

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

Petitions:	53-008-04-1-5-00743a	Parcels:	014-07690-00
	53-008-04-1-5-00743b		014-21400-00
	53-008-04-1-5-00743d		014-26230-00
	53-008-04-1-5-00743e		014-31440-00
	53-008-04-1-5-00743f		014-32150-00

Petitioner: JWR Properties

Respondent: Perry Township Assessor (Monroe County)

Assessment Year: 2004

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. The Petitioner initiated assessment appeals with the Monroe County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated May 12, 2004.
2. The PTABOA mailed notice of its decisions to the Petitioner on August 18, 2004.
3. The Petitioner filed appeals to the Board by filing Form 131s with the county assessor on September 14, 2004. The Petitioner elected to have these cases heard according to small claims procedures.
4. The Board issued notices of hearings to the parties dated July 10, 2006.
5. The Board held an administrative hearing on September 13, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Marilyn Meighen appeared as counsel for the Respondent. Persons present and sworn as witnesses at the hearing:
 - Milo Smith, Tax Representative,
 - Judy Sharp, Monroe County Assessor,
 - Ken Surface, Nexus Group.

Facts

7. The properties are five single-family rental units on one-acre parcels of land. They are located in the 5100 and 5200 blocks of South State Road 37, Bloomington, Indiana.

8. The ALJ did not conduct on-site inspections of the properties.

9. The PTABOA determined the assessed values of the subject properties are as follows:

<u>Parcel Number</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
014-07690-00	\$17,500	\$53,100	\$70,600
014-21400-00	\$17,500	\$52,500	\$70,000
014-26230-00	\$17,500	\$62,900	\$80,400
014-31440-00	\$17,500	\$70,600	\$88,100
014-32150-00	\$17,500	\$73,100	\$90,600

10. Based on a capitalization rate of 9.75%, the Petitioner requested the following assessments:

<u>Parcel Number</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
014-07690-00	\$17,500	\$21,710	\$39,210
014-21400-00	\$17,500	\$24,500	\$42,000
014-26230-00	\$17,500	\$22,880	\$40,380
014-31440-00	\$17,500	\$25,130	\$42,630
014-32150-00	\$17,500	\$24,260	\$41,760

Issue

11. Summary of Petitioner's contentions:

- a. The Introduction to the MANUAL states, "A general reassessment of all real property within the state is required as of March 1, 2002. This assessment manual contains the rules for assessing real property located in Indiana for the March 1, 2002, through March 1, 2005, assessment dates." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). "Based on decisions provided by recent court rulings, the basis for True Tax Value outlined in this manual is value-in-use as opposed to value-in-exchange." *Id.* at 3. The value is defined as the value a specific property has for a specific use and these properties are rental properties. *Smith testimony.*
- b. The Petitioner submitted a copy of the Board's ruling on John Goulding's appeal, Petition No. 48-003-04-1-5-00192. *See Petitioner Exhibit 8.* The Petitioner highlighted several passages from those findings as being relevant to its claim. "Commercial properties generally receive higher depreciation than do residential properties." *Id.* at 2. "In Indiana, real property is assessed based upon its 'true tax value.' The 2002 Real Property Assessment Manual ('Manual') defines 'true tax value' of real property as 'the market value-in-use of a property for its current use, as reflected by the utility received by the owner . . .'" *Id.* at 4. "A taxpayer may also rely upon sales information . . . and any other information compiled in accordance with generally accepted appraisal practices." *Id.* at 4-5.

