

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

Petitions: 72-007-07-1-5-00003
72-007-07-1-5-00004
72-007-07-1-5-00005
72-007-07-1-5-00006
72-007-07-1-5-00007
72-007-07-1-5-00008

Petitioner: Indiana MHC, LLC

Respondent: Scott County Assessor

Parcels: 72-04-25-200-003.004-008
72-04-24-700-025.004-008
72-04-25-200-003.001-008
72-04-24-700-025.003-008
72-04-25-200-003.000-008
72-04-25-200-003.002-008

Assessment Year: 2007

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

Procedural History

1. The Petitioner initiated the assessment appeals process with the Scott County Property Tax Assessment Board of Appeals (PTABOA) by filing a written document dated October 10, 2008.
2. The PTABOA issued its decision for each parcel on December 2, 2008.
3. The Petitioner appealed to the Board by filing a Form 131 for each parcel on January 6, 2009. It elected to have this case hearing according to small claims procedures.
4. The Board issued a notice of hearing on February 23, 2010.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing in Scottsburg on April 1, 2010. He did not inspect the property.

6. Attorneys Brian Ellerman and Dennis Williams represented the Petitioner. Attorney Marilyn Meighen represented the Respondent.
7. Kurtis Keeney testified as a witness for the Petitioner. Cathi Gould testified as a witness for the Respondent.

Facts

8. The property is a manufactured home community (MHC) known as Amberly Pointe (Amberly). It is located at 1200 Birchtree Lane, Scottsburg. Amberly consists of six parcels, four of which have a zoning restriction. The parcels with the zoning restriction have no pads for homes and constitute approximately 8% the land. There are improvements on the other two parcels. The tenants of this community own their manufactured homes and rent only the pads from the Petitioner.
9. The PTABOA determined the aggregate assessed value of Amberly is \$3,377,000.
10. The Petitioner requested an aggregate assessed value of \$1,075,692.

Record

11. The official record for this matter contains the following:
 - a) The Petition,
 - b) The digital recording of the hearing,
 - c) Petitioner Exhibit 1 – Explanation for requested change in assessment,
Petitioner Exhibit 2 – Map of the subject parcels,
Petitioner Exhibit 3 – Rent roll data for 2005, 2006, 2007, and 2008,
Petitioner Exhibit 4 – Income Statement of subject property,
Petitioner Exhibit 5 – Rosewood acquisition comparison,
Petitioner Exhibit 6 – Table of requested values,
Petitioner Exhibit 7 – Form 115, Notification of the Final Assessment
Determination for each of the parcels,
Petitioner Exhibit 8 –Written notice to County Assessor for review of
assessments,
Petitioner Exhibit 9 – Sales data regarding other parks,
Petitioner Exhibit 10 – Appraisal of Rosewood manufactured home park,
Respondent Exhibit A– Aerial map that shows the subject property,
Respondent Exhibit B – Indiana Administrative Code tit. 50 r. 21-3-3,
Respondent Exhibit C – Appraisal of Rosewood manufactured home park,
Respondent Exhibit D – Sales data regarding other parks,
Board Exhibit A – Form 131 Petitions with attachments,
Board Exhibit B – Notices of Hearing,

Board Exhibit C – Hearing Sign-In Sheet,
Board Exhibit D – Petition list,

- d) These Findings and Conclusions.

