

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

**Petition Nos.:** 79-026-11-1-4-00012  
79-026-12-1-4-00003  
79-026-13-1-4-00007  
**Petitioner:** Chauncey Hill (2011)<sup>1</sup>  
Chauncey Hill Annex LLC (2012 & 2013)  
**Respondent:** Tippecanoe County Assessor  
**Parcel No.:** 79-07-19-427-007.000-026  
**Assessment Years:** 2011, 2012, & 2013

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

**Procedural History**

1. Chauncey Hill (“Petitioner”) filed Form 130 petitions with the Tippecanoe County Property Tax Assessment Board of Appeals (“PTABOA”) for the 2011, 2012, and 2013 assessment years on May 29, 2012, November 14, 2012, and September 17, 2013, respectively.
2. The PTABOA upheld the 2011 and 2012 assessments on January 10, 2014, and the 2013 assessment on September 19, 2014.
3. Petitioner timely filed Form 131 petitions, electing to have its appeals heard under the Board’s small claims procedures. Eric Grossman, the Tippecanoe County Assessor (“Respondent”), did not elect to have the proceeding removed from the small claims procedures.
4. Dalene McMillen, the Administrative Law Judge (“ALJ”) appointed by the Board, held a hearing on July 21, 2015. Neither the ALJ nor the Board inspected the property.
5. Milo Smith, tax representative, and Belinda Graber, certified appraiser, were sworn as witnesses for Petitioner. Eric Grossman, Tippecanoe County Assessor, and Max

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<sup>1</sup> The subject property’s name changed from Chauncey Hill to Chauncey Hill Annex LLC on August 22, 2012. *Pet’r Ex. 2; Resp’t Ex. 2.*

Campbell, Tippecanoe County project manager, were sworn as witnesses for the Respondent.<sup>2</sup>

### Facts

6. The property under appeal is a multi-tenant general retail neighborhood strip center located at 134 West State Street in Lafayette.
7. The PTABOA determined the following assessments for the parcel under appeal:<sup>3</sup>

Year	Land	Improvements	Total
2011	-0-	\$1,457,600	\$1,457,600
2012	-0-	\$1,495,800	\$1,495,800
2013	-0-	\$1,630,000	\$1,630,000

8. On its Form 131 petitions, the Petitioner did not request any specific assessments. At the hearing, it requested the following assessments:

Year	Total
2011	\$610,376
2012	\$479,588
2013	\$476,483

### Record

9. The official record for this matter is made up of the following:
  - a. The digital recording of the hearing,
  - b. Exhibits:

Petitioner Exhibit 1 – Rental real estate income and expenses of a partnership or an S corporation – Form 8825 for 2010-2012  
Petitioner Exhibit 2 – 2010 subject property record card (“PRC”)  
Petitioner Exhibit 3 – Petitioner’s income & expenses analysis for 2010-2014  
Petitioner Exhibit 4 – Petitioner’s CoStar lease comp summary  
  
Respondent Exhibit 1 – 2011 IncomeWorks Evaluation Report

<sup>2</sup> Christopher Coakes was sworn as a witness but did not testify. Matthew Salsbery, Attorney for Tippecanoe County was in attendance to observe the hearing.

<sup>3</sup> It appears, because Respondent valued the subject property using the income approach, the PTABOA showed the total assessed value on the Form 115 as non-residential improvements. *Board Ex. A.*

Respondent Exhibit 2 – 2011 subject PRC  
Respondent Exhibit 3 – 2012 IncomeWorks Evaluation Report  
Respondent Exhibit 4 – 2012 subject PRC  
Respondent Exhibit 5 – 2013 IncomeWorks Evaluation Report  
Respondent Exhibit 6 – 2013 subject PRC  
Respondent Exhibit 7 – Respondent’s assessment equitability analysis  
Respondent Exhibit 8 – Respondent’s CoStar data to substantiate assessed value  
Respondent Exhibit 9 – Respondent’s bar graphs and spreadsheet showing 2009-2013 net operating income average per square foot,

Board Exhibit A – Form 131 petitions with attachments  
Board Exhibit B – Notices of hearing  
Board Exhibit C – Hearing sign-in sheets

c. These Findings and Conclusions.

