

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

Petition #: 71-023-02-1-5-00033
Petitioner: Brian K. Weaver¹
Respondent: Penn Township Assessor (St. Joseph County)
Parcel #: 16-1147-5906
Assessment Year: 2002

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

Procedural History

1. The Petitioner initiated an assessment appeal with the St. Joseph County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated December 31, 2003.
2. The Petitioner received notice of the decision of the PTABOA on June 9, 2004.
3. The Petitioner filed an appeal to the Board by filing Forms 131 with the county assessor on July 16, 2004. Petitioner elected to have the case heard in small claims.
4. The Board issued notice of hearing to the parties dated January 23, 2006.
5. The Board held an administrative hearing on March 9, 2006, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:²
 - a. For Petitioner: Brian K. Weaver, Owner
John Miller, Certified Public Accountant
Ronald A. Cukrowicz, Employee of the Petitioner

¹ The Form 131 petition shows the subject property in the name of Brian K. Weaver. The Notification of Final Assessment Determination – Form 115 issued by the St. Joseph Property Tax Assessment Board of Appeals shows the property in the name of Administrator of Veterans Affairs. At the hearing, Mr. Weaver stated that he had purchased the subject property on contract and was responsible for the 2002 payable 2003 taxes.

² Mr. Terrance Wozniak, Ms. Beth A. Szweda, and Ms. Sue Tranberg were present during the administrative proceedings on behalf of the Respondent, but they were not sworn in to present testimony.

Richard Lentz, Employee of the Petitioner

- b. For Respondent:
- Dennis Dillman, PTABOA Member
 - Ross A. Portolese, PTABOA Member
 - Ralph J. Wolfe, PTABOA Member
 - Sue Tranberg, PTABOA Member
 - Kevin Klaybor, PTABOA President
 - David E. Wesolowski, St. Joseph County Assessor
 - Beth A. Szweda, Deputy Assessor, St. Joseph County
 - Terrance F. Wozniak, Attorney representing St. Joseph County and Portage Township Assessors
 - Greg Bock, Penn Township Assessor

Facts

7. The subject property is a single-family rental property located at 107 E. Tenth Street, Mishawaka, in Penn Township.
8. The ALJ did not conduct an on-site visit to the subject property.
9. The PTABOA determined the assessed value of the subject property to be \$8,100 for the land and \$34,700 for the improvements, for a total assessed value of \$42,800.
10. The Petitioner requested a total assessed value for land and improvements of \$20,961.

Issue

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner contends that the property under review is a rental property and should be valued using the income approach. *Weaver testimony*. The Petitioner argues that while St. Joseph County's use of the gross rent multiplier (GRM) for valuing one to four unit income producing properties is a valid strategy for establishing value based on location factors, it is only a starting point for determining market value-in-use. *Id.* According to the Petitioner, the income approach to valuation is a better indicator of value for a specific property. *Id.*
 - b. The Petitioner contends that the property is over-valued based upon its market value. *Weaver testimony*. According to the Petitioner, the property's value is \$30,349 pursuant to the income approach to value. *Id.* The Petitioner alleges that

the calculation he used is based on his 26 years of property management and data from his thirty-three rental properties.³ *Id.*

- c. The Petitioner testified that the 2002 annual gross income of the subject property is \$8,400. *Weaver testimony.* Further, the Petitioner testified that the 1999 through 2002 average vacancy and collection loss calculated per the Petitioner's property located in Penn Township is 10.3%. *Id.* When the allowable expense calculated on all the Petitioner's properties located in Penn and Portage Township of 42% is removed, the Petitioner testified that the property has a net operating income of \$4,370 for the subject parcel. *Petitioner Exhibits A, A-5, A-14 & O-4; Miller testimony.* According to the Petitioner, he then calculated a capitalization rate of 14.4% by taking one sale from a MLS listing sheet and dividing the listed net operating income of \$11,136 by the selling price of \$77,250. The Petitioner testified that he then multiplied the capitalization rate of 14.4% by the net operating income for the subject property of \$4,370 to arrive at a market value for the subject property of \$30,349. *Petitioner Exhibits A-15 & O-4; Miller testimony.*
- d. The Petitioner further testified that he also used a GRM for the subject property's calculations. *Miller testimony.* According to the Petitioner, the GRM should be 4 and multiplied by the property's annual gross income of \$7,535, similarly arrives at a market value for the subject of \$30,349. *Petitioner Exhibit O-4; Miller testimony.*
- e. Finally, the Petitioner testified that high crime rates in the area, negatively impact the market value of the subject property. *Weaver testimony.* According to the Petitioner, several articles and statistics from London, New York, Merrillville, Gary and South Bend show property values have declined in areas of high criminal activity. *Weaver testimony; Petitioner Exhibit A-1.* The Petitioner contends that the articles further show that crime impacts the capitalization rate of an area and what an investor is willing to take on as a burden of risk in investing in real estate. *Id.*

