcel 18 748-4</u>		
land \$10,500	improvements \$145,411	total \$155,911,
<u>parcel 18 41-6A-8-2Z</u>		
land \$119,000	improvements \$394,687	total \$513,687.

Issue

12. Summary of Petitioner’s contentions in support of alleged error in the assessment:

- a. The apartment complex consists of thirteen parcels that currently are assessed for a total of \$4,766,400.³ *Pet’r Ex. 5*. The total assessed value of the thirteen parcels should be reduced to \$3,770,000. *Praul testimony*.
- b. The subject property was originally owned by an entity referred to as the Chicago Group. The Chicago Group agreed to sell the property to Richard Gould (“Gould”) for \$3,770,000. Gould then contacted Petitioner for financing. Gould and Petitioner entered into a preliminary agreement in which Petitioner would provide the full purchase price for a 75% interest in the property. Gould would retain a 25% interest in the property as compensation for arranging the sale and subsequent management services. *Bowden testimony; Resp’t Ex. 1*. This preliminary agreement was never finalized. *Bowden testimony*.

³ Seven of the parcels are vacant land. Only the six parcels with improvements are under appeal.

- c. Gould and Petitioner altered the preliminary agreement. The parties agreed that Petitioner would provide the full purchase price and receive 87.5% interest in the property. Gould would receive the other 12.5% interest⁴. *Id.*
- d. Shortly before closing of the sale, the Chicago Group informed Petitioner that the property was going to be donated to Partners in Action, Inc. (“PIAI”)⁵, a non-profit corporation. PIAI would be a conduit entity and transfer title to Petitioner and Gould. *Id.*
- e. PIAI subsequently transferred 87.5% interest in the property to Petitioner and 12.5% interest to Arbor Group, LLC (“Arbor”) on September 26, 2002. *Id.*; *Resp’t Ex. 3*. (Gould was the managing member of Arbor. *Resp’t Ex. 4*.) The final closing statement for the transaction was prepared on October 1, 2002. *Pet’r Ex. 4*; *Resp’t Ex. 2*.
- f. Within three months of assuming ownership of the property, Petitioner became dissatisfied with Gould’s management services. To avoid legal action between the parties, Gould transferred Arbor’s 12.5% interest to Petitioner on January 12, 2004, for \$10 and other valuable consideration. *Bowden testimony*; *Resp’t Ex. 4*.
- g. The Anderson area has experienced a general economic decline. The apartment complex is not making money. *Praul testimony*. Petitioner presented income statements for the last three months of 2002, the entire year of 2003, and the first ten months of 2004. *Id.*; *Pet’r Exs. 6-8*. Based on these income statements, Petitioner calculated the property’s market value-in-use using the income capitalization approach. This analysis indicated the subject property has a value ranging from \$1,227,153 to \$2,931,966. *Praul testimony*; *Pet’r Ex. 9*.
- h. Petitioner is trying to sell the property for the amount of the current debt. Prospective buyers claim property taxes on the property are about \$20,000 too high. *Praul testimony*.
- i. Petitioner testified that the subject property lacks amenities, such as tennis courts and swimming pools that are present in the purportedly comparable properties identified by Respondent. *Praul testimony*. Additionally, Indianapolis and Anderson are two distinct markets. *Bowden testimony*.

⁴ At the hearing, Bowden testified that Gould was to receive a 15% interest, but Respondent Exhibit 3 indicates Gould was to receive a 12.5% interest.

⁵ The reason for the transfer was so that Chicago Group could take advantage of income tax effect by transferring property to a charitable organization.

13. Summary of Respondent's contentions in support of the assessment:
- a. The purchase price represents a 75% interest in the subject property. *Resp't Ex. 1.* The two corporate warranty deeds also show Petitioner owned less than 100% interest in the property. The corporate warranty deed dated September 26, 2002, reflects PIAI conveyed 12.5% interest to Arbor and 87.5% interest to Petitioner. *Simmons testimony; Resp't Ex. 3.* A corporate warranty deed dated January 12, 2004, subsequently conveyed Arbor's 12.5% interest to Petitioner. *Simmons testimony; Resp't Ex. 4.*
 - b. The operating to expense ratio average is about 50.3% and the overall capitalization rate is 9.538%, based on a market analysis performed by Respondent. *Simmons testimony; Resp't Ex. 5.* Applying these figures to Petitioner's 2002 data results in an income approach to value of \$4,612,038 for 75% of the property, or \$5,030,000 for 100% of the property. This calculation supports the current assessed value of \$4,766,400. *Simmons testimony; Resp't Ex. 7.*
 - c. There were six comparable sales in Anderson, Kokomo, and Indianapolis from April 1, 1998, to November 18, 2002. *Resp't Ex. 6.* The per unit price of these comparable properties range from \$29,000 to \$42,000. The per unit price of Petitioner's apartments was approximately \$26,125. The Indianapolis market is similar to the Anderson market because Anderson is only sixty miles from Indianapolis. Kokomo has a similar industrial base as Anderson. *Simmons testimony.*

