

REPRESENTATIVE FOR PETITIONER:  
Milo E. Smith, Tax Representative

REPRESENTATIVE FOR RESPONDENT:  
Marilyn Meighen, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Hick's Properties of Indiana, Inc.	)	Petition Nos.:	47-010-11-1-4-00061
	)		47-010-11-1-4-00062
Petitioner,	)		47-010-11-1-4-00064
	)		47-010-11-1-4-00065
	)		47-010-11-1-4-00067
	)		
	)	Parcel Nos.:	47-06-15-100-105.000-010
v.	)		47-06-15-100-069.000-010
	)		47-06-15-100-078.000-010
	)		47-06-15-100-077.000-010
	)		47-06-15-100-076.000-010
	)		
	)	County:	Lawrence
	)		
Lawrence County Assessor	)	Township:	Shawswick
	)		
Respondent.	)	Assessment Year:	2011

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Appeal from the Final Determinations of the  
Lawrence County Property Tax Assessment Board of Appeals

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November 10, 2015

**FINAL DETERMINATION**

The Indiana Board of Tax Review ("Board"), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### PROCEDURAL HISTORY

1. In this assessment appeal, Hick's Properties of Indiana, Inc. ("Petitioner") contested the 2011 assessments for the above-captioned parcels. On January 11, 2013, the Lawrence County Property Tax Assessment Board of Appeals ("PTABOA") issued its determinations. Petitioner timely filed Form 131 petitions with the Board on February 1, 2013.

### HEARING FACTS AND OTHER MATTERS OF RECORD

2. A hearing was held on August 12, 2015, by the Board's administrative law judge ("ALJ"), Jacob Robinson. Neither the Board nor the ALJ inspected the subject property.
3. Tax representative Milo Smith represented Petitioner and was sworn. Attorney Marilyn Meighen represented the Lawrence County Assessor ("Respondent"). Kirk Reller was sworn and testified for Respondent.<sup>1</sup>
4. Petitioner submitted the following exhibits:

Petitioner Exhibit 1:	2011 property record card ("PRC") for Parcel No. 47-06-15-100-078.000-010
Petitioner Exhibit 2:	2011 PRC for Parcel No. 47-06-15-100-069.000-010
Petitioner Exhibit 3:	2011 PRC for Parcel No. 47-06-15-100-076.000-010
Petitioner Exhibit 4:	2011 PRC for Parcel No. 47-06-15-100-077.000-010
Petitioner Exhibit 5:	2011 PRC for Parcel No. 47-06-15-100-105.000-010
Petitioner Exhibit 6:	Actual income information
Petitioner Exhibit 7:	Data analysis of the subject assessments

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<sup>1</sup> April Stapp Collins, Lawrence County Assessor, was sworn, but did not testify at the hearing.

- Petitioner Exhibit 8: 2011 Real Property Assessment Manual at Page 3
- Petitioner Exhibit 1R: Email from Respondent's counsel dated August 5, 2015, with Respondent's income analysis attachment
- Petitioner Exhibit 2R: Excerpt from Appraisal Institute, The Appraisal of Real Estate (11<sup>th</sup> Edition)
- Petitioner Exhibit 3R: Copy of Ind. Code § 6-1.1-4-39

5. Respondent submitted the following exhibits:

- Respondent Exhibit A1: Income analysis
- Respondent Exhibit A2: Lawrence County rental data
- Respondent Exhibit A3: Excerpt from Tikijian Associates 2012 Indiana Apartment Market Overview
- Respondent Exhibit A4: Excerpt from CBRE capitalization rate survey dated February 2012

6. The following items are also recognized as part of the record:

- Board Exhibit A: Form 131 petitions and attachments
- Board Exhibit B: Notices of hearing
- Board Exhibit C: Hearing sign-in sheet

7. The subject property consists of several residential apartment buildings containing 44 total rental units located at 2505 6<sup>th</sup> Street in Bedford.

8. The PTABOA determined the assessed values of the subject property to be:

Parcel No. 47-06-15-100-105.000-010:		
Land \$55,800	Improvements \$396,800	Total \$452,600
Parcel No. 47-06-15-100-069.000-010:		
Land \$88,900	Improvements \$587,200	Total \$676,100
Parcel No. 47-06-15-100-078.000-010:		
Land \$24,300	Improvements \$274,800	Total \$299,100
Parcel No. 47-06-15-100-077.000-010:		
Land \$17,700	Improvements \$137,400	Total \$155,100
Parcel No. 47-06-15-100-076.000-010:		
Land \$23,500	Improvements \$138,800	Total \$162,300

The total assessed value for all five parcels was \$1,745,200. Petitioner contends that the total assessed value should be \$1,514,500.

### **BURDEN OF PROOF**

9. 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.
10. 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).
11. 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).

12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
13. The parties agreed on the record that Petitioner has the burden of proof in this appeal.

