

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

Petition: 20-015-12-1-5-00668
Petitioner: Myron Borntrager
Respondent: Elkhart County Assessor
Parcel: 20-11-03-355-004.000-015
Assessment Year: 2012

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

Procedural History

1. The Petitioner initiated his 2012 assessment appeal with the Elkhart County Assessor on September 5, 2012. On February 6, 2014, the Elkhart County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner relief.
2. The Petitioner filed a Petition for Review of Assessment (Form 131) with the Board on March 18, 2014. He elected the Board's small claims procedures.
3. The Board issued a notice of hearing on August 8, 2014.
4. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on September 10, 2014. She did not inspect the property.
5. Myron Borntrager appeared *pro se* and was sworn as a witness. Attorney Beth Henkel represented the Respondent. Elkhart County Assessor Cathy Searcy and Gavin Fisher were sworn as witnesses for the Respondent.

Facts

6. The property under appeal is a residential rental property located at 529 Olive Street in Goshen.
7. The PTABOA determined the total assessment is \$50,600 (land \$12,200 and improvements \$38,400).
8. On his Form 131 petition, the Petitioner requested a total of \$40,000 (land \$12,200 and improvements \$27,800).

Record

9. The official record for this matter is made up of the following:
- a) Petition for Review of Assessment (Form 131) with attachments,
 - b) A digital recording of the hearing,
 - c) Exhibits:

Petitioner Exhibit 1: “Rental Property Valuation” spreadsheet prepared by the Petitioner.

Respondent Exhibit A: “Practical Application of Additive Multiple Regression Modeling in Income Property Valuation” prepared by Gavin M. Fisher,

Respondent Exhibit B: Subject property record card,

Respondent Exhibit C: Appraisal of the subject property prepared by Gavin M. Fisher with an effective date of March 12, 2012,

Respondent Exhibit D: 2012 “E-Valuate” report for the subject property developed by Equi-Val Tax Solutions, LLC.

Board Exhibit A: Form 131 petition with attachments,

Board Exhibit B: Notice of appearance from Beth Henkel,

Board Exhibit C: Notice of hearing dated August 8, 2014,

Board Exhibit D: Hearing sign-in sheet.

- d) These Findings and Conclusions.

Contentions

10. Summary of the Petitioner’s case:
- a) The subject property is assessed too high. The property is utilized as a rental property and the Petitioner charges \$700 per month in rent. The Petitioner prepared an income approach to value indicating the property should be assessed at \$24,392. *Borntrager argument; Pet’r Ex. 1.*
 - b) The Petitioner explained that at times, the property is vacant, or a tenant gets behind on the rent. Thus, the annual rental income varies. In his valuation analysis, the Petitioner reported rental income of \$6,320.50.¹ *Borntrager testimony; Pet’r Ex. 1.*

¹ The Petitioner’s analysis is dated January 1, 2012. Thus, the Board assumes that the rental income and the expense data is from 2011.

- c) After deducting the annual property-related expenses, totaling \$3,149.54, the Petitioner is left with a net operating income of \$3,170.96. Next, the Petitioner divided that figure by a 13% capitalization rate to arrive at his value of \$24,392. While the Petitioner is not necessarily arguing this is the property's value, he contends this is what an investor would pay for it. *Borntrager testimony; Pet'r Ex. 1.*
- d) The 13% capitalization rate utilized by the Petitioner was arrived at after talking to peers about what is commonly used in the industry, and "it comes from a combination of things." For instance, the Petitioner explained that interest rates, taxes, depreciation, return on investment, and the quality of the property must be taken into consideration when choosing a capitalization rate. *Borntrager testimony; Pet'r Ex. 1.*
- e) Finally, the comparables utilized in the Respondent's appraisal are not comparable to the subject property. The purportedly comparable properties utilized in the appraisal are not rental properties. Further, the first purportedly comparable property is "substantially better" than the subject property with a garage and part of a basement. And the fourth purportedly comparable property was a foreclosure. *Borntrager argument (referencing Resp't Ex. C).*

11. Summary of the Respondent's case:

- a) The subject property is correctly assessed. The Respondent offered an appraisal prepared by Indiana certified residential appraiser Gavin Fisher. Mr. Fisher prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). He estimated the total value of the subject property was \$55,000 as of March 12, 2012. *Henkel argument; Fisher testimony; Resp't Ex. C.*
- b) To obtain his final estimate of value, Mr. Fisher considered all three approaches to value. While he developed the cost approach, he concluded that approach is more applicable to new construction and did not give it any further consideration. In developing the income approach, Mr. Fisher applied a Gross Rent Multiplier (GRM) of 80 to a market rent of \$700 per month. The income approach indicated the value of the subject property was \$56,000. *Fisher testimony; Resp't Ex. C at 4.*
- c) Mr. Fisher also gave substantial consideration to the sales-comparison approach. In developing this approach, he relied mainly on three comparable sales. Mr. Fisher did list two additional sales, which were sheriff's sales or foreclosures. These properties Mr. Fisher defined as real estate owned (REO).² Often, the sale price of REO properties reflects an amount that is indicative of a substandard condition. They are not truly arm's-length driven sales. However, sometimes REO sales are indicative of the market. Here, by analyzing the two REO sales, Mr. Fisher was able to determine that the foreclosure influence is limited to the specific properties affected by the

² Mr. Fisher explained that an REO transaction is "real estate owned after a sheriff's sale takes place or after a lender takes title back to a property. In the time that they hold the title or deed, it is considered real estate owned."

