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

**Petition:** **03-005-12-1-5-00003**
**Petitioner:** **Columbus Trucking, Inc.**
**Respondent:** **Bartholomew County Assessor**
**Parcel:** **03-95-13-140-005.300-005**
**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 its 2012 assessment appeal with the Bartholomew County Assessor on January 11, 2013.

2. On October 7, 2013, the Bartholomew County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment, but not to the level requested by the Petitioner.[1]

3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board, and elected the Board's small claims procedures.

4. The Board issued a notice of hearing on January 28, 2016.

5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's consolidated administrative hearing on March 31, 2016.[2] She did not inspect the property.

6. Milo Smith appeared for the Petitioner. Local government representative Virginia Whipple appeared for the Respondent. County Assessor Lew Wilson appeared as a witness. All of them were sworn.

[1] Generally, the values listed on the PTABOA's determination (Form 115) are controlling. Here, the improvement value was inadvertently omitted from the Form 115. The notice only lists a land value of $37,700, and states "PTABOA agrees to Assessor's Findings." Initially, the parties indicated the current 2012 total assessment should be $227,600 (land $37,700 and improvements $189,900). However, when the parties presented their arguments regarding which side should bear the burden of proof, they agreed that the PTABOA lowered the 2012 total assessment to $216,200 (land $37,700 and improvements $178,500). Additionally, the subject property record card confirms the 2012 total assessment is $216,200. *See Pet'r Ex. 1.* Accordingly, the Board finds the 2012 total assessment to be $216,200.

[2] This was a consolidated hearing for the 2012 and 2015 assessment years. The Board is issuing separate findings of fact for each year.

## Facts

7. The property under appeal is a single-family rental property located at 2654 Chestnut Street in Columbus.

8. As previously noted, the PTABOA determined the 2012 total assessment is $216,200 (land $37,700 and improvements $178,500).

9. At the hearing, the Petitioner's representative requested a 2012 total assessment of $153,500.

## Record

10. 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: | 2012 subject property record card (PRC), |
| Petitioner Exhibit 2: | Email from Tami Burton to Milo Smith, dated March 30, 2016, |
| Petitioner Exhibit 3: | Memorandum from Department of Local Government Finance (DLGF), dated August 24, 2007, |
| Petitioner Exhibit 4: | Email from Ginny Whipple to Milo Smith, dated September 1, 2015, and a "spreadsheet of appealed properties" from the Bartholomew County Assessor, |
| Petitioner Exhibit 5: | Spreadsheet from Pet'r Ex. 4 with Petitioner's modifications, |
| Petitioner Exhibit 6: | Email from Belinda Graber to Milo Smith, dated March 30, 2016, and "Stabilized Operating Statement" prepared by Belinda Graber. |
| Respondent Exhibit A: | Curricula Vitae for Mr. Wilson and Ms. Whipple, |
| Respondent Exhibit B: | "Statement of Professionalism," |
| Respondent Exhibit C: | 2011 subject PRC, |
| Respondent Exhibit D: | 2012 subject PRC, |
| Respondent Exhibit E: | Photograph of subject property, |
| Respondent Exhibit F: | Aerial map indicating location of Respondent's comparable properties, |
| Respondent Exhibit G: | PRCs and photographs of Respondent's comparable properties, |
| Respondent Exhibit H: | Spreadsheet listing Respondent's comparable properties, |
| Respondent Exhibit I: | "2012 narrative," |
| Respondent Exhibit J: | Power of attorney. |

Board Exhibit A: Form 131 with attachments,
Board Exhibit B: Notice of Hearing dated January 28, 2016,
Board Exhibit C: Hearing sign-in sheet,
Board Exhibit D: Power of attorney and certification for Ms. Whipple.

d) These Findings and Conclusions.

