

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

Petition: 20-015-12-1-5-00667
Petitioner: My Properties LLC
Respondent: Elkhart County Assessor
Parcel: 20-11-10-106-002.000-015
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 level requested by the Petitioner.
3. The Petitioner timely filed a Form 131 petition with the Board and elected our small claims procedures.
4. On August 18, 2015, our designated administrative law judge, Jennifer Bippus, held a hearing. Neither she nor the Board inspected the property.
5. Myron Borntrager, one of the Petitioner’s members, 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

6. The property under appeal is a two-unit, residential rental property located at 616 Middlebury Street in Goshen.
7. The PTABOA determined a total assessment of \$90,700 (land \$16,500 and improvements \$74,200).
8. On its Form 131 petition, the Petitioner requested an assessment of \$62,800 (land \$16,500 and improvements \$46,300).

Record

9. The official record for this matter is made up of the following:

- a) Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1: “Four Year Assessment History” graph.

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 petition,
Board Exhibit B: Notice of appearance from Beth Henkel,
Board Exhibit C: Hearing notice,
Board Exhibit D: Hearing sign-in sheet.

- d) These Findings and Conclusions.

Contentions

10. Summary of the Petitioner’s case:

- a) The property’s assessment is too high. It went from \$43,300 in 2011 to \$90,700 in 2012, an increase of approximately 109.5%. *Borntrager argument; Pet’r Ex. 1.*
- b) The Respondent’s appraiser, Gavin Fisher used gross rent multiplier (“GRM”) in valuing the property. Based on extenuating circumstances, his GRM of 75 is too high. *Borntrager argument (referencing Resp’t Ex. A).*
- c) First, the subject home is modular. Modular homes have inferior construction quality compared to “stick-built” homes. Second, it has a gravel driveway, making it incomparable to similarly aged, multi-family properties with paved parking. *Borntrager argument.*
- d) Third, and most importantly, the property shares a common access drive with the property in front of it—618 Middlebury Street. The Petitioner owns both properties. Because of the common access, they cannot realistically be sold separately. *Borntrager testimony.*
- e) Finally, several easements would be required if the subject property were sold separately. There would need to be an access easement. There would also need to be a utility easement. The subject property and 618 Middlebury share a common

“lift station,” which Mr. Borntrager described as a “sewage injector pump” necessitated by the fact that the subject property is at a lower elevation than the street sewer. A separate lift station would be needed to remove sewage from the subject property independent of 618 Middlebury. Mr. Borntrager would expect the fees associated with that would easily amount to \$15,000. *Borntrager testimony and argument.*

- f) The subject property’s value is closely tied to the value of 618 Middlebury. The Respondent argued a GRM of 50 for that property.¹ For the sake of consistency, the same GRM should be used for the subject property. *Borntrager testimony and argument.*

11. Summary of the Respondent’s case:

- a) The Respondent offered Mr. Fisher’s appraisal report, which he prepared in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). He estimated the property’s value at \$90,000 as of March 1, 2012. *Henkel argument; Fisher testimony; Resp’t Ex. A.*
- b) In reaching his opinion, Mr. Fisher considered the income and sales-comparison approaches to value. Because the property is a rental, he mainly relied on the income approach. *Fisher testimony; Resp’t Ex. A at 3.*
- c) Mr. Fisher acknowledged there was limited data available for determining a GRM. The subject home is roughly 13 years old, while the majority of rental properties of comparable size are older. More risk is involved in older properties as they require more repairs and maintenance. Newer, “purpose-built” rental homes also have more utility and appeal than do single family homes that have been converted to multi-unit rentals. The increased appeal translates to shorter vacancy periods. *Fisher testimony.*
- d) The only sales near the assessment date involved older, converted rental homes. While those homes were generally similar to the subject home, they were not exact matches. Mr. Fisher therefore expanded his data pool to encompass historical sales going back to 2010, including sales of newer, four-unit buildings. That expanded search helped him measure how age and other added risks affected GRMs. The newer four-unit rentals had GRMs as high as 100 to 110, although they also had features, such as common parking lots, that made them superior to the subject property. He ultimately extracted a GRM of 75, which he described as being in the middle of the indicated range. *Fisher testimony; Resp’t Ex. A.*
- e) Mr. Fisher accounted for the home’s modular construction. While modular homes generally might have slightly inferior construction quality compared to stick-built homes, that difference is not as prevalent when dealing with homes built for rental

