

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

Petition: 20-015-12-1-4-00195
Petitioner: My Property LLC
Respondent: Elkhart County Assessor
Parcel: 20-11-08-478-019.000-015
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 a 2012 assessment appeal with the Elkhart County Assessor on September 5, 2012.
2. On February 7, 2014, the Elkhart County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner relief.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board on March 18, 2014, and elected the Board's small claims procedures.
4. The Board issued a notice of hearing on January 29, 2015.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on June 2, 2015. She did not inspect the property. Because the Petitioner appealed several similar properties on this date, the ALJ allowed the parties to incorporate by reference testimony offered during the hearing for petition number 20-015-12-1-4-00196.
6. Myron Borntrager appeared *pro se* and was sworn as a witness.¹ Attorney Beth Henkel represented the Respondent. Elkhart County Assessor Cathy Searcy and Gavin Fisher were sworn as witnesses for the Respondent.

Facts

7. The property under appeal is a four-unit residential rental property located at 521 Dewey Avenue in Goshen.
8. The PTABOA determined the total assessment is \$79,600 (land \$13,200 and improvements \$66,400).

¹ Mr. Borntrager signed the Form 131 petition as "Member" of My Properties LLC. Herein, the Board refers to Mr. Borntrager and My Properties LLC both as "the Petitioner."

9. On the Form 131 petition, the Petitioner requested a total of \$49,900 (land \$13,200 and improvements \$36,700).

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 A: “Rental Property Valuation” spreadsheet prepared by the Petitioner.

Respondent Exhibit A: Appraisal of the subject property prepared by Gavin M. Fisher with an effective date of March 1, 2012,

Respondent Exhibit B: Indiana Code § 6-1.1-4-39.

Board Exhibit A: Form 131 petition with attachments,

Board Exhibit B: Notice of appearance from Beth Henkel,

Board Exhibit C: Notice of hearing dated January 29, 2015,

Board Exhibit D: Hearing sign-in sheet.

- d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioner’s case:

- a) The subject property’s assessment is too high. By utilizing the property’s actual income and expenses, and a 13% capitalization rate, the property should be assessed at \$20,709.85. *Borntrager argument; Pet’r Ex. A.*
- b) According to Mr. Borntrager, the property suffers from a “historically high vacancy rate.” In his valuation analysis, he reported a rental income of \$13,418.63.² After deducting the annual property-related expenses of \$10,726.35, the net operating equates to \$2,692.28. *Borntrager testimony; Pet’r Ex. A.*
- c) Mr. Borntrager utilized a 13% capitalization rate after a discussion with Peter Salvesson of Bright Support Services. According to Mr. Borntrager, Mr. Salvesson

² The Petitioner’s analysis is dated January 1, 2012. The Board assumes the rental income and the expense data are from 2011.

arrived at that figure based on his “expertise and experience, peer discussions, and looking at industry standards.” *Borntrager testimony*.

- d) Finally, the assessment is excessive because this property is more difficult to rent. One of the units is a small efficiency apartment, and two of the units are small one-bedroom units. The income has “not been close to what four-unit properties generally get.” Thus, an adjustment should be made to “either the gross rent or the Gross Rent Multiplier (GRM).” *Borntrager argument*.

