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

Petition No.: **79-026-12-1-5-00005**
Petitioner: **Chauncey Hill Annex, LLC**
Respondent: **Tippecanoe County Assessor**
Parcel No.: **79-07-19-427-005.000-026**
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. Chauncey Hill Annex, LLC ("Petitioner") filed its Form 130 with the Tippecanoe County Property Tax Assessment Board of Appeals ("PTABOA") on November 14, 2012. The PTABOA issued notice of its final assessment determination on January 10, 2014.

2. Petitioner filed its Form 131 petition with the Board on February 18, 2014, electing to have its appeal heard under the Board's small claims procedures. Respondent did not elect to have the appeal removed from those procedures.

3. Ellen Yuhan, the Board's Administrative Law Judge ("ALJ"), held a hearing on May 31, 2016. Neither the Board nor the ALJ inspected the subject property.

4. Milo Smith, tax representative, was sworn and testified for Petitioner. Eric Grossman, Tippecanoe County Assessor, was sworn and testified for Respondent.[1]

Facts

5. The property under appeal is a residential duplex located at 115 South Street in West Lafayette.

6. For 2012, the PTABOA determined the assessed value of the property to be $40,700 for the land and $195,400 for the improvements, for a total assessed value of $236,100.

7. For 2012, Petitioner requested an assessed value of $151,100.

[1] Max Campbell, Tippecanoe County Project Manager, was sworn but did not testify. Christopher Coakes of the Tippecanoe County Assessor's appeal staff was also present.

Record

8. The official record for this matter is made up of the following:

   a. A digital recording of the hearing,

   b. Exhibits:

Petitioner Exhibit 1:	Subject property record card ("PRC")
Petitioner Exhibit 2:	Form 115-IPT
Petitioner Exhibit 3:	DLGF Memorandum dated August 24, 2007
Petitioner Exhibit 4:	Copy of the assessor's worksheet (income capitalization approach)
Respondent Exhibit 1:	Property history and Tippecanoe County Student Rental Unit Report & Survey
Respondent Exhibit 2:	PRCs before and after the obsolescence factor was removed, tax records, assessment records
Respondent Exhibit 3:	Income capitalization approach
Respondent Exhibit 4:	Sales from the 2012 and 2013 ratio studies and sales of multi-family buildings
Board Exhibit A:	Form 131 petition and attachments
Board Exhibit B:	Notice of hearing
Board Exhibit C:	Hearing sign-in sheet

   c. These Findings and Conclusions.

Burden of Proof

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its property's assessment is wrong and what the correct assessment should 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). A burden-shifting statute creates two exceptions to the rule.

10. First, Ind. Code § 6-1.1-15-17.2(a) "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." Under Ind. Code § 6-1.1-15-17.2(b), "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."

11. Second, Ind. Code § 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 Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "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).

12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).

13. The assessed value increased from $168,300 for 2011 to $236,100 for 2012, which is an increase of more than 5%. The parties agree that Respondent has the burden of proof.

Contentions

14. Summary of Respondent's case:

    a. The property is a two-story, 1,555 square foot, two-unit rental building with an attached garage. Respondent contends it is in a prime location near the Purdue University campus and close to retail shopping. It was built in 1998 and is considerably newer and in better condition than similar properties in the area that were built in the 1920s and 1930s. *Grossman testimony; Resp't Ex. 1*.

    b. The 2012 assessment was calculated by trending the replacement cost using certain sales from the subject's neighborhood that were used in the 2012 and 2013 ratio studies. The resulting median factor was then applied to the subject to calculate its current value. The land was "flat valued" at $40,700. *Grossman testimony; Resp't Exs. 1, 2 and 4*.

    c. Prior to the PTABOA hearing, there was a 44% obsolescence factor on the property. The PTABOA subsequently removed the obsolescence factor, increasing the total assessed value from $151,100 to $236,100. *Grossman testimony; Resp't Exs. 1 and 2*.

    d. Respondent contends that the income capitalization approach is the most reliable valuation method with which to confirm the accuracy of the current assessed value. For the potential gross income, Respondent used the average rent per square foot from, what he claims, is a competitive market set, and applied it to the subject property. *Grossman testimony; Resp't Exs. 3 and 4*.

    e. Respondent calculated a market rent of $31,264. He then applied a vacancy and collection loss rate of 4.2%, which is effectively twice the rate listed in the Area Plan

