

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

Petitions: 72-008-11-1-5-00016
72-008-11-1-5-00017
72-008-11-1-5-00018
Petitioners: Dane and Kenny Hughbanks
Respondent: Scott County Assessor
Parcels: 72-05-20-310-088.000-008
72-05-20-340-117.000-008
72-05-20-340-121.000-008
Assessment Year: 2011

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Scott County Property Tax Assessment Board of Appeals (PTABOA) by filing Forms 130 dated May 29, 2012.
2. The PTABOA mailed notices of its decision for all three 2011 assessments on October 12, 2012, denying the appeal.
3. The Petitioners timely appealed the determinations to the Board. They elected to have these appeals heard according to small claims procedures.
4. Administrative Law Judge Paul Stultz held the Board's administrative hearing on December 11, 2013. He did not inspect the property.
5. Certified Tax Representative Jill Yount represented the Petitioners. Chief Deputy Assessor Jennifer Binkley represented the County Assessor. Jill Yount was sworn as a witness for the Petitioners. Jennifer Binkley, Aaron Shelhamer and County Assessor Diana Cozart were sworn as witnesses for the Respondent. The Assessor did not provide any testimony.

Facts

6. The properties are rental duplexes located at 297 South Main Street, 368 East Jefferson Street, and 367 East Davis Street, in Scottsburg, Indiana.

7. The PTABOA determined the following values:

297 South Main Street: land \$7,400, improvements \$127,400 for a total assessed value of \$134,800;

368 East Jefferson Street: land \$12,700, improvements \$217,200 for a total assessed value of \$229,900;

367 East Davis Street: land \$12,700, improvements \$237,000 for a total assessed value of \$249,700.

8. According to the Form 131 Petitions, the Petitioners requested the following values:

297 South Main Street: land \$7,400, improvements \$75,100 for a total assessed value of \$82,500;

368 East Jefferson Street: land \$12,700, improvements \$130,300 for a total assessed value of \$143,000;

367 East Davis Street: land \$12,700, improvements \$130,300 for a total assessed value of \$143,000.

Record

9. The official record contains the following:

- a. The Petition.
- b. A digital recording of the hearing.
- c. Petitioner Exhibit 1 – List of monthly rents for the subject properties,
Petitioner Exhibit 2 – List of monthly utilities for the property at 297 S. Main Street,
Petitioner Exhibit 3 – List of five comparable sales identified by the Respondent,
Petitioner Exhibit 4– Property record card (PRC) for Pramukh Real Estate Development LLC. (278 N. Second St.),
Petitioner Exhibit 5– PRC for Mike and Sonya Nichols (392 N. Washington).
- d. Respondent Exhibits for Petition #72-008-11-1-5-00016:
Respondent Exhibit A– Assessed value calculation based on rental income,
Respondent Exhibit B – The Petitioners’ PRC for 2011,
Respondent Exhibit C – Form 131 Petition and attachments,
Respondent Exhibit D – Income sheet and utility sheet submitted at the PTABOA hearing,

Respondent Exhibits for Petition #72-008-11-1-5-00017:
Respondent Exhibit A– Assessed value calculation based on rental income,
Respondent Exhibit B – Subject PRC for 2011,
Respondent Exhibit C – Form 131 Petition and attachments,
Respondent Exhibit D – Income sheet and utility sheet submitted at PTABOA hearing,

Respondent Exhibits for Petition #72-008-11-1-5-00018:
Respondent Exhibit A– Assessed value calculation based on rental income,
Respondent Exhibit B – Subject PRC for 2011,
Respondent Exhibit C – Form 131 Petition and attachments,
Respondent Exhibit D – Income sheet and utility sheet submitted at the PTABOA hearing.¹

- e. Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notices of Hearing,
Board Exhibit C – Hearing Sign-In Sheet,
- f. 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 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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.

¹ Respondent exhibits A and D are duplicate copies for all petitions. Respondent exhibits B and C are different for each petition.