- c. The Petitioner submitted a copy of a page from House Bill 1001 – Property Tax Fairness Plan, where it states that the assessment of rental properties and mobile homes is "to be calculated based on all three possible fair market value methodologies, and the most favorable assessment result provided to the property owner." *Smith testimony; Petitioner Exhibit 3*. A memo entitled "Overview of the Income Approach to Valuation" from the Department of Local Government Finance (DLGF) dated November 12, 2003, states, "The income approach to value is one of the three generally accepted appraisal methods used to determine market value appraisal." *Smith testimony; Petitioner Exhibit 5*.
- d. Using a gross rent multiplier (GRM) valuation method establishes the market value of a property due to the use of sale prices in the equations, while the application of a capitalization rate to the net operating income (NOI) specific to individual properties establishes market value-in-use based on the utility received. *Smith testimony*.
- e. In order to determine the market value-in-use for the five rental properties under review, one must use a capitalization rate (cap rate) calculation. *Smith testimony*. The Petitioner's calculation consists of the net operating income (NOI) less the expenses, divided by the cap rate. *Id.*; see *Petitioner Exhibits 10 – 14*. This calculation confirms market value-in-use of the properties as opposed to market value. *Id.* The use of a GRM formula does not determine market value-in-use for the subject properties. *Id.* The market value-in-use is the utility received by the owner per rulings and in the Board's 2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL). *Id.*
- f. The Petitioner submitted 2004 and 2005 income and expenses for each of the subject properties as support for the income approach to valuation. *Petitioner Exhibit 2*. Based on experience, the income and expenses supplied for the subject properties are representative of the market in general. *Smith testimony*. The subject properties should be valued using a weighted composite cap rate of 9.75%, determined from the RealtyRates.com investor survey. *Id.*; *Petitioner Exhibit 7*. In conversation Mr. Surface stated that an 8.50% cap rate is used for apartments in Bloomington. *Id.* At the hearing, the Petitioner changed its position and claimed that the cap rate should be 8.50%. *Smith testimony*.

12. Summary of Respondent's contentions in support of the assessment:

- a. The Respondent cites 50 IAC 2.3-1-1(d) as authority that "failure to comply with the Real Property Assessment Guidelines for 2002-Version 'A' or other guidelines approved under subsection (c) does not in itself show that the assessment is not a reasonable measure of 'True Tax Value'." *Meighen argument; Respondent Exhibit 1*. The "bottom line" value is the crucial part of the assessment process. When a Petitioner challenges an assessment, the Petitioner must provide probative evidence to rebut the value determined by an assessor. *Meighen argument; Respondent Exhibit 2*.

- b. The income and expenses of the subject properties were not compared to the marketplace to establish fairness and reasonability. The Petitioner's capitalization of income method used income and expenses specific to the properties, rather than income and expenses extracted from the market. The Petitioner's method is in opposition to the instructions for valuation of income producing properties. *Meighen argument; Petitioner Exhibit 5*. Even if capitalization of income were appropriate, the 9.75% cap rate originally suggested by the Petitioner is not specific to the Bloomington area. *Meighen argument*. An 8.5% cap rate was developed for twenty to twenty-five large, multi-unit apartment complexes using average market rents, expenses and sales prices in the Bloomington area. It is not intended for use with single-family rentals. *Meighen argument; Surface testimony*.
- c. The cap rate used by the Petitioner from Realtyrates.com (Petitioner Exhibit 7) does not indicate that it was for the Bloomington area or any other area. The Petitioner admitted it was from the Indianapolis page of the Realtyrates.com. *Smith testimony*. If the Petitioner's weighted composite index of 9.75% is assumed to be applicable to 2004, the correct weighted composite index shown on the Petitioner's exhibit is a 9.00% rate for apartments and not 9.75%. *Meighen argument*.
- d. Valuation of property by the cost approach, the income approach and the sales comparison approach, with use of the lowest value for the assessment is pursuant to Ind. Code § 6-1.1-4-39(a). *Meighen argument*. This statute became effective for the 2006 assessment and is not relevant to the case at bar. *Id.* This statute specifically states that use of the GRM is the preferred method of valuation for properties with four or less rental units. When using the GRM method, expenses and capitalization rate are not part of the calculation. *Surface testimony; Respondent Exhibit 11*.
- e. The current assessed values of the five subject properties are reasonable when they are compared to two comparable real estate sales transactions involving properties located in the same neighborhood. *Respondent Exhibits 3 - 7, 9, 10*. The two properties that sold are comparable in size, age, location and amenities. *Surface testimony; Respondent Exhibits 9, 10*.

