

**Small Claims  
Final Determination  
Findings and Conclusions**

**Petitions:** 45-004-11-1-5-00005  
45-004-12-1-5-00011  
45-004-13-1-5-00785-16  
45-004-14-1-5-00783-16  
45-004-15-1-5-00978-16  
**Petitioner:** Elkhart Rentals, LLC/Chris Schaap<sup>1</sup>  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-01-454-029.000-004  
**Assessment Years:** 2011-2015

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**Procedural History**

1. Petitioner initiated the 2011 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) on June 11, 2012. Petitioner initiated the 2012 appeal with the PTABOA on January 29, 2013. The PTABOA issued notices of final determination for 2011 and 2012 on October 1, 2014. Petitioner then timely filed its Form 131 petitions with the Board.
2. Petitioner initiated the 2013 appeal on May 22, 2014, the 2014 appeal on April 25, 2015, and the 2015 appeal on October 22, 2015. For all three years, the PTABOA failed to hold hearings within 180 days as required by Ind. Code § 6-1.1-15-1(k). Accordingly, Petitioner filed Form 131 petitions directly with the Board pursuant to Ind. Code § 6-1.1-15-1(o).
3. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
4. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on September 12, 2016. Neither the ALJ nor the Board inspected the property.
5. Chris Schaap, member of Elkhart Rentals, LLC, was sworn as a witness for Petitioner. Robert Metz, Lake County Hearing Officer, and Danny Cruz, Calumet Township Residential Supervisor, were sworn as witnesses for Respondent.

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<sup>1</sup> The 2011 and 2012 appeals were filed by Elkhart Rentals, LLC. The 2013-2015 appeals were filed by Chris Schaap.

**Facts**

- 6. The subject property is a single-family dwelling located at 4418 Miller Avenue in Gary.
- 7. Respondent determined the following assessments for the parcel under appeal<sup>2</sup>:

Year	Land	Improvements	Total
2011	\$12,800	\$48,000	\$60,800
2012	\$11,700	\$48,100	\$59,800
2013	\$11,700	\$48,300	\$60,000
2014	\$11,600	\$50,200	\$61,800
2015	\$11,600	\$37,100	\$48,700

- 8. Petitioner requested the following assessed values:

Year	Total
2011	\$37,380
2012	\$33,268
2013	\$29,609
2014	\$25,167
2015	\$21,392

**Record**

- 9. The official record contains the following:
  - a. A digital recording of the hearing
  - b. Exhibits:

Petitioner Exhibit 1:	Appraisal by Roy Gouwens
Petitioner Exhibit 2:	2011 property record card (“PRC”)
Petitioner Exhibit 3:	2012 PRC

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<sup>2</sup> Mr. Cruz testified to these values. However, the property record cards submitted as Petitioner Exhibits 2-6 show the 2012 value as \$11,700 for land and \$30,300 for improvements for a total of \$42,000.

Petitioner Exhibit 4:	2013 PRC
Petitioner Exhibit 5:	2014 PRC
Petitioner Exhibit 6:	2015 PRC
Petitioner Exhibit 7:	Annual Adjustment of Assessed Values Fact Sheet
Petitioner Exhibit 8:	Tax receipts for 2011
Respondent Exhibit 1:	PRC for subject property
Respondent Exhibit 2:	Appraisal by Roy Gouwens
Board Exhibit A:	Form 131 petitions
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Hearing sign-in sheet

c. These Findings and Conclusions.

### **Objection**

10. Respondent objected to Petitioner Exhibit 8 because the 2011 tax receipts show an unrelated party as the property owner and not Petitioner. Petitioner acknowledged the discrepancy but testified that he did in fact pay the taxes at issue. Respondent did not offer any evidence to dispute that testimony. The Board therefore admits Petitioner Exhibit 8 over Respondent's objection.

### **Burden**

11. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a 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 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
12. 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).
13. 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).

14. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
15. The assessed value decreased from \$71,500 in 2010 to \$60,800 in 2011. Petitioner, therefore, has the burden of proof for 2011. Assigning the burden for the other years at issue will depend on the final determinations for each respective preceding year.

### **Summary of Parties’ Contentions**

16. Petitioner’s case:
  - a. Petitioner contends that the property is over-assessed. Petitioner submitted an appraisal prepared by Roy Gouwens, a certified residential appraiser. Mr. Gouwens prepared the appraisal in conformance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). Mr. Gouwens estimated a value of \$42,000 as of March 1, 2010. *Schaap testimony; Pet’r Ex. 1.*
  - b. In an attempt to trend the 2010 appraised value to the 2011 valuation date, Petitioner applied the market adjustment value of .89 shown on the 2011 PRC. Applying the .89 value to the \$42,000 appraisal estimate results in a proposed assessed value of \$37,380 for 2011. *Schaap testimony; Pet’r. Ex. 2.*
  - c. For 2012, the market adjustment value was .89. Applying the .89 value to the 2011 value of \$37,380 results in a proposed assessed value of \$33,268 for 2012. *Schaap testimony; Pet’r Ex. 3.*
  - d. For 2013, the market adjustment value was .89. Applying the .89 factor to the 2012 value of \$33,268 results in a proposed assessed value of \$29,609 for 2013. *Schaap testimony; Pet’r Ex. 4.*
  - e. For 2014, the market adjustment value was .85. Applying the .85 factor to the 2013 value of \$29,609 results in a proposed assessed value of \$25,167 for 2014. *Schaap testimony; Pet’r Ex. 5.*
  - f. For 2015, the market adjustment value was .85. Applying the .85 factor to the 2014 value of \$25,167 results in a proposed assessed value of \$21,392 for 2015. *Schaap testimony; Pet’r Ex. 6.*