### **Burden of Proof**

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 IC 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. Here, the parties agreed that the assessed value of the subject property did not increase by more than 5% from 2010 to 2011 and that Petitioner had the burden of proving the 2011 assessment was incorrect. The burden with regard to the 2012 assessed value depends on the resolution of the 2011 matter and will be addressed in turn. Likewise, the burden with regard to the 2013 assessed value depends on the resolution of the 2012 matter and will be addressed in turn.

### **Summary of Contentions**

15. Petitioner's case:
  - a. Ms. Garber presented an income approach to value. Mr. Smith provided her with real estate income and expense statements from the Petitioner's tax returns for 2010, 2011, and 2012. Ms. Graber constructed an income statement showing gross income and actual expenses for the years at issue from that information. She then compared it to the IncomeWorks Evaluation Report performed by the Respondent.<sup>4</sup> She stated that one of the major differences between the two calculations was that Respondent used net rent at \$16.99 per square foot, while she used gross income of \$10.95 per square foot for the 2011 assessment year. *Smith & Garber testimony; Pet'r Ex. 1 & 3.*
  - b. Mr. Smith testified that Ms. Graber's calculation shows that for 2011 the capitalized value of the subject property based on actual income and expenses should be \$610,376, not Respondent's proposed IncomeWorks value of \$1,487,717. For 2012, Petitioner argues the value should be \$479,588, not Respondent's proposed value of \$1,457,565. For 2013, Petitioner argues the value should be \$476,483, not Respondent's proposed value of \$1,539,540. *Smith testimony; Pet'r Ex. 3.*
  - c. Petitioner also searched CoStar for signed and executed leases between the years of 2007 and 2015 in the subject property's neighborhood. The lease comparison summary shows there were 15 deals with an average net asking rate of \$13.00 per square foot, with an average of 14 months on the market. CoStar also showed the net asking rent was at a low of \$8.00 per square foot, a high of \$22.00 per square foot, and a median rent of \$15.50 per square foot. The subject property, on the other hand, had a gross income of \$10.95 per square foot and a net income of \$6.25 per square foot. *Graber testimony; Pet'r Ex. 4.*

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<sup>4</sup> Ms. Graber referred to the Assessor's 2010 IncomeWorks evaluation report. Respondent emailed his exhibits and witness list to the Petitioner and Board on July 14, 2015, which included the 2010 IncomeWorks evaluation report. This report, however, was not offered into evidence at the Board hearing.

- d. Mr. Smith submitted the 2010 subject PRC to show that the assessed value was shown as \$933,100 in 2010 and in 2011 it increased to \$1,457,600. He stated that Respondent explained that the PRC for 2010 was in error and did not reflect the final value established by the Respondent's office. *Smith testimony.*

16. Respondent's case:

- a. Respondent used IncomeWorks to compute the value using the income approach. IncomeWorks predicts rents, vacancies, expenses, and rates of capitalization from aggregate data. It also allows the county to store independent rent studies and national CoStar rent studies. Respondent concluded from the aggregate data that the assessments for the years at issue are fair and accurate. *Grossman testimony; Resp't Ex. 9.*
- b. Respondent agrees the rents were overstated in determining the 2011, 2012, and 2013 assessments. After reviewing the county's rent studies, CoStar rents, equitability studies, and aggregate data, Petitioner's assessed values should be reduced to \$1,282,900 (rounded) in 2011, \$1,328,200 (rounded) in 2012, and \$1,366,500 (rounded) in 2013. *Grossman testimony; Resp't Ex. 7 & 9.*
- i. To compute the reduced assessment for 2011, Respondent determined the rent per square foot was \$15.87. He then applied a 14.88% vacancy rate, \$2.82 per square foot for expenses, and a capitalization rate of 8.75% to arrive at a value of \$1,282,870. *Resp't Ex. 7 & 9.*
- ii. To compute the reduced assessment for 2012, Respondent determined the rent per square foot was \$15.63. He then applied a 14.88% vacancy rate, \$2.87 per square foot for expenses, and a capitalization rate of 8.25%, for a value of \$1,328,249. *Resp't Ex. 7 & 9.*
- iii. To compute the reduced assessment for 2013, Respondent determined the rent per square foot was \$15.42. He then applied a 13.88% vacancy rate, \$2.87 per square foot for expenses, and a capitalization rate of 8% for a value of \$1,366,534. *Resp't Ex. 7 & 9.*
- c. Mr. Campbell testified that he conducted a rent and equitability study on the subject property. He determined the subject property is a multi-tenant retail strip center with typical suite build-outs ranging in size from 1,500 square feet to 2,500 square feet. He found several retail properties within 0.21 miles of the subject property that would be competing for similar type tenants. The equitability study showed the five year average rent for retail space for the area was \$15.65 per square foot.<sup>5</sup> *Campbell testimony; Resp't Ex. 7 & 9.*

