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

Petition No.: **79-026-12-1-5-00004**
Petitioner: **Chauncey Hill North, LLC**
Respondent: **Tippecanoe County Assessor**
Parcel No.: **79-07-19-427-006.000-026**
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 North, 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 10 N. Chauncey Avenue in West Lafayette.[2]

6. For 2012, the PTABOA determined the assessed value of the property to be $36,500 for the land and $191,900 for the improvements, for a total assessed value of $228,400.

7. For 2012, Petitioner requested an assessed value of $137,900.

[1] Max Campbell, Tippecanoe County Project Manager, and Christopher Coakes of the Tippecanoe County Assessor's appeal staff, were both sworn but did not testify.
[2] The original appeal was filed for 125 South Street but apparently sometime after the Form 131 was filed the address was changed to 10 N. Chauncey Avenue.

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:	Copy of Ind. Code § 6-1.1-4-4.4
Petitioner Exhibit 3:	Form 115-IPT
Petitioner Exhibit 4:	DLGF Memorandum dated August 24, 2007
Respondent Exhibit 1:	Property history and Tippecanoe County Student Rental Unit Report & Survey
Respondent Exhibit 2:	PRCs before and after the grade and condition changes
Respondent Exhibit 3:	Income capitalization approach
Respondent Exhibit 4:	Sales comparison approach, 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. Ind. Code § 6-1.1-4-4.4 states that if the assessor changes the underlying parcel characteristics, including age, grade, or condition of a property, from the previous year's assessment date, the assessor shall document each change, and the reason that each change was made. In any appeal of the assessment, the assessor has the burden of proving that each change was valid.

14. The assessed value increased from $144,400 for 2011 to $228,400 for 2012, which is an increase of more than 5%. Furthermore, the change was the result of the PTABOA changing the grade and the condition of the property. The parties agree that Respondent has the burden of proof.

Contentions

15. Summary of Respondent's case:

    a. The property is a two-story, 3,600 square foot, two-unit rental house with an 800 square foot utility and storage building. Respondent contends it is in a prime location near the Purdue campus and close to retail shopping. It is similar to its competitive market set which consists of several two and three unit buildings in the neighborhood. However, the subject building is slightly larger than other properties in the area, so there is some resulting obsolescence because there are tenant-limiting laws that prohibit more than three unrelated persons from living in either side of the duplex. *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. *Grossman testimony; Resp't Exs. 2 and 4*.

    c. After the PTABOA adjusted the grade from D to C and changed the condition from fair to average, the value increased from $137,900 to $228,400 for 2012. Respondent

contends that, based on a neighborhood of two and three unit buildings, the grade and condition are appropriate. *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. In developing the approach, Respondent did not use market rent per square foot because he contends it would cause the property to be overvalued due to its excess size. Instead, Respondent maximized the rent at $1,500 per side monthly, or $36,000 annually, because that is approximately the limit for older duplexes in the neighborhood. *Grossman testimony; Resp't Ex. 3*.

e. Respondent calculated a market rent of $36,000. 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 $34,500. *Grossman testimony; Resp't Exs. 1 and 3*.

f. Respondent contends that expenses are benchmarked and they amounted to 49%, which is reasonable for a property of the subject's age. The resulting net operating income was $17,595. *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 $225,267, which reconciles very closely with the current assessment. *Grossman testimony; Resp't Ex .3*.

h. Respondent also attempted to develop a sales comparison analysis. In that analysis, Respondent presented three properties and made adjustments for differences in living space on each floor, finished basement and attic space, air conditioning, and fireplaces. Mr. Grossman contends that these features are not particularly correlative to value, but were adjusted for nonetheless. On the other hand, grade, effective year built, and garage space are variables that do correlate to value substantially and were also adjusted for accordingly. *Grossman testimony; Resp't Ex. 4*.

i. Respondent contends that the properties used in the comparison are within two miles of the subject property and are subject to the same economic conditions. They are of similar age to the subject, although smaller. They are also within close walking distance of Purdue's campus and would attract the same type of tenants as the subject. *Grossman testimony; Resp't Ex. 4.*

j. Respondent contends that if it were to be construed that the gross rent multiplier ("GRM") method was a statutory requirement and not a preference, as Petitioner suggests, such would contradict annual adjustment rules that require certain accuracy. The GRM method is limited in that it only has one input which is rent. Respondent contends that achieving ratio study compliance at the level of accuracy prescribed by the IAAO makes it impossible to implement the GRM method when performing mass appraisals. Furthermore, using the GRM method would likely not constitute due diligence on Respondent's behalf because other factors that contribute to value would be ignored. *Grossman testimony; Pet'r Ex. 4*.

16. Summary of Petitioner's case:

a. The 2011 assessment was $144,400. When the Form 11 was issued in 2012, the value was $137,900, which was the value Petitioner appealed to the PTABOA. The PTABOA subsequently changed the value to $228,400 for 2012. Petitioner contends that, should he prevail, the assessment should revert back to the original 2012 amount of $137,900 as opposed to the prior year amount of $144,400. *Smith testimony; Pet'r Exs. 1 and 3.*

b. The assessment was increased by changing the grade and condition. Ind. Code § 6-1.1-4-4.4 states that the assessor has the burden when such changes are made. *Smith testimony; Pet'r Ex. 2.*

c. 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. 4*.

Analysis

17. 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…."

d. As explained above, Respondent had the burden of proving that the 2012 assessment of $228,400 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

c. 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.

g. 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.

h. 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 the subject to calculate its current value
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i. 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).

j. With regard to the changes in grade and condition, Respondent contends that the C grade and average condition were appropriate for a neighborhood of two and three unit properties. Respondent presented no evidence to support his contention. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890,893 (Ind. Tax Ct. 1995).

k. Respondent attempted to develop the income capitalization approach to support the assessed value. Respondent did not use market rent per square foot to derive the potential gross income for the property because of the excessive size of the subject and the effect of the tenant-limit laws. Respondent estimated that $1,500 per unit each month was appropriate because that was the approximate upper limit for other older duplexes. However, with the exception of vacancy and loss percentages, Respondent failed to offer any support for the other factors that were used.

l. 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 n. (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.

m. Respondent also presented a sales comparison analysis using three properties that are similar in age and location. Respondent stated that the value using this method was overstated due to the size of the subject property. The net adjustments were 38.4%, 65.7%, and 65.5% respectively. The sales occurred in 2013, anywhere from 15 months to 21 months after the valuation date. Because the sale dates are removed considerably from the valuation date, it was necessary for Respondent to explain how the sales were relevant to the 2012 valuation date. Respondent failed to do so. *See Long*, 821 N.E.2d at 471 (stating that any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, the valuation date at issue.).

n. Consequently, Respondent failed to make a prima facie case that the 2012 assessment is correct. The 2012 assessment must be returned to its 2011 value of $144,400. But Petitioner requested a value of $137,900, 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 initially was lower than the prior year.

o. 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 $137,900. Consequently, Petitioner failed to make a prima facie case that the 2012 value should be further reduced.

CONCLUSION

18. 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 $144,400.

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>.