

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

Petition: 20-015-12-1-4-00197
Petitioner: My Properties, LLC
Respondent: Elkhart County Assessor
Parcel: 20-11-10-106-019.000-015
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 lowering the assessment but not to the amount the Petitioner requested.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board on March 18, 2014, electing the Board's small claims procedures.
4. The Board issued a notice of hearing on April 17, 2015.
5. Administrative Law Judge (ALJ) Patti Kindler held the Board's administrative hearing on June 3, 2015. She did not inspect the property.
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 612 Middlebury Street in Goshen.
8. The PTABOA determined the total assessment is \$79,000 (land \$13,800 and improvements \$65,200).

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 \$48,600 (land \$13,200 and improvements \$35,400).

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: "Rental Property Valuation" spreadsheet prepared by the Petitioner,

Petitioner Exhibit 2: Graph of the subject property's 2009 to 2012 assessed values.

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 hearing dated April 17, 2015,

Board Exhibit C: Hearing sign-in sheet,

Board Exhibit D: Notice of appearance from Beth Henkel.

- d) These Findings and Conclusions.

Objections

11. Ms. Henkel objected to the Petitioner's testimony regarding statements made by Mr. Salveson on the grounds of hearsay. The Petitioner did not offer any argument in response. The ALJ took the objection under advisement.
12. "Hearsay" is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can either be oral or written. (Ind. R. Evid. 801(c)). The Board's procedural rules specifically address hearsay evidence:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 3-1-5(b). The word “may” is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it.

13. The Petitioner’s testimony is hearsay. Here, while it does nothing to either prove or disprove the subject property’s market value-in-use, the Petitioners’ testimony is admitted. However because the Respondent objected to the testimony, it cannot serve as the sole basis for the Board’s decision.

Contentions

14. Summary of the Petitioner’s case:

- a) The subject property’s assessment is too high. The property’s assessment increased by “almost 63%” between 2011 and 2012. By utilizing the property’s actual income and expenses, and a 13% capitalization rate, the property should be assessed at \$48,943.69. *Borntrager testimony; Pet’r Ex. 1, 2.*
- b) In his valuation analysis, Mr. Borntrager reported a rental income of \$21,256.50.² After deducting the annual property-related expenses of \$14,893.82, the net operating income equates to \$6,362.68. *Borntrager testimony; Pet’r Ex. 1.*
- c) Mr. Borntrager utilized a 13% capitalization rate after a discussion with Peter Salvesson of Bright Support Services. According to Mr. Borntrager, Mr. Salvesson was “once an ALJ for these types of hearings.” Mr. Borntrager went on to state that “maybe 13% is a bit too high” and “if we went to 10% that would bring the appraised value to \$63,626.” *Borntrager testimony.*
- d) Finally, Mr. Borntrager argued that in valuing a property such as this, most investors would rely on the income capitalization method and cash flows rather than using a Gross Rent Multiplier (GRM). Further, using market rent rather than actual rent is not appropriate in this case. The subject property’s one-bedroom units are small and less desirable, so in turn they rent for less. Currently in 2015, one-bedroom units rent for \$450 per month and two-bedroom units rent for \$550 per month. *Borntrager argument.*

15. Summary of the Respondent’s case:

- a) The subject property is currently undervalued. 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 \$110,000 as of March 1, 2012. *Henkel argument; Fisher testimony; Resp’t Ex. A.*

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

- b) To obtain his final estimate of value, Mr. Fisher considered both the sales-comparison and income approaches to value. In developing the sales-comparison approach, Mr. Fisher relied mainly on four comparable sales located in rural Goshen. Adjustments were made to account for various differences between the properties. The sales-comparison approach yielded a value of \$111,500. *Fisher testimony; Resp't Ex. A at 4, 5.*
- c) In developing the income approach, Mr. Fisher applied a GRM of 50 to a market rent of \$2,200 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 investors and tenants. The income approach yielded a value of \$110,000. *Fisher testimony; Resp't Ex. A at 3, 4.*
- d) Mr. Fisher's final value estimate 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.*

Burden of Proof

- 16. 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.
- 17. 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).
- 18. 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.

19. These 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 \$48,600 to \$79,000. This assessment, however, was determined utilizing the income approach. The Petitioner did not dispute that the property was valued utilizing the income approach. Therefore, in accordance with Ind. Code § 6-1.1-15-17.2(d) the Petitioner has the burden of proof.

Analysis

20. The Petitioner failed to make a prima facie case for the assessed valuation he requested.
- 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) In support of his contention, the Petitioner presented his own valuation evidence. Specifically, he offered an income-based analysis that estimated the subject property's value at \$48,943.69. But Mr. Borntreger failed to provide any indication that he used generally accepted appraisal principles in computing his value. It appears that he relied on the property's actual rent, rather than market rent, to compute his effective gross income. In addition, he failed to offer credible evidence to support his capitalization rates. Originally he relied on a 13% capitalization rate, but then testified to a calculation utilizing a 10% capitalization rate. His valuation evidence has little probative value.
 - d) The Petitioner also offered a graph illustrating the assessment of the subject property between 2009 and 2012. Merely illustrating that an assessment increased from one

year to the next does not establish the market value-in-use of the property. Further, it fails to prove that any particular valuation is correct. The Petitioner's graph lacks probative value.

- e) 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 1214, 1221-1222 (Ind. Tax Ct. 2003).
- f) Nevertheless, the Respondent offered a USPAP compliant appraisal prepared by Gavin Fisher, a licensed residential appraiser, who estimated the market value-in-use of the subject property was \$110,000 as of March 1, 2012. And often the most effective method to prove a correct 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). Significantly, the Petitioner offered little, if any, evidence to impeach or rebut that appraisal.
- g) Despite the fact that the burden did not shift to the Respondent, the Board cannot simply ignore such evidence in the record. The appraisal submitted by the Respondent supports an increase in the assessment to \$110,000.

Conclusion

21. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions, the 2012 assessment will be changed to \$110,000.

ISSUED: September 1, 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>>.