12. Summary of Respondent's contentions in support of the assessment:

- a. The Respondent contends that the assessment of the subject property is correct. According to the Respondent, the Township calculated the value of the subject property using a GRM. *Bock testimony.* The Respondent testified that the assessment was calculated using the Petitioner's annual gross income on the subject property in the amount of \$8,400. *Id.* This annual gross rent was then

³ The Petitioner submitted a map of St Joseph County showing the thirty-three properties on appeal in both Penn and Portage Townships broken down in five color coded areas with Penn Township being color coded "orange." *Petitioner Exhibit A.*

adjusted to reflect the market rent for the area (\$8,400 minus \$1,260) to equal an annual gross income of \$7,140. *Id.* Finally, the annual gross income of \$7,140 was then multiplied by the GRM of 6 that was determined for this area to equal a market value for the subject property of \$42,800. *Respondent Exhibit 8; Bock testimony.*

- b. The Respondent questioned the accuracy of the Petitioner's income approach to value because the Petitioner presented no supporting documentation to show how the capitalization rate, vacancy and loss calculation and the income and expenses of the subject property compare to other like properties. *Dillman testimony; Wozniak argument.* The Respondent further argued that Petitioner's capitalization rate was based on one MLS listed sale rather than multiple sales from the area. *Id.* The Respondent concluded that the Petitioner's income approach calculation has not been prepared in accordance with standard appraisal practices and was not entitled to any weight. *Id.*
- c. Finally, the Respondent contends that the articles and statistics on crime submitted by the Petitioner have not been adequately explained. The Petitioner has not shown how such information impacts the market value-in-use of the property under appeal. *Wozniak argument.*

Record

13. The official record for this matter is made up of the following:

- a. The Petition,
- b. The tape recording of the hearing labeled STB #2286,
- c. Exhibits:

Petitioner Exhibit A - Color coded map Portage and Penn Township properties,

Petitioner Exhibit A-1 - The following information on crime; Urban Property Crime Erodes The Value Of Your Home by Dr. Steve Gibbons, The Fruman Center's Current Research Agenda by New York University School of Law, South Bend City TownInfo.com, Crime Stories Should Take Public Safety Angle by Post-Tribune Merrillville, Core Indicators Report by Healthy Communities Initiative, Crime Statistics by CityRating.com, Offenses by Area from 1999 through 2002 by South Bend Police Department, Combined Crime

Statistics by areas on appeal and Combined
Crime Statistics Totals prepared by Mr. Weaver,
Petitioner Exhibit A-3 – Transcript of Penn Township meeting, dated 5-
19-04,
Petitioner Exhibit A-4 – Department of Local Government Finance
Memorandum on Overview of the Income
Approach to Valuation, dated
November 12, 2003,
Petitioner Exhibit A-5 – Weaver Property Services, LLC total annual
income and allowable expenses calculation,
Petitioner Exhibit A-14– Calculation of the average vacancy rate for
Petitioner’s five properties located in Penn
Township,
Petitioner Exhibit A-15 – MLS listing sheet for a property located at 228
Lawrence, Mishawaka,
Petitioner Exhibit A-16 – Weaver Property Services, LLC profit and loss
statement from January 1999 through December
2002,
Petitioner Exhibit A-17 – U.S. Return of Partnership Income – Form 1065
for 2002,
Petitioner Exhibit A-18 – U.S. Return of Partnership Income – Form 1065
for 2001,
Petitioner Exhibit A-19 – U.S. Return of Partnership Income – Form 1065
for 2000,
Petitioner Exhibit A-20 – U.S. Return of Partnership Income – Form 1065
for 1999,
Petitioner Exhibit A-21 – Copies of the Form 131 petitions for the
properties under appeal in Portage and Penn
Townships,
Petitioner Exhibit O-4 – Income approach and GRM calculations for 107
East Tenth,

Respondent Exhibit 1 – Form 130 petition,
Respondent Exhibit 2 – Notification of Final Assessment Determination –
Form 115,
Respondent Exhibit 3 – Form 131 petition,
Respondent Exhibit 4 – Brian K. Weaver’s annual income and allowable
expenses presented at the PTABOA hearing,
Respondent Exhibit 5 – Real estate tax statements for 2002 payable 2003,
Respondent Exhibit 6 – Subject 1989 property record card (PRC),
Respondent Exhibit 7 – Subject 2002 PRC,
Respondent Exhibit 8 – Township’s rental property worksheet,

Board Exhibit A – Form 131 petition,

Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet,

- d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
 - c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a. The Petitioner contends that his property is over-valued based on its market value. The Petitioner further contends that the subject property’s high crime rate negatively impacts its value.

Market Valuation

- b. The Petitioner contends that the subject property is over-valued based on an income approach to value calculation. *Petitioner Exhibit O-4*. In support of this contention, the Petitioner presented an income approach summary showing the value of the property on appeal to be \$30,349. The Petitioner based the calculation on the income and expenses of the subject property and the Petitioner’s thirty-three properties located in Penn and Portage Townships. *Petitioner Exhibits A, A-5, A-14, A-15, & O-4*. The Petitioner testified that the

income approach to value is the best indicator of value for the subject property because it reflects the market value-in-use. *Weaver testimony*.