Record

14. The official record for this matter is made up of the following:
- a. The Petition,
 - b. Digital recording of the hearing,
 - c. Petitioner Exhibit 1 - Witness list,
Petitioner Exhibit 2 - Rent Roll,
Petitioner Exhibit 3 - Capital Improvement Costs and Needs,
Petitioner Exhibit 4 - Closing Statement for Purchase,
Petitioner Exhibit 5 - Summary of Total Assessed Values,
Petitioner Exhibit 6 - 2002 Income Statement (4th quarter),
Petitioner Exhibit 7 - 2003 Income Statement,
Petitioner Exhibit 8 - 2004 Income Statement (1st 10 months),
Petitioner Exhibit 9 - Summary of Income (Recast),
Respondent Exhibit 1 - Purchase and Sale Contract of subject property dated August 19, 2002,
Respondent Exhibit 2 - Buyers Closing Statement Final of subject property prepared October 1, 2002,

Respondent Exhibit 3 - Corporate Warranty Deed of subject property dated September 26, 2002,
Respondent Exhibit 4 - Corporate Warranty Deed of subject property dated January 12, 2004,
Respondent Exhibit 5 - Market Derived Operating Expense Ratios and Overall Capitalization Rates,
Respondent Exhibit 6 - Data sheets for six comparable sales,
Respondent Exhibit 7 - Respondent one page summary,
Board Exhibit A - Form 131 Petitions,
Board Exhibit B - Notices of Hearing,
Board Exhibit C - Sign-in sheet,

d. These Findings and Conclusions.

Analysis

15. 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 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. 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”).
 - 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.
16. Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:
- a. Real property is assessed on the basis of its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter Manual) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3.

- To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A (hereafter Guidelines). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
- b. For the 2002 reassessment, an assessment is to reflect value of the property as of January 1, 1999. MANUAL at 4. Should a Petitioner present any evidence of value relating to a different time, the Petitioner is required to provide some explanation how those values demonstrate, or are relevant to, the subject property's value as of January 1, 1999. See *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - c. Petitioner purchased the property for \$3,770,000 on October 1, 2002. The evidence does not establish how much of that price should be attributed to the parcels that are being appealed. Nevertheless, Petitioner did not contend that the 2002 sale represented the property's value as of January 1, 1999. Instead, Petitioner testified the Anderson area experienced a general economic decline that contributed to the property's financial losses. *Praul testimony*. In a declining market, a 2002 sale does not establish the property's value as of January 1, 1999. Petitioner failed to establish the relevance of the October 2002 purchase price to the value as of January 1, 1999.
 - d. Additionally, implicit in the definition of market value is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby payment is made in terms of cash or comparable financial arrangements and the price is unaffected by special financing or concessions. MANUAL at 10.
 - e. The sale of the property, however, was not solely in terms of cash, as required to establish market value. Petitioner acknowledged the terms of the sale were specifically structured to permit the Chicago Group to receive tax benefits through the use of a conduit non-profit entity, PIAI. Because the total sale price included both cash and an unidentified amount of tax benefits to the Chicago Group and/or PIAI, Petitioner failed to establish the cash payment alone is representative of the market value of the property.
 - f. Using the income capitalization approach, Petitioner calculated the property's market value-in-use based on income statements for the last three months of 2002, the entire year of 2003, and the first ten months of 2004. This analysis concluded the value of the property ranged from \$1,227,153 to \$2,931,966. *Praul testimony; Pet'r Exs. 6-9*.
 - g. Petitioner failed to show the relevance of 2002, 2003, and 2004 financial data to the January 1, 1999, valuation date. Further, Petitioner did not explain how the calculations for 2002 and 2004, which are based on partial financial data for each

year, established a true indication of the property's annual financial performance. Petitioner failed to establish the relevance of calculations that produced a range of more than \$1.7 million in proposed value, or to explain the manner in which any of these calculations support the proposed revised total value of \$3,770,000, or to establish how that number might relate to the six parcels covered in this appeal.

- h. Petitioner failed to make a prima facie case. Where Petitioner has not supported the claim with probative evidence, Respondent's duty to support the assessment is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. Petitioner failed to make a prima facie case. The Board finds in favor of Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should not be changed from those listed in paragraph 10.

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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Trial Rules are available on the Internet at <http://www.in.gov/judiciary/rules/trial_proc/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.