11. The assessed values for all three parcels under appeal increased less than five percent from the prior year assessments. Therefore, Indiana Code section 6-1.1-15-17.2 does not apply and the Petitioners have the burden of proof in these appeals.

Contentions

12. Summary of the Petitioners' case:
- a. The 2010 rent rolls show the gross rent for the property at 297 South Main Street is \$1,500 per month.² Water, sewer, and trash pickup in the amount of \$127 per month should be deducted from this amount. The adjusted gross rent for this property is \$1,373. *Yount testimony; Pet'r Exs. 1 and 2.*
 - b. The rent for 368 East Jefferson Street is \$2600 per month. The rent for 367 East Davis Street is \$2600 per month. Trash pickup of \$37.50 per month should be deducted from the income of these properties, resulting in an adjusted gross rent for each of the two properties of \$2,562.50 per month.³ The Petitioners thought they would get better renters but that did not happen and these properties were trashed. The Petitioners have not changed the rent amount for four years. *Yount testimony; Pet'r Exs. 1 and 2; Resp't Ex. A.*
 - c. A list of sales provided by the Respondent shows five sales in the subject's area. The first three are sales between family members and were not considered. For the fourth sale, located on Beechwood Avenue, the owner tried to turn the property into a triplex, but no rental information could be found. *Yount testimony; Pet'r Ex. 3.*
 - d. The fifth sale is for property located at 278 North Second Street. The purchase price is \$17,500 and the owner rents two units for \$300 per month for a total rent of \$600 per month. The gross rent multiplier (GRM) is 29, calculated by dividing the \$17,500 sale price by the monthly rent of \$600. *Yount testimony; Pet'r Exs. 3, 4.*
 - e. A property located at 392 North Washington Street rents for \$1,050 per month. The owner was asking \$62,000 for this property. Dividing the \$1,050 rent per month by this asking price would result in a GRM of 59. *Yount testimony; Pet'r Ex. 5.* The 278 North Second Street and the 392 North Washington Street

² The property located at 297 South Main Street is a duplex. One side rents for \$800 per month, and the other side, which is in the same building but the entrance is on East Walnut, rents for \$700 per month, for a total rent of \$1500 per month. *Yount testimony; Pet's Ex. 1.*

³ The trash bill which is Petitioner's Exhibit 2 is for the service address of 297 Main Street. However, this also includes the trash bill for the East Jefferson and East Davis Street addresses. Trash pick-up at these properties stopped after non-residents dumped their trash into the receptacles. The receptacles for East Jefferson and East Davis are at 297 Main Street.

properties should be considered to calculate the correct GRM for the appealed properties. *Yount testimony.*

- f. The Respondent has developed a table showing the gross rent for each appealed property. The gross rents used in the table are correct, but the GRM should be much lower than 85. *Yount testimony.*
13. Summary of the Respondent's case:
- a. Ms. Brinkley developed an assessed value calculation based on rental income and utilities amounts provided by the Petitioners. *Brinkley testimony; Resp't Ex. A.* This calculation shows the PTABOA assessments are too high. Based on the calculations from this table the indicated value of the property at 297 S. Main St. is \$116,705.
 - b. The property on East Davis Street consists of two buildings with two units each. Each unit rents for \$650 per month. The property on East Jefferson Street consists of two buildings with two units each. Each unit rents for \$650 per month. *Brinkley testimony; Resp't Ex. A.*
 - c. The indicated value for the properties on East Jefferson Street and East Davis Street is \$214,625, which is lower than the PTABOA values. *Id.*
 - d. The property located at 278 North Second Street identified by the Petitioners as comparable to the subject properties sold for \$17,500. This was a foreclosure sale involving New Washington State Bank and therefore is not a valid sale. The property located at 392 North Washington Street sold for \$60,000 in 2000. This sale would have to be time adjusted for five or six years to determine a current sale price. *Brinkley testimony.*
 - e. A spreadsheet in the Assessor's office represents sales and monthly rent for rental housing in Scottsburg. Duplexes are different than single resident rentals due to size and increase in vacancies. Data from both duplexes and single residences are compiled into a list of rent surveys and were blended to formulate a proper GRM. These rents established a GRM for the area of approximately 85. There are limited sales of duplexes in this area so a GRM cannot be formulated from only the rental income from duplexes. *Shelhamer testimony.*
 - f. The gross rent for the subject properties was determined from income and expense data provided by the Petitioners. The GRM of 85 is used for all duplexes in this area. The Respondent's proposed revised assessed values are lower than what the properties are currently being assessed at. Using the GRM is the fairest way to value the subject properties. *Brinkley testimony; Resp't Ex. A.*