- c. The 2002 REAL PROPERTY ASSESSMENT MANUAL (“MANUAL”) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property.” MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual’s definition of true tax value, including the cost approach, sales comparison approach or the income approach, to establish the actual true tax value of a property. *See* MANUAL at 5.
- d. The Petitioner seeks to value its property based on the income approach to value. “The income approach to value is based on the assumption that potential buyers will pay no more for the subject property...than it would cost them to purchase an equally desirable substitute investment that offers the same return and risk as the subject property.” MANUAL at 14. The income approach, thus, focuses on the intrinsic value of the property, not upon the Petitioner’s operation of the property because property-specific rents or expenses may reflect elements other than the value of the property “such as quality of management, skill of the work force, competition and the like.” *Thorntown Telephone Company, Inc. v. State Board of Tax Commissioners*, 588 N.E.2d 613, 619 (Ind. Tax Ct. 1992).
- e. Here, the Petitioner offered rental and expense information solely from Petitioner’s personal data on the subject property and other properties it owns. The Petitioner provided no evidence to demonstrate whether the income and expenses were typical for comparable properties in the market. Thus, any low rental income or high expense levels may be attributable to the Petitioner’s management of the properties as opposed to their market value. *See Thorntown Telephone Company*, 588 N.E.2d at 619. *See also, Lake County Trust Co. No. 1163 v. State Board of Tax Commissioners*, 694 N.E.2d 1253, 1257-58 (Ind. Tax Ct. 1998) (economic obsolescence was not warranted where taxpayer executed unfavorable leases resulting in a failure to realize as much net income from the subject property). Also, the Petitioner failed to explain what criteria he used to determine his neighborhoods (color coded areas) or how they compare to the County’s delineated neighborhoods. More importantly, the Petitioner did not adequately support his capitalization rate. The Petitioner based the calculation of capitalization rate from a single MLS sales listing. A 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.” *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 275 (Ind. Tax Ct. 2005). The Respondent

correctly notes that selecting the correct capitalization rate is critical to use the income approach. Here, the Petitioner failed to show that his one MLS sale is representative of the market. Nor did the Petitioner show that his income approach methodology conformed to the Uniform Standards of Professional Appraisal Practice (USPAP) or any other generally accepted standards. Consequently, the Petitioner's income approach calculation lacks relevance or probative value in this case.

- f. Alternatively, the Petitioner contends that the subject property could be valued by using a GRM. Instead of using the multiplier of 6 that the township used, the Petitioner used a multiplier of 4. The Petitioner failed, however, to provide any support for the use of a four-time multiplier. As such, the Petitioner failed to walk the Board through every element of the analysis. *See Indianapolis Racquet Club, Inc.*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004). The Petitioner has failed to raise a prima facie case on the basis of the income approach.

Obsolescence

- g. The Petitioner also testified that statistics have shown that property values are negatively impacted by criminal activity within a neighborhood. *Id.*; *Petitioner A-1*. In support of this contention, the Petitioner submitted several articles and statistics to show that criminal activity affects the value on property and what risk a potential investor is willing to take. *See Petitioner Exhibit A-1*.
- h. According to the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A, intro at 1, (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES), depreciation consists of physical depreciation, functional obsolescence and external obsolescence. *Id.* External obsolescence represents a loss in value caused by an influence outside of the property's boundaries. *Id.* For a Petitioner to show it is entitled to receive an adjustment for obsolescence, however, the Petitioner must both identify the causes of obsolescence it believes is present in its improvement and also quantify the amount of obsolescence it believes should be applied to its property. *Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Thus, the Petitioner must present probative evidence that the causes of obsolescence identified by the Petitioner are causing an actual loss in value to its property. *See Miller Structures, Inc. v. State Board of Tax Commissioners*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001). Further, the Petitioner's quantification of the amount of obsolescence must be converted into a percentage reduction and applied against the structure's overall value. *See Clark*, 694 N.E.2d at 1238. It is not sufficient for a Petitioner to merely identify random factors that may cause the property to be entitled to an obsolescence adjustment. The Petitioner must explain how those purported causes of obsolescence cause the property's improvements to suffer an actual loss in value.

See Champlin Realty Co. v. State Board of Tax Commissioners, 745 N.E.2d 928, 936 (Ind. Tax Ct. 2001), *review denied*.

- i. It is not sufficient for the Petitioner to allege that there is a high crime rate in the property's neighborhood. The Petitioner must show the amount of loss in value caused by that crime. In failing to provide this evidence, the Petitioner has not quantified the obsolescence to which he believes he is entitled. Further, while the Petitioner's articles do state there can be an affect on property value, the Petitioner failed to meaningfully explain how or what affect there may be on the property under appeal. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1119 (Ind. Tax Ct. 1998). Thus the Petitioner failed to raise a prima facie case that the subject property's assessment was incorrect in failing to apply an obsolescence factor.
- j. Where Petitioner has not supported the claim with probative evidence, Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus., LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioner failed to provide sufficient evidence to establish a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.