#### **SUMMARY OF PETITIONER'S CONTENTIONS**

14. Petitioner contends that the subject property was over-assessed in 2011. Ind. Code § 6-1.1-4-39 states that the value of this type of rental property is to be determined by using the lowest value calculated under the three acceptable approaches. Petitioner believes that in this case, the income approach results in the lowest value. Petitioner also contends that the subject property should be assessed based upon its actual rental income when using the income approach. Based on the Appraisal Institute, one should analyze the property's income streams. Petitioner interprets this to mean the actual income received from the property should be considered as opposed to its potential income as shown by the market. *Smith testimony; Pet'r Exs. 2R and 3R.*
15. Petitioner adopted Respondent's calculation of the 2010 net operating income ("NOI"). Respondent calculated an NOI of \$159,025 using Petitioner's actual income and expenses. Petitioner agrees with Respondent's individual NOI calculations for 2010, 2011, and 2012. But, Petitioner disputes Respondent's choice to use an average of all three years because the NOIs reported for 2011 and 2012 use income from a period of time after the March 1, 2011 assessment date, making them irrelevant to the year under appeal. *Smith testimony; Pet'r Exs. 7 and 1R.*
16. Petitioner generally agrees with the 9.5% and 10% capitalization rates used by Respondent. Petitioner believes, however, that the Marcus and Millichap capitalization rate of approximately 8% (assumed to be 8.5%) is the correct rate to use for 2011. Adding Respondent's effective tax rate calculation of 2% results in a loaded capitalization rate of 10.5%. Dividing the 2010 NOI of \$159,025 by the loaded

capitalization rate of 10.5% produces a total value of \$1,514,500. Petitioner requests that the total assessment for 2011 be reduced to that amount. *Smith testimony; Pet'r Exs. 7 and 1R.*

#### **SUMMARY OF RESPONDENT'S CONTENTIONS**

17. Respondent engaged Kirk Reller to establish a value for the subject property. Mr. Reller has worked in real estate since graduating from Indiana University. He is currently a Level III assessor and has been a Level II assessor since 1987, providing his services to more than twenty Indiana counties. Mr. Reller has worked as an appraisal contractor for Lawrence County since 1993. *Reller testimony.*
18. The properties under appeal consist of 4 to 6 unit rental properties. They are being treated as one property for purposes of this appeal and have a combined total assessment for 2011 of \$1,745,200. Respondent used both a cost approach and an income approach, but ultimately based the actual assessment on the cost approach because it produced the lower of the two values. Respondent did not develop a sales comparison approach because there were no sales of multi-family properties with more than four units in Lawrence County. *Reller testimony; Resp't Ex. A1.*
19. A potential investor ideally looks at the market as a whole to estimate a property's potential income. Investors want to value a property exclusive of variations due to management or expenses unique to the property. Capitalization rates reflect varying levels of investment risk, with higher capitalization rates representing higher risk. There are multiple real estate surveys that provide different capitalization rates broken down by classes of property. Class A is an investment grade apartment, Class B is an average apartment, and Class C is a lower-end apartment. CBRE's survey from February 2012 found a stabilized unloaded capitalization rate of 7-7.5% for Class B properties in Indianapolis. It also shows that the trend has been flat and will continue to be flat. Marcus & Millichap's Indianapolis market survey found a capitalization rate in the

approximate 8% range. Respondent chose an unloaded capitalization rate of 7-7.5% since there was very little change from 2011 to 2012. To load the capitalization rate, Respondent added the 2% property tax rate. It was then adjusted upward by an additional 0.5% which resulted in a loaded capitalization rate between 9.5 and 10%. *Reller testimony; Resp't Ex. A4.*

20. Respondent's income analysis lists the parcels, their individual assessments, and a description of each. There are 44 total units with an average assessed value of \$39,663 per unit. Respondent's analysis involved extracting and reconstructing actual income and expense data provided by Petitioner for 2010, 2011, and 2012. Respondent's exhibit shows total rental income for each of those years and a monthly per unit rental value, but does not include a breakdown of Petitioner's gross income or vacancy rates.
21. Deductions for non-allowable expenses including depreciation, interest, and property taxes, along with deductions for allowable expenses, were made to calculate the NOI. The resulting NOIs are based solely on the income and expenses provided by Petitioner. To stabilize the NOI to account for the extraordinary sewer expense in 2010, Respondent added the expense back in and then averaged the three years. The resulting stabilized NOI was roughly \$175,000. Applying the capitalization rates of 9.5% and 10% produced a range of values between \$1,750,000 to \$1,842,800. *Reller testimony; Resp't Ex. A1.*
22. Petitioner believes that only actual rental income should be used, but Respondent contends that incorporating market data is necessary when employing the income approach. To support this contention, Respondent cited *Indiana MHC, LLC v. Scott Co. Ass'r*, 987 N.E.2d 1182 (Ind. Tax Ct. 2013) and *Lantern Partners, LLC v. Hamilton County Ass'r*, Pet. No.29-006-10-1-4-00198 (IBTR January 21, 2015).
23. Respondent did a market survey and obtained as much data from the market as possible. Respondent also talked to tenants and managers as part of the survey process. Many of the properties identified in the market survey are Section 515 rural housing and Section 42 low income housing, which are rent restricted. Respondent relied on the market

survey to develop and support a market rate for the income approach, but excluded the Section 515 and Section 42 properties. *Meighen argument; Reller testimony; Resp't Ex. A2.*

