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

Petition Nos:	**03-011-15-1-5-00100-15**
	03-011-14-1-5-20462-15
	03-011-13-1-5-00002
	03-011-12-1-5-10003
Petitioner:	**Tom's Rentals LLC**
Respondent:	**Bartholomew County Assessor**
Parcel:	**03-95-32-000-000.500-011**
Assessment Year:	**2012, 2013, 2014, 2015**

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

Procedural History

1. The Petitioner, Tom's Rentals, LLC, appealed its 2012-2015 assessments. In June 2014 and September 2015, the Bartholomew County Property Tax Assessment Board of Appeals ("PTABOA") issued determinations upholding the assessments. The Petitioner then timely filed Form 131 petitions with the Board, electing our small claims procedures.

2. On December 8, 2016, our designated administrative law judge, Gary Ricks ("ALJ") held a hearing on the petitions. Neither he nor Board inspected the property.

3. Milo E. Smith, certified tax representative, appeared for the Petitioner. Virginia R. ("Ginny") Whipple, appeared for the Respondent. The following witnesses were sworn: Smith; Belinda Graber, certified general appraiser; JoEllen ("Jodi") Wright, certified residential appraiser; and Lew Wilson, Bartholomew County Assessor.

Facts

4. The property consists of 1.84 acres and is located at 1573 S. 475 W. in Columbus. It has a two-story single-family home with 2,504 square feet of living area,[1] a detached garage, and outbuildings, including a heated greenhouse being used for storage. The Petitioner rents out the property for use as a residence.

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[1] That is the number reflected on the property record cards. In her appraisals, Jodi Wright used 2,524 square feet of finished living area, which she determined based on exterior measurements. *Resp't Exs. C-D* (2012-2015), *F* 92012-2015); *Wright testimony*.

5. The PTABOA determined the following assessments:

Year	Land	Improvements	Total
2012	$75,000	$244,000	$317,400
2013	$75,000	$230,000	$305,000
2014	$75,000	$230,000	$305,000
2015	$70,400	$167,400	$237,800

6. The Petitioner requested a total assessment of $132,600 for each year. It alternatively requested assessments for 2012-2014 based on subtracting the value assigned to a second house that had been torn down in 2011 but that was still assessed in those years.

Record

7. The official record of the hearing consists of the following:

a. A digital recording of the hearing.

b. Exhibits

Petitioner's Exhibits

Petitioner Exhibit 1:	2012 property record card ("PRC") for the subject property,
Petitioner Exhibit 2:	2013 PRC for the subject property,
Petitioner Exhibit 3:	2014 PRC for the subject property,
Petitioner Exhibit 4:	2015 PRC for the subject property,
Petitioner Exhibit 5:	2004 Bartholomew County GIS map,
Petitioner Exhibit 6:	2011 Bartholomew County GIS map,
Petitioner Exhibit 7:	Google Maps aerial photograph of the subject property,
Petitioner Exhibit 8:	February 1, 2013 lease agreement,
Petitioner Exhibit 9:	January 23, 2015 lease agreement,
Petitioner Exhibit 10:	Gross Rent Multiplier SOP,
Petitioner Exhibit 11:	August 24, 2007 joint memorandum from the Department of Local Government Finance and the Board.

Respondent's Exhibits

<u>2012</u>

Respondent Exhibit A:	Résumés for Gordon Wilson and Ginny Whipple,
Respondent Exhibit B:	Statement of Professionalism,
Respondent Exhibit C:	2011 PRC for subject property,
Respondent Exhibit D:	2012 PRC for subject property,
Respondent Exhibit E:	Aerial photograph of subject property,

Respondent Exhibit F:	Jodi Wright's appraisal report valuing the subject property as of March 1, 2012,
Respondent Exhibit G:	Wright's résumé

2013

Respondent Exhibit A:	Resumes for Wilson and Whipple,
Respondent Exhibit B:	Statement of Professionalism,
Respondent Exhibit C:	2012 PRC for subject property,
Respondent Exhibit D:	2013 PRC for subject property,
Respondent Exhibit E:	Aerial photograph of subject property,
Respondent Exhibit F:	Wright's appraisal report valuing the subject property as of March 1, 2013,
Respondent Exhibit G:	Wright's résumé

