

REPRESENTATIVE FOR PETITIONER:
David Schaadt, Integrity Tax Consulting

REPRESENTATIVE FOR RESPONDENT:
F. John Rogers, Thompson & Rogers

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Azar, Incorporated,)	Petition No.: 02-073-07-1-4-03011
)	
Petitioner,)	Parcel No.: 02-07-14-477-012.000-073
)	
v.)	County: Allen
)	
Allen County Assessor,)	Township: Washington
)	
Respondent.)	Assessment Year: 2007

Appeal from the Final Determination of the
Allen County Property Tax Assessment Board of Appeals

March 4, 2011

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. Although the Petitioner, Azar Incorporated, offered evidence to show that the subject property suffered from deferred maintenance on March 1, 2007, Azar did not offer probative evidence that would allow the Board to determine the property’s true tax value. Azar did not explain how a significant portion of its evidence related to the subject

property's market value-in-use as of the relevant valuation date. And while Azar's representative attempted to apply the sales-comparison and income approaches to value, he did not show that he complied with generally accepted appraisal principles when he made key judgments in his analyses under those approaches.

Procedural History

2. Azar filed a Form 130 petition contesting the subject property's 2007 assessment. On October 30, 2009, the Allen County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying Azar relief. Azar then timely filed a Form 131 petition with the Board. The Board has jurisdiction over Azar's appeal under Indiana Code §§ 6-1.1-15 and 6-1.5-4-1.

Hearing Facts and Other Matters of Record

3. On October 19, 2010, the Board's administrative Law Judge, Patti Kindler ("ALJ"), held a hearing on Azar's appeal. Neither the Board nor the ALJ inspected the subject property.
4. The following people were sworn in and testified:
 - Dave Schaadt, Integrity Tax Consulting
 - Robin Thompson, Commercial Appraisal Deputy, Allen County Assessor's Office
5. Azar offered the following exhibits:
 - Petitioner Exhibit 1: March 1, 2007 letter from Dave Schaadt to the Washington Township Assessor with two-page narrative about Azar's requested assessment,
 - Petitioner Exhibit 2: Copies of two photographs of the subject building's front door and interior taken on May 20, 2008,
 - Petitioner Exhibit 3: Copies of two photographs of boarded-up windows and ceiling taken on May 20, 2008,
 - Petitioner Exhibit 4: March 17, 2010 printout from <http://www.loopnet.com> advertising the subject property for lease,
 - Petitioner Exhibit 5: March 17, 2010 e-mail from Robin Thompson to Dave Schaadt,
 - Petitioner Exhibit 6: Spreadsheet entitled "Income & Expense Analysis,"

- Petitioner Exhibit 7: “Income Statement Breakdown” before and after the remodeling,
- Petitioner Exhibit 8: Sales disclosure form for September 20, 2004 sale of the subject property, seven building permits, one sign permit, invoices dated 9/3/08 and 2/16/09, *RealtyRates.com Investor Survey-1st Quarter 2006*, and unsigned Lease Agreement between Azar, Inc. and MSDK, Inc.,
- Petitioner Exhibit 9: Booklet from Integrity Tax Consulting entitled “Assessment Analysis as of March 1, 2007,”
- Petitioner Exhibit 10: “Income Statement Breakdown” with variable lease prices ranging from \$19 to \$21,
- Petitioner Exhibit 11: “Income Statement Breakdown” with remodeling expense and variable lease prices ranging from \$19 to \$21,
- Petitioner Exhibit 12: Comparable Property Report for Cosmos Restaurant located at 1425 W. Washington Center Road,
- Petitioner Exhibit 13: “Sales Disclosure Detail” for 1425 W. Washington Center Road,
- Petitioner Exhibit 14: Invoice dated 9/3/08,
- Petitioner Exhibit 15: “Exhibit B Lessor’s Work,”
- Petitioner Exhibit 16: “Exhibit C Lessor’s Equipment,”
- Petitioner Exhibit 17: “Response to County Information,”
- Petitioner Exhibit 18: Second page of “Response to County Information”