¹ We assume Mr. Borntrager is referring to a separate appeal for 618 Middlebury, which we decided on September 1, 2015. See *My Properties, LLC v. Elkhart County Ass’r*, pet. no. 20-015-12-1-5-00665 (IBTR Sep’t 1, 2105)

purposes. Even when “stick built,” those homes typically are not customized. Mr. Fisher also considered the fact that the property shares a common drive with 618 Middlebury Street. He noted that the Petitioner could grant an access easement if it sold the subject property separately. Mr. Fisher explained that he has addressed similar set-ups in valuing single-family homes, and the market has not shown any diminution in value. *Fisher testimony; Resp’t Ex. A.*

- f) Next, Mr. Fisher determined market rent for the subject property. He examined rent charged for newer, two-bedroom units and found a range between \$575 and \$800 per month. Given some of the subject property’s limitations, he settled on a market rent of \$600 per month for each unit. That translated to a total value of \$90,000 for the subject property when he applied his GRM. *Fisher testimony; Resp’t Ex. A at 3.*
- g) Mr. Fisher also gave some weight to his conclusions under the sales-comparison approach. He relied on four comparable sales in developing that approach. He adjusted each sale price based on differences between the comparable property and the subject property in terms of age, condition, and number of units. Ultimately, the sales-comparison analysis also yielded a value of \$90,000. *Fisher testimony; Resp’t Ex. A at 3.*
- h) The Respondent believes the assessment should be lowered to \$90,000, which is slightly less than the amount the PTABOA determined. *Henkel argument; Resp’t Ex. A.*

Burden of Proof

- 12. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving both that the 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). Indiana Code § 6-1.1-15-17.2 creates an exception to that rule and shifts the burden to the assessor in certain circumstances, including where the assessment under appeal represents an increase of more than 5% over the previous year’s assessment. I.C. § 6-1.1-15-17.2(a) and (b). If the assessor has the burden of proof and fails to show that 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)*
- 13. The parties agree that the assessment increased by more than 5% between 2011 and 2012 and that the Respondent has the burden of proof.

Analysis

- 14. The Respondent made a prima facie case that the 2012 assessment should be \$90,000, 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’s evidence in an assessment appeal must be consistent with that standard. For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.*; *see also Kooshtard Property VI, LLC v. White River Twp. Ass’n*, 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) The Respondent offered a USPAP-compliant appraisal from Gavin Fisher, a licensed residential appraiser. Mr. Fisher estimated the subject property’s market value-in-use at \$90,000 as of the appropriate valuation date. He based his opinion primarily on the income approach using a GRM—the preferred method for valuing small rental properties like the subject property. And he explained, albeit without offering all his underlying data, how he arrived both at his choice of an appropriate GRM and his ultimate valuation opinion.
- c) Mr. Borntrager criticized Mr. Fisher’s choice of GRM, arguing that it should have been lower. Mr. Borntrager identified various “extenuating circumstances” to support his contention. But he did nothing to quantify a loss in value from those circumstances beyond offering his guess as to the cost of an independent lifting station. Mr. Fisher sufficiently responded to those criticisms and explained why two of the circumstances identified by Mr. Borntrager—the home’s modular construction and shared drive—did little to affect the property’s value.
- d) The Petitioner also argued that Mr. Fisher should have used the same GRM to value the subject property as he used for 618 Middlebury. But it offered no details about 618 Middlebury, such as the age, style, or quality of the home on that property.² Under those circumstances, we do not find that the market would necessarily value the properties using the same GRM. In light of the shared drive and lifting station, one might argue that the two properties should be valued together as a single economic unit rather than separately, as Mr. Fisher valued them. On the limited record before us, however, we cannot say that the decision to value them separately

² The Petitioner did not ask us to take official notice of the proceedings involving the appeal of 618 Middlebury’s assessment, and we decline to do so. *See* 52 IAC 2-7-4 (allowing the Board to take official notice of the record in other proceedings before it but requiring the parties to be given the opportunity to contest or rebut the facts or material of which official notice is taken).

fails to comply with generally accepted appraisal principles. We therefore find Mr. Fisher's opinion probative.

- e) The Petitioner offered no probative valuation evidence of its own. Simply pointing to previous assessments does little or nothing to show the property's true tax value for the year under appeal. Thus, based on Mr. Fisher's appraisal, we find that the property's true tax value for 2012 was \$90,000.

Conclusion

- 15. The 2012 assessment must be changed to \$90,000.

Final Determination

In accordance with these findings and conclusions, the 2012 assessment will be reduced to \$90,000.

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 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>>.