2014

Respondent Exhibit A:	Resumes for Wilson and Whipple,
Respondent Exhibit B:	Statement of Professionalism,
Respondent Exhibit C:	2013 PRC for subject property,
Respondent Exhibit D:	2014 PRC for subject property,
Respondent Exhibit E:	Aerial photograph of subject property,
Respondent Exhibit F:	Wright's appraisal report valuing the subject property as of March 1, 2014,
Respondent Exhibit G:	Wright's résumé

2015

Respondent Exhibit A:	Resumes for Wilson and Whipple,
Respondent Exhibit B:	Statement of Professionalism,
Respondent Exhibit C:	2012 PRC for subject property,
Respondent Exhibit D:	2013 PRC for subject property,
Respondent Exhibit E:	Aerial photograph of subject property,
Respondent Exhibit F:	Wright's appraisal report valuing the subject property as of March 1, 2015,
Respondent Exhibit G:	Wright's résumé,
Respondent Exhibit H:	MLS listings,
Respondent Exhibit I:	Photographs of subject property.

Board Exhibits

Board Exhibit A:	Form 131 petitions with attachments,
Board Exhibit B:	Hearing notice,
Board Exhibit C:	Hearing sign-in sheet.

c. These Findings and Conclusions

Objections

8. The Respondent objected to Petitioner's Exhibit 11—an August 24, 2007 memorandum from the Department of Local Government Finance ("DLGF") and the Board addressing the use of gross rent multipliers to value residential properties with between one and four rental units—on relevance grounds. The ALJ took the objection under advisement. We overrule it. This appeal involves a rental home, so any prior guidance on the question of how those homes should be assessed is at least relevant.

Contentions

A. Summary of the Petitioner's case

9. The subject property previously had two houses. But the second house, which had 992 square feet, was torn down in 2011. The Respondent erroneously included that house in the 2012-2014 assessments and assigned it a value of $61,700 for 2012 and $61,100 for the other two years. At a minimum, the value assigned to the second home should be subtracted from the property's assessment for those years. *Smith testimony and argument; Pet'r Exs. 1-4.*

10. The Petitioner leases-out the subject property for use as a single-family home. Indiana Code § 6-1.1-4-39(b) provides that the gross rent multiplier ("GRM") is the "preferred" method for assessing rental properties with between one and four units. Pursuant to the August 2007 memo from the DLGF and Board, "[a]ssessing officials **are required** by law to develop and apply gross rent multipliers on smaller, residential investment properties." Because the Respondent failed to develop and apply a GRM in assessing the subject property, the assessments are invalid. *Smith testimony and argument; Pet'r Ex. 11 (emphasis in original).*

11. The Respondent produced a document titled "Gross Rent Multiplier SOP." It states: "These [standard operating procedures] will be used to assess residential type construction holding 4 units or less," and lists GRMs for several neighborhoods for 2014-2015. The GRMs were computed by dividing rental properties' sale prices by their gross monthly income, and they ranged from 69.3 to 102.27. The Respondent should have referred to this list to determine the appropriate GRM to use in assessing the subject property, but he failed to do so. *Smith testimony and argument; Pet'r Ex. 10.*

12. The Petitioner would agree to use the highest GRM from the list to value the subject property. As shown by leases from 2013 and 2015, the property rents for $1,300 per month. Applying the highest GRM to that rent yields a value around $132,600. *Smith testimony and argument; Pet'r Ex. 10.*

13. The Petitioner called Belinda Graber, a certified general appraiser, as a witness. Graber did not prepare an appraisal report, nor did she purport to have prepared a valuation opinion in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP). She did not develop a GRM from sales of comparable properties, and the Petitioner's representative acknowledged that there were no sales of rental properties that were comparable to the subject property. But Graber testified that taking the reciprocal of a GRM of 100, which is "the highest one we got," and loading the effective tax rate produces a capitalization rate of 12%. Based on monthly rent of $1,300, the property's net annual income would be about $12,000. That yields a value in the low $100,000 range, which Graber acknowledged is low. From an investment perspective, she believes the property is worth at least $150,000. It is in a good location. She testified that the rent could be increased, possibly by renting out the barn. *Graber testimony; Smith testimony*.