6. The Assessor presented the following exhibits:

- Respondent Exhibit 1: Notice of hearing,
- Respondent Exhibit 2: Respondent’s position statement,
- Respondent Exhibit 3: “Income Capitalization Proforma Analysis” (spreadsheet),
- Respondent Exhibit 4: *RealtyRates.com Investor Survey-2nd Quarter 2006*, *RealtyRates.com Investor Survey-1st Quarter 2007*,
- Respondent Exhibit 5: *NAI Harding Dahm* vacancy loss analysis for Fort Wayne area,
- Respondent Exhibit 6: October 24, 2008 e-mail from Robin Thompson to Dave Schaadt,
- Respondent Exhibit 7: PTABOA Findings and Conclusions,
- Respondent Exhibit 8: Property record card for subject parcel,
- Respondent Exhibit 9: Property record card for GES, LLC,
- Respondent Exhibit 10: Property record card for Tony and Stan, LLC,
- Respondent Exhibit 11: Property record card for Chappels Broadway, LLC,
- Respondent Exhibit 12: Property record card for Sekulovski,
- Respondent Exhibit 13: Property record card for M. Allen,
- Respondent Exhibit 14: Property record card for O’Reilly Automotive, Inc.,
- Respondent Exhibit 15: Building permits issued for remodel of improvements on the subject parcel,

- Respondent Exhibit 16: Lease Agreement between Azar and MSDK, Inc. (missing pages 13-15, including signature page),
- Respondent Exhibit 17: Copies of title pages, table of contents and pages 490-92 from APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE, (13th ed. 2008),
- Respondent Exhibit 18: Copies title pages and page 259 from the INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, PROPERTY APPRAISAL AND ASSESSMENT ADMINISTRATION (Joseph K. Eckert ed. 1990).

7. The Board recognizes the following additional items as part of the record of proceedings:
- Board Exhibit A: Form 131 petition,
 - Board Exhibit B: Hearing notice,
 - Board Exhibit C: Hearing sign-in sheet,
 - Board Exhibit D: Azar's witness and exhibit list,
 - Board Exhibit E: Notice of Appearance by F. John Rogers
8. The subject property contains a 3,429-square-foot restaurant on a 1.05-acre lot. It is located near the I-69 and the Coldwater Road interchange at 301 East Washington Center Road in Fort Wayne, Indiana.
9. For 2007, the PTABOA determined the following values for the subject property:
- | | | |
|-----------------|-------------------------|------------------|
| Land: \$365,900 | Improvements: \$157,000 | Total: \$522,900 |
|-----------------|-------------------------|------------------|
10. Azar requested the following values on its Form 131 petition:
- | | | |
|-----------------|-------------------------|------------------|
| Land: \$365,900 | Improvements: \$ 59,400 | Total: \$425,300 |
|-----------------|-------------------------|------------------|

Administrative Review and the Parties' Burdens

11. A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). In making its case, the taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. 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”). If the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to rebut or impeach the taxpayer’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Analysis