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<sup>5</sup> Respondent's equitability study states that the comparable properties reviewed were mixed-use facilities with retail space on the first story and living space on the upper floors. So for purposes of his analysis, he only valued the square footage attributed to the retail space. *Resp't Ex. 7.*

- d. To further analyze the competitive market set of retail properties, Respondent used CoStar. Respondent sampled the subject area over a five year span. From the aggregate data, Respondent determined the five year triple net lease rate was \$15.65 per square foot. Mr. Campbell contends that for the subject property, rather than using the five year average, he is proposing that the assessed values for 2011, 2012, and 2013 be based on the individual year's average rent per square foot. *Campbell testimony; Resp't Ex. 7 & 8.*
- e. When questioned about her testimony on the subject property's 2011 actual net rent, Ms. Graber confirmed it was \$6.25 per square foot. Mr. Grossman argues that if the Petitioner's actual income is used to value the property, it would produce a value below market. *Grossman testimony.*
- f. Mr. Grossman explained that the 2010 PRC did not reflect the correct value because the county went through a software conversion. The 2010 value of record was established using IncomeWorks. Mr. Grossman contends the PRC is used as a "calculator" for the county's annual adjustment process. *Grossman testimony.*

### Analysis

- 17. 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.
- 18. 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 dates for 2011, 2012, and 2013 assessments were March 1, 2011, March 1, 2012, and March 1, 2013 respectively. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
- 19. Ms. Graber prepared an income approach valuation using Petitioner's actual income and expenses from 2010, 2011, and 2012. She used the actual amounts, except for the reserve

for replacement. For the capitalization rate, she used the average surveyed rates and then added in the tax rate to arrive at a final rate.<sup>6</sup>

20. Ms. Graber submitted a lease comparison summary for signed and executed leases between 2007 and 2015 in the subject property's neighborhood. Her analysis showed the average net asking rate is \$13.00 per square foot. It also showed the low net rate was \$8.00 per square foot. For 2011, she testified that the subject property's net rent was \$6.25 per square foot.
21. In valuing a property under the income approach, it is appropriate to consider the historic and projected income and expense data of the property in question. It is also necessary to consider that same kind of data from other comparable properties in order to make accurate, realistic projections about the income stream a property should be expected to produce. Where the income and expense data for the subject property is not consistent with what the market data shows, generally accepted appraisal principles require further examination and analysis. For example, considering both types of income and expenses helps to protect against distortions and inaccurate value estimates that might be caused by extraneous factors (such as bad management or poor business decisions) that have nothing to do with the inherent value of a property. *See Indiana MHC, LLC v. Scott County Assessor*, 987 N.E.2d 1182, 1186 (Ind. Tax Ct. 2013).
22. Here, Petitioner failed to establish that its 2011, 2012, and 2013 income approaches to value calculations conform to generally accepted appraisal principles. Although Ms. Graber was identified as a general appraiser, the record does not establish that she did an appraisal of the subject property or that her "capitalized value" for the property was computed according to generally accepted appraisal principles. She failed to explain why no deduction was made for vacancy and collection loss. She did not explain how she determined her capitalization rate or reserves for replacement. *See Grabbe v. Carroll County Assessor*, 1 N.E.3d 226, 231 (Ind. Tax Ct. 2013) (upholding determination that income approach lacked probative value where taxpayer failed to provide evidence demonstrating why 20% capitalization rate was proper). Thus, the Board is unable to determine if the calculations are representative of the local market.
23. Ms. Graber also failed to explain the reasons why the subject property's net rent was \$6.25 per square foot, while her CoStar lease comp summary showed other leased properties had an average net asking rate of \$13.00 per square foot in the subject property's neighborhood.
24. Accordingly, Petitioner failed to make a prima facie case that the assessed value for 2011 is incorrect. Because the Petitioner failed to prove the incorrectness of the assessment at issue, Respondent's duty to prove the correctness of the assessments with substantial

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<sup>6</sup> For 2011, she deducted \$7,188 as wages & salaries, when it actually appears on the Petitioner's tax return as depreciation.

evidence was not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003).