Commission Report. That report surveyed 4,263 units containing 9,608 bedrooms. Over the course of the 2012-2013 school year, approximately 2% of those units remained vacant. So, while the vacancy rate used appears to be low, Respondent contends it is nonetheless justified by the report. The resulting effective gross income was $29,866. *Grossman testimony; Resp't Exs. 1 and 3*.

f. Respondent contends that the expense ratios were developed by surveying local insurance agents and management companies. Respondent also developed its own utility benchmarks. The benchmarks they used for expenses are primarily determined by the age of the property. The resulting expenses were 40% and the resulting net operating income was $17,919. *Grossman testimony; Resp't Ex. 3*.

g. Considering various other factors, Respondent arrived at a capitalization rate of 5.6%. Because real estate taxes were not included in the expenses, Respondent then added an effective tax rate, which included the 2% residential cap plus an additional amount for the referendum in that taxing district. Adding these amounts to the 5.6% rate resulted in an ultimate capitalization rate of 7.8%. Capitalizing the net operating income resulted in a value of $229,419, which reconciles very closely with the current assessment. *Grossman testimony; Resp't Ex .3*.

h. Respondent contends that an income capitalization method rate and a gross rent multiplier ("GRM") method effectively serve the same purpose. According to Mr. Grossman, the reason Respondent did not use a GRM method is because mass appraisal via a GRM method is grossly inaccurate and they are unable to maintain ratio study requirements with such a broad method. He contends that they try to consider many more specific factors to improve accuracy. For example, when Respondent performed a year-end study of West Lafayette, the GRM was in excess of 10. Applying a GRM of 10 in the case of the subject would result in a value of $311,640. *Grossman testimony.*

15. Summary of Petitioner's case:

a. The 2011 assessment was $168,300. When the Form 11 was issued in 2012, the value was $151,100, which was the value Petitioner appealed to the PTABOA. The PTABOA subsequently changed the value to $236,100 for 2012. Petitioner contends that, should he prevail, the assessment should revert back to the original 2012 amount of $151,100 as opposed to the prior year amount of $168,300. *Smith testimony; Pet'r Exs. 1 and 2.*

b. A memorandum issued jointly by the DLGF and the Board, dated August 24, 2007, states the GRM method is the preferred method and the method required by statute for valuing one to four unit family residential properties. Petitioner contends that, pursuant to that memorandum, the GRM method is the proper way to value the subject property as opposed to any other approach. *Smith testimony; Pet'r Ex. 3*.

Analysis

16. Respondent failed to establish a prima facie case that the assessment was correct. The Board reached this decision for the following reasons:

a. Typically, 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 by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. 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. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.

b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject 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. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2012 assessment was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

c. There is a separate statute, however, regarding the valuation of certain rental properties such as the one at issue. Specifically, Ind. Code § 6-1.1-4-39 provides in part that the GRM "is the preferred method of valuing…real property that has at least one (1) and not more than four (4) rental units…." The parties agree this statute applies to the subject property.

d. As explained above, Respondent had the burden of proving that the 2012 assessment of $236,100 was correct. In presenting its case, Respondent declined to value the property under the GRM method. Petitioner argues the failure to value the property under the GRM method is fatal to Respondent's case, because the GRM is statutorily required. Petitioner misreads the statute. Because the GRM method is described as only the "preferred method," rather than mandatory, the statute contemplates circumstances in which the GRM method should be disregarded.

e. The question before the Board is whether Respondent has established the GRM method should be rejected. Respondent has not offered a cogent analysis of the statute. The Board is aware that Respondent is attempting to concede to a lower value than under the GRM method, which is arguably a benefit to Petitioner. But this

is not a case where both parties agree that (1) the GRM method was correctly calculated, and (2) the GRM method should be disregarded in favor of other methods. The burden is on the Respondent to justify its rejection of the GRM method.

f. Respondent basically argues that applying the GRM method in this case would yield an unreasonably excessive value and they would be unable to maintain their ratio study requirements. For example, when Respondent performed a year-end study of West Lafayette using the GRM method, the GRM was in excess of 10. Applying a GRM of 10 in the case of the subject would result in a value of $311,640.

g. As for the ratio studies, the IAAO's Standard on Ratio Studies, which 50 IAC 27-1-4 incorporates by reference, prohibits using ratio studies for that purpose:

> Assessors, appeal boards, taxpayers, and taxing authorities can use ratio studies to evaluate the fairness of funding distributions, the merits of class action claims, or the degree of discrimination. . . **However, ratio study statistics cannot be used to judge the level of appraisal of an *individual* parcel.**

INTERNATIONAL ASSOCIATION OF ASSESSING OFFICIALS STANDARD ON RATIO STUDIES, Version 17.03, Part 2.3 (Approved by IAAO Executive Board 07/21/2007) (bold added, italics in original). The Board finds that a GRM should not be disregarded based solely on the value's disparity with regard to ratio studies.

h. The Board notes that Respondent has not explained how the rejected GRM value was calculated. If the record does not disclose how the GRM value was calculated, including the sources of the data for the inputs (market rents, vacancy, comparable sales, etc.), the Board cannot easily accept that the GRM method should be rejected as unreliable. Regardless, an alternative valuation must be based on probative evidence. Respondent's alternative method of valuation fails to make a prima facie case.

i. Respondent contends that the current assessment is derived from the replacement cost trended by a pool of sales from the subject's neighborhood that were used in the 2012 and 2013 ratio studies. The resulting median factor was then applied to calculate its current value and the land was flat valued at $40,700.

j. In using the method described above, Respondent is essentially relying on the INDIANA REAL PROPERTY ASSESSMENT GUIDELINES to arrive at an assessed value. Such evidence has little or no probative weight. As the tax court has explained, strictly applying assessment regulations does not necessarily prove a property's true tax value in an assessment appeal. *Eckerling v. Wayne Twsp. Ass'r*, 841 N.E.2d 674 (holding that taxpayers failed to make a case by simply focusing on the assessor's methodology instead of offering market value-in-use evidence).

k. Respondent did offer limited market-based evidence. Specifically, as part of its Exhibit 4, Respondent offered a list of sales that occurred in the same neighborhood as the subject property. According to Respondent, those sales were used in calculating the subject property's assessed value. The Board infers that Respondent is attempting to prove the property's value by using the sales-comparison approach.

l. In order to use a sales comparison approach as evidence in an assessment appeal, however, the party must first show that the properties being examined are comparable to each other. Conclusory statements that a property is "similar" or "comparable" to another property are not probative evidence. *Long*, 821 N.E.2d at 470-471. Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the purportedly comparable properties. Similarly, one must explain how any differences between the properties affect their relative market value-in-use. Id

m. Here, Respondent did little to compare the properties. Also, despite the fact that the sale prices of the properties ranged from $160,000 to $625,000, Respondent failed to offer any market-based adjustments for differences between the properties. Accordingly, Respondent's sales analysis has little probative value.

n. Respondent also attempted to develop the income capitalization approach to support the assessed value. However, Respondent did not fully explain how the potential gross income amount used in the calculation was derived. Also, with the exception of vacancy and loss percentages, Respondent failed to offer any support for the other factors that were used.

o. As part of making a prima facie case, "it is the taxpayer's duty to walk the [Board] through every element of [its] analysis." *Long*, 821 N.E.2d at 417 (quoting *Clark v. Dep't of Local Gov't Fin*., 779 N.E.2d 1277, 1282 (Ind. Tax Ct. 2002). This requirement applies equally to an assessor bearing the burden. Here, the record contains no support documentation that provides a basis for the selection of the factors discussed herein, and there is no evidence that the analysis at issue was prepared according to generally accepted appraisal principles.

p. Consequently, Respondent failed to make a prima facie case that the 2012 assessment is correct. Therefore, the 2012 assessment must be returned to its 2011 assessment of $168,300. Petitioner, however, requested a value of $151,000, which is lower than the 2011 assessment. There is no exception to the rule about returning the value to the prior year's assessment when the appealed assessment was initially lower than the prior year.

q. Petitioner argues that the GRM method is the required method under the applicable statute to value one to four unit family residential properties. Petitioner is misguided. The statute unambiguously states that the GRM is the "preferred" method as opposed to the required method. Regardless of Petitioner's interpretation of the statute, he offered no probative evidence to show the 2012 value should be $151,000.

Consequently, Petitioner failed to make a prima facie case that the 2012 value should be further reduced.

CONCLUSION

17. Respondent had the burden of proving the 2012 assessment was correct, but failed. Petitioner asked for an assessed value lower than that of 2011, but also failed to meet its burden. Thus, the 2012 assessment must be reduced to the 2011 amount.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2012 assessed value should be changed to $168,300.

ISSUED: August 29, 2016

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>.