Parties’ Contentions

A. Azar’s Contentions

12. The subject property’s \$522,900 assessment is too high in light of the property’s condition on March 1, 2007. *Schaadt argument*. The property may have been worth that amount in 2009; indeed, Azar did not appeal the property’s 2009 assessment. But in 2007, the property suffered from substantial deferred maintenance that required extensive repair and remodeling before it could be sold or leased. *Schaadt testimony*. Among other things, the restaurant building had rotted wood on its doors, boarded up windows, and missing ceiling tiles. *Id*; *Pet’r Exs. 2-3*.
13. Azar bought the subject property for \$405,000 on September 20, 2004. According to Mr. Schaadt, “it was a quit claim deed; basically they took this property over because Taco Cabana abandoned it.” *Schaadt testimony*; *Pet’r Ex. 8*. That sale price gave Azar room to make needed repairs and improvements. *Schaadt testimony*. The total cost for repair and remodeling was \$253,700. *Schaadt testimony*; *Pet’r Ex. 8*. Mr. Schaadt, however, acknowledged that much of that amount related to personal—not real—property. *Schaadt testimony*. He calculated the repair and remodeling costs attributable to the real property at \$71,922, while the Assessor’s witness, Ms. Thompson, estimated those real property costs at \$60,000. *Schaadt testimony*.
14. In any event, the repairs were necessary to make the subject property rentable or sellable. To that end, Mr. Schaadt offered an analysis of the property’s value under the income approach. In that analysis, Mr. Schaadt used an unsigned 2008 lease between Azar and

MSDK, Inc., which used the property to run a Barb-B-Cutie restaurant. *Pet'r Ex. 8*. The five-year lease called for rent of \$72,093 or \$21 per square foot of building space for the first year. *Id.*; *Schaadt testimony*. Using that rent and subtracting 10% for vacancy and collection losses, Mr. Schaadt arrived at effective gross income of \$64,884. *Schaadt testimony*; *Pet'r Ex. 7*. Mr. Schaadt did not explain why he used 10% of gross income to account for vacancy and collection loss other than to say that he took his numbers from an analysis that Ms. Thompson had given him. *See Schaadt testimony*; *Pet'r Ex. 6*.

15. From his estimated effective gross income, Mr. Schaadt subtracted the following: (1) replacement reserves of \$1,947, or 3% of gross income; (2) a management fee of \$2,596, or 4% of gross income; and (3) remodeling costs of \$12,000. *Schaadt testimony*; *Pet'r Ex. 7*. Again, Mr. Schaadt did not explain how he determined any of those amounts other than to say that he used Ms. Thompson's numbers. *See id.* In particular, Mr. Schaadt pointed out that Ms. Thompson had used the \$12,000 figure for remodeling costs, which she derived by spreading what she viewed as the \$60,000 total of real-property-related remodeling costs over the five-year lease between Azar and MSDK. *See Schaadt testimony*; *Pet'r Exs. 5-6*. After subtracting the replacement reserves, management fee, and remodeling costs, Mr. Schaadt was left with net income of \$62,950. *Id.*

16. To capitalize his estimated income, Mr. Schaadt used a rate of 11.53%, which he calculated based on an overall rate of 10.25% that he loaded by adding 50% of the subject property's tax rate (the amount of taxes that Azar was responsible for paying under the lease). *Schaadt testimony*; *Pet'r Exs. 7-8*. Mr. Schaadt supported his rate by pointing to a printout from *RealtyRates.com INVESTOR SURVEY-1st Quarter 2006* for Restaurants-Fast Food. *Schaadt testimony*; *Pet'r Ex. 8*. After capitalizing the property's net income, Mr. Schaadt ended up with a value of \$419,270. *Pet'r Ex. 7*. Mr. Schaadt also made alternate calculations using rent of \$21, \$20, and \$19 per square foot and Ms. Thompson's slightly higher capitalization rate of 12.33%.¹ *Schaadt testimony*; *Pet'r Ex.*

¹ Mr. Schaadt presumably referred to the rate that Ms. Thompson used in her revised calculations that the Assessor offered at the Board's hearing, which was 12.3261%. *See Resp't Ex. 3*.

