

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

Petitions: 45-046-13-1-5-01838-17
45-046-14-1-5-01837-17
45-046-15-1-5-01836-17
Petitioners: Jerry Kirk, Ursula Kirk, and Robert Kirk
Respondent: Lake County Assessor
Parcel: 45-13-19-151-006.000-046
Assessment Years: 2013, 2014, and 2015

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

PROCEDURAL HISTORY

1. The Kirks contested the 2013, 2014, and 2015 assessments of their property located at 4980 E. 81st Avenue in Merrillville. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the self-storage facility at \$329,300 for 2013, \$352,800 for 2014, and \$393,200 for 2015.
2. The Kirks timely filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On November 5, 2018, Ellen Yuhan, our designated administrative Law Judge (“ALJ”), held a hearing on the Kirks’ petitions. Neither she nor the Board inspected the property.
3. Tax representative Timothy Parish appeared for the Kirks. Hearing Officer Robert W. Metz appeared for the Assessor. Ross Township Commercial Supervisor Nicole Ooms appeared as a witness for the Assessor. They were all sworn as witnesses.¹

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit 1: Aerial photograph and property information from Lake County GIS system, and photograph from Google Maps
 - Petitioner Exhibit 2: LoopNet listing, dated July 2011
 - Petitioner Exhibit 3: Warranty Deed and sales disclosure form from

¹Lake County Hearing Officer Joseph James was present, but he was not sworn and did not testify.

	the Kirks' 2012 purchase of the property
Petitioner Exhibit 4:	Income pro forma analysis
Petitioner Exhibit 5:	Income and expense analysis
Petitioner Exhibit 6:	Income and expense statements for 2013-2015
Petitioner Exhibit 7:	RealtyRates Investor Surveys for 2013-2015
Petitioner Exhibit 8:	Power of Attorney
Respondent Exhibit 1:	Sales grid of comparable sales and sales disclosure forms
Respondent Exhibit 2:	IncomeWorks reports for 2013, 2014, and 2015
Respondent Exhibit 3:	Calculation spreadsheet of potential gross income ("PGI") and income analysis for 2013-2015
Respondent Exhibit 4:	Supporting data for IncomeWorks reports
Respondent Exhibit 5:	Sales disclosure forms for the subject property

- b. The record for this matter also includes the following (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Ind. 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—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).
6. Here, the assessment decreased from \$413,200 in 2012 to \$329,300 in 2013. The Kirks therefore bear the burden of proof for 2013. Assigning the burden of proof for 2014 and 2015 depends on our determination for the immediately preceding year. We will therefore address the question of who has the burden for those years after deciding the previous year's appeal.

SUMMARY OF CONTENTIONS

7. The Kirks' case:
- a. The subject property is a self-storage facility with a house. The property was listed on LoopNet in July 2011, and the Kirks purchased it in November 2012. The Kirks contend that their \$250,000 purchase price is the correct assessed value for 2013. They further claim that trending the purchase price forward using the annual assessment adjustment produces the correct assessments for 2014 and 2015. After trending, the property's 2014 and 2015 values would be \$248,600 and \$252,000, respectively. *Parish testimony. Pet'r Exs. 1-3.*