- foreclosure, and does not impact the entire market. Thus, Mr. Fisher included these two REO sales to illustrate the vast difference in values for REO influenced properties. *Fisher testimony; Resp't Ex. C* at 4, 5.
- d) Mr. Fisher concluded that his final estimate of value was based primarily on the sales comparison and income approaches to value. However, the most consideration was given to the income approach “in accordance with the preferred methodology of valuation (GRM) as promulgated by the Department of Local Government Finance (DLGF).” *Fisher testimony; Resp't Ex. C* at 2.
 - e) Mr. Fisher was also previously hired by the Respondent as a consultant to assist in the development of market rental rates and gross rent multipliers specifically for appeal purposes. Mr. Fisher developed multiple-regression models that could be applied to “1-4 unit rental properties.” In developing the model, Mr. Fisher considered things such as age, location, size, number of units, and number of bedrooms. Based on Mr. Fisher’s model, and a market rent of \$710 and a GRM of 83, the subject property should be valued at \$58,900. *Fisher testimony; Resp't Ex. A, D*.
 - f) According to the evidence presented, the subject property is worth more than the current assessment. However, the Respondent is not requesting an increase, and she contends that the 2012 assessment should remain at \$50,600. *Henkel argument; Resp't Ex. A, B, C, D*.

Burden of Proof

- 12. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.
- 13. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
- 14. Second, Ind. Code section 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township

assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change is effective March 25, 2014, and has application to all appeals pending before the Board.

15. Here, the parties agreed that the 2012 assessment increased by more than 5% over the 2011 assessment. In fact, the total assessed value increased from \$36,000 to \$50,600. Thus, according to Ind. Code § 6-1.1-15-17.2, the Respondent has the burden to prove the 2012 assessment is correct.

Analysis

16. The Respondent made a prima facie case that the 2012 assessment was correct.
 - a) Real property is assessed based on its "true tax value," which 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); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. 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.
 - b) Regardless of the method used, a party must explain how the evidence relates to the appealed property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2012 assessments, the assessment and valuation date were March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f).
 - c) The most effective method to establish value can be through the presentation of a market value-in-use appraisal, completed in conformance with USPAP. *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. Here, the Respondent offered a USPAP compliant appraisal prepared by Gavin Fisher, a licensed residential appraiser. The appraisal valued the subject property at \$55,000 as of March 12, 2012. Mr. Fisher's final reconciliation of value is based primarily on the income and sales-comparison approaches. While the Respondent also offered other evidence in support of the assessment, Mr. Fisher's appraisal alone is enough to establish a prima facie case. The burden therefore shifts to the Petitioner.
 - d) The Petitioner attempted to both impeach and rebut the Respondent's appraisal, however this attempt was unsuccessful. In his attempt to impeach the appraisal, Mr.

Borntrager argued that Mr. Fisher failed to use income-producing properties as comparables. However, Mr. Borntrager failed to provide evidence or argument as to how that alleged error affected the value Mr. Fisher determined. Moreover, it is well within an appraiser's expertise to choose the sales he or she deems most comparable to the subject property and apply adjustments to account for any differences. Without probative evidence to the contrary, Mr. Fisher's comparables appear to be reasonable.

- e) Mr. Borntrager also attempted to rebut the appraisal with an income analysis of his own, which estimated the subject property's value at \$24,392. However, Mr. Borntrager failed to provide any indication that he used general accepted appraisal principles in computing his value. It appears from his evidence that he used actual rent, rather than market rent, to compute his effective gross income. Further, Mr. Borntrager failed to offer sufficient evidence to support his choice of a 13% capitalization rate. Therefore, the Petitioner's computation has little probative value.
- f) Here, the Respondent offered sufficient evidence to support an increase in the 2012 assessment to \$55,000. However, the Respondent indicated that she was not seeking an increase, and conceded that the 2012 assessment should remain at \$50,600. The Board accepts the Respondent's concession.

Conclusion

17. The Board finds for the Respondent. The 2012 assessment will not be changed.

Final Determination

In accordance with these findings and conclusions, the 2012 assessment will remain at \$50,600.

ISSUED: March 17, 2015

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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.