

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

Petitions: 20-015-12-1-5-00666
20-015-13-1-5-00021
Petitioner: My Properties, LLC
Respondent: Elkhart County Assessor
Parcel: 20-11-16-478-006.000-015
Assessment Years: 2012 and 2013

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

Procedural History

1. The Petitioner appealed its 2012 and 2013 assessments. On February 7 and October 22, 2014, the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) issued notice of its determinations upholding the assessments.
2. The Petitioner timely filed Form 131 petitions with the Board and elected to have the appeals heard under our small claims procedures.
3. On August 18, 2015, our designated administrative law judge, Jennifer Bippus, held a hearing. Neither she nor the Board inspected the property.
4. Myron Borntreger, a member of the Petitioner, appeared for the Petitioner and was sworn as a witness. Beth Henkel appeared as counsel for the Respondent. Elkhart County Assessor Cathy Searcy and Gavin Fisher were sworn as witnesses for the Respondent.

Facts

5. The property under appeal is a three-unit, residential rental property located at 1601 S. Main Street in Goshen.
6. The PTABOA determined the following values:

Year	Land	Improvements	Total
2012	\$17,500	\$74,700	\$92,200
2013	\$17,500	\$75,500	\$93,000

7. The Petitioner requested the following assessments:

Year	Land	Improvements	Total
2012	\$17,500	\$30,000	\$47,500
2013	\$14,000	\$30,000	\$44,000

Record

8. The official record contains the following:

a. A digital recording of the hearing

b. Exhibits:

Petitioner Exhibit 1: “Rental Property Valuation” spreadsheet as of January 1, 2012, “Rental Property Valuation” spreadsheet as of January 1, 2013,

Petitioner Exhibit 2: Two graphs entitled “4 year assessment history.”¹

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

Board Exhibit A – Form 131 petitions,

Board Exhibit B – Hearing notices,

Board Exhibit C – Notice of Appearance for Beth Henkel,

Board Exhibit D– Hearing sign-in sheet.

c. These Findings and Conclusions.

Burden

9. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving both that his property’s assessment is wrong and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2, as amended, creates an exception to that general rule and shifts the burden to the assessor to prove the assessment is correct. Either of two circumstances may trigger that shift. The first occurs where the assessment under appeal represents an increase of more than 5% over the previous year’s assessment as last corrected by an assessing official, stipulated by the parties, or determined on review. I.C. § 6-1.1-15-17.2(a) and (b).

¹ The Petitioner submitted a separate set of exhibits for each petition. In each case, Petitioner’s Exhibit 1 was a valuation analysis and Petitioner’s Exhibit 2 was a graph showing the property’s assessment history. The valuation analyses cover different years. The graphs showing the property’s assessment history are identical except that one contains handwritten notations at the top.

10. The second occurs where the property's gross assessed value was reduced in an appeal, and the assessment for the following date (the year currently at issue) represents an increase over the gross assessed value as decided by that appeal, regardless of the amount of the increase. I.C. § 6-1.1-15-17.2(d). That second trigger does not apply, however, if the determination in the previous year's appeal was based on the income capitalization approach. *See id.* (“[T]his subsection does not apply for an assessment date if the real property was valued using the income capitalization approach in the appeal.”)(emphasis added).
11. If the assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).
12. The parties disagree about who has the burden of proof for the Petitioner's 2012 appeal. That dispute arises, in part, because the parties disagree about the amount of the 2011 assessment. According to Respondent's counsel, the property record card shows an assessment of \$88,300 for 2011, and the 2012 assessment of \$92,200 represents only a 4% increase. But she did not offer the property record card as an exhibit. The Respondent also argues that, because she used the income approach to assess the property, the burden should not shift regardless of how much the assessment increased between 2011 and 2012. Mr. Borntrager testified that the “final” assessment for 2011 was only \$44,500. Because the 2012 assessment represents an increase of far more than 5% over that amount, the Petitioner argues that the Assessor should have the burden.
13. We agree with the Petitioner. The method used to assess the property in 2011 is irrelevant because the Petitioner does not rely on the second trigger—success in appealing the previous year's assessment—to support its claim for shifting the burden of proof. The Petitioner instead relies on Mr. Borntrager's testimony that the assessment increased by more than 5% between 2011 and 2012. The Respondent offered only the unsworn statement of her counsel to dispute Mr. Borntrager's testimony. We find that the assessment increased by more than 5% between 2011 and 2012 and that the Respondent therefore has the burden of proof for the 2012 appeal. Our determination of who has the burden for 2013 necessarily depends on how we resolve the 2012 appeal.