14. But Graber does not believe the property is worth anything close to what it is assessed for. According to Graber, Indiana gives an advantage to people who rent their property to tenants rather than occupy it themselves, and investors pay less to buy properties than homeowners do. Investors care about a property's potential to produce income. They get loans and have to service that debt. The property's income would not support a mortgage of more than $130,000 or a value of more than $150,000 if an investor was looking for a 10% return "cash on cash." *Graber testimony.*

B. Summary of the Respondent's case

15. Although the GRM is the preferred method for valuing rental properties, such as the subject property, it is not required under all circumstances. USPAP requires that certain data must be considered when using a GRM to assess property. Unfortunately, the subject property is not a typical income-producing property, and neither party could find sales of comparable rental properties sufficient to develop a reliable GRM. *Wright testimony; Wilson testimony.*

16. Jodi Wright, a certified residential appraiser, prepared appraisal reports estimating the subject property's market value as of each assessment date. She viewed the property and spoke with the renters about "big-ticket" items they had concerns with and some of the improvements that had been made. She also pulled historical information from the multiple listing service to determine what improvements had been made to the property. She took all that into consideration in estimating the home's effective age at 25-30 years for the assessment dates under appeal. She did not include the second house that was torn down in 2011 in any of her appraisals. *Wright testimony; Resp't Ex. F (2012-2015).*

17. Wright certified that each appraisal complied with USPAP. She based her opinions on the sales-comparison approach. Like Graber and the Respondent, she could not find rental data to develop a GRM. She did not develop the cost approach because of the property's age.

18. For her sales-comparison analysis, Wright used sales data from the year preceding each assessment date. Some of the sales were from the immediate area. In other instances, Wright had to look at other comparable locations to find sales close to the assessment date. All of the homes were newer than the subject home. One was 72 years old, but the rest were between 7 and 33 years old. Most had sites that were between three and five acres. *Resp't Ex. f (2012-2015).*

19. Wright considered adjusting each property's sale price to account for various ways in which that property differed from the subject property, including differences in the homes' sizes, conditions, and ages; differences in amenities; and differences in sites. For her age adjustments, she considered the total depreciation of the properties based on their effective ages, which she determined using age/life and market-extraction methods as well as the information from the local multiple listing service, realtors, brokers, and her own file data. Thus, although all of her comparable homes were newer than the subject home, she only adjusted the sale prices for homes that were built within approximately 20 years of the assessment dates. Even then, her adjustments were relatively small. The largest adjustment was $7,500, which she applied to homes with actual ages of 7 and 16 years. *Wright testimony; Resp't Ex. F (2012-2015).*

20. Similarly, Wright found that the market did not support any site-related adjustment in most instances, even though most of the sites were at least three acres, while the subject site is only 1.84 acres. Wright, however, did make several adjustments for differences in living area, basements, and amenities. *Wright testimony, Resp't Ex. F (2012-2015).*

21. After reconciling her adjusted sale prices, Wright settled on the following values:

Year	**Value**
March 1, 2012	$325,000
March 1, 2013	$310,500
March 1, 2014	$307,000
March 1, 2015	$314,500

The Respondent asked that the assessment be increased for each year to match the values from Wright's appraisals. *Whipple argument; Resp't Ex. F (2012-2015).*

Burden of Proof

22. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was

determined in the appeal, regardless of the level of that increase. *See* I.C. § 6-1.1-15-17.2(a), (b) and (d). If an assessor has the burden and fails to meet it, the assessment reverts to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).

23. The subject property's assessment decreased from $369,700 in 2011 to $317,400 in 2012. Thus, the burden-shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the Petitioner had the burden of proof for the 2012 appeal. Assigning the burden of proof for the later appeals necessarily depends on the outcome of each preceding year's appeal. As explained below, however, we ultimately rely on what we believe is the most persuasive evidence of the property's true tax value—Wright's appraisals. Assigning the burden of proof therefore has no bearing on the outcome for any of the appeals.

