

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

Petition: 20-015-18-1-5-00955-19
Petitioners: My Properties, LLC
Respondent: Elkhart County Assessor
Parcel: 20-11-16-478-006.000-015
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 \$103,300 for a three-unit apartment building located at 1601 South Main Street 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.

OBJECTION

6. My Properties objected to the Assessor's appraisal, Exhibit R-1, contending that it was not relevant to the subject property. 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 \$103,500. *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 \$1,800 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 \$103,500. *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 value of all the rental properties was the number of units. This approach yielded a value of \$105,000. *Fisher testimony; Resp't Ex. R-1.*
 - d. Fisher testified that he relied most heavily on the GRM variation of the income approach to determine market value-in-use for rental properties with between one and four units. He calculated a final value of \$103,500. *Fisher testimony; Resp't Ex. R-1.*
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 \$1,310, and not market rent. Fisher did not view the interior to see its lower quality finishes that detract from the property's ability to earn market rent. *Borntrager testimony, Pet'r. Exs. 1, 2.*

- b. My Properties argued that the appraisal did not account for the specific features of the subject property that detract from its ability to capture higher rents. One of the apartments is in the basement which significantly impairs its marketability at higher rents and the upstairs apartment is limited by its sloped ceilings because it is only one and a half stories high. The assessed value should be lower because of these features which detract from the property's ability to generate income. *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 \$103,300 and the prior year, 2017, the assessed value was \$88,800. 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 met her burden of proof that the 2018 assessed value of \$103,500 in the appraisal was correct. My Properties did not rebut her evidence to make a prima facie case that the assessed value was incorrect.
 - 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. Fisher estimated the subject property's market value-in-use to be \$103,500 retrospective to January 1, 2018.

- d. In his testimony, 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 \$103,500 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 adjusted valuations only based upon the number of units in each property to reach a valuation of \$105,000.
- 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 units is the GRM which Fisher used. For his final reconciled value retrospective to January 1, 2018, Fisher calculated market value-in-use at \$103,500, relying most upon the income approach.
- g. The Assessor met her burden of proof that the assessed value of \$103,500 for 2018 was correct. Fisher offered a USPAP-compliant appraisal relying most upon the preferred methodology, the GRM, a variation of the income approach, to determine value. Ind. Code § 6-1.1-4-39 (b) He also developed the sales comparison approach, using three comparable properties which he explained were all similar in age to the subject, and then he adjusted for the number of units in each. My Properties provided no evidence other than conclusory statements that the appraisal was not relevant, and that Fisher should have used actual rent, rather than market rent, which is not correct. *See Indiana MHC LLC. v. Scott County*, 987 N.E.2d 1182, 1185-1186 (Ind. Tax Court 2013). Additionally, My Properties has failed to provide evidence that establishes the subject property is substantially inferior to Fisher's comparables.
- h. The Assessor requested an increase in assessed value and met her burden of proof to merit an increase from the original assessed value of \$103,300 to \$103,500.

CONCLUSION

- 12. The Assessor made a prima facie case that the 2018 assessed value of \$103,500 was correct. She provided a USPAP-compliant appraisal which developed the income approach using the preferred GRM method as described in Ind. Code § 6-1.1-4-39 (b) and the sales comparison approach. She further supported the appraisal with testimony by an Indiana licensed residential appraiser. My Properties did not rebut her evidence to provide proof that the assessed value was wrong or of a different market value-in-use.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the Board finds for the Assessor and orders the 2018 assessed value for the subject property to be changed to \$103,500 to reflect the market value-in-use in the appraisal.

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>>.