Contentions

12. Summary of the Petitioner's case:

- a) The property has 205 manufactured home pads. During the relevant assessment period between 82 and 85 of the pads were occupied, which is only about 40%. At the current time this occupancy rate is as high as any similar property owner could possibly get. The owner receives no revenue or utility from the empty lots. In addition, zoning requires part of the property to be reserved as green space, which produces no income. *Keeney testimony; Pet'r Ex. 1, 2, 3.*
- b) The income approach to value is the preferred method of determining an income producing property's correct value. A calculation using this approach (analysis of the income and expenses for the subject property with a 10% capitalization rate) results in a value of \$1,075,692. *Keeney testimony; Pet'r Ex. 1, 4, 6.*
- c) In its income approach calculation, the Petitioner used actual revenues from 2007. Expense amounts in the calculation were derived from the same time period. *Keeney testimony; Pet'r Ex. 4.* Income and expenses remained basically constant during the period 2005 through 2007. *Keeney testimony.*
- d) A 10% capitalization rate is the national standard for this type of property. *Keeney testimony; Pet'r Ex. 1.* Additionally, the capitalization rates for two other MHCs currently listed for sale are 10.8% and 13.18% for an average of 11.99%. *Keeney testimony; Pet'r Ex. 9.*
- e) The Petitioner's proposed valuation uses Amberly's actual occupancy rate. *Keeney testimony; Pet'r Ex. 1, 2.* The Respondent's assessment did not consider the actual occupancy. If the Respondent had used the same per pad value, but with Amberly's actual occupancy rate, the assessment would be similar to the Petitioner's proposed value. *Ellerman argument.*
- f) The value per occupied pad is \$12,655. *Keeney testimony.* After determining the aggregate value, the Petitioner allocated this value to each individual parcel in the same percentage as the original assessment. *Ellerman argument.*
- g) The value placed on the land that has zoning restrictions seems arbitrary because there is no commercial value. *Keeney testimony.*
- h) The Respondent never explained how it arrived at the current assessed value. *Keeney testimony.* The Respondent's witness was not part of the PTABOA

decision and cannot explain the reduction granted by the PTABOA.¹ *Ellerman argument.*

- i) Often a MHC can be valued on a per pad basis, but this method is not reliable when the occupancy rate is below 80%. The occupancy rate of the subject property is well below that level. Therefore, in this instance a valuation on a per pad basis is unreliable. *Keeney testimony.*

13. Summary of the Respondent's case:

- a) The property was assessed using the cost approach described in the Guidelines.² The Respondent entered this data on property record cards, which explain the assessment. Copies of those property record cards are in the attachments to the 131 Petitions. *Gould testimony.*
- b) The March 2006 sale of another manufactured home community located in Scottsburg verifies the cost value. *Gould testimony; Resp't Ex. C.* That sale was for \$920,000, which would be \$16,473 per pad. This amount is in accordance with the per pad value of the Petitioner's property. *Gould testimony.*
- c) The Respondent used two recognized approaches to value, cost and sales comparison, when assessing this property. These two approaches resulted in similar values. The Petitioner's income approach results in a value far removed from the other two. *Meighen argument.*
- d) The problem with the Petitioner's income approach calculation was that it used the property's actual income and expense amounts. Generally accepted appraisal practices state the income and its expenses should be derived from market data rather than the financial records for the subject property. Furthermore, the Petitioner's data is from 2008 and not from the required time period. *Meighen argument.*
- e) The income approach is the preferred method for valuing income producing properties. *Gould testimony.*
- f) For the income approach, potential gross income is derived from the market. It is determined by multiplying the rent by the number of lots. *Gould testimony.*
- g) Vacancy and collection losses are subtracted from the potential gross income. Market data establishes an occupancy rate of 92%. The Petitioner should have used that rate in the calculation rather than the actual occupancy rate of the subject property. *Gould testimony.*

¹ The PTABOA reduced the aggregate assessment from approximately \$5,400,000 to \$3,377,000. The PTABOA's Forms 115 state this reduction was the result of a changed neighborhood code. *Pet'r Ex. 7.*

² Real Property Assessment Guidelines for 2002-Version A (incorporated by reference at 50 IAC 2.3-1-2).

- h) The Petitioner's calculation included \$42,206 in real estate taxes as an expense. Real estate taxes are not an allowable expense in the income approach. *Gould testimony*.
- i) The 10% capitalization rate used by the Petitioner is acceptable. *Gould testimony*.