10. Those calculations yielded values of \$413,222, \$388,910, and \$363,599, respectively. *Pet'r Ex. 10.*
17. In response to questions about whether it was appropriate to deduct for repair and remodeling costs on top of replacement reserves, Mr. Schaadt explained that the repair and remodeling costs were necessary to bring the property to leasable condition. *See Schaadt testimony.* The tenant insisted on those repairs. *Id.*; *see also Pet'r Ex. 8. Lease at 1, 16-17.* Simply using reserves of \$2,009 would require 181 years to recapture the \$253,700 of repair and remodeling costs. *Schaadt testimony.* While the \$253,700 included costs related to personal property, so did the \$21-per-square-foot lease rate. *Id.*; *Pet'r Ex. 8.* To eliminate any connection to personal property, one could use rent of \$16 per square foot in determining the property's net income. That was the subject property's advertised lease rate at the time of the Board's hearing. *Schaadt testimony; Pet'r Ex. 4.* When Mr. Schaadt used rent of \$16-to-\$17 and ignored the repair and remodeling costs, he arrived at a value of \$399,067. *Schaadt testimony.*
18. Mr. Schaadt also performed what he described as an "assessment analysis." *Pet'r Ex. 9.* In that analysis, Mr. Schaadt used four properties that he believed were comparable to the subject property. Two of the properties had actually sold, and the other two were listed for sale. *Pet'r Ex. 9 at comparables tab.* The first property was just around the corner from the subject property. Its building needed extensive remodeling, which was reflected in the property's sale price of \$100.83 per square foot. The other three properties sold for \$123.91, \$156.44, and \$160.37 per square foot, respectively. *Schaadt testimony; Pet'r Ex. 9, comparables tab at 4-7.*
19. Mr. Schaadt then made the following adjustments to each property's sale or list price to account for differences between it and the subject property: 1% of the gross sale or list price for each year difference in building age, and 2% of the gross sale or list price for each percentage-point difference in land-to-building ratio. *Pet'r Ex. 9, assessment analysis tab at 2.* Mr. Schaadt further adjusted each property's sale or list price by 3% per year to relate those prices to January 1, 2006. *Id.* And he adjusted the two list prices

by 10% to account for the fact that those properties had not actually sold. *Id.* Mr. Schaadt, however, did not point to any data to support his adjustments or otherwise explain how he quantified those adjustments. *See id.*

20. The average adjusted sale price was \$130.34 per square foot, which translated to a value of \$445,800 for the subject property. *Schaadt testimony.* According to Mr. Schaadt, however, simply using the average adjusted sale price would not account for the subject property's need for repair and remodeling. *Schaadt testimony; Pet'r Ex. 9, assessment analysis tab at 1-2.* To account for those needs, Mr. Schaadt believed that a value of \$115 per square foot would be more appropriate. *Id.*
21. Although not included in Mr. Schaadt's original analysis, Azar included sales information for Cosmos restaurant. *See Schaadt testimony; Pet'r Ex. 12.* That property sold in February 2007 for \$580,000, which Mr. Schaadt computed to be \$125.98 per square foot. *Id.* Although the Assessor's materials list the sale price as \$156 per square foot, Mr. Schaadt divided the sale price by the area listed on the property's record card. *Schaadt testimony.*
22. According to Mr. Schaadt, the subject property was correctly assessed for 2009. *Schaadt testimony.* Like the 2007 assessment, however, the 2009 assessment included a 47% market adjustment for obsolescence. *Id.; Pet'r Ex. 9 at county PRC tab.* A greater adjustment was needed for 2007 to account for the property's substantial deferred maintenance. *Schaadt testimony.*

B. The Assessor's Contentions

23. The Assessor took issue with Mr. Schaadt's analyses. According to the Assessor's witness, Ms. Thompson, Mr. Schaadt relied on sales and listings of properties that were dissimilar to the subject property. *Thompson testimony.* Mr. Schaadt's first property, the former Joe's Crab Shack, is 5,000 square feet larger than the subject building, which would yield a lower per-unit price. Also, the Joe's Crab Shack building was vacant at the

time of the sale and needed to be renovated. *Id.*; *Resp't Exs. 2, 11*. Mr. Schaadt's second sale, which involved a former Denny's that sold for \$695,000 in 2006, was really a land sale that included the cost of demolishing the existing building. *Id.*; *Resp't Exs. 2, 14*. And Mr. Schaadt's third property is in an inferior location. *Id.*; *Resp't Exs. 2, 12*.

