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

Petition Nos.:	**03-005-16-1-5-01514-17**
	03-005-17-1-5-01513-17
Petitioner:	**546 Investments, LLC**
Respondent:	**Bartholomew County Assessor**
Parcel Nos.:	**03-95-24-340-900.003-005**
Assessment Yrs.:	**2016 and 2017**

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

PROCEDURAL HISTORY

1. 546 Investments, LLC ("Investments") challenged its assessment on grounds that the Bartholomew County Assessor should have used a gross rent multiplier ("GRM") to value its property for the 2016 and 2017 assessment years. On July 5, 2016, and May 8, 2017, the Bartholomew County Property Tax Assessment Board of Appeals ("PTABOA") issued determinations upholding the assessments. Investments responded by timely filing Form 131 petitions with the Board, electing our small claims procedures.

2. On October 3, 2018, our designated administrative law judge, Jeremy Owens ("ALJ"), held a hearing on the petitions. Neither he nor the Board inspected the property. The following people testified under oath: Bartholomew County Assessor Gordon Wilson; Virginia Whipple; and Milo Smith, Investment's certified tax representative.

3. The Assessor valued the property as follows:

Land: $0 Improvements: $209,600 Total: $209,600

RECORD

4. The parties offered the following exhibits:

Petitioner's Exhibit 1:	2017 property record card ("PRC") for Investments' condominium
Petitioner's Exhibit 2:	Spreadsheet summarizing sale and assessment information for The Lofts and 546 Lofts, together with PRCs

Petitioner's Exhibit 3:	August 24, 2007 memorandum from the Department of Local Government Finance and the Board
Petitioner's Exhibit GRM1:	Gross Rent Multiplier SOP
Petitioner's Exhibit A1:	List of GRMs by neighborhood
Petitioner's Exhibit C1:	Excerpts from 2011 Real Property Assessment Guidelines
Respondent's Exhibit A:	Wilson and Whipple resumes
Respondent's Exhibit B:	Statement of Professionalism
Respondent's Exhibit C:	2015 PRC
Respondent's Exhibit D:	2016 PRC
Respondent's Exhibit D1:	2017 PRC
Respondent's Exhibit E:	Photograph of 546 Lofts building

5. The record also includes the following: (1) all petitions, motions, briefs, or other documents filed in these appeals; (2) all orders and notices issued by the Board or our ALJ; and (3) a digital recording of the hearing.

OBJECTION

6. The Assessor objected to Petitioner's Exhibits GRM1 and A1—documents from the Assessor's office describing standard operating procedures for determining GRMs (GRM1) and a list of GRMs by neighborhood (A1)—because Investments did not give him copies of those exhibits before the hearing.

7. If requested more than 10 business days before a hearing, a party must, at least five business days before the hearing, give all other parties copies of any documents it intends to offer and names and addresses of any witnesses it intends to call. 52 IAC 3-1-5(d). Although we may exclude evidence for failure to comply with those requirements,[1] we generally will not do so without some showing of prejudice.

8. Virginia Whipple testified that the Assessor requested Investments' evidence but did not receive either exhibit before the hearing. Her testimony on that point was vague, and it is unclear when the Assessor made his request. In any case, Smith testified that he received one exhibit at the PTABOA hearing and that the Assessor provided him with the other one. The Assessor knew Investments was claiming that he should have used a GRM to assess the property. We see little prejudice from Investments offering the Assessor's own GRM policy and data even where it did not exchange those documents in advance of the hearing. Consequently, we overrule this objection.

[1] *See* 52 IAC 3-1-5(f)

CONTENTIONS

Summary of Investments' contentions

9. Investments' property is a 1,313-square-foot condominium located in a building known as 546 Lofts. It is located at 546 Washington Street in Columbus. The condominium rents for $1,375 per month. *Smith testimony; Pet'r Ex. 1*.

10. By statute, the GRM method is the preferred method for valuing real property that has between one and four residential rental units. But Investments points to an August 24, 2007 memo issued by the Commissioner of the Department of Local Government Finance and two members of the Board ("DLGF memo"). According to Investments, that memo actually requires assessors to use GRMs to assess those properties. Dividing the assessment for Investments' condominium by its monthly rent leaves a GRM of 152. In 2014, the highest GRM used to assess any property in Bartholomew County was 102.27. In 2018, the highest GRM was 100. Applying a GRM of 102.27 to the monthly rent for Investments' condominium yields a value of $140,600 (rounded). *Smith testimony and argument; Pet'r Exs. 3, GRM 1, A1*.

