

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

Petition: 03-011-19-1-5-00908-19
Petitioner: Tom's Commercials, LLC
Respondent: Bartholomew County Assessor
Parcel: 03-95-32-000-000.500-011
Assessment Year: 2019

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

PROCEDURAL HISTORY

1. Tom's Commercials, LLC ("Tom's") contested the 2019 assessment of its property located at 1573 South 475 West in Columbus. On August 13, 2019, the Bartholomew County Property Tax Assessment Board of Appeals ("PTABOA") issued its final determination valuing the subject property at \$305,400 (\$70,400 for land and \$235,000 for improvements).
2. Tom's filed a timely Form 131 appeal with the Board and elected to proceed under our small claims procedures. On July 22, 2020, David Smith, our designated Administrative Law Judge ("ALJ"), held a telephonic hearing on Tom's petition. Neither he nor the Board inspected the property.
3. Tom's appeared by Certified Tax Representative Milo Smith. Bartholomew County Assessor Ginny Whipple appeared pro se. Smith, Whipple, and Appraiser Jon Scheidt were sworn as witnesses.

RECORD

4. The official record for this matter contains the following:

Petitioner Exhibit 1:	Affidavit of Tom Wetherald
Petitioner Exhibit 2:	Bartholomew County Gross Rent Multiplier ("GRM") neighborhood list
Petitioner Exhibit 3:	GRM statute
Petitioner Exhibit 4:	Joint memorandum
Petitioner Exhibit 5:	True Tax Value statute
Petitioner Exhibit 6:	2019 Property Record Card ("PRC") for subject
Petitioner Exhibit 7:	2018 PRC for subject

Petitioner Exhibit 8: September 17, 2018 e-mail from Assessor
Petitioner Exhibit 9: Income Method

Respondent Exhibit A: Whipple resume`
Respondent Exhibit B: Statement of Professionalism
Respondent Exhibit C: 2018 PRC for subject
Respondent Exhibit D: 2019 PRC for subject
Respondent Exhibit E: Aerial photo of subject parcel
Respondent Exhibit F: Scheidt Appraisal Report

5. The official 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.

OBJECTIONS

6. The Assessor objected to the admission of Petitioner's Exhibit 1 as hearsay, because the affidavit was not notarized or otherwise appropriately witnessed. Our ALJ took the objection under advisement. The statements contained in the affidavit are hearsay regardless of whether it has been notarized or otherwise witnessed under oath. However, our procedural rules allow us to admit hearsay evidence provided we do not base our final determination solely on the hearsay evidence. 52 IAC 4-6-9(d). We therefore overrule the objection and note that the affidavit does not serve as the basis for our final determination.

BURDEN OF PROOF

7. 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—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). If the assessor has the burden of proof and fails to meet it, the assessment reverts to the previous year's level or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b).
8. Here, the assessment increased from \$235,600 in 2018 to \$305,400 in 2019—an increase of more than 5%. The Assessor stipulated that she bears the burden of proof.

SUMMARY OF CONTENTIONS

9. **The Assessor's case:**
- a. Scheidt is an Indiana Certified Residential Appraiser. He is a 2010 graduate of Purdue University and he holds the SRA designation from the Appraisal Institute.

Scheidt has been appraising property primarily in Bartholomew County, but also in several surrounding counties, for the last 8 years. He was hired by the Assessor to establish the subject property's market value for tax appeal purposes. The appraisal report erroneously shows the effective date of his appraisal to be March 1, 2019, but he appraised the property as of January 1, 2019 using sales chosen based on that date. Scheidt believes that the erroneous effective date came from older tables he was reviewing during the appraisal process. *Scheidt testimony; Resp't. Ex. F.*

- b. Scheidt completed his appraisal pursuant to the Uniform Standards of Professional Appraisal Practice ("USPAP"). He considered using the sales, cost, and income approaches. However, he gave no consideration to the GRM approach because the property is not a typical income producing property and he was unable to find any appropriate sales from which to develop a GRM. Scheidt also concluded that the cost approach was less reliable since the home is approaching 100 years old. Scheidt therefore relied on the sales-comparison approach using available sales data from the area. *Scheidt testimony; Resp't Ex. F.*
- c. Scheidt performed both interior and exterior walk-through inspections of the subject property in October 2019. It has a single-family residential dwelling built nearly 100 years ago, a combination shed/greenhouse, and a horse barn. Scheidt had to expand his search parameters and radius because there were limited sales with similar age, features, and characteristics that had occurred within a two-year period before the appraisal's effective date. He located three comparable properties within 12 miles of the subject property, all of which he or his firm had previously appraised. *Scheidt testimony; Resp't Ex. F.*
- d. The three comps Scheidt used in his appraisal bracket the subject as far as the number of bedrooms, bathrooms, and gross living area. However, the subject has a superior suburban location that provides good proximity to schools, shopping, and employment. Scheidt therefore made positive adjustments for location to Comps 1 and 3 because they do not provide similar access. Comp 2 is on a much smaller site, which required an upward adjustment to account for its inferior size. While the subject has been adequately maintained, the condition of Comps 2 and 3 are superior to the subject due to some updates they received, necessitating downward adjustments. The subject's basement is a cellar, and it is only useful for housing mechanicals. Scheidt therefore assigned it no value. By contrast, Comps 2 and 3 have functional basements with finished areas that required downward adjustments. Except for Comp 3, all the properties have a two-car garage, so it received a positive adjustment. The subject's greenhouse has limited utility and Scheidt assigned it no value. However, he did place some value on the shed and horse barn based on their storage utility. Comps 1 and 3 both have superior amenities (a pool and pool house), resulting in negative adjustments for each property. Comp 2 only has a shed, so it received a positive adjustment to reflect its inferior amenities. *Scheidt testimony; Resp't Ex. F.*