24. Ms. Thompson, however, agreed that the fourth property, a former Tumbleweed restaurant that sold for \$160.37 per square foot in May 2006, was a good indicator of the market for the subject property's area. *Thompson testimony; Resp't Exs. 2, 10*. It is in a location similar to the subject property. So was the fifth property, the one that Mr. Schaadt did not include in his original analysis. That property contains a Cosmos Restaurant, which was formerly a KFC restaurant. *Id.*; *Resp't Exs. 2, 9*. It sold for \$154.46 per square foot, a little more than the \$152.16 per square foot that the subject property's March 1, 2007 assessment equates to. *Id.* Although Ms. Thompson's data reflects a higher per-square-foot price for that property than what is reflected in Mr. Schaadt's data, that difference may stem from the fact that they buyer made some additions after the sale. *Thompson testimony*.
25. Ms. Thompson revised the income-approach analysis that she had originally supplied to Mr. Schaadt. *Thompson testimony; Resp't Ex 3*. In both her original and revised analyses, Ms. Thompson derived the subject property's potential gross income from Azar's 2008 lease agreement with MSDK. *Id.*; *Resp't Ex. 16*. Although that lease apparently included personal property, it did not specify what percentage of the rent, if any, was attributable to the personal property. *Id.* So Ms. Thompson did not adjust the \$21 per square foot rent. *See Thompson testimony*.
26. In her revised analysis, Ms. Thompson used a vacancy loss equaling 7% of gross income, which she took from *NAI Harding Dahm* for the Fort Wayne area. *Thompson testimony; Resp't Ex. 5*. She also used replacement reserves and management fees equaling 3% of gross income each. *Id.*; *Resp't Ex. 5*. Ms. Thompson took her overall capitalization rate from *RealtyRates.com INVESTOR SURVEY 2nd Quarter 2006* for Restaurants-Fast Food, to which she added property taxes to arrive at a total rate of 12.3261%. *Id.*; *Resp't Ex. 4*.

27. In revising her analysis, Ms. Thompson realized that she had overestimated the amount of remodeling costs that were attributable to real estate as opposed to personal property. When she recalculated that number it came to only \$50,000. *Thompson testimony*. More importantly, Ms. Thompson realized that the remodeling costs should not have been included as a separate expense but were instead simply part of replacement reserves. *Id.*
28. In fact, when cross-examining Mr. Schaadt, the Assessor’s counsel directed Mr. Schaadt’s attention to excerpts from two different works: *Property Appraisal and Assessment Administration*, a publication of the International Association of Assessing Officials (“IAAO”) (1990) and *The Appraisal of Real Estate* (13th ed.), a treatise published by the Appraisal Institute. Faced with those excerpts, Mr. Schaadt acknowledged that some of the remodeling costs were capital improvements that should be reflected as replacement reserves rather than operating expense. *See Schaadt testimony*;² *Rogers argument*. By including the cost for repairs and remodeling as an operating expense while also deducting for replacement reserves, Mr. Schaadt essentially “double dipp[ed].” *Rogers argument*.
29. Finally, the subject property receives a 47% market adjustment for obsolescence. The Assessor originally gave the property that adjustment because it was empty and therefore was not producing any income. *Thompson testimony*; *Resp’t Ex. 8*.

Discussion

30. Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.”

² “Q: What you are telling me is that the . . . improvements that you looked at here - that you’ve added the \$12,000 per year. Are they or are they not capital improvements?”

A: Some of them are, yes. Some of them are short term.

. . .

Q: [w]ould you agree with the IOOA . . . when they say that capital improvements should not be considered operating expenses?

A: It would be considered in the reserves, I agree with that.”

2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property's market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.

