

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

**Petition:** 20-015-18-1-5-00954-19  
**Petitioners:** My Properties, LLC  
**Respondent:** Elkhart County Assessor  
**Parcel:** 20-11-08-478-019.000-015  
**Assessment Year:** 2018

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

**PROCEDURAL HISTORY**

1. My Properties, LLC (“My Properties”) appealed its 2018 assessment of \$102,500 for a four-unit apartment building located at 521 Dewey Avenue in Goshen to the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) which denied the appeal and issued a decision with no change in the assessed value. My Properties timely appealed to the Board, electing to proceed under the Board’s small claims’ procedures.
2. On August 5, 2020, Joseph Stanford, Administrative Law Judge (“ALJ”) heard the case telephonically. Neither the Board nor the ALJ inspected the property.
3. Myron Borntrager, President, appeared for My Properties and was sworn as a witness. Attorney Beth Henkel represented the Assessor. Gavin Fisher, an Indiana licensed residential appraiser, was sworn as the Assessor’s witness.

**RECORD**

4. The official record for this matter is comprised of the following:

Petitioner Exhibit 1:	Assessor’s Evaluation Form
Petitioner Exhibit 2:	Rental data collection sheet
Respondent Exhibit R-1:	Appraisal of Subject Property
Respondent Exhibit R-2:	Property Record Card of Subject

5. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders, and notices issued by the Board or ALJ; and (3) these findings and conclusions.

## OBJECTIONS

6. My Properties objected to the Assessor's appraisal, Exhibit R-1, contending that it was inaccurate and that the appraiser used a property as a comparable to the subject although it had no similar features. We interpret the objection as an objection to relevance. The Assessor argued that the appraisal complied with the Uniform Standards of Professional Appraisal Practice ("USPAP") and was relevant to the subject property's market value-in-use. Further, she contended that the objection My Properties raised addressed the weight of the appraisal, not its admissibility.
7. The ALJ overruled the objection at the hearing and admitted the appraisal into the record. The appraisal is relevant. The objection My Properties raised indeed addressed the weight of the evidence, not its admissibility. We affirm the ALJ's ruling admitting the appraisal.

## SUMMARY OF CONTENTIONS

8. **The Assessor:**
  - a. The Assessor contended that the 2018 assessed value is too low and provided a USPAP-compliant appraisal prepared and supported with testimony from Gavin Fisher, an Indiana licensed residential appraisal. He estimated the value as of January 1, 2018 at \$145,000. *Fisher testimony, Resp't Ex. R-1.*
  - b. Fisher developed the income and sales comparison approaches to value. He applied a gross rent multiplier ("GRM") of 57.5 to a market rent of \$2500 per month. He extracted the GRM from market data using properties he contended were comparable to the subject. The three properties he used were all converted to apartment units and were over 100 years old, like the subject. All three comparisons were in the urban Goshen rental market. Fisher's income approach yielded a value of \$143,750. *Fisher testimony; Resp't Ex. R-1.*
  - c. Fisher gave some consideration to the sales comparison approach. In developing it, he relied on the same three properties as comparable sales. He adjusted to account for differences in the number of rental units. He noted that the most significant characteristic requiring adjustment for all the rental properties was the number of units. This approach yielded a value of \$150,000. *Fisher testimony; Resp't Ex. R-1.*
  - d. Fisher testified that he relied most heavily on the GRM and income approach to determine market value-in-use. The GRM is preferred for rental properties with between one and four units. He calculated a final value of \$145,000. *Fisher testimony; Resp't Ex. R-1.*
  - e. Fisher acknowledged an error in square footage in the appraisal. While the appraisal reflected square footage for the subject at 4,244 square feet, its property

record card noted 2,256 square feet. He testified that the single most significant factor in value however, was not square footage, but the number of rental units. He contended that while square footage would be more relevant for a single-family residence, or an owner-occupied unit, it is not significant to market rentals, as renters look for basic requirements to meet their needs, such as number of bedrooms. The apartment rental market is not driven by square footage. Additionally, while the sales comparison and cost approaches might directly rely upon square footage to determine value, the income approach does not directly rely on it in determining value. He put the most weight on the income approach, using the GRM. *Fisher testimony. Resp't Exs. R-1, R-2.*

**9. My Properties:**

- a. My Properties contended that the subject property's assessed value is too high. The Assessor should base the assessed value on the property's actual rental data of \$1,400, and not market rent. When Fisher's GRM of 57.5 is applied, the resulting value should be \$80,500. *Borntrager testimony.*
- b. The Assessor offered an appraisal that includes a significant mistake which renders its findings to be irrelevant. Fisher wrote the appraisal noting 4,244 square feet when the property record card reflects only 2,256 square feet for the subject. *Borntrager testimony; Pet'r. Ex. 1, 2.*
- c. My Properties argued that Fisher used properties as comparables when they were not similar to the subject. The rental unit sizes are larger and thus they command higher rents. One of the subject property's units is an efficiency with 200 square feet. It does not rent for the same value as a regular-sized one-bedroom apartment. *Borntrager testimony.*

**BURDEN OF PROOF**

10. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003). Ind. Code § 6-1.1-15-17.2 provides however, that when a subject property's assessed value increases by more than 5% from the prior year, then the Assessor must make a prima facie case that the assessed value is correct. In this appeal, the 2018 assessed value was \$102,500 and the prior year, 2017, the assessed value was \$81,300. The Assessor acknowledged that the 2018 assessed value exceeded a 5% increase from the prior year and accepted the burden. We agree that the Assessor has the burden.

## ANALYSIS

11. The Assessor did not meet her burden of proof to increase the assessed value to her requested amount of \$145,000, because the appraisal she offered contained a serious flaw that significantly reduced its probative value. The appraiser's testimony did not sufficiently overcome My Properties' successful impeachment of its credibility. Thus, she offered no evidence to prove either that the 2018 assessed value of \$102,500 was correct or that the assessed value should be raised.
  - a. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). 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, but other evidence is permitted to prove an accurate 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.
  - b. Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For this appeal, the valuation date was January 1, 2018. *See* Ind. Code § 6-1.1-2-1.5.
  - c. The most effective method to establish value can be through the presentation of a market value-in-use appraisal, completed in conformance with USPAP. *O'Donnell*, 854 N.E.2d at 94. Here, the Assessor offered a USPAP-compliant appraisal prepared by Gavin Fisher, an Indiana licensed residential appraiser but it contained a significant underlying flaw that seriously decreased its probative value. Fisher estimated the subject property's market value-in-use to be \$145,000 retrospective to January 1, 2018.
  - d. Fisher discussed key aspects of his appraisal, noting that he chose three similar converted properties over 100 years old in the same market area with similar physical conditions in developing both his income and sales comparison approaches. He adjusted for the number of units and calculated a GRM, reaching a value of \$143,750 for the income approach.
  - e. In developing the sales comparison approach, he used the same three properties. Two sold within six months of the subject's assessed valuation date, and the other sold within two years in a stable market. He did not make a time adjustment. He adjusted valuations only based upon the number of units in each property to reach a valuation of \$150,000.

- f. For his final valuation, he placed the most weight on the income approach. Ind. Code § 6-1.1-4-39 (b) states that the preferred method of valuation for buildings with between one and four rental units is the GRM which Fisher used. For his final reconciled value retrospective to January 1, 2018, Fisher calculated market value-in-use at \$145,000, relying most upon the income approach. While this part of his appraisal could have been sound, the appraisal contained a significant underlying error which My Properties successfully used to impeach its probative value.
- g. My Properties argued that the appraisal was seriously flawed to the point it had no probative value. Fisher admitted that the square footage upon which he based his valuation of the subject property reflected 4,244 instead of 2,256, almost double the actual square footage on the subject's property record card. Indeed, this was a serious error. It substantially detracted from the appraisal's reliability and probative value.
- h. The Assessor attempted to salvage the appraisal's probative weight through Fisher's testimony that the most significant factor relative to the income approach for his appraisal was the number of units and the market rent reflected for each. He contended that the calculation of the income approach is not directly related to square footage. If the subject property had been a single-family home or an owner-occupied unit, he testified that square footage would impact the market for those properties. He noted that square footage is directly relevant to the cost approach and to some extent, sales comparisons. Fisher did develop and use the sales comparison approach in his appraisal, however, and thus the erroneous nearly doubling in size in square footage is relevant and significant, creating serious doubt about the probative value of the appraisal in general.
- i. My Properties also pointed out that one of its rental units is only 200 square feet and rented as an efficiency. While Fisher contended that all one-bedroom apartments are equally desirable to tenants, and that an efficiency unit's rental value is the same as a larger one-bedroom unit, this argument is without market data to support that proposition. Thus, the basis upon which Fisher developed the income approach to value was also flawed, as he made no adjustments for significant differences in square footage. My Properties successfully impeached the credibility of the appraisal, leaving the Assessor without sufficient evidence to support either her request to raise the assessed value to \$145,000 or to maintain the property's original assessed value of \$102,500 for 2018.
- j. When an assessor does not meet her burden of proof, and the taxpayer does not provide evidence of another market value-in-use, the assessed value reverts to the prior year's assessed value. Ind. Code § 6-1.1-15-17.2 (b). For this property, the prior year's assessed value was \$81,300.

## CONCLUSION

12. The Board finds that the Assessor did not meet her burden of proof that the 2018 assessed value of \$102,500 was correct or to merit raising the assessed value to her requested amount of \$145,000. While she provided a USPAP-compliant appraisal supported by testimony by an Indiana licensed residential appraiser, the appraisal had serious flaws, including an error of noting the subject property at almost double its actual square footage, which My Properties used to impeach its probative value. The Assessor did not successfully rebut their contentions. When the Assessor does not meet her burden of proof, the assessed value reverts to the prior year's value. In this appeal, the property's assessed value the prior year was \$81,300.

## FINAL DETERMINATION

In accordance with the above findings and conclusions, the Board finds for My Properties and orders the 2018 assessed value to be changed to the assessed value from the prior year, to \$81,300.

ISSUED: November 4, 2020

---

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>>.