

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

Petition: 03-001-19-1-1-00940-19
Petitioner: Richard Lovelace
Respondent: Bartholomew County Assessor
Parcel: 03-97-30-000-001.000-001
Assessment Year: 2019

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

PROCEDURAL HISTORY

1. Richard Lovelace contested the 2019 property tax assessment for his property located at 616 South 650 East in Columbus. The Bartholomew County Property Tax Assessment Board of Appeals (“PTABOA”) valued the property at \$149,300 for 2019. He timely appealed to the Board.
2. The Board’s appointed Administrative Law Judge, Jennifer Thuma (“ALJ”), heard the case telephonically on September 17, 2020. Neither she nor the Board inspected the property.
3. Milo Smith, Certified Tax Representative, represented Mr. Lovelace. Mr. Smith, Ginny Whipple, Bartholomew County Assessor, and Dean Layman, Data Analyst, were sworn as witnesses.
4. The parties submitted the following exhibits:

Petitioner’s Exhibit 1:	Property Record Card-Subject
Petitioner’s Exhibit 1A:	Affidavit signed by Richard Lovelace
Petitioner’s Exhibit 1B:	DLGF and Board Memo
Petitioner’s Exhibit 1C:	List of GRM rates for Bartholomew County
Respondent’s Exhibit A:	Resume of Ginny Whipple
Respondent’s Exhibit B:	Statement of Professionalism
Respondent’s Exhibit C:	2018 Property Record Card-Subject
Respondent’s Exhibit D:	2019 Property Record Card-Subject
Respondent’s Exhibit E:	Aerial View-Subject Property
5. The official record also contains (1) all pleadings, motions, and documents filed in this appeal; (2) all notices, and orders issued by the Board or our ALJ; (3) an audio recording of the hearing.

OBJECTIONS

6. The Assessor made the following objections:
 - a. The Assessor objected to all of the Petitioner's exhibits, contending that they were provided to her after the Board's deadline for small claims rules. She testified that Mr. Smith provided the evidence at 3:43 p.m. on September 10, not a full five business days in advance of the September 17 hearing, and that he should have provided it by 10:30 a.m. on that day. The Board's rules do not set a specific hour in which evidence is to be exchanged. 52 IAC 4-8-2 also provides that evidence in a small claims hearing need only be exchanged if requested not less than 10 business days before the hearing. The Assessor did not assert that she made such a request. Thus, we overrule the objection and admit the exhibits.
 - b. The Assessor objected to statements from Mr. Smith's closing argument on the grounds that they were not questions. There is no prohibition on making statements in a closing argument. Thus, we overrule the objection.

BURDEN OF PROOF

7. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. Ind. Code. § 6-1.1-15-17.2(b) and (d).
8. In this appeal, the assessment decreased from \$152,800 in 2018 to \$149,300 in 2019. The parties agreed that the taxpayer had the burden of proof. We agree.

SUMMARY OF CONTENTIONS

9. Mr. Lovelace's Case:

- a. Mr. Lovelace contends that because the subject property was a rental the Assessor should have used the gross rent multiplier ("GRM") method for the dwelling and homesite as required by the Indiana Department of Local Government Finance ("DLGF") regulations. *Smith testimony; Pet'r Exs. 1-1C.*
- b. He argued that the Assessor had sufficient data to calculate a GRM for this rural neighborhood by using the GRM from other neighborhoods. Specifically, she should have used a catchall category on her list of GRM calculations to assess the property. *Smith testimony; Pet'r Exs. 1-1C.*
- c. Smith testified that the subject property should be assessed at \$90,800. He reached this value by using a monthly rental amount of \$950 and a GRM of 92

from the catchall category for various rural areas. He then added in the 8.93 acres of agricultural land at a rate of \$3400 for growing timber. *Smith testimony; Pet'r Exs. 1-1C.*

10. **The Assessor's Case:**

- a. The Assessor contended that Mr. Lovelace merely attacked methodology and did not make a prima facie case that the assessment was incorrect or what a correct value should be. *Whipple testimony; Resp't Exs. B-D.*
- b. She further argued that when the subject property was assessed, there were no suitable sales from which she could derive a GRM. She testified that it would have been incorrect to use data from other areas of the county, including other rural areas to determine the value. *Whipple testimony; Resp't Exs. B-D.*
- c. The Assessor contended that Indiana law does not require assessors to use a GRM when no data is available to calculate assessed value. Instead, Indiana law requires that assessors value residential rental properties using market value-in-use. *Whipple testimony.*

ANALYSIS

11. Mr. Lovelace failed to make a prima facie case for any change in the assessment. We reached this decision for the following reasons:

- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. True tax value does not mean "fair market value" or "the value of the property to the user." Ind. Code § 6-1.1-31-6(c), (e). It is instead determined under the rules of the DLGF. Ind. Code § 6-1.1-31-5(a); Ind. Code § 6-1.1-31-6(f). The DLGF defines true tax value as "market value in use," which it in turn defines as "[t]he 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." MANUAL at 2.
- b. Generally, a party may not make a case for changing an assessment simply by showing how the assessment regulations should have been applied. See *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) ("Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.") Instead, the party must offer market-based evidence. *Id*
- c. A portion of the property is farmland and was assessed at the agricultural rate. Neither party is contesting that portion of the assessment. Thus, we will focus on the residence and the homesite.

- d. Lovelace primarily argued that the Assessor should have used a different method to value the subject property. As discussed above, this is insufficient. *See Meridian Tower East & West v. Washington Township Assessor*, 805 N.E. 2d 475, 478 (Ind. Tax Ct. 2003). Instead, a taxpayer must provide their own market-based evidence of value. In addition, although the GRM is the preferred method for valuing certain types of property, it is not required. In *Gillette v. Brown County*, 54 N.E. 3d 454 (Ind. Tax Court 2016) the Indiana Tax Court reiterated that a taxpayer cannot meet its burden simply by asserting that the GRM method should have been used by an assessor.
- e. Nevertheless, Mr. Smith did provide his own GRM calculation using the subject's actual income and a GRM for "rural neighborhoods" in Bartholomew County. But there is no indication that the GRM he selected was appropriate for the subject property. Nor did Mr. Smith demonstrate that he relied on generally accepted appraisal principles in preparing his calculation.
- f. For these reasons we find Mr. Lovelace failed to make a prima facie case for any change in the assessment.

FINAL DETERMINATION

- 12. The Board finds for the Assessor and orders no change to the subject property's 2019 assessment.

ISSUED: December 15, 2020

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>>.