31. A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
32. Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dept' of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *See id.* For March 1, 2007 assessments, the valuation date was January 1, 2006. 50 IAC 21-3-3(2006).
33. Azar relied on three things to rebut the presumption that the subject property was accurately assessed: (1) the property's sale price, (2) Mr. Schaadt's "assessment analysis," and (3) Mr. Schaadt's analysis under the income approach. Because Azar's evidence was largely unrelated to the relevant valuation date and Mr. Schaadt failed to show that he complied with generally accepted appraisal principles, Azar failed to make a *prima facie* case.

34. The Board begins with the subject property's sale price. The sale took place in September 2004, more than 15 months before the January 1, 2006 valuation date at issue in this appeal. Mr. Schaadt did not even attempt to explain how that sale price related to the property's value as of January 1, 2006. Also, in describing the sale, Mr. Schaadt testified that "it was a quit claim deed; basically [Azar] took this property over because Taco Cabana abandoned it." *Schaadt testimony*. That raises significant questions about whether the sale price is a reliable indicator of the subject property's value. Perhaps that is why Mr. Schaadt did not rely particularly heavily on the property's sale price. In any event, the sale price lacks probative value.
35. Mr. Schaadt's "assessment analysis" fares no better. Mr. Schaadt's description may be a bit of a misnomer; he appears to have been trying to apply the sales-comparison approach. That approach "estimates the total value of [a given] property directly by comparing it to similar, or comparable, properties that have sold in the market." MANUAL at 3. In order to effectively use a sales-comparison analysis as evidence in a property assessment appeal, however, the proponent must show that the properties on which that analysis is based are truly comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the appealed property's characteristics and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
36. Although tracking the sales-comparison approach in form, Mr. Schaadt's analysis lacked substance. Mr. Schaadt did little to explain how his four purportedly comparable properties actually compared to the subject property. Most notably, while Mr. Schaadt made much of the subject property's condition, he did little to describe the relative condition of three of his four purportedly comparable properties. He also said

almost nothing about various other factors that presumably would affect a commercial property's market value-in-use.

37. Similarly, while Mr. Schaadt adjusted each property's sale or listing price to account for differences between it and the subject property in terms of building age and land-to-building ratio, he did not even attempt to explain how he quantified those adjustments. The same is true for the adjustment he made to relate the sale or list prices to January 1, 2006 to account for the fact that two of the properties had not actually sold. Even with those unexplained adjustments, the average sale price was \$130 per square foot, which translates to a value of \$445,800 for the subject property. Yet Mr. Schaadt simply asserted that a price of \$115 per square foot would be more appropriate given the subject property's condition.
38. Mr. Schaadt similarly failed to support key judgments in his analysis under the income approach. Perhaps the most significant problem comes from Mr. Schaadt's computation of the subject property's net operating income. Mr. Schaadt started with rent listed in an unsigned 2008 lease involving the subject property. Mr. Schaadt, however, did not explain how that rent related to market rent for the subject property as of either the March 1, 2007 assessment date or the earlier January 1, 2006 valuation date. In fact, Mr. Schaadt did not really even show that the lease rent reflected market rent for the subject property as of 2008. He made no attempt to check that lease rate against the rent for comparable properties or any other market data.
39. In any event, Mr. Schaadt deducted \$12,000 as an annual operating expense, which he explained was one fifth of the \$60,000 that Ms. Thompson agreed was spent to repair and remodel the subject property. He chose \$12,000 because that equaled the cost of the improvements spread out over the five-year term of the 2008 lease. That \$12,000 deduction was on top of what Mr. Schaadt deducted for replacement reserves.
40. On cross-examination, however, Mr. Schaadt did not really try to defend his deduction as complying with generally accepted appraisal principles. For example, he agreed that

some of the repair and remodeling costs were really capital improvements and would more properly be considered under replacement reserves. *See Schaadt testimony on cross examination.* Mr. Schaadt sought to excuse including those costs as an operating expense by explaining that he had simply used the numbers from the income-approach calculations that Ms. Thompson had sent him. *Id.* The fact that Ms. Thompson originally included the repair and renovation costs as operating expenses, however, does not somehow make that approach any more compliant with generally accepted appraisal principles. Indeed, Ms. Thompson has since recognized that as an error.