**Contentions**

11. Summary of the Petitioner's case:

a) The property's 2012 assessment is too high. The property should have been valued utilizing the Gross Rent Multiplier (GRM) methodology in accordance with a 2007 DLGF memorandum stating, "[T]he preferred method, and the method required by statute, for valuing one to four (1-4) family residential property is the use of the gross rent multiplier (GRM)." Further, the 6% market factor listed on the PRC should be removed.[3] *Smith argument; Pet'r Ex. 1, 3.*

b) For the period between 2011 and 2012, the monthly gross rent for the property equated to $1920. A landscaping fee of $100 and quarterly maintenance fee of $35 were included in the monthly gross rent collection. Accordingly, the actual monthly rental income equated to $1785 per month. *Smith argument; Pet'r Ex. 2.*

c) By utilizing a spreadsheet obtained from the Respondent in 2015, Mr. Smith was able to breakdown the difference between the 2015 assessed value and the value obtained based upon "the GRM [that] should have applied." Mr. Smith specifically pointed to the following properties:

- 4380 State Street is assessed at 131% higher than the GRM value.
- 1461 California is assessed at 216% higher than the GRM value.
- 809 Fairview is assessed 137% higher than the GRM value.
- 2214 Pennsylvania is assessed 130% higher than the GRM value.
- 1912 Indiana Avenue is assessed 108% higher than the GRM value.
- 1444 Pearl Street is assessed at 113% higher than the GRM value.
- 2220 Elm Street is assessed at 107% higher than the GRM value.
- 416 Union Street is assessed at 207% higher than the GRM value.
- 263 North Brooks is assessed at 88% of the GRM value.
- 35665 N 250 W is assessed at 73% of the GRM value.
- 1413 25th Street is assessed 223% higher than the GRM value.

Mr. Smith acknowledged these values were from 2015, but stated the same argument applies for 2012. *Smith argument; Pet'r Ex. 5.*

[3] It appears the PTABOA removed the market factor. In any event, Mr. Smith failed to offer any additional evidence regarding the 6% market factor.

d) Belinda Graber, a certified appraiser, performed a "stabilized operating statement" for the subject property "just to double-check" Mr. Smith's calculation. Ms. Graber arrived at an indicated GRM of 92.71. If the 92.71 GRM had been applied to the 2012 assessment, the assessment would be reduced to $153,500. In fact, when the Petitioner appealed its 2013 assessment, the Respondent conceded the value should be $153,500 for 2013. *Smith argument; Pet'r Ex. 6.*

e) Four "similar" properties taken from the "spreadsheet of appealed properties" support Ms. Graber's GRM. Specifically, 1011 Parkside Drive, the most comparable to the subject property, has a GRM of 93.25. Three additional properties also support Ms. Graber's GRM: 1511 Parkside Drive with a GRM of 112.93, 2013 Parkside Drive with a GRM of 87.77 and Park Forest with a GRM of 112.40. *Smith argument; Pet'r Ex. 5, 6.*

12. Summary of the Respondent's case:

a) The property is correctly assessed. The assessment was performed "in accordance with the Constitution and laws of the State of Indiana, applicable rules, regulations and guidelines published by the DLGF, and also with generally accepted appraisal principles and the ethical professional guidelines of the International Association of Assessing Officers (IAAO) and USPAP." For 2012, the GRM was not utilized because of a "lack of credible data." *Whipple argument; Wilson testimony; Resp't Ex. B.*

b) Nonetheless, Ms. Whipple presented a sales-comparison analysis to establish a GRM for the subject property. She utilized three comparable properties located in the "same general location" as the subject property. All of the comparable properties sold in 2012 and no adjustments were necessary.

| | Address | Sales Price | Rent |
|---|---|---|---|
| Comparable #1 | 923 Hummingbird Lane | $161,900 | $1,685 |
| Comparable #2 | 3278 Wheaton Court | $185,082 | $1,525 |
| Comparable #3 | 1511 Parkside Drive | $210,900 | $1,640 |

According to the information the Respondent had in 2012, the subject property's monthly rent was $1,640. This is the same monthly rent as the property located at 1511 Parkside Drive. Because both properties have the same monthly rental income "our suggested value would be $210,900." *Whipple argument; Resp't Ex. H.*

c) As for the analysis from Ms. Graber, she did not develop her GRM according to IAAO. Instead, Ms. Graber utilized an "income cap value rent (*sic*) to come up with the GRM." *Whipple argument (referencing Pet'r Ex. 6).*

## Burden of Proof

13. 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.

14. 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).

15. 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 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 was effective March 25, 2014, and has application to all appeals pending before the Board.

