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

Petition:	**71-026-06-1-5-06968**
Petitioner:	**Union Realty, Inc.**
Respondent:	**St. Joseph County Assessor**
Parcel:	**71-08-03-226-001.000-026**
	a/k/a key number 18-2082-2971
Assessment Year:	**2006**

The Indiana Board of Tax Review (Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The Petitioner initiated an assessment appeal with the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) by written document dated July 25, 2007.

2. The PTABOA issued notice of its decision on December 27, 2007.

3. The Petitioner appealed to the Board by filing a Form 131 on February 1, 2008, and elected to have this case heard according to small claims procedures.

4. The Board issued a notice of hearing to the parties dated June 4, 2009.

5. Administrative Law Judge Ted Holaday held the Board's hearing on July 29, 2009. He did not inspect the property.

6. Daniel E. Kemp, President of Union Realty, represented the Petitioner at the hearing. Attorney Frank J. Agostino represented the Respondent.

7. Daniel Kemp, County Assessor David Wesolowski, and Kevin S. Klaybor were sworn as witnesses and testified at the hearing. PTABOA members Dennis J. Dillman and Ross A. Portolese were sworn, but they did not testify in this case.

Facts

8. The property is a single family rental residence located at 1922 Elwood in South Bend.

9. The PTABOA determined the assessed value is $900 for land and $38,700 for improvements (total $39,600).

10. The Petitioner claimed the assessed value should be $900 for land and $19,800 for improvements (total $20,700).

Contentions

11. Summary of the Petitioner's case:

    a. A gross rent multiplier (GRM) calculation is the preferred method of computing assessed values for rental properties. *Kemp testimony; Pet'r Ex. 13 at 7*.

    b. The 2002 assessment for the subject property was $19,900 and it used the GRM method. Beth Swede's calculations for this property show how that value was determined (annual rent of $4,980 times GRM 4 equals $19,920). *Pet'r Ex. 4 at 12*.

    c. Rosemary Mandrici, the Portage Township Assessor, told a local newspaper reporter that the assessed values of one-to-four unit rental properties increased by four percent during the 2006 trending process. *Kemp testimony.* The newspaper article says, "Rental homes in the one-to-four unit range increased by 4 percent in value, to $20.8 million, while commercial and industrial properties increased in value by 7 percent, to $35.7 million." *Pet'r Ex. 13 at 10*. Based on this information, the Petitioner increased the 2002 assessment of the subject property by four percent to determine the requested assessment for 2006. *Kemp testimony*.[1]

    d. A recent Multiple Listing Service (MLS) market analysis established a market rate of $24 per square foot. This analysis was based on all area sales, rather than only comparable properties. *Kemp testimony; Pet'r Ex. 15 at 3*.

    e. At the Petitioner's request, an appraiser determined the value of the property was $36,000 as of January 1, 2005. The appraisal complies with the Uniform Standards of Professional Appraisal Practice and the comparable properties identified in the appraisal are comparable to the Petitioner's property. The Petitioner, however, had instructed the appraiser to ignore homes in foreclosure proceedings. This omission resulted in an appraisal value that was excessive. *Kemp testimony*.

12. Summary of the Respondent's case:

    a. The property was appraised for $36,000 as of January 1, 2005. That appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal

[1] On cross examination, Mr. Kemp admitted he was never told by either the county assessor or the township assessor that all rental properties increased at a uniform rate of four percent.

Practice based on appropriate comparable properties. The assessed value should be $36,000. *Klaybor testimony; Resp't Ex. 9.*

b. The appraisal is the best evidence of value in this appeal. *Wesolowski testimony*.

c. According to the State, GRM calculations are the preferred method of valuing one-to-four unit rental properties. A GRM is derived from market rents in the neighborhood and information from realtors and property owners. They ranged from four to eight for 2006 and may vary from year to year. *Klaybor testimony; Wesolowski testimony*. For 2006, the Petitioner's GRM was somewhat less than eight. The records would need to be reviewed to determine the specific GRM applied to the Petitioner's property. *Wesolowski testimony.*