- e. Scheidt's adjustments produced adjusted values ranging from \$275,000 for Comp 2 to \$292,000 for Comp 3. These values represent a range of 6% from lowest to highest. A range of less than 10% is considered a tight range, which is preferred in this valuation approach. Scheidt ultimately concluded to a value of \$285,000 under the sales-comparison approach. *Scheidt testimony; Resp't Ex. F.*
- f. Even though the property is currently a rental, Scheidt valued the property on the premise that the most likely buyer would be an owner/occupant. In his opinion, the subject's overhead and operating expenses would make it unappealing to an investor seeking an income-producing property. The subject's highest and best use is as a single-unit residence whether it is an owner-occupied or an investment property. Market value and market value-in-use are therefore the same for this particular property. *Scheidt testimony; Resp't Ex. F.*
- g. Tom's entire argument is that the GRM must be applied when calculating assessed values for properties with one to four rental units. The Board previously issued a ruling for the same property addressing the same argument that stated the legislature did not make GRM the exclusive method for determining the assessed value for rental properties. If it had, it would force assessors to arbitrarily choose GRMs when no supporting sales data is available. There is no sales data available for comparable one-to-four-unit rental properties from which to determine a GRM for the subject parcel. The sales-comparison approach is the best-supported method for determining the assessed value for this parcel. The Assessor requests the Board assign the subject an assessed value within 1% of \$285,000. *Whipple testimony.*

10. **Tom's case:**

- a. The subject property is over-assessed because the Assessor is using the wrong valuation method. This single-family, one-unit rental property is required to be valued using the GRM method. Indiana Code § 6-1.1-31-6(c) states that true tax value does not mean fair market value, and Scheidt's appraisal is a fair market value appraisal. Indiana Code § 6-1.1-4-39(b)(1) states that the preferred method for valuing a parcel with at least one rental unit is the GRM method. The Assessor's Operations Manual also states on page 75 that GRM is the preferred method for calculating value for a property with at least one rental unit. The Manual further says that if the taxpayer asks the Assessor to use the GRM method, that method must be considered by the Assessor. *Smith testimony; Pet'r Exs. 3, 4, 5, 9.*
- b. The Department of Local Government Finance ("DLGF") and Board issued a joint memorandum on August 27, 2007 which reinforced that the GRM method is preferred when valuing properties with one-to-four rental units. The DLGF was supposed to work with all the assessors to develop GRMs for residential rentals in their counties. The property should and must be valued according to its current use as

a rental using the GRM method.¹ *Smith testimony; Pet'r Ex. 4.*

- c. There is data to calculate the subject's assessed value using the GRM method because we know the monthly rental rate and the Assessor published a list of GRMs for neighborhoods in Bartholomew County. The subject is a single-family, one-unit property that was rented throughout 2018 and 2019 at the rate of \$1,600 per month. Tom Wetherald signed an affidavit in which he swore and affirmed that this rental information is correct. The subject is a rural property with a septic tank, rural water, and REMC electric, but no city utilities. The Assessor has incorrectly assessed this property as part of the Lexington Green neighborhood when it is really part of the Howe Minor subdivision. The Assessor's list of GRMs shows a GRM of 92 for "Various-Rural County Neighborhoods," which should apply to this parcel. Based on the monthly rent of \$1,600 and the GRM of 92, the subject's assessed value, based on its current use, should be \$147,200. *Smith testimony; Pet'r Exs. 1, 2, 6, 7.*

ANALYSIS

11. The Assessor failed to make a prima facie case supporting the 2019 assessment, but she did provide probative evidence supporting another value. Tom's failed to make a case for a valuation lower than the Assessor's requested value. 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 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. 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). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v.*

¹ Smith also offered testimony about a Memorandum authored by one of our Commissioners in 2015 that discusses the market value-in-use standard. However, the Memorandum clearly states that it "shall not be cited as legal authority" before the Board.