16. Here, the Petitioner contends the burden should rest with the Respondent for 2012. Mr. Smith argued the 2012 assessment increased from $215,600 in 2011 to $227,600 in 2012, an increase of 5.5%. Even though the PTABOA subsequently lowered the 2012 assessment to $216,200, Mr. Smith argued the burden should still rest with the Respondent because "the 5% statute would be meaningless because the assessor could reduce it just 1% to get it under 5% and no longer have the burden." The ALJ made a preliminary determination that the burden remains with the Petitioner.

17. The Board affirms the ALJ's preliminary determination. The burden-shifting statute clearly applies to "the assessment that is subject to review or appeal." Ind. Code § 6-1.1-15-17.2(a). Here, the parties agreed that the 2012 total assessment is $216,200. That is an increase of only 0.3% over the 2011 level of $215,600. Accordingly, the Petitioner has the burden of proof.

## Analysis

18. The Petitioner failed to make a prima facie case for reducing the 2012 assessment.

    a) Real property is assessed based on its market value-in-use. 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. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate 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 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 a 2012 assessment, the valuation date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f).

c) In an attempt to prove the 2012 assessment was incorrect, the Petitioner presented a listing of properties "to see how accurately the GRM was being applied compared to its assessed value." Indiana law provides that the GRM method is the preferred method of valuing real property that has one (1) to four (4) rental units. *See* Ind. Code § 6-1.1-4-39(b). But the burden still remains with the Petitioner to prove what the correct assessment should be.

d) The 2015 data Mr. Smith presented fails to prove the 2012 assessment is incorrect. In fact, according to the Respondent's own admission, due to the lack of credible data, he did not use credible data to compute the 2012 assessment because he did not relate it back to 2012.

e) Additionally, the Petitioner relied on what amounts to a GRM comparison. Specifically, Mr. Smith pointed to 2013 GRMs for four purportedly comparable properties. Mr. Smith indicated the property located at 1011 Parkside Drive, with a GRM of 93.25, was the "most relevant."

f) As is the case when comparing properties using the sales-comparison approach, conclusory statements that a property is "similar" or "comparable" to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id*. at 471. Even had Mr. Smith adequately compared the properties, his comparison to 2013 GRMs, like the 2015 GRMs, are not related back to the 2012 assessment for the subject property.

g) Mr. Smith also offered a "stabilized operating statement" performed by Belinda Graber. The Board notes that this is not an appraisal and does not necessarily provide probative evidence of either the subject property or data for calculating the GRM. Ms. Graber purports to have arrived at a GRM of 92.71 for the subject property. The GRM method develops an income multiplier by looking to market data for sales of comparable income-producing properties and calculates the ratio of

the sale price to the gross income at the time of the sale. Both the GRM and rent must be based on market rates. Here, by not indicating whether or not the subject property falls in line with other comparable properties, any low income or high expenses may be attributed to the Petitioner's management of the property as opposed to the property's market value. *See Lake County Trust Co. No. 1163 v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1253, 1257-58 (Ind. Tax Ct. 1998) (economic obsolescence was not warranted where taxpayer executed unfavorable leases resulting in a failure to realize as much net income from the subject property). Because Ms. Graber's analysis considers only the subject property, it fails to provide evidence of the market rates.

h) Finally, Mr. Smith argues that because the Respondent accepted a lower GRM and subsequently reduced the assessment to $153,500 in 2013; the same should apply for 2012. However, the Board and the Indiana Tax Court have repeatedly held that each assessment and each tax year stands alone. *See Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) ("[F]inally, the Court reminds Fleet Supply that each assessment and each tax year stands alone. … Thus, evidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later.")

i) Consequently, the Petitioner failed to make a prima facie case for reducing the 2012 assessment. Where the Petitioner has not supported its 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). However, the Respondent offered evidence and testimony the 2012 assessment should be $210,900. This amount is lower than the current assessment of $216,200. The Board views this as a concession by the Respondent that the assessment should be reduced to that level. Thus, without ruling on the probative value of the Respondent's evidence, the Board accepts the Respondent's concession that the 2012 assessment should be reduced to $210,900.

## Conclusion

18. The Board finds for the Respondent. However, the Respondent's concession is accepted and the 2012 assessment should be lowered to $210,900.

## Final Determination

In accordance with these findings and conclusions, the 2012 assessment shall be reduced to $210,900.

ISSUED: June 23, 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 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>.