24. While Petitioner's actual rents average \$513 per unit, Respondent's market analysis showed that market rates for two bedroom units are actually closer to \$525 per month. Based on this market data, Respondent found that Petitioner's 44 units rented at \$525 per month, less a 6% vacancy factor, would result in an effective gross income of \$260,568. The typical operating expense ratio in the market is approximately 30%, which is close to Petitioner's actual ratios. This resulted in an NOI of \$182,398. Applying the capitalization rates of 9.5% and 10% produced a range of values from \$1,823,980 to \$1,919,980. *Reller testimony; Resp't Ex. A1.*

#### **DISCUSSION AND ANALYSIS**

25. The Indiana legislature has enacted a specific statute for the valuation of rental property. Indiana Code § 6-1.1-4-39(a) provides as follows:
- (a) For assessment dates after February 28, 2005, except as provided in subsections (c) and (e), the true tax value of real property regularly used to rent or otherwise furnish residential accommodations for periods of thirty (30) days or more and that has more than four (4) rental units is the lowest valuation determined by applying each of the following appraisal approaches:
    - (1) Cost approach that includes an estimated reproduction or replacement cost of buildings and land improvements as of the date of valuation together with estimates of the losses in value that have taken place due to wear and tear, design and plan, or neighborhood influences.
    - (2) Sales comparison approach, using data for generally comparable property.
    - (3) Income capitalization approach, using an applicable capitalization method and appropriate capitalization rates that are developed and used in computations that lead to an indication of value commensurate with the risks for the subject property use.

Ind. Code § 6-1.1-4-39(a).



26. Regardless of the method used to prove 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 a 2011 assessment was March 1, 2011. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
27. As explained above, Petitioner had the burden of proving what the correct assessment should be for 2011. Petitioner presented an income approach to value and requested a total assessment of \$1,514,500. The income approach converts an estimate of rental income the property is expected to produce into value through a mathematical process known as capitalization. 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The income approach to value is based on the assumption that potential buyers will pay no more for the subject property than it would cost them to purchase an equally desirable substitute investment that offers the same return and risk. It considers the subject property as an investment and its value is based on the rent it will produce for the owner. MANUAL at 10.
28. Petitioner contends that the subject property should be assessed based solely upon its actual rental income. Nevertheless, the tax court has explained, "to provide a sound value indication under the income capitalization approach, one must not only examine the historical and current income, expenses, and occupancy rates for the subject property, but the income, expenses and occupancy rates of comparable properties in the market as well." *Indiana MHC, LLC v. Scott Co. Ass'r*, 987 N.E.2d 1182, 1185-86 (Ind. Tax Ct. 2013). Thus, Petitioner's income capitalization approach lacks probative value because it does not consider market rents from comparable properties.<sup>2</sup>

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<sup>2</sup> The actual rents of a property are, of course, an indicator of market value, just as a sale of a property is market evidence in the sales comparison approach. But the calculation of NOI involves more variables than market rent and only an examination of comparable properties will provide a sound indication of value.

29. Even if Petitioner had shown that using only actual rental income was an acceptable method for calculating market value-in-use, Petitioner's calculations rely exclusively on Respondent's capitalization rate analysis. But, Respondent failed to provide sufficient support for the selected capitalization rates, and Petitioner did nothing to correct this deficiency when adopting the analysis.
  
30. Specifically, neither party explained how a capitalization rate for the Indianapolis market is in any way relevant to the subject property's market. They failed to discuss any of the qualities or characteristics that differentiate the three classes of property from one another or why the subject property is assigned to the Class B category. While Petitioner introduced a version of Respondent's income analysis summary in which a Marcus & Millichap market survey of Indianapolis capitalization rates was cited, the survey itself was not introduced as evidence by either party. The Board therefore finds the 8.5% unloaded capitalization rate utilized by Petitioner to be unsupported by the evidence. Thus, Petitioner's loaded capitalization rate of 10.5% is equally unsupported, making the value conclusion unreliable.
  
31. Because Petitioner did not offer probative evidence to prove the market value-in-use of the subject property, it failed to make a prima facie case that the 2011 assessment was incorrect. Where Petitioner has not supported its claim with probative evidence, Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

**SUMMARY OF FINAL DETERMINATION**

32. Petitioner did not make a prima facie case for reducing the subject property's 2011 assessment. The Board therefore finds for Respondent.

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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

**- 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>>.