Analysis

24. The most persuasive evidence of the subject property's true tax value shows that it was actually under-assessed for each year under appeal. We reach this conclusion for the following reasons:

a) 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).[2] 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.

b) The cost, sales-comparison, and income approaches are three generally accepted ways to determine true tax value. 2011 MANUAL at 2. The GRM, however, is the "preferred" method of valuing properties with between one and four residential rental units. I.C. § 6-1.1-4-39(b). In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally accepted appraisal principles. 2011 MANUAL at 3; *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a USPAP-compliant market-value-in-use appraisal is the most effective method for rebutting the presumption that an assessment is correct).

c) The Petitioner argues that the assessments are incorrect for two reasons: (1) they are not based on the GRM, and (2) three of the four assessments include a house that had been torn down in 2011, before any of the years under appeal.

[2] The legislature has specifically defined true tax value for various property types, including residential rental properties with more than four units (I.C. § 6-1.1-4-39(a)), casinos (I.C. § 6-1.1-4-39.5), low-income rental properties (I.C. § 6-1.1-4-41), and golf courses (I.C. § 6-1.1-4-42).

d) As to the Petitioner's first point, the legislature has directed that the 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 in part on the memo from the DLGF and Board, however, the Petitioner essentially reads "preferred" as meaning exclusive. But that memo simply clarifies that assessors cannot ignore the GRM when assessing small residential rental properties. This case illustrates why the legislature chose not to make the GRM the exclusive method—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 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.

e) Indeed, that is precisely what the Petitioner wants us to do. It asks us to value the property by applying the highest GRM the Respondent determined for other rental properties in the county, or alternatively, to accept Graber's opinion in which she capitalized her rough estimate of the net operating income using a capitalization rate that was the inverse of that GRM. There is nothing to show the GRM or the capitalization rate Graber derived from it reflects the risk associated with the subject property much less to show any of the other factors that go into determining such rates. *See Hometowne Associates, L.P. v. Maley,* 839 N.E.2d 269, 275 (Ind. Tax Ct. 2005) (quoting *Lacy Diversified Indus., LTD v. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1224 (Ind. Tax Ct. 2003) ("The capitalization rate generally reflects the annual rate of return necessary to attract investment capital and is influenced by such factors as 'apparent risk, market attitudes toward future inflation, the prospective rates of return for alternative investments, the rates of return earned by comparable properties in the past, the supply of and demand for mortgage funds, and the availability of tax shelters.'"). Graber similarly did little to support her very rough estimate of potential rent or expenses beyond testifying that she thought the Petitioner might be able to charge a little more rent by leasing out a barn.

f) The Petitioner's request to simply subtract the value the Respondent assigned to the second home from the 2012-2014 assessments is a different matter. Normally, a taxpayer must do more than simply attack an assessor's methodology in computing an assessment. And strictly applying the Guidelines does not suffice to show a property's true tax value. *See Eckerling*, 841 N.E.2d at 678 (explaining that "strict application" of the Guidelines is not enough to rebut the presumption that an assessment is correct, but that a taxpayer may make a prima facie case through market-based evidence). But this case tests the limits of that general rule. Arguably, a taxpayer should be able to make a case under these circumstances by simply deducting the value of a structure that was improperly assessed to its property.

g) We need not decide that question, however. Even if the Petitioner could make a prima facie case based on the improper inclusion of the demolished house, we find

Wright's appraisals, which did not include the second house, more persuasive. Wright prepared her appraisals in accordance with USPAP, and she relied on a generally accepted appraisal methodology—the sales-comparison approach. The Petitioner questioned some of Wright's adjustments, such as her adjustments for differences in the homes' ages and sites. But Wright reasonably explained her methodology, and the Petitioner did little to rebut her explanations. Thus, we find her valuation opinions generally reliable and persuasive.

h) Because Wright's appraisals are the most persuasive evidence of the property's true tax value, the assessments should reflect her value estimate for each assessment date. While we are generally reluctant to increase assessments, the Petitioner knew that could happen when it filed its appeals. The Petitioner chose not to commission a USPAP compliant appraisal that might have been more persuasive, and the Board must value the property based on the evidence in the record.

Summary of Final Determination

25. Wright's appraisals are the most persuasive evidence of the property's true tax value for each assessment date under appeal. We therefore order the assessments changed to the following values:

Year	Value
March 1, 2012	$325,000
March 1, 2013	$310,500
March 1, 2014	$307,000
March 1, 2015	$314,500

Issued: May 4, 2017

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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 within forty-five (45) days of 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>.