- b. The Kirks offered the sales disclosure form documenting their purchase to the township assessor, but she was unwilling to make an adjustment based on the purchase price and asked for an appraisal. Because the purchase was not bank financed, an appraisal was not required. The Kirks did not provide an appraisal to Parish and to his knowledge an appraisal has never been completed. *Parish testimony; Pet'r Ex. 3.*
- c. The property was struggling at the time of purchase. The Kirks had to do some ongoing repairs in order to increase the occupancy. Revenue has improved over the years since the purchase, but expenses have also increased in order to take care of the deferred maintenance. *Parish testimony.*
- d. The Assessor asked the Kirks to supply income information for the property. They provided what information they had, but because they had recently purchased the property, they only had 2013 income available. Based on the data originally provided to the Assessor, the property's indicated value was \$170,000, which is well below its purchase price. *Parish testimony.*
- e. Parish prepared a pro forma analysis for 2013 based on the actual asking rents for the units. He used a 5% vacancy rate and a 45% expense rate. The expense rate is not particularly high considering the amount of deferred maintenance that was present at the time of purchase. He estimated the net operating income ("NOI") to be \$23,575. Applying a 10.70% capitalization rate to the NOI resulted in a value of \$220,300, which is below the price the Kirks paid for the property. *Parish testimony; Pet'r Ex. 4.*
- f. Parish prepared full income analyses for 2013, 2014, and 2015 using the actual income and expenses. For 2013, the NOI was \$16,577.60. Capitalizing the NOI using a loaded rate of 13.38% resulted in an indicated value of \$123,900 for 2013. For 2014, the NOI was \$27,420.13. Capitalizing the NOI using a loaded rate of 13.07% resulted in an indicated value of \$209,800 for 2014. For 2015, the NOI was \$42,601.38. Capitalizing the NOI using a loaded rate of 12.82% resulted in an indicated value of \$332,800 for 2014. The average value for the three years was \$220,513. The Assessor took issue with the replacement reserves Parish included, but removing that expense from the calculation would produce a value of approximately \$270,000, which is only slightly more than the purchase price. *Parish testimony; Pet'r Ex. 5.*
- g. Regarding the Assessor's evidentiary presentation, the Kirks criticized the Assessor for his failure to make any time adjustments to the comparable properties included in his sales grid. Parish further testified that the sale of 1710 E. State Road 130 was part of a larger portfolio sale that included seven or eight locations. *Parish testimony.*

- h. The Kirks further complained that the Assessor's spreadsheet calculating the property's PGI more than doubles the number of rentable units. At the time of purchase, there were only 52 rentable units, not 113. The remaining square footage was an open space with no walls dividing it into rentable units. The Kirks have done repairs over the years to get the buildings into a rentable condition, and they finished putting in new units last year. *Parish testimony.*
8. The Assessor's case:
- a. The Assessor presented a sales price analysis of six similar U-Lock storage properties. The six properties had an average sales price of \$38.22/SF and a median value of \$33.05/SF. Applying the median value to the storage buildings' 12,300 square feet produces a value of \$406,501. Most storage properties do not have a house on them, but the Kirks use the house as a sales office. When the 1,482 square foot house is included, the property's value is \$455,480. *Metz testimony; Resp't Ex. 1.*
- b. The Assessor used IncomeWorks, which is a company that provides research and rankings for self-storage properties, to value the Kirks' property. The IncomeWorks Evaluation Reports used the direct capitalization approach and produced values of \$329,279 for 2013, \$352,765 for 2014, and \$393,173 for 2015. *Metz testimony; Resp't Exs. 2, 4.*
- c. The Assessor contends Parish's income approach for 2013 is flawed because he accounted for only a portion of the storage units. Parish's calculations only account for 7,100 square feet when the buildings' total square footage is actually 12,300. The Assessor prepared an income valuation approach using the Kirks' actual rents and the total square footage. Deducting 20% for vacancy and collection loss and 30% for expenses from the property's PGI of \$83,400 resulted in an NOI of \$46,704 for all three years under appeal. The Assessor used a loaded 12% cap rate for 2013 and 2014, and a loaded 11.75% cap rate for 2015. Capitalizing the NOI by those rates produced values of \$389,200 for 2013 and 2014, and \$397,481 for 2015. *Metz testimony; Resp't Ex. 3.*
- d. The Assessor also criticized the Kirks' attempt to use their original purchase price as valuation evidence. There were two sales of the subject property in 2012. In the first sale to Charles Russell on October 4, 2012, the property sold for \$275,000. The second sale from Russell to the Kirks occurred on November 15, 2012 and had a sales price of \$250,000. The Assessor deemed both sales invalid because they involved seller financing. The Assessor also took issue with the second sale because Russell related that he did not offer the property on the open market prior to the Kirks' purchase. The Assessor also complained that the LoopNet listing submitted by the Kirks does not disclose an asking price. *Metz testimony; Ooms testimony; Resp't Ex. 5.*

ANALYSIS

9. The Kirks failed to make a prima facie case for reducing their property's 2013 assessment. The Assessor failed to make a prima facie supporting the 2014 and 2015 assessments, and the Kirks failed to prove that those assessments should be lower than the reversionary values. The Board reached this decision for the following reasons:
- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); 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." MANUAL at 2.
 - b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2013, 2014 and 2015, the valuation date was March 1 of each year. Ind. Code § 6-1.1-2-1.5(a).