Wayne Twp. Ass'r, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for this appeal is January 1, 2019. Ind. Code § 6-1.1-2-1.5(a).

- c. As discussed above, the Assessor has the burden of proving that the 2019 assessment is correct. She offered a USPAP-compliant appraisal prepared by Scheidt, an Indiana Certified Residential Appraiser. Scheidt relied on the sales-comparison approach and concluded the property's value was \$285,000 as of January 1, 2019.
- d. In an effort to discredit Scheidt's appraisal, Tom's raised two basic arguments: (1) Scheidt's sales-comparison approach improperly valued the subject at its fair market value as opposed to its true tax value, and (2) because the subject is a rental property, the Assessor is required to value it using the GRM method.
- e. Tom's briefly argued that Scheidt's sales-comparison approach improperly valued the subject at its fair market value as opposed to its true tax value. However, Tom's has failed to convince us that Scheidt erred. Tom's seems to contend that Scheidt did not appraise the subject's true tax value because his sales-comparison approach relies on the market values of comps instead of their income-producing ability. But we note that at its core, the GRM method that Tom's insists is the required valuation approach also relies on the market values of comps. The GRM method develops an income multiplier by looking to *market data for sales of comparable income-producing properties* and calculates the ratio of the sale price to the gross income at the time of the sale. Tom's also appears to believe that Scheidt improperly strayed from determining the subject's true tax value by valuing it based on its highest and best use instead of what Tom's views as its current use—a rental property. However, Scheidt simply described the subject's highest and best use as a single-unit residence, which he felt was the correct description regardless of whether it is an owner-occupied or an investment property.
- f. Tom's also contends that because the subject is a rental property, the Assessor is required to value it using the GRM method. As the Assessor pointed out, however, we have previously addressed this same argument for this same property—and Tom's has given us no reason to stray from our prior decision.² Although the legislature has directed that the GRM is the “preferred” method of valuing properties with between one and four residential rental units, it is not the exclusive valuation method for such properties. This case serves as another example of why the legislature chose not to make the GRM the exclusive method—Scheidt was unable to find any appropriate sales from which to develop a GRM. Absent reliable data, we cannot fault Scheidt for deciding to forego a GRM analysis.
- g. Nevertheless, Tom's claims that reliable data does exist. It submitted an “Affidavit” purportedly from the owner of the subject stating that the subject's monthly rental

² See *Tom's Rentals LLC v. Bartholomew Cty. Ass'r.*, Pet. No. 03-011-15-1-5-00100-15, et. al. (IBTR 2017).

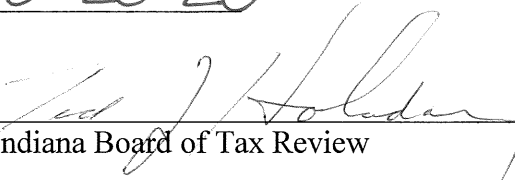
rate during the year at issue was \$1,600/month. Tom's then selected a GRM of 92 from a list of GRMs the Assessor emailed to Tom's representative and calculated a proposed assessment of \$147,200 by multiplying the GRM by the monthly rental rate. However, there are several serious problems with Tom's GRM analysis that deprive it of any probative value.

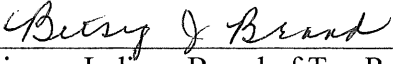
- h. First, Tom's attempted to establish the monthly rental rate with hearsay statements contained in an unwitnessed/unnotarized affidavit. Additionally, Tom's failed to convince us that the subject is incorrectly classified as being part of the Lexington Green neighborhood. Tom's claim that the subject is part of the Howe Minor subdivision appears to be true, but it failed to explain how the legal description for a platted lot tells us anything about which neighborhood the Assessor should have grouped it in for assessment purposes. Furthermore, Tom's did not provide any evidence demonstrating that the GRM for "Various-Rural County Neighborhoods" applies to the subject, which is at odds with Scheidt's description of the subject's neighborhood as suburban. Nor did Tom's show that the GRM it selected is supported by market data from sales of comparable income-producing properties. Finally, we note that Tom's applied a GRM from 2018 but failed to explain how the resulting value relates to the 2019 valuation date.
- i. Although the Assessor failed to make a prima facie case supporting the original assessment, we conclude that Scheidt's appraisal provides probative evidence of the property's true tax value. He prepared his appraisal in accordance with USPAP, and he relied on a generally accepted appraisal methodology—the sales-comparison approach. Because Tom's failed to offer any probative valuation evidence to rebut Scheidt's appraisal, the assessment must be changed to reflect his value conclusion.

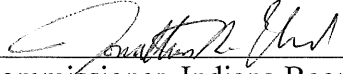
FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order the 2019 assessment reduced to \$285,000.

ISSUED: 10.20.20


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>.