

REPRESENTATIVE FOR PETITIONER:
Augustine Ponnezhan, Representative of the Trust

REPRESENTATIVE FOR RESPONDENT:
Cathy Searcy, Elkhart County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Bank Calumet (as Trustee),	)	Petition No:	20-011-07-1-4-00018
For Augustine Ponnezhan,)		
	)	Parcel No.	20-06-17-352-001.000-011
Petitioner,)		
)		
v.	)	County:	Elkhart
	)	Township:	Concord
Elkhart County Assessor,)		
)		
Respondent.	)	Assessment Year:	2007

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

April 8, 2010

FINAL DETERMINATION

The Indiana Board of Tax Review (the 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

ISSUE

1. The issue presented for consideration by the Board is whether the assessed value of the subject property is overstated.

PROCEDURAL HISTORY

2. Pursuant to Indiana Code § 6-1.1-15-1, Augustine Ponnezhan, on behalf of Bank of Calumet (as Trustee) for Augustine Ponnezhan (Petitioner) filed a Form 131 Petition for Review of Assessment on May 4, 2009, petitioning the Board to conduct an administrative review of the above petition. The Elkhart County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination on April 27, 2009.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on January 26, 2010, in Goshen, Indiana.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Augustine Ponnezhan, Representative for the Trust¹

¹ The property at issue in this appeal is owned by a trust with the Bank of Calumet as the trustee. Thus, Mr. Ponnezhan is neither the property owner, nor the trustee of the trust. The Board's procedural rules only allow "(1) a permanent full-time employee of the owner of a property; (2) assessing officials and permanent, full-time employees of local units of government appearing on behalf of the unit or as the authorized representative of another unit; (3) a tax representative as defined in 52 IAC 1-1-6; (4) a representative of a minor or incapacitated party as defined in 52 IAC 1-2-1.1; (5) a local government representative as defined in 52 IAC 1-1-3.5; (6) a certified public accountant when the certified public accountant is representing a client in a matter that relates only to personal property taxation; or (7) an attorney who is a member in good standing of the Indiana bar" to represent a party in a matter before the Board. 52 IAC 2-2-4. There is no indication that Mr. Ponnezhan is a certified public accountant, certified tax representative, local government representative or attorney. Consequently, he should not have been permitted to act as the Petitioner's representative at the hearing. The Respondent did not object to Mr. Ponnezhan's participation. Nevertheless, Mr. Ponnezhan is admonished to refrain from any future violation of the Board's rules.

For the Respondent:

Cathy Searcy, Elkhart County Assessor

5. The Petitioner presented the following exhibits:

Petitioner Exhibit A – Property tax bill for Parcel No. 20-06-17-352-001.000-011,
Petitioner Exhibit B – 2008 Income and Expenses for Farmington Hills,
Petitioner Exhibit C – Summary of Petitioner’s issue labeled “Appendix A”.

6. The Respondent presented the following exhibits:

Respondent Exhibit 1 – Notice of Final Assessment Determination – Form 115,
dated April 9, 2009,
Respondent Exhibit 2 – Notice of Hearing on Petition – Real Estate (by County
Board) – Form 114, dated March 3, 2009.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing, dated December 22, 2009,
Board Exhibit C – Hearing sign-in sheet.

8. The subject property is an apartment complex on 4.25 acres located at 01000 Mishawaka Road, Elkhart, Concord Township in Elkhart County.

9. The ALJ did not conduct an on-site inspection of the subject property.

10. For 2007, the PTABOA determined the assessed value of the property to be \$96,900 for land and \$1,574,400 for the improvements, for a total assessed value of \$1,671,300.

11. On the Form 131 the Petitioner requested the assessed value to be \$50,000 for the land and \$787,600 for the improvements, for a total assessed value of \$837,600.

JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, and (3) property tax exemptions, that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER’S BURDEN

13. 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).
14. 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”).
15. 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.

PETITIONER'S CONTENTIONS

16. The Petitioner argues the property is over-valued based on an income approach valuation. *Ponnezhan testimony*. In his income analysis, Mr. Ponnezhan calculated the property's 2008 gross income using the property's actual income and subtracted its actual expenses, including real estate taxes. *Petitioner Exhibits B and C; Ponnezhan testimony*. Mr. Ponnezhan then applied a capitalization rate of 9.5%, which he determined by combining factors such as his personal knowledge of the market, the age of the property, the economic climate of the area and