Analysis

14. The Petitioners failed to present a prima facie case for a change in the assessments. The Board reached this 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 a similar user, from the property." Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. 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. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 676-77 (Ind. Tax. Ct. 2006).
 - b. Regardless of the method used to challenge an assessment's presumption of accuracy, a party must explain how its evidence relates to 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). For the 2011 assessment, the valuation date was March 1, 2011. 50 IAC 21-3-3 (2010); Ind. Code § 6-1.1-4-4.5.
 - c. The Petitioners and the Respondent agree that the income approach to value using the GRM is the best indication of value for the properties. Both parties also agree to the amount of gross rent for each of the properties.
 - d. The Petitioners however contend that the GRM of 85 is not correct and that a lower GRM should be used for the subject properties.
 - e. In support of this position, the Petitioners presented financial data of two comparable rental properties. The property located at 278 North Main Street in Scottsburg was purchased for \$17,500 and currently rents for \$600 per month. The GRM for this property is 29. The other rental property is also located in Scottsburg at 392 North Washington. The owner was asking \$62,000 for this property at the time of the hearing and the monthly rent is \$1,105. The GRM for this property is 59. The Petitioners contended the GRM for the subject properties should be closer to the GRM of these properties.
 - f. To effectively use any kind of comparison approach to value a property, one must establish that the properties truly are comparable. Conclusory statements that properties are "similar" or "comparable" are not sufficient. *Long*, 821 N.E.2d at 470.
 - g. In these appeals, the Petitioners were "responsible for explaining to the Indiana Board the characteristics of their own property, how those characteristics compared to those

- of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties.” *Long*, 821 N.E.2d at 471. Except for selecting two properties located in the same city as the Petitioners’ property, the Petitioners’ provided no comparison of the properties’ features.
- h. Additionally, although the sale for the property located at 392 North Washington Street occurred in December 2000, Petitioners failed to sufficiently relate this sale price to the March 1, 2011, valuation date. Instead she merely offered testimony that, at the time of hearing, the property was on the market for \$62,000 and currently remains on the market with an asking price of \$60,000.
 - i. The Petitioners did not explain how one property with a GRM of 29 is comparable to another property that has a GRM of 59. In fact, she did not identify the GRM that the Petitioners were proposing or identify the proposed correct true tax value of any of the subject properties. Therefore, the alleged comparable properties are not probative evidence for an accurate assessed valuation of the subject properties.
 - j. When taxpayers fail to provide probative evidence supporting their 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 Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - k. While the Petitioners failed to make a prima facie case for reducing the subject property’s assessment, the Assessor conceded that the property located at 297 S. Main Street is worth \$116,700, and the properties at 368 E. Jefferson Street and 367 E. Davis Street are worth \$214,600 (rounded to the nearest \$100) for 2011. The Board accepts the Assessor’s concession.

Conclusion

- 15. The Board finds in favor of the Respondent and reduces the assessment based on the Assessor’s concession.

Final Determination

In accordance with the above findings and conclusions, the revised assessments are \$116,700 for the property at 297 S. Main St. (parcel 088) and \$214,600 for the properties at 368 E. Jefferson St. (parcel 117) and 367 E. Davis St. (parcel 121).

ISSUED: February 24, 2014

Commissioner, Indiana Board of Tax Review

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- 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>>.