Record

- 13. The official record for this matter contains the following:
 - a. The Petition,
 - b. The recording of the hearing labeled BTR # 6156,
 - c. Exhibits¹:

Petitioner Exhibit 2 - Subject rental income information,
Petitioner Exhibit 3 - HB 1001, Property Tax Fairness Plan,

¹ Exhibits 1, 4, 6, and 9 were not included in the items the Petitioner submitted.

Petitioner Exhibit 5 - Overview of the Income Approach to Valuation,
Petitioner Exhibit 7 - Market Commentary for RealtyRates.com,
Petitioner Exhibit 8 - Board Determination for Petition No. 48-003-04-1-5-00192,
Petitioner Exhibit 10 - PRC for parcel 014-26230-00,
Petitioner Exhibit 11 - PRC for parcel 014-07690-00,
Petitioner Exhibit 12 - PRC for parcel 014-21400-00,
Petitioner Exhibit 13 - PRC for parcel 014-31440-00,
Petitioner Exhibit 14 - PRC for parcel 014-32150-00,

Respondent Exhibit 1 - Copy of 50 IAC 2.3-1-1,
Respondent Exhibit 2 - *Eckerling v. Wayne Twp. Assessor*,
Respondent Exhibit 3 - Photograph and PRC for parcel no. 014-07690-00,
Respondent Exhibit 4 - Photograph and PRC for parcel no. 014-21400-00,
Respondent Exhibit 5 - Photograph and PRC for parcel no. 014-26230-00,
Respondent Exhibit 6 - Photograph and PRC for parcel no. 014-11440-00,
Respondent Exhibit 7 - Photograph and PRC for parcel no. 014-32150-00,
Respondent Exhibit 8 - Map,
Respondent Exhibit 9 - Photograph, Sales Disclosure, and PRC for parcel
014-09320-00,
Respondent Exhibit 10 - Photograph, Sales Disclosure, and PRC for parcel
014-11080-00,
Respondent Exhibit 11 - Income Approach to Value on Single-family and Small
Multi-family Properties,

Board Exhibit A - Form 131,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - Notice of Appearance,
Board Exhibit D - Notice of county assessor's appearance for township,
Board Exhibit E - Hearing Sign in Sheet,

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 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.
15. The Petitioner failed to establish a prima facie case. The Board reached this decision for the following reasons:
- a. Real property assessments are based on “true tax value”, which does not mean fair market value. “True tax value” is defined as “[t]he market value-in-use of 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. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (GUIDELINES)(incorporated by reference at 50 IAC 2.3-1-2). 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 of comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
- b. The market value-in-use of the subject properties should consider the fact that the Petitioner currently uses them as single-family rental properties. An income approach is one of the three generally accepted techniques that a party could use. Neither party appears to dispute that point, but they dispute how to apply that approach.²

Gross Rent Multiplier

- c. A memorandum from the Department of Local Government Finance about the "Income Approach to Value on Single-family and Small Multi-family Properties" supports the Respondent's position that a GRM calculation is an appropriate method for valuation of single-family rentals such as the subject properties. The GRM method considers income (rent), but does not use a capitalization rate: "The GRM gives a simple, direct estimate of value and does not require the development of a reconstructed, annual operating statement nor a capitalization rate." *Respondent*

² With certain exceptions, Indiana Code § 6-1.1-4-39 provides that for the 2005 and subsequent assessments, the true tax value of real property regularly used as residential rentals with more than four units is the lowest valuation determined by applying the cost approach, the sales comparison approach, and the income capitalization approach. It also provides that the gross rent multiplier method is the preferred method for valuing real property that has one to four rental units. The Petitioner, however, appealed 2004 assessments. The Petitioner supplied no authority or substantial argument to support its claim that this provision should apply in the current cases. The time limitation is clear on its face. Consequently, the Petitioner cannot have the benefit of this provision for its 2004 appeals.

Exhibit 11. The Petitioner offered conclusory testimony that the GRM method would indicate market value, but not market value-in-use. The record contains no facts or persuasive argument to support that conclusion. Such unsubstantiated conclusions do not constitute probative evidence. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The Petitioner's claim that the GRM method is inconsistent with the definition of market value-in-use is unconvincing. The record fails to establish that using the GRM method for a rental property with four or fewer units would be inconsistent with the definition of market value-in-use.