11. If we do not value the property using a GRM, Investments argues that we should value it based on the 2011 Real Property Assessment Guidelines. Investments points to Appendix F from the Guidelines, which addresses how to (1) determine the actual age for a commercial or industrial structure, (2) translate that actual age into an effective age, and (3) assign a depreciation percentage. The building in which Investments' condominium is located was built in 1900. According to Investments, even if the building were in excellent condition, it would still have an effective age of 40. That, in turn, would require its replacement cost new to be depreciated by 73%. But the Assessor used an effective age of 10 and applied normal depreciation of only 8% in assessing Investments' condominium. *Smith testimony and argument; Pet'r Exs. 1, C1*.

12. Finally, Investments claims that the condominiums in its building (546 Lofts) were not assessed in a uniform and equal manner compared to condominiums in a building across the street known as The Lofts. According to Milo Smith, Investments' tax representative, the two buildings were built around the same time and were later converted into condominiums by the same owner. The owner hired the same builder to do the conversions. Smith testified that he was inside each building both before and after the conversions, and that he had looked at photographs from the multiple listing service. Based on his observations, the two buildings were the same. *Smith testimony*.

13. In support of its lack-of-uniformity-and-equality claim, Investments offered sale and assessment information for individual condominiums in the two buildings. That information showed the following ranges: [2]

[2] We have rounded the dollar amounts.

Building	Sale Dates	Size (sq. ft.)	Price/sq. ft.	2016 AV/sq. ft.	2017 AV/sq. ft.	Investments' AV
546 Lofts	12/13 – 5/15	1,113 – 1,433	$129 - $182	$158 - $186	$158 - $186	$160/sq. ft.
The Lofts	3/05 – 12/17	1,184 – 1,461	$116 - $198	$122 - $128	$131 - $188	N/A

Only three of those condominiums sold within one year of either assessment date under appeal. For those years, all three were assessed at per-unit rates that were slightly below their sales prices

Condo/Bldg.	Sale Date	Sale Price	Price/sq. ft.	AV/sq. ft. (Year)
Unit 201/546 Lofts	5/6/15	$245,000	$170.97	$166 (2016)
Unit 201/The Lofts	12/17/17	$289,000	$197.81	$188 (2017)
Unit 204/The Lofts	5/4/15	$185,000	$129.73	$127 (2016)

See Smith testimony and argument; Pet'r Ex. 2.

Summary of the Assessor's contentions

14. The Assessor argues that Investments did not meet its burden of showing its assessments were wrong. According to the Assessor, the GRM method is merely the preferred, rather than the required, method for assessing properties with between one and four rental units. He claims that there was insufficient data from which to determine a GRM for Investments' condominium because there was no rental data for condominiums similar to it. Data taken from dissimilar sales, such as single-family homes or apartments, would be misleading because it comes from a different market. *Whipple testimony*.

15. According to Whipple, the Assessor was required to use a different method to assess condominiums than he used to assess other residential property. For condominiums, he had to come up with a value for the entire building and then apply a percentage to each unit based on its size. *Whipple testimony*.

CONCLUSIONS OF LAW

Burden of Proof

16. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—(1) where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or (2) where it is above the level determined in a taxpayer's successful

appeal of the prior year's assessment, regardless of the amount. I .C. § 6-1.1-15-17.2(b), (d).[3] The assessment for Investments' condominium was the same from 2015 through 2017. The parties therefore agree that Investments has the burden of proof for its 2016 appeal. Assigning the burden for 2017 necessarily depends on whether Investments prevails in its 2016 appeal.

Discussion

17. Indiana assesses real property based on its "true tax value," which does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c) and (e). For most types of real property, true tax value is determined under the DLGF's rules. I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he 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 2.

18. The cost, sales-comparison, and income approaches are three generally accepted ways to determine true tax value. *Id*. Parties may offer evidence that is consistent with the DLGF's definition of true tax value. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *See Eckerling v. Wayne Twp. Ass'r,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Parties may also offer actual construction costs, sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id*.; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property-tax appeals). That said, the GRM is the "preferred" method of valuing properties with between one and four residential rental units. I.C. § 6-1.1-4-39(b).

19. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, that evidence lacks probative value. *Id*. The valuation dates for the assessments at issue were January 1, 2016, and January 1, 2017, respectively.

20. According to Investments, the DLGF memo requires that its condominium be assessed using the GRM method. Because the Assessor claims he did not have a GRM for properties like the condominium, 546 Investments argues that its assessment must be reduced to $140,600—the amount yielded by multiplying the condominium's monthly rent by the highest GRM the Assessor applied to any property in Bartholomew County.

[3] Investments also raises a claim based on a lack of uniformity and equality in assessments. The burden-shifting rule under Indiana Code § 6-1.1-15-17.2 does not apply to such claims. *See Thorsness v. Porter Cnty, Ass'r,* 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014) (Explaining that the predecessor to Ind. Code § 6-1.1-15-17.2 applied "only to valuation challenges, not to uniform and equal constitutional challenges. . . ."). Investments therefore has the burden of proof on its lack-of-uniformity claim.