12. Summary of the Respondent’s case:

- a) The subject property is correctly assessed. The Respondent offered an appraisal prepared by Indiana certified residential appraiser Gavin Fisher. Mr. Fisher prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). He estimated the total value of the subject property was \$105,000 as of March 1, 2012. *Henkel argument; Fisher testimony; Resp’t Ex. A*.
- b) To obtain his final estimate of value, Mr. Fisher considered both the income approach and the sales-comparison approach to value. In developing the income approach, Mr. Fisher applied a Gross Rent Multiplier (GRM) of 50 to a market rent of \$2,100 per month. He extracted his GRM from the comparable sales he utilized in his appraisal report. All of the comparable properties were leased at the time of their sale and would be considered direct competitors to the subject property by both investors and tenants. The income approach yielded a value of \$105,000. *Fisher testimony; Resp’t Ex. A at 3*.
- c) Mr. Fisher also gave some consideration to the sales-comparison approach. In developing this approach, he relied mainly on four comparable sales. Adjustments were made to account for difference in size. The sales-comparison approach yielded a value of \$111,500. *Fisher testimony; Resp’t Ex. A at 3*.
- d) Mr. Fisher’s final value estimate, though, was based primarily on the income approach to value determined in accordance with USPAP and Indiana Code § 6-1.1-4-39(b). According to Indiana Code § 6-1.1-4-39(b) “the gross rent multiplier is the preferred method of valuation for real property that has 1-4 rental units as promulgated by the Department of Local Government Finance (DLGF).” *Fisher testimony; Resp’t Ex. B*.
- e) Mr. Fisher did address the possible presence of any functional obsolescence resulting from the property’s small unit sizes. Specifically, Mr. Fisher pointed to a comparable property he utilized in his appraisal that also has small units. Still, the gross monthly rent for this comparable property is close to \$500 per month. Accordingly, he concluded that “one rents small units similarly to all others with superior square footage; I would say there is no major functional obsolescence attributable to that small unit size.” *Fisher testimony*.

- f) Even though the evidence presented supports a higher assessment, the Respondent is not requesting an increase. Accordingly, the 2012 assessment should remain at \$79,600. *Henkel argument; Resp't Ex. A.*

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 section 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 is effective March 25, 2014, and has application to all appeals pending before the Board.
16. That being said, the burden-shifting provisions may not apply if there was a change in improvements, zoning, or use, or if the property was valued using the income approach. Ind. Code § 6-1.1-15-17.2(c) and (d). Here, the parties agree that the assessed value of the subject property increased by more than 5% from 2011 to 2012. In fact, the total assessed value increased from \$49,900 to \$79,600. Ms. Henkel speculated that the income approach was utilized to value the Petitioners other properties under appeal. However, County Assessor Cathy Searcy testified that she did not have the records in front of her to verify if the properties were valued in that manner. While the burden-shifting provisions may not apply if the property was valued utilizing the income approach, here the record lacks sufficient evidence to determine whether the income approach was actually used to value the property.
17. Initially, the ALJ made the preliminary determination that the burden of proof remains with the Petitioner. However, for the reasons stated above, the Board reverses the ALJ's

preliminary determination. Thus, according to Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2012 assessment is correct.

Analysis

18. The Respondent made a prima facie case that the 2012 assessment was correct.
 - 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 a similar user, from the property." 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. *Id.* Assessing officials primarily use the cost approach. 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. *Id.* A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed 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 date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f).
 - c) The most effective method to establish value can be through the presentation of a market value-in-use appraisal, completed in conformance with USPAP. *O'Donnell*, 854 N.E.2d at 94; *Kooshtard Prop. VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). Here, the Respondent offered a USPAP compliant appraisal prepared by Gavin Fisher, a licensed residential appraiser. Mr. Fisher estimated the subject property's market value-in-use at \$105,000 as of March 1, 2012. His opinion of value is based primarily on the income approach to value. Mr. Fisher's appraisal establishes a prima facie case. The burden therefore shifts to the Petitioner.
 - d) In an attempt to rebut the Respondent's appraisal, the Petitioner presented his own valuation evidence. Specifically, he offered an income-based analysis that estimated the subject property's value at \$20,709.85. However, Mr. Borntreger failed to provide any indication that he used generally accepted appraisal principles in computing his value. It appears from his evidence that he used actual rent, rather than market rent, to compute his effective gross income. Further, Mr. Borntreger failed to offer sufficient evidence to support his choice of a 13% capitalization rate. Therefore, the Petitioner's computation has little probative value.

- e) Here, the Respondent offered sufficient evidence to support an increase in the 2012 assessment to \$105,000. However, the Respondent indicated that she was not seeking an increase, and conceded that the 2012 assessment should remain at \$79,600. The Board accepts the Respondent's concession.

Conclusion

19. The Board finds for the Respondent. The 2012 assessment will not be changed.

Final Determination

In accordance with these findings and conclusions, the 2012 assessment will remain at \$79,600.

ISSUED: August 28, 2015

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>>.