- d. In this case, however, the Petitioner's argument about the GRM method appears to be a red herring because the record does not establish that it was used for the current assessed values. The Petitioner merely claims that the GRM method should not be used, while the Respondent establishes that the GRM method is authorized. *See* Ind. Code § 6-1.1-4-39(b). The fact that the legislature has declared the GRM method to be a preferred way to value property of the same type as the Petitioner's appears to be a strong indication that the GRM method is consistent with the market value-in-use concept. Regardless of the merit of those claims, the Petitioner must prove the current assessment is incorrect *and* what the correct amount should be. Therefore, the Board must consider the Petitioner's income approach to valuation, which is the main issue.

Income Capitalization

- e. Another memorandum from the Department of Local Government Finance provides an "Overview of the Income Approach to Valuation." This approach uses net operating income and a capitalization rate to determine the market value of a property according to the following basic formula:

$$\text{Net operating income} \div \text{capitalization rate} = \text{market value of property}$$

- f. In applying the income approach, one "must extract the income-related data from the marketplace and apply it only to comparable investment real estate." *Petitioner Exhibit 5.* "Gross income is the rent a property can produce for the owner in a given time span, generally one year. The appraiser looks at comparable marketplace rentals to determine the applicable rent for the property – this may not be actual rent." *Id.* "Appraisers then deduct expenses typical to the property-type being appraised. The actual income and expense statements are examined and adjustments made based on appraisal practices." *Id.* This methodology calls for consideration of data that is specific to the property in question within the context of what is typical for similar property. Doing so helps to eliminate distortions of value that might result from bad business judgments such as establishing an unreasonable rent or incurring unnecessary expenses.
- g. The Petitioner offered testimony that the reported specific incomes and expenses are representative of the market, but the testimony is only a conclusory statement from Mr. Smith. The Petitioner failed to submit probative evidence that might support the

opinion of what is typical in the marketplace. Unsubstantiated conclusions do not constitute probative evidence. *Whitley Products*, 704 N.E.2d at 1119. This fault alone is fatal to the Petitioner's claim.

- h. The income and expenses used to determine the net operating income are not the only part of the Petitioner's case that is lacking. The capitalization rate is another critical element in the formula. It is the mathematical process used to convert income into value. "The capitalization rate is extracted from the marketplace using detailed income and expense information on sold properties. The overall rate may also be calculated by equations that measure safety or risk, liquidity, investment size, using equity as collateral for other investments, leverage, holding period, amount of management required, potential for appreciation and income tax advantages. An effective tax rate is added to the capitalization rate to account for the expense of property taxes on the real estate." *Petitioner Exhibit 5*.
 - i. The Petitioner originally sought to use a Weighted Composite Index of 9.75% from Realtyrates.com as a capitalization rate. *Petitioner Exhibit 7*. The Weighted Composite Index is a composite number that takes into account all types of properties and not just apartments. The number shown for *apartments* is only 9.00% for 2004. The Petitioner failed to explain or support the use of either number as an appropriate cap rate.
 - j. In challenging the Petitioner's original proposed cap rate, the Respondent brought up the fact that an 8.5% cap rate was used for multiple unit apartment complexes in Bloomington. Clearly, the Respondent did not argue or agree that 8.5% was appropriate for the subject properties. The Petitioner's attempt to negotiate the cap rate at the hearing and to accept 8.50% does not establish its claim. The evidence establishes no basis for using it on these single-family residential rental units.³
 - k. The Petitioner failed to prove that the current assessed values are wrong. In addition, the Petitioner failed to prove that the values it claimed (or any other specific values) are the market value-in-use of these rental properties.
16. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

17. The Board finds in favor of the Respondent.

³ Furthermore, the Petitioner failed to walk through calculations using that cap rate on four of the subject properties. One of the Petitioner's proposed PRCs contains the following: $\$4,072 / 8.5 = \$47,906$ with an added note stating "Used for apartments in Bloomington (per Ken Surface). The other four PRCs lack computations with that cap rate.

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. 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>.