41. Also, Ms. Thompson provided Mr. Schaadt with her calculations in order to support her position in settlement negotiations. That is evident from the following e-mail that apparently accompanied Ms. Thompson's calculations:

I don't feel after reviewing the information that there is substantial evidence to lower the value. Bar-B-Cutie entered into a 5 year lease and even [if] I take the lease amount - \$12,000 (cost of improvements)(60,000/5yrs) a 10.7298 cap I am still over \$500,000. If you wish, I will go ahead and forward the appeal onto the PTABOA Board.

Pet'r Ex. 5. Statements made in settlement negotiations should not even be in evidence. *See* Ind. Evidence Rule 408 ("Evidence of conduct or statements made in compromise negotiations is . . . not admissible."); *see also Boehning v. State Bd. of Tax Comm'rs*, 763 N.E.2d 502, 504-05 (Ind. Tax Ct. 2001)(applying Evid. Rule 408 to exclude evidence of settlement between State Board of Tax Commissioners and taxpayers in a separate appeal). Evidence Rule 408 reflects a judicial policy of encouraging settlement negotiations. *See Dep't of Local Gov't Fin. v. Commonwealth Edison*, 820 N.E.2d 1222, 1227 (Ind. 2005) (explaining that the law encourages settlement negotiations in several ways, including through Ind. Evid. Rule 408). While the Assessor did not object to Mr. Schaadt's testimony concerning Ms. Thompson's calculations or to the exhibit containing them, the policy underlying the evidentiary rule counsels against treating those calculations as some type of admission or concession.

42. But Mr. Schaadt countered that, even if he was not technically correct in viewing the repair and renovation costs as an operating expense, Azar incurred those costs to address the subject property's substantial deferred maintenance and to make the property saleable or leasable. Thus, argued Mr. Schaadt, the property's condition and the costs necessary for repairs would be taken into account under the sales-comparison approach. That may be true. Of course, when applying the sales-comparison approach, Mr. Schaadt dealt with the property's condition and the need for repairs in a highly conclusory manner. In any case, Mr. Schaadt's argument begs the question: How should those costs be accounted for when applying the income approach to value?
43. Mr. Schaadt also suggested simply taking the repair and remodeling costs out of the equation by using the subject property's 2010 advertised lease rate to calculate its net operating income. According to Mr. Schaadt, that rate reflects the property as it now exists following the repairs and remodeling and apparently does not include any personal property. But Mr. Schaadt did not even attempt to explain how using the current advertised rent would relate to the property's market value-in-use as of the relevant January 1, 2006 valuation date.
44. At the end of the day, Mr. Schaadt asks the Board to recognize that the subject property must have been worth less in 2007 when it suffered from significant deferred maintenance than it was worth in 2009 after Azar has addressed that problem through repairs and remodeling. Of course, that simply assumes that the property's 2009 assessment was accurate. Plus, without probative evidence to show how much, if any, the market changed during the interim, one cannot simply assume that the difference in the property's relative condition is the only thing that affected its value between those two dates. Finally, merely quantifying the costs for repair and remodeling does not necessarily quantify the effect of the properties' deferred maintenance on its market value-in-use, at least not without something to show that buyers or sellers value those repairs and improvements on a dollar-for-dollar basis.

SUMMARY OF FINAL DETERMINATION

45. Much of Azar’s evidence did not relate to the relevant valuation date. And while Mr. Schaadt attempted to apply the sales-comparison and income approaches to value, he did not show that he complied with generally accepted appraisal principles when he made key judgments in his analyses under those approaches. His valuation opinion therefore lacked probative value. The Board finds for the Assessor.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, 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 Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>.