Contentions

14. Summary of the Petitioner's case:
 - a. The assessments at issue are too high in light of (1) the property's value as shown by the income capitalization approach, and (2) its assessment over the three years leading up to 2012. *Borntrager testimony and argument; Pet'r Ex. 1.*

Mr. Borntrager used the property's actual rental income and expenses in completing his analyses under the income approach. For his 2012 analysis, the actual income

was \$ [REDACTED].² That was less than the property's potential income. Mr. Borntrager acknowledged that, when occupied, two of the units rent for [REDACTED] and the third for [REDACTED]. Mr. Borntrager deducted property-related expenses of \$ [REDACTED] to arrive at net operating income ("NOI") of \$ [REDACTED]. He then capitalized that NOI using a rate of 13%. He did little to explain how he arrived at that rate. At most, the sheet with his valuation analysis contains a heading of "Cap Rate Rationalization" indicating that Mr. Borntrager calculated the rate as follows: 5-6% for interest, 3% for risk, 2% for taxes, and 3% for "Recover (Dep Factors)." *Borntrager testimony; Pet'r Ex. 1.*

- b. The capitalized NOI yielded a value of \$ [REDACTED]. Mr. Borntrager acknowledged that the property was worth more, but he did not believe its value had increased from the prior three years when it was assessed at \$44,500. *Borntrager testimony; Pet'r Exs. 1-2.*
- c. For 2013, Mr. Borntrager used actual rental income of \$ [REDACTED]³ and expenses of \$ [REDACTED], leaving NOI of \$ [REDACTED]. He again used a 13% capitalization rate, which yielded a value of \$ [REDACTED]. *Borntrager testimony; Pet'r Exs. 1-2.*
- d. The Respondent's appraiser, Gavin Fisher, used a gross rent multiplier ("GRM") to value the property. According to Mr. Borntrager, that method is subjective. Mr. Borntrager believes that Mr. Fisher used the same comparable sales in other appeals involving the 2012 assessment year. In those other appeals, Mr. Fisher determined a GRM of 50, while he used a GRM of 55 for the subject property in these appeals. For the sake of consistency, the same GRM should be used for all 2012 values. *Borntrager testimony and argument; Resp't Ex. A.*

15. Summary of the Respondent's case:

- a. The Respondent offered an appraisal report and testimony from Mr. Fisher. He prepared his report and opinion in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Fisher testimony; Resp't Ex. A.*
- b. Mr. Fisher considered two approaches to value: the sales-comparison approach and a version of the income approach using the GRM. For his sales-comparison analysis, Mr. Fisher used sales of four properties that he viewed as comparable to the subject property. Those buildings had between two and six units. He adjusted the sale prices to account for differences between the comparable properties and the subject property in terms of age and number of rental units. He arrived at a value of \$86,500 based on that approach. *Fisher testimony; Resp't Ex. A.*

² Mr. Borntrager's analysis is dated January 1, 2012. It is unclear whether the income and expense data is from calendar year 2011 or 2012.

³ Once again, the analysis is dated January 1, and it is unclear whether the income and expense information is from calendar 2012 or 2013.

- c. Turning to the income approach, Mr. Fisher explained that investors typically value small properties using a GRM rather than direct capitalization. He extracted a GRM from the sales he used in his sales-comparison analysis, which he explained would directly compete with the subject property for tenants and investors. Those extracted GRMs were 44, 50, 58, and 71. The lowest GRM was from the six-unit property, which Mr. Fisher believed had greater risk than the subject property. The two properties that were most similar to the subject property had GRMs of 71 and 58, respectively. He therefore felt the appropriate range was 55 to 65. He settled on 55, which he believed was a conservative estimate. *Fisher testimony; Resp't Ex. A.*
- d. To determine the property's market gross income, Mr. Fisher looked at three rental properties he viewed as comparable to the subject property. He settled on total monthly rent of \$1,500, or roughly \$500 per unit. He then applied his GRM to that monthly rent and arrived at a value of \$82,500. *Fisher testimony; Resp't Ex. A.*
- e. Mr. Fisher's final reconciliation of value was \$85,000, which took into account his conclusions under both approaches. *Fisher testimony; Resp't Ex. A.*
- f. The Respondent also asked Mr. Fisher to determine whether his valuation opinion for March 1, 2012, would apply to March 1, 2013. He reviewed sales of two- to four-unit rental properties and trends in the asking rates for rentals properties in the greater Goshen area. He found no changes in either. And there was no influx of rental concessions on those types of properties. The overall market for those property types was stable between 2012 and 2013. Mr. Fisher therefore found that the information and valuation opinion from his appraisal report for March 1, 2012, applied equally to March 1, 2013. *Fisher testimony.*
- g. Mr. Borntrager used direct capitalization in his analysis. As Mr. Fisher explained, however, the more simplified GRM approach is how investors value small rental properties like the subject property. Also, Ind. Code § 6-1.1-4-39 provides that the GRM is the preferred method of valuing properties with between one and four rental units. *Fisher testimony; Henkel argument.*