25. Because the assessed value increased by less than 5% between 2011 and 2012, Petitioner also has the burden of proof for 2012. Petitioners relied on the same evidence and arguments for 2012 as for 2011. The Board reaches the same conclusion. The Petitioners failed to make a prima facie case that the assessed value for 2012 is incorrect.
26. Because the assessed value increased by more than 5% between 2012 and 2013, Respondent has the burden of proof for the 2013 assessment year.
27. Respondent used data collected by IncomeWorks to determine the 2013 assessed value. While Respondent asserted that IncomeWorks uses data from properties that are similar in age, condition, design, quality, amenities, and have similar locations, Respondent failed to relate the properties' specific features and characteristics to the subject property. Specific reasons must be provided as to why a proponent believes a property is comparable. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of two properties.
28. Respondent also failed to specifically explain how the capitalization rate was derived. A capitalization rate "reflects the annual rate of return necessary to attract investment capital and is influenced by such factors as apparent risk, market attitudes toward future inflation, the prospective rates of return for alternative investments, the rate of return earned by comparable properties in the past, the supply of and demand for mortgage funds, and the availability of tax shelters." *See Hometown Assay's, L.P. v. Maley*, 839 N.E.2d 269, 275 (Ind. Tax Ct. 2005).
29. As part of making a prima facie case, "it is the taxpayer's duty to walk the [Board] through every element of [its] analysis." *Long*, 821 N.E.2d at 471 (quoting *Clark v. Dep't of Local Gov't Fin.*, 779 N.E.2d 1277, 1282 n. 4 (Ind. Tax Ct. 2002)). This requirement applies equally to an assessor bearing the burden. Here, the record contains no basis for the selection of any of the factors discussed herein, and there is no evidence that the report at issue was prepared according to generally accepted appraisal principles.
30. Respondent's income approach did not provide probative evidence of the subject property's market value-in-use for the 2013 assessment. Further, Respondent failed to walk the Board through every element of the income approach analysis as required by *Long*, and did not demonstrate that it conforms to generally accepted appraisal and assessment principles. IncomeWorks may be a valid tool for delivering a calculation of value, but Respondent failed to prove it. Furthermore, a party introducing a report produced by such a software tool must also show that the underlying data used by the software are reliable to the conclusion and constitute probative evidence of a property's market value-in-use.

31. Because Respondent failed to offer probative evidence to show market value-in-use, he failed to make a prima facie case that the 2013 assessed value is correct. Therefore, Petitioner is entitled to have the assessment level returned to the 2012 amount. Petitioner requested that the 2013 value be assessed at a level lower than the 2012 level, but Petitioner failed to make a prima facie case for any lower value.

### **Conclusion**

32. For 2011 and 2012, Petitioner failed to make a prima facie case that the assessed values are incorrect. For 2013, Respondent failed to make a prima facie case that the assessed value is correct and Petitioner failed to make a case that it should be lower than the 2012 assessed value
33. Nonetheless, as discussed previously, Respondent concedes that, based on its various income studies, the assessed values should be reduced to \$1,282,900 for 2011 and \$1,328,200 in 2012 respectively. For 2013, the assessed value should revert to the 2012 assessed value, which, as discussed, Respondent concedes should be \$1,328,200. The Board accepts these concessions.

### **Final Determination**

34. The 2011, 2012, and 2013 assessed values should be \$1,282,900, \$1,328,200, and \$1,328,200 respectively.

ISSUED: December 18, 2015

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Chairman,  
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

## IMPORTANT NOTICE

- APPEAL RIGHTS -

**You may petition for judicial review of this final determination pursuant to 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 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/bills/2007/SE0287.1.html>.**