Record

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

a. The Petition,

b. A digital recording of the hearing,

c. Petitioner Exhibit 4 – "SzwedaAssessments" includes materials relating to appeals for several of the Petitioner's properties (including the subject property) for prior years,
Petitioner Exhibit 6 – "2006 pay 2007 Appeal Filings" consists of a letter to the township assessor dated July 25, 2007, requesting an informal appeal and the attachments to that letter,
Petitioner Exhibit 7 – "GRM rental exhibits" consists of GRM computations for eight properties and property record cards for three properties (none of them are the subject property),
Petitioner Exhibit 8 – "2006 trended homeowner increases" consists of maps and property record cards for five other properties,
Petitioner Exhibit 13 – "Exhibit 'B' submitted September 27, 2007," includes information about the Petitioner's business, memoranda about valuation, and copies of several newspaper articles,
Petitioner Exhibit 15 – "Northwest neighborhood" includes map with location of the subject property noted, MLS data and reports for 2004 and 2005, and copies of several newspaper articles,
Petitioner Exhibit 16 – "1618 N. Huey" includes escrow account documents, a property record card, correspondence, a lease, and court documents relating to 1618 Huey and tenant Candace R. Langel,
Petitioner Exhibit 17 – "Valuation" consists of a letter dated June 15, 2007, from the county assessor to St. Joseph County taxpayers about appeals and a document dated June 26, 2007, from the township assessor about gross rent multipliers,

Petitioner Exhibit 18 – "Greater South Bend-Mishawaka Association of Realtors" is a verification of Dan Kemp's membership,
(Petitioner Exhibits 1, 2, 3, 5, 9, 10, 11, 12, and 14 were not offered),
Respondent Exhibit 1 – Written document initiating the appeal,
Respondent Exhibit 2 – Form 131,
Respondent Exhibit 3 – Form 115,
Respondent Exhibit 4 – Letter dated September 26, 2007, from Daniel Kemp to Rosemary Mandrici with attachments focusing on MLS comparable sales,
Respondent Exhibit 5 – Letter dated September 26, 2007, from Daniel Kemp to Rosemary Mandrici focusing on income and gross rent multipliers,
Respondent Exhibit 6 – Deposit charges,
Respondent Exhibit 7 – Disclosure of lead based paint,
Respondent Exhibit 8 – Lease for the subject property dated October 24, 2003,
Respondent Exhibit 9 – Appraisal of the subject property as of January 1, 2005,
Respondent Exhibit 10 – Property record card,
Board Exhibit A – Form 131 Petition for Review of Assessment,
Board Exhibit B – Notice of Hearing on Petition,
Board Exhibit C – Hearing Sign In Sheet,

d. These Findings and Conclusions.

Objections

14. The Respondent objected to portions of Petitioner's Exhibits 13 and 15 (newspaper articles about neighborhood problems, abandoned homes, declining property values, assessment increases, etc.) asserting they should be excluded on the grounds they are hearsay.

15. "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 be either oral or written. The newspaper articles are hearsay. Nevertheless, hearsay evidence is admissible with significant limitations:

> Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801) may be admitted. If the hearsay evidence is not objected to, the evidence may form the basis for a determination. However, if the evidence is: (1) properly objected to; and (2) 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.

16. These newspaper articles appear to contain nothing that specifically relates to the subject property, but in general terms they paint a bleak picture of neighborhoods and overall property values that the Respondent did not attempt to dispute. The newspaper articles are admitted into the record, even though they do very little to help prove what a more accurate assessed value of the subject property might be.

17. The Respondent objected to Petitioner's Exhibits 4, 6, 7, 8, 13, and 15 on the grounds they are not relevant. These exhibits relate to appeals filed for the Petitioner's properties for prior years. Part of the Petitioner's arguments concern the use of a GRM calculation, an assessment method used by the local assessing officials during both the 2002 general reassessment and the trending calculation for 2006. These exhibits support this argument, and therefore, they are relevant. The Respondent's objections to Exhibits 4, 6, 7, 8, 13, and 15 are overruled.

18. The Respondent also objected to Petitioner's Exhibit 16 on the grounds that it is not relevant. This exhibit is a collection of documents related to a rental property that the Petitioner has at 1618 Huey and the tenant at that property. The Petitioner argued they are relevant because they show the kind of problems caused by incorrect assessments (higher taxes caused higher rent, which tenant had trouble paying and eventually tenant filed bankruptcy). The Petitioner failed to explain how that point helps to determine what a more accurate valuation for the subject property might be. Although nobody disputed the importance of getting accurate assessed valuations, the objection to Exhibit 16 is overruled.

Analysis

19. The most applicable governing cases are:

    a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 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).

    b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis").

    c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.; Meridian Towers*, 805 N.E.2d at 479.