17. Respondent's case:
- a. As an alternative to the original assessed values, Mr. Metz testified that Respondent would accept the \$42,000 appraised value for 2011 and 2012. Respondent would also accept a trended value of \$38,900 for 2013 and a trended value of \$40,300 for both 2014 and 2015. *Metz testimony.*
  - b. Respondent contends Petitioner is not applying the market adjustment values correctly in his calculations. *Cruz testimony.*

#### ANALYSIS

18. The Board finds that the assessed values should be reduced for each year at issue and it reached that decision for the following reasons:
- 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 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 each assessment at issue in these appeals was March 1 of the assessment year. Ind. Code § 6-1.1-4-4.5(f).
  - 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 gross rent multiplier ("GRM") method "is the preferred method of valuing...real property that has at least one (1) and not more than four (4) rental units..." In this case, neither party attempted to calculate a valuation under the GRM method. Consequently, the Board next turns to the parties' specific proposals for the years at issue.

## 2011 Assessment

- a. As stated above, Petitioner had the burden of proof for 2011. Petitioner offered a USPAP compliant appraisal in which a certified residential appraiser valued the subject property at \$42,000 as of March 1, 2010. The Board has regularly found that appraisals performed within a year of the relevant valuation date are temporally sufficient to make a prima facie showing of a property's true tax value.
- b. Petitioner, however, requested a value of \$37,380 for 2011. To arrive at that figure, Petitioner contends that the appraised value should be trended to the March 1, 2011, valuation date. Petitioner attempted to trend the appraised value to the 2011 valuation date by applying the market adjustment value of .89 shown on the 2011 PRC.
- c. While the market adjustment value appearing on the PRC is applied to the cost of the improvements determined under the Guidelines, it appears that factor in this case is not reflective of the overall annual trending factor for 2011 because the total assessed value decreased at a different rate from 2010 to 2011. Furthermore, Petitioner provided no explanation about how or why the market adjustment value appearing on the PRC should be determinative of the overall assessed value. 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). Therefore, Petitioner's calculation is not probative evidence for a change in the appraised value.
- d. Respondent did not offer any evidence to prove that the original assessed value for 2011 is correct. Respondent did, however, agree to accept an assessed value of \$42,000 for 2011 based on Petitioner's appraisal. Therefore, the Board finds that the 2011 assessed value should be \$42,000.

## 2012 Assessment

- a. As discussed in Footnote 2 above, there is some discrepancy as to what the assessed value is for 2012. The PRCs presented by Petitioner indicate a total assessed value of \$42,000, while Mr. Cruz testified that the total assessed value is \$59,800. If the assessed value for 2012 is \$42,000, Petitioner has the burden for that year because there would have been no increase from the prior year. If the assessed value for 2012 is \$59,800, Respondent has the burden for that year because there would have been an increase from the prior year. As the petitioner has been successful for 2011, the burden is on the respondent.
- b. As was the case for 2011, Petitioner contends that the value for 2012 should be trended forward using the market adjustment value found on 2012 PRC. For the same reasons that were discussed with regard to Petitioner's 2011 proposed value, the

Board finds that Petitioner similarly did not provide credible evidence to support its proposed value for 2012.

- c. As was the case for 2011, Respondent did not offer any evidence to prove that the original assessed value for 2012 is correct. Respondent did, however, also agree to accept an assessed value of \$42,000 for 2012. Therefore, the Board finds that the 2012 assessed value should be \$42,000.

### 2013 – 2015 Assessments

- a. As will be discussed below, the Board ultimately finds that the assessed values for years 2013 – 2015 will each be changed to \$38,900, \$40,300, and \$40,300 respectively. Because the original assessed value for each of those years represents an increase from each respective previous year's value, Respondent has the burden of proving that the assessed values for 2013 – 2015 are correct.
- b. As was the case for 2011 and 2012, Petitioner contends that the values for 2013 – 2015 should each be trended forward using the market adjustment value found on each respective PRC. For the same reasons that were discussed with regard to Petitioner's 2011 and 2012 proposed values, the Board finds that Petitioner similarly did not provide credible evidence to support its proposed values for 2013 – 2015.
- c. As was the case for 2011 and 2012, Respondent did not offer any evidence to prove that the original assessed values for 2013 – 2015 are correct. In the alternative, Respondent agreed to accept trended values for 2013 – 2015 in the amounts of \$38,900, \$40,300, and \$40,300 respectively. Therefore, the Board finds that the 2013 – 2015 assessed values should be \$38,900, \$40,300, and \$40,300 respectively.

### **CONCLUSION**

19. While the GRM method is the preferred method for this type of rental property, in this case, neither party attempted to calculate a valuation under the GRM method. With regard to the parties' proposed values for the years at issue, Petitioner provided a USPAP compliant appraisal valuing the property at \$42,000. Petitioner, however, requested lower values for each year at issue, but failed to provide probative evidence in support of those values. Respondent, on the other hand, agreed to accept the \$42,000 appraisal value for 2011 and 2012, and proposed values of \$38,900, \$40,300, and \$40,300 for years 2013 – 2015 respectively.

### **FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, the Board determines that the assessed values for 2011, 2012, 2013, 2014, and 2015 should be \$42,000, \$42,000, \$38,900, \$40,300, and \$40,300 respectively.

ISSUED: November 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 after 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>>.