

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

Petitions: 45-004-11-1-5-00001
45-004-12-1-5-00008
45-004-13-1-5-00754-16
45-004-14-1-5-00753-16
45-004-15-1-5-00974-16
Petitioner: Chris Schaap
Respondent: Lake County Assessor
Parcel: 45-08-28-154-003.000-004
Assessment Years: 2011-2015

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

Procedural History

1. Petitioner initiated the 2011 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) on June 11, 2012, and the 2012 appeal on January 29, 2013. The PTABOA issued notice of its final determinations for 2011 and 2012 on October 1, 2014. Petitioner then timely filed its Form 131 petitions with the Board
2. Petitioner initiated the 2013 appeal on May 22, 2014, the 2014 appeal on April 25, 2015, and the 2015 appeal on October 22, 2015. For all three years, the PTABOA failed to hold hearings within 180 days as required by Ind. Code § 6-1.1-15-1(k). Accordingly, Petitioner filed Form 131 petitions directly with the Board pursuant to Ind. Code § 6-1.1-15-1(o).
3. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
4. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on June 13, 2016. Neither the ALJ nor the Board inspected the property.
5. Chris Schaap, member of Elkhart Rentals, LLC, was sworn as a witness for Petitioner. Robert Metz, Lake County Hearing Officer, and Henry Bennett, Jr., Calumet Township Deputy Assessor, were sworn as witnesses for Respondent.

Facts

6. The subject property is a single-family dwelling located at 3915 Lincoln Street in Gary.

7. Respondent determined the following assessments for the parcel under appeal:

Year	Land	Improvements	Total
2011	\$3,800	\$49,900	\$53,700
2012	\$3,700	\$46,600	\$50,300
2013	\$3,700	\$46,700	\$50,400
2014	\$3,700	\$30,700	\$34,400
2015	\$3,700	\$30,800	\$34,500

8. Petitioner requested the following assessed values:

Year	Total
2011	\$32,640
2012	\$27,091
2013	\$22,486
2014	\$17,539
2015	\$13,680

Record

9. The official record contains the following:

a. A digital recording of the hearing

b. Exhibits:

- Petitioner Exhibit 1: Appraisal of Roy Gouwens
- Petitioner Exhibit 2: 2011 property record card (“PRC”)
- Petitioner Exhibit 3: 2012 PRC
- Petitioner Exhibit 4: 2013 PRC
- Petitioner Exhibit 5: 2014 PRC
- Petitioner Exhibit 6: 2015 PRC
- Petitioner Exhibit 7: Department of Local Government Finance fact sheet on annual adjustments

Respondent Exhibit 1: Appraisal of Roy Gouwens

Board Exhibit A:	Form 131 petitions
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Hearing sign-in sheet

c. These Findings and Conclusions.

Burden

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
11. 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).
12. Second, Ind. Code 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 Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "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).
13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The assessed value decreased from \$56,400 in 2010 to \$53,700 in 2011. Petitioner, therefore, has the burden of proof for 2011. Assigning the burden for the other years at issue will depend on the final determinations for each respective preceding year.

Summary of Parties' Contentions

15. Petitioner's case:

- a. Petitioner contends that the property is over-assessed. Petitioner submitted an appraisal prepared by Roy Gouwens, a certified residential appraiser. Mr. Gouwens prepared the appraisal in conformance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). Mr. Gouwens estimated a value of \$32,000 as of March 1, 2010. He did not value the property as of the assessment date under appeal because Petitioner requested an estimated value as of March 1, 2010, believing that was the date required for the appeal. *Schaap testimony; Pet'r Ex. 1.*
- b. In an attempt to trend the 2010 appraised value to the 2011 valuation date, Petitioner applied the market adjustment value of 1.02 shown on the 2011 PRC. Applying the 1.02 value to the \$32,000 appraisal estimate results in a proposed assessed value of \$32,640 for 2011. *Schaap testimony; Pet'r. Ex. 2.*
- c. For 2012, the market adjustment value was .83. Applying the .83 value to the 2011 value of \$32,640 results in a proposed assessed value of \$27,091 for 2012. *Schaap testimony; Pet'r Ex. 3.*
- d. For 2013, the market adjustment value was .83. Applying the .83 factor to the 2012 value of \$27,091 results in a proposed assessed value of \$22,486 for 2013. *Schaap testimony; Pet'r Ex. 4.*
- e. For 2014, the market adjustment value was .78. Applying the .78 factor to the 2013 value of \$22,486 results in a proposed assessed value of \$17,539 for 2014. *Schaap testimony; Pet'r Ex. 5.*
- f. For 2015, the market adjustment value was .78. Applying the .78 factor to the 2014 value of \$17,539 results in a proposed assessed value of \$13,680 for 2015. *Schaap testimony; Pet'r Ex. 6.*

16. Respondent's case:

- a. As an alternative to the original assessed values, Mr. Metz testified that Respondent would accept the \$32,000 appraised value for 2011 and trend that value annually using the market adjustment values on the respective PRCs. However, he indicated that those market adjustment values would have to be verified and adjusted accordingly because there is no indication as to when the PRCs were printed. *Metz testimony.*
- b. As a second alternative, Mr. Metz testified that Respondent would accept the \$32,000 appraised value for 2011 – 2013, while the 2014 and 2015 years would remain unchanged from their original assessed values of \$34,400 and \$35,000 respectively. *Metz testimony; Resp't Ex. 1.*