20. The Petitioner did not make a case for a change in the assessment. This conclusion was arrived at because:

a. A 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

b. 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); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may offer evidence relevant to market value-in-use to rebut the presumption the assessment is correct. 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. MANUAL at 5.

c. Using a GRM is the preferred method for valuing real properties that have at least one and not more than four rental units. IC 6-1.1-4-39(b)(1). Undisputed testimony established that a GRM is computed from market rents in the neighborhood and information from realtors and property owners.[2] Furthermore, the appropriate GRM for a property may change from year to year. In this case, the evidence indicates the GRM that would have applied to the subject property for 2006 might have been anything from four to eight. Nobody ever specified the exact GRM for 2006.

d. Despite talking about the GRM valuation method being preferred, the Petitioner's proposed assessed value is not based on a GRM calculation for 2005. It is merely a calculation in which the property's 2002 assessed value is trended by four percent to arrive at a proposed 2006 assessed value. The Petitioner based its claim for a four percent increase on a statement attributed to Township Assessor Mandrici in a newspaper article. As previously discussed, the Respondent correctly objected to the newspaper articles as hearsay. While the newspaper articles were admitted into the record, the rules are specific that "the resulting determination may not be based solely upon the hearsay evidence." 52 IAC 3-1-5(b). The newspaper articles (along with the Petitioner's testimony that did nothing more than reiterate and summarize them) cannot serve as the basis for a final

[2] Indiana has not defined the term "gross rent multiplier" by statute or regulation. Nevertheless, it is a commonly used appraisal term. A GRM "is a tool sometimes used by appraisers … to compare the relationship between sale price and the gross income/rent of a property. In calculating GRM, the appraiser divides the sale price of the comparable property by its gross rent/income. The appraiser will then estimate the subject property by multiplying the actual income of the property by the multiplier in an attempt to determine the estimated sales price that can be obtained for the subject property. *** Typically, an appraiser will assess the GRM of several comparable properties to the subject property in determining the value of the subject property…." *In re Vanderveer Estates Holding, LLC*, 293 B.R. 560, 573 n.7 (Bankr. E.D.N.Y. 2003).

determination that the increase in assessed value for the subject property from 2002 to 2006 must be four percent. Furthermore, even the newspaper article does not support the Petitioner's claim that the increase for the subject property necessarily had to be four percent. The context of the article indicates that the percentage increases discussed in it are aggregate percentages for different types of property—homes, rental homes with one-to-four units, commercial and industrial property—and not specific trending percentages for individual properties. The Petitioner failed to make a prima facie case for changing the assessment by simply increasing the 2002 value by four percent.

e. An appraisal that complies with the Uniform Standards of Professional Appraisal Practice is often the most effective method to rebut the presumption that an assessment is correct. *O'Donnell v. Dep't of Local Gov't Fin.,* 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006); *Kooshtard Property VI, LLC v. White River Township Assessor,* 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). In this case, an appraisal was prepared by a licensed appraiser, who apparently used generally accepted appraisal principles to conclude that as of January 1, 2005, the market value of the subject property was $36,000. The appraisal is evidence of what a more accurate valuation might be. Nevertheless, the Petitioner asserted the appraisal value is excessive because it omitted foreclosed properties from the analysis. But the Petitioner presented no probative evidence to show how the analysis or conclusion would have been different if additional properties had been considered. Unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs,* 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Consequently, the Petitioner's conclusory testimony that the appraisal value is too high does not rebut or impeach the appraisal.

f. The Petitioner also offered MLS data to show an average price of $24 per square foot for sales in the area.[3] In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value-in- use of the subject property. *See* MANUAL at 3 (stating that the sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market."); *See also, Long,* 821 N.E.2d at 469. In order to effectively use a sales comparison approach, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long,* 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* at 471. The Petitioner failed to present any such analysis. The Petitioner acknowledged the $24 per square foot amount was based on all MLS sales from 2004 and 2005 from several streets in MLS area 03, rather than

[3] The Petitioner failed to explain how that price per square foot compares to the current assessment of the subject property or what a valuation of the subject property based on $24 per square foot would be.

on a proper comparability analysis. Furthermore, the actual square foot selling prices ranged from a high of $48 per square foot to a low of $5 per square foot. *Pet'r Ex. 15*. The Petitioner failed to establish that this kind of valuation methodology complies with generally accepted appraisal principles. The average price per square foot for those other properties does not help to prove what a more accurate valuation of the subject property might be.

g. When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley,* 704 N.E.2d at 1119.

Conclusion

21. The Petitioner failed to make a prima facie case. The Respondent, however, conceded that the assessment should be reduced to the value established by the appraisal.

Final Determination

In accordance with the above findings and conclusions, the assessment must be changed to $36,000.

ISSUED: _____

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>