2013 Assessment

- c. As discussed above, the Kirks bear the burden of proof with respect to the 2013 assessment. The Kirks primarily contend that their \$250,000 purchase price is the correct assessed value. The purchase price of a property can be the best evidence of a property's value. *Hubler Realty Co. v. Hendricks Co. Ass'r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). Here, however, the Kirks did not provide any evidence demonstrating that their purchase met the requirements of an open market transaction. Nor did they contest the Assessor's evidence that the property had no exposure to the open market prior to sale, or that the seller financed the Kirks' purchase. Consequently, the purchase price is not probative evidence of the market value-in-use.
- d. The Kirks also offered two separate income capitalization approaches. But in both analyses, they relied solely on their own rental rates. Although examining the actual

rents is an important step, relying on them exclusively is inappropriate when appraising a property's market value-in-use. The Kirks made the same mistake with regard to the expenses and vacancy rates used in their second analysis. *See Indiana MHC, LLC v. Scott Cty. Ass'r*, 987 N.E.2d 1182, 1185-86 (Ind. Tax Ct. 2013) (citing THE APPRAISAL OF REAL ESTATE 493, 501, 509, 511-12 (12th ed. 2001) (“[T]o 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.”) (emphasis in original). Additionally, the Kirks offered no market support for the 5% vacancy rate and a 45% expense rate used in their pro forma analysis for 2013.² These errors alone deprive the Kirks' income capitalization approaches of any probative value.

- e. We also find the Kirks' description of the subject property troubling. The Kirks submitted listing information that indicates that the property consists of two buildings that are each 210' by 30' (12,600 square feet of combined space) with a total of 98 rentable units. But Parish testified that the property only had 52 rentable units when the Kirks first purchased it in 2012. Moreover, the total square footage listed in their income approaches was 13,782, meaning the house/sales office would be about 1,182 square feet if the listing is accurate. However, the listing shows the house/sales office as being approximately 2,150 square feet, and the Assessor described it as a 1,482 square foot house with a 2-car garage. The Kirks' failure to explain these discrepancies further undermines the credibility of their evidentiary presentation.
- f. Because the Kirks offered no probative market-based evidence to demonstrate the property's correct market value-in-use for 2013, they failed to make a prima facie case for a lower assessment. Where a Petitioner has not supported its claim with probative evidence, the 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).

2014 Assessment

- g. We start by addressing the question of which party has the burden of proof. The Assessor argued that the burden shifting provisions in Ind. Code § 6-1.1-15-17.2 do not apply because he valued the property using the income capitalization approach. But that exception can only relieve an assessor of the burden of proof if the burden is shifting under subsection 17.2(d). Here, the Kirks' appeal did not result in a reduction to the 2013 assessed value. Thus, 17.2(d) is inapplicable.
- h. Because the Kirks failed to make a prima facie case for reducing the property's 2013 assessment, the \$329,300 assessment remains unchanged. In 2014, the PTABOA

² We also note that they did not load the cap rate to account for real estate taxes in their pro forma analysis for 2013 despite doing so in their second income approach.

valued the property at \$352,800, which is more than a 5% increase over the 2013 assessment. Consequently, the Assessor bears the burden of proving that the 2014 assessment is correct.