ANALYSIS

17. The Board finds that the assessed values should be reduced for each year at issue and it reached that decision for the following reasons:
- 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.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. 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. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
 - b. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of 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). The valuation date for each assessment at issue in these appeals was March 1 of the assessment year. Ind. Code § 6-1.1-4-4.5(f).
 - c. There is a separate statute, however, regarding the valuation of certain rental properties such as the one at issue. Specifically, Ind. Code § 6-1.1-4-39 provides in part that the gross rent multiplier (“GRM”) method “is the preferred method of valuing...real property that has at least one (1) and not more than four (4) rental units....” In this case, neither party attempted to calculate a valuation under the GRM method. Consequently, the Board next turns to the parties’ specific proposals for the years at issue.

2011 Assessment

- a. As stated above, Petitioner had the burden of proof for 2011. Petitioner offered a USPAP compliant appraisal in which a certified residential appraiser valued the subject property at \$32,000 as of March 1, 2010. The Board has regularly found that appraisals performed within a year of the relevant valuation date are temporally sufficient to make a prima facie showing of a property’s true tax value.

- b. Petitioner contends that the appraised value should be trended to the March 1, 2011, valuation date. Petitioner attempted to trend the appraised value to the 2011 valuation date by applying the market adjustment value of 1.02 shown on the 2011 PRC.
- c. While the market adjustment value appearing on the PRC is applied to the cost of the improvements determined under the Guidelines, it appears that factor in this case is not reflective of the overall annual trending factor for 2011 because the total assessed value decreased from 2010 to 2011. Furthermore, Petitioner provided no explanation about how or why the market adjustment value appearing on the PRC should be determinative of the overall assessed value.
- d. Nevertheless, Respondent agreed to accept the 2010 effective date of the appraisal for the 2011 valuation and agreed to accept an assessed value of \$32,000 for 2011. This figure is less than the value Petitioner claimed. Therefore, the Board finds that the 2011 assessed value will be changed to \$32,000.

2012 – 2015 Assessments

- a. As will be discussed below, the Board ultimately finds that the assessed values for years 2012 – 2015 will also each be changed to \$32,000. Because the original assessed value for each of those years represents from each respective previous year's value of \$32,000, Respondent has the burden of proving that the assessed values for 2012 – 2015 are correct.
- b. Respondent did not offer any evidence to prove that the original assessed values for 2012 – 2015 are correct. In the alternative for 2012 – 2015, beginning with the \$32,000 value for 2011, Respondent proposed to trend each year thereafter by the market adjustment values on the PRCs. As a second alternative, Respondent agreed to accept the \$32,000 value for 2011 – 2013, while the original assessed values for 2014 and 2015 would remain unchanged.
- c. With regard to Respondent's first alternative, while he agreed to accept the \$32,000 value for 2011 and trend the subsequent years according to the market adjustment values on the PRCs, he indicated that those adjustments would have to be verified and adjusted accordingly. There is no evidence, however, that those market adjustment values were verified or adjusted, nor is there any indication as to what the proposed assessed values would have been had any calculations actually been undertaken, which they were not. With regard to Respondent's second alternative, while he agreed to accept the \$32,000 value for 2011 – 2013, he did not present any evidence to substantiate no change for 2014 and 2015. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890,893 (Ind. Tax Ct. 1995).

- d. As was the case for 2011, Petitioner contends that the values for 2012 – 2015 should each be trended forward using the market adjustment value found on each respective PRC. For the same reasons that were discussed with regard to Petitioner’s 2011 proposed value, the Board finds that Petitioner similarly did not provide credible evidence to support its proposed values for 2012 – 2015.
- e. If an assessor fails to meet its burden and neither party offers probative evidence to show the property’s actual true tax value, the assessment reverts to the previous year’s level. Ind. Code § 6-1.1-15-17.2(b). Accordingly, the Board accepts Respondent’s concession to a value of \$32,000 each for 2012 and 2013. The Board also finds that the values for 2014 and 2015 should each revert to their respective prior year values of \$32,000.

CONCLUSION

- 18. While the GRM method is the preferred method for this type of rental property, neither party attempted to calculate a valuation under the GRM method. With regard to the parties’ proposed values for the years at issue, Petitioner had the burden of proof for 2011 and provided a USPAP compliant appraisal valuing the property at \$32,000 to which Respondent agreed. Respondent had the burden of proof for the remaining years and ultimately conceded to a value of \$32,000 for 2012 and 2013. Respondent failed to provide probative evidence for its proposed values for 2014 and 2015. Petitioner provided its own proposed values for 2012 – 2015 and similarly failed to provide credible evidence. As a result, the assessed values for 2012 – 2015 each revert to the respective previous year’s value.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines that the assessed values for 2011, 2012, 2013, 2014, and 2015 must each be changed to \$32,000.

ISSUED: October 12, 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>>.