Analysis

14. The most applicable governing cases are the following:
- 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.
 - d) The valuation date for a 2007 assessment is January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
15. The Petitioner did not make a case for any assessment change because:
- a) Real property is assessed based on 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); MANUAL at 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. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer may 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) The Tax Court has said that an appraisal is often the best evidence of value. See *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006); *Kooshtard Prop. VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). Unfortunately, neither party presented an appraisal of the subject property.
- c) But other evidence that is compiled in accordance with generally accepted appraisal principles can be used to establish a more accurate valuation. Certainly income and expense data presented in the context of a proper income approach to value can be an acceptable way for a taxpayer to prove a case. MANUAL at 5. The Petitioner offered a calculation based on the income capitalization approach, which is the heart of its case. Assuming that Mr. Kenney actually collected the data and did the income analysis, the record does little to establish his professional qualifications and it does nothing to establish that he complied with generally accepted appraisal principles in doing so. These points diminish the credibility and reliability of what the Petitioner presented regarding the income capitalization approach. Does that evidence convince us the existing assessments do not accurately state the market value-in-use of the subject property and does it prove that the actual total should only be \$1,075,692? We conclude that it does not.
- d) Both parties presented an appraisal of a different property known as Rosewood Manufactured Home Park. *Pet'r Ex. 10; Resp't Ex. C*. Rosewood is also located in Scottsburg, but it is a much smaller park. It has approximately 9.5 acres with 55 pads. Its base rent is \$229 per month. In September 2008, Rosewood's occupancy rate was 78%, but the appraisal noted that historically Rosewood maintained occupancy greater than 85%.³ It also forecast the occupancy rate would reach 88% within the following year. *Pet'r Ex. 10 at 31-33*. The effective date of the appraisal was September 23, 2008. It does not correspond with the required valuation date for a 2007 assessment, and neither party related it back to the required valuation date, January 1, 2006. Therefore, the appraisal is not probative evidence regarding the assessed value of the subject property. Nevertheless, the appraisal provides guidance about appropriate valuation techniques for this type of property (according to its certification, the analysis, opinions, and conclusions in it comply with USPAP standards).

³ According to the appraisal, "[t]he current owner indicated his limited oversight and management of the park has resulted in the current 78% occupancy rate." *Pet'r Ex. 10 at 33*.

- e) In this particular case, both parties focus on how to value the subject property using the income approach, but their views about how to properly apply that approach are very different. The Petitioner's proposed application relies on Amberly's own income and expense data. The Respondent's proposed application relies on market data and not the financial records of the subject property. The most significant aspect of this difference relates to the occupancy rate. The Petitioner's proposed value is based on Amberly's own occupancy of only about 40%. Regardless of Amberly's actual situation, the Respondent argues that market data indicates the expected occupancy rate should be 92%. This difference has a major impact on the projected income of the property, and thus, on the purported valuations according to the income approach.
- f) The Petitioner's approach and the Respondent's approach to the relevant data are both overly restrictive. It is necessary to look at other property as well as the subject property:

To estimate market rent(s) for the subject, we surveyed brokers and property owners in the competing market area. Our survey consisted of actual lease rates, terms, concessions, expense structure and any other pertinent factors. *** [I]t was necessary to include manufactured home parks from surrounding communities within our survey.

Pet'r Ex. 10 at 31. For example, the appraiser reviewed data for Rosewood and five comparable manufactured home parks. *Id. at 32.*

- g) The methodology in the Rosewood appraisal demonstrates that in properly applying the income approach to determine the value of a property, it is appropriate to consider the historic and projected income and expense data of the property in question, but it is also necessary to consider that same kind of data from other comparable properties in order to make accurate, realistic projections about the income stream a property should be expected to produce. Where the income and expense data for the subject property is out of step with what the market data shows, generally accepted appraisal principles require further examination and analysis. For example, considering both types of income and expense data helps to protect against distortions and inaccurate value estimates that might be caused by extraneous factors (such as bad management or poor business decisions) that really have nothing to do with the inherent value of a property. The Petitioner, however, provided no substantial analysis along that line.
- h) Some of the information in the Rosewood appraisal also contradicts the Petitioner's representation that it is reasonable to anticipate that the expected income for the subject property should reasonably be based on 40% occupancy.

While it is not clear what occupancy rate would satisfy generally accepted appraisal practices, it is clear that it would be substantially higher.

- i) Although the Petitioner presented something that it characterized as an income approach to determining the value of the subject property, it failed to establish that what it offered actually satisfies generally accepted appraisal principles. More specifically, the serious flaws in a key element of the Petitioner's analysis, renders its income approach meaningless and lacking in probative value. It did not make a case for any assessment change.
- j) To the extent that the Petitioner may be claiming that no value should be attributed to the areas with zoning restrictions and that no value should be attributed to unoccupied pads, it failed to provide substantial support for such conclusions. And they are wrong. While those are factors that might have some impact on valuation, the Petitioner offered no probative evidence about what that impact might be.

Conclusion

16. The Petitioner failed to prove its case. The board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, there will be no change in the assessment.

ISSUED: _____

Commissioner, 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>>