- i. In an effort to support the assessment, the Assessor presented a sales comparison approach and two different income capitalization approaches—one developed by IncomeWorks and one he prepared using the Kirks’ actual rents.
- j. We give no weight to the Assessor’s sales comparison approach. Other than stating that the six purportedly comparable sales are all U-Lock storage properties, the Assessor did little to identify their relevant characteristics or compare them to the Kirks’ property (for which he also offered an insufficient description). And he completely failed to explain how any relevant differences affected the values. That failure is particularly concerning given the substantial differences in the purportedly comparable sales’ acreage (1.01 to 17.8 acres), building size (13,957 to 50,840 square feet), and building ages (6-54 years old). Thus, the Assessor’s sales comparison approach falls well short of providing the level of analysis the Tax Court has explained is necessary when relying on comparative sales data. *See Long*, 821 N.E.2d at 470-71 (holding that taxpayers’ comparative sales data lacked probative value where they failed to compare relevant characteristics or explain how differences affected value).
- k. Furthermore, there are numerous discrepancies between the data presented in the sales grid and the supporting documents. Notably, several of the sales prices in the Assessor’s grid do not match the prices reported on the sales disclosure form. While we assume this was the result of an allocation of the total sales price between multiple parcels, the Assessor did not explain these apparent allocations. We also take particular issue with the sale of 13649 Wicker Avenue. The Assessor used the full sales price of \$1,775,000 in his grid when the sales disclosure form clearly indicates that the price included the seller’s business and \$697,500 worth of personal property. These problems are significant and pervasive, and further undermine the probative value of the Assessor’s sales comparison approach.
- l. The income capitalization approach developed by IncomeWorks fails no better. As part of making a prima facie case, “it is the taxpayer’s duty to walk the [Indiana Board and this] Court 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. Although the Assessor provided 19 pages of supporting documentation from IncomeWorks, he failed to explain how IncomeWorks derived any of the inputs such as market rent, vacancy, expenses, or cap rates from the information contained in those documents. Even if we were willing to dig into the data, the lack of information in the record concerning the subject property’s characteristics would make for an impossible task. Moreover, none of the information even addresses the development of a market rent. As a final point, we note that there is no indication that the

IncomeWorks report was prepared according to generally accepted appraisal principles. While IncomeWorks may be a tool for delivering an estimated value, the Assessor failed to prove that the values it produced are relevant or credible in this case.

- m. The income capitalization approach developed using the Kirks' actual rents suffers from the same problems we addressed above when reviewing the Kirks' income approaches—it fails to examine the income, expenses, and occupancy rates of comparable properties in the market. We therefore conclude its value estimate is not probative evidence of the property's market value-in-use.
- n. The Assessor failed to make a prima facie case that the 2014 assessment is correct. The Kirks are therefore entitled to have their property's 2014 assessment reduced to its 2013 assessed value of \$329,300. That does not end our review, however, because the Kirks sought a lower valuation.
- o. For 2014, the Kirks requested a valuation developed by trending the original \$250,000 sales price using the annual assessment adjustment the Assessor applied. But we have already concluded that the purchase price is not probative evidence of the property's market value-in-use due to our concerns about whether the seller exposed the property to the open market and the seller financing issue. Thus, the values produced by trending the purchase price are equally unconvincing.
- p. The Kirks also offered a full income analysis for 2014 using the property's actual income and expenses. However, as previously discussed, any effort to rely solely on such data to develop a valuation lacks probative value. Accordingly, the Kirks failed to make a case for a further reduction.

2015 Assessment

- q. We again start by addressing the burden of proof. Unlike our burden discussion for the 2014 assessment, the exception contained in subsection 17.2(d) is potentially relevant because we ultimately reduced the 2014 assessment. Nevertheless, we conclude that the exception is inapplicable because our value determination for 2014 was the result of a reversion under subsection 17.2(b), not the result of adopting a value produced by an income capitalization approach presented by one of the parties. Because the 2015 assessment of \$393,200 represents an increase over the new 2014 assessment of \$329,300, the Assessor bears the burden for 2015 as well.
- r. Although some elements of the parties' evidence vary from year to year, both of their evidentiary presentations for 2015 suffer from the same underlying flaws we have already addressed. We ultimately find neither party presented probative evidence to show the correct market value-in-use. Because the Assessor bore the burden, however, his failure to make a prima facie case entitles the Kirks to have their property's 2015 assessment reduced to its 2014 assessed value of \$329,300.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order no change to the property's 2013 assessment, and we order the 2014 and 2015 assessments reduced to \$329,300.

ISSUED: April 18, 2019

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>>.