

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

**Petition:** 20-015-12-1-5-00665  
**Petitioner:** My Properties, LLC  
**Respondent:** Elkhart County Assessor  
**Parcel:** 20-11-03-355-011.000-015  
**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, 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 Borntreger appeared *pro se* and was sworn as a witness.<sup>1</sup> 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 618 Middlebury Street in Goshen.
8. The PTABOA determined the total assessment is \$76,700 (land \$18,500 and improvements \$58,200).

---

<sup>1</sup> Mr. Borntreger signed the Form 131 petition as "Member" of My Properties LLC. Herein, the Board refers to Mr. Borntreger and My Properties, LLC both as "the Petitioner."

9. On the Form 131 petition, the Petitioner requested a total of \$61,500 (land \$18,500 and improvements \$43,000).

### **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,<sup>2</sup>

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.

### **Contentions**

11. Summary of the Petitioner’s case:

- a) The subject property’s assessment is too high. The assessment increased by roughly 77% between 2011 and 2012. *Borntrager testimony; Pet’r Ex. 2.*
- b) The property is currently utilized as a rental property, but it has been “difficult to rent and has had high vacancies.” The Petitioner offered an income approach to value utilizing the property’s actual income of \$9,165.50.<sup>3</sup> After deducting the annual property-related expenses, totaling \$8,646.08, the net operating income is

---

<sup>2</sup> Mr. Fisher testified that the effective date of his appraisal was March 1, 2012. However, the appraisal itself lacks an effective date. The Board will accept Mr. Fisher’s testimony that the effective date of the appraisal is March 1, 2012.

<sup>3</sup> The Petitioner’s analysis is dated January 1, 2012. The Board assumes the rental income and the expense data is from 2011.

\$519.42. With a 13% capitalization rate, the purported market value would be \$3,995.54. *Borntrager testimony; Pet'r Ex. 1.*

- c) Mr. Borntrager argued that in valuing a property such as this, most investors would rely on the income capitalization method rather than using a Gross Rent Multiplier (GRM). The GRM fails to take into consideration the unique features of the subject property, such as the high vacancy rate and cash flow. *Borntrager testimony; Pet'r Ex. 1.*
- d) Mr. Borntrager admitted that his 13% capitalization rate may not be substantiated by anything more than "his own personal opinion." Nevertheless, even if a 10% capitalization rate were utilized, the outcome would still be substantially less than the current assessment. *Borntrager testimony; Pet'r Ex. 1.*

12. Summary of the Respondent's case:

- a) 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 \$55,000 as of March 1, 2012. *Fisher testimony; Resp't Ex. A.*
- b) To obtain his final estimate of value, Mr. Fisher considered both the sales-comparison and the income approaches to value. In developing the sales-comparison approach, Mr. Fisher relied mainly on four comparable sales located in rural Goshen. The sales-comparison approach yielded a value of \$61,500. *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 \$1,100 per month. Mr. Fisher 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 \$55,000. *Fisher testimony; Resp't Ex. A at 3.*
- 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**

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 \$43,300 to \$76,700. The Petitioner, however, did not dispute that the property was valued utilizing the income approach. Therefore, the Petitioner has the burden of proof.

## **Analysis**

17. The Petitioner failed to make a prima facie case for his requested assessed valuation.
  - 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 analysis. Specifically, he offered an income-based analysis that estimated the subject property's value at \$3,995.54. Mr. Borntrager failed to provide any indication that he used generally accepted appraisal principles in computing his value. It appears from his evidence that he relied on the actual rent, rather than market rent, to compute his effective gross income. In addition, he failed to offer sufficient evidence to support his choice of capitalization rates, which he testified was derived from "personal opinion." Thus, the Petitioner's valuation evidence has little probative value.
  - d) The Petitioner also offered a graph illustrating the subject property's assessment 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 a particular assessment is incorrect. Thus, 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) The Respondent, however, offered a USPAP compliant appraisal prepared by Gavin Fisher, a licensed residential appraiser, who estimated the subject property's market value-in-use at \$55,000 as of March 1, 2012. Mr. Fisher's final reconciliation of value is based primarily on the income approach. The Petitioner failed to offer probative evidence to impeach or rebut the appraisal.

### **Conclusion**

18. Even though the burden did not shift to the Respondent, the best evidence on record as to the property's market value-in-use is the USPAP compliant appraisal submitted by the Respondent. Accordingly, the disputed assessment should be lowered to \$55,000.

## Final Determination

In accordance with these findings and conclusions, the 2012 assessment will be reduced to \$55,000.

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>>.