Analysis

2012 Appeal

16. The Respondent made a prima facie case that the 2012 assessment should be \$82,500, and the Petitioner failed to significantly impeach or rebut the Respondent's evidence.
 - 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." I.C. § 6-1.1-31-6(c): 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). A party' evidence in an assessment appeal must be consistent with that standard. For

- example, a market value-in-use appraisal prepared in conformity with USPAP often will be probative. *See id.*; *see also Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005) A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Kooshtard Property IV*, 836 N.E.2d at 506; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use). The GRM, however, is the "preferred method of valuing . . . real property that has at least one (1) and not more than four (4) rental units . . ." I.C. § 6-1.1-4-39(b).
- b. Regardless of the type of evidence a party offers, it must explain how that 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. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *See id.* The valuation dates for the assessments at issue in these appeals were March 1, 2012, and March 1, 2013, respectively. *See* 50 IAC 27-5-2(c).
 - c. The Respondent offered a USPAP-compliant appraisal report prepared by Gavin Fisher, in which Mr. Fisher used the GRM to estimate the property's value at \$82,500 as of March 1, 2012. Although he came to a higher reconciled value, the GRM is the statutorily preferred approach for valuing a three-unit rental property such as the subject property. The Respondent therefore made a prima facie case for valuing the property at \$82,500.
 - d. The Petitioner did little to impeach Mr. Fisher's appraisal. Although Mr. Borntrager testified that he thought Mr. Fisher had used the same comparable sales to arrive at a slightly lower GRM in other appeals, he offered no support for that proposition. Even if that were the case, the comparable sales indicated a range of GRMs, and Mr. Fisher settled on his GRM for the subject property based partly on which of the four sales he believed were most comparable to it.
 - e. The Petitioner offered a competing valuation analysis from Mr. Borntrager. But Mr. Borntrager did little to show that he complied with generally accepted appraisal principles. For example, he used the subject property's actual income (and consequently vacancy rate) and expenses without even attempting to check that information against the market. *See Indiana MHC v. Scott County Ass'r*, 987 N.E.2d 1182, 1185-86 (explaining the importance of looking at income, expenses and occupancy rates for comparable properties in the market as well as at current and historical information for the subject property). More importantly, he did not credibly support his capitalization rate. His analysis therefore has little or no probative value.
 - f. Based on Mr. Fisher's appraisal report, we find that the subject property's 2012 assessment must be changed to \$82,500.

2013 Appeal

17. The 2013 assessment must also be changed to \$82,500.
- a. Our determination for 2012 reduces the property's assessment to \$82,500. The 2013 assessment of \$93,000 represents an increase of more than 5% over that amount. The Assessor therefore has the burden of proof for the 2013 appeal as well.
 - b. The Respondent again relies on Mr. Fisher's appraisal report and his testimony regarding why his valuation opinion applies equally to the property's value as of March 1, 2013. The Petitioner did not dispute Mr. Fisher's testimony in that regard. Under those circumstances, we find that the property's true tax value for 2013 was also \$82,500.
 - c. The result would be the same even if we were to disregard Mr. Fisher's testimony relating his appraisal to 2013. As explained above, when an assessor fails to meet her burden of proving that a property's assessment is correct and there is no other probative evidence of its true tax value, the assessment reverts to the previous year's level as last corrected by an assessing official, stipulated to by the parties, or determined on review. Without Mr. Fisher's appraisal, the record is devoid of any evidence showing the property's true tax value. We have already explained why Mr. Borntrager's analysis for 2012 lacks probative value, and his analysis for 2013 has the same shortcomings. Thus, the assessment would revert to the 2012 level as last determined on review i.e. our determination of \$82,500.

Final Determination

In accordance with the above findings and conclusions, the subject property's assessment must be changed to \$82,500 for the 2012 and 2013 assessment years.

ISSUED: January 15, 2016

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 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>>.