21. We disagree. The legislature has directed that using a GRM is the "preferred" method for assessing small residential rental properties. That is unsurprising, given that investors largely value properties based on their anticipated income streams. Relying on the DLGF memo, Investments interprets "preferred" as meaning "exclusive." But that memo simply clarifies that assessors cannot ignore the GRM method when assessing small residential rental properties.

22. This case illustrates why the legislature chose not to make the GRM method exclusive—there were no sales of comparable rental properties from which to derive a reliable GRM for the subject property. Under those circumstances, if the GRM method were the exclusive method for determining the property's true tax value, assessors would have little choice but to arbitrarily choose a GRM and apply it to the property's income. Indeed, that is precisely what Investments wants us to do when it asks us to apply the highest GRM the Assessor determined for other rental properties in the county. But there is nothing to show that any of the GRMs the Assessor determined for rental properties in neighborhoods throughout the county reflects the risk associated with Investments' condominium. Moreover, Investments also failed to prove that its condominium was leased at a market rate, which is necessary for applying a GRM. In any case, Investments pointed to GRMs from 2014 and 2018 without explaining how they related to the January 1, 2016, and January 1, 2017 valuation dates at issue in these appeals.

23. Investments next argues that its condominium should be valued using an effective age determined under the Guidelines. But a party generally may not make its case by strictly applying the Guidelines. It must instead offer market-based evidence to show the true tax value of the property under appeal. *See Eckerling*, 841 N.E.2d at 678. At best, Investments offered sales information for several condominiums in the same building as its condominium (546 Lofts) and in a building across the street (The Lofts). It did not analyze that sales information much less explain how that information showed what the value of its condominium was. Of the three sales that were within a year of either valuation date at issue in these appeals, two actually yielded higher per-unit prices ($170.97/sq. ft., and $197.81/sq. ft.) than the assessment for Investments' condominium ($160/sq. ft.).

24. In truth, Investments did not offer the sales information to prove the value of its condominium. It instead offered that information and related assessment data to support its claim that the condominiums in 546 Lofts were not assessed in a uniform and equal manner compared to condominiums across the street at The Lofts. Once again, Investments misses the mark.

25. As the Tax Court has explained, Indiana's current assessment system no longer focuses on how assessment regulations were applied, but rather on whether assessments reflect the external benchmark of market value-in-use. *Westfield Golf Practice Center, LLC v. Washington Twp. Ass'r,* 859 N.E.2d 396, 398-99 (Ind. Tax Ct. 2007). Thus, "the end result—a uniform and equal rate of assessment—is required, but there is no requirement of uniform procedures to arrive at that rate." *Id*. (*quoting State ex. Rel. Att'y Gen. v. Lake Superior Court*, 820 N.E.2d 1240, 1250 (Ind. 2005) (emphasis in original).

26. One method of proving a lack of uniformity and equality under our current system is to offer ratio studies comparing the assessments of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals. *Id*. at 399 n.3. When used to measure uniformity of assessments or to apply equalization adjustments, the Department of Local Government Finance's rules require statistical analyses to be performed. *See* 50 IAC 27-4-1; 50 IAC 27-4-5; *see also*, *Thorsness v. Porter Cnty. Ass'r*, 3 N.E. 3d 49, 53-54 (Ind. Tax Ct. in 2014) (interpreting predecessors to current regulations). The taxpayer in *Westfield Golf* lost its uniformity-and-equality claim because it focused solely on the base rate used to assess its driving-range landing area compared to the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the properties. *Id*. at 399.

27. Investments' claim suffers from similar problems as the taxpayer's claim in *Westfield Golf*. Investments offered no market-based evidence regarding the actual market value-in-use for its condominium and little such evidence for the other condominiums in the two buildings. The relevant information it did offer (sales data from within a year of either assessment date at issue) showed that one condominium in its own building and two condominiums in The Lofts were assessed for slightly less than their market values in use. But Investments did not show that it used a statistically valid sample. And it did not otherwise meaningfully analyze the ratios between sales and assessments. Without passing on what sample size or analysis would suffice, we find that Investments' evidence falls well short of what is required.

FINAL DETERMINATION

28. 546 Investments, LLC failed to meet its burden of proving the assessments for its condominium were incorrect[4] or that it was not assessed in a uniform and equal manner. We find for the Assessor and order no change to those assessments.

ISSUED: December 27, 2018

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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

[4] Because Investments did not prevail in its 2016 appeal and the assessment was the same for 2017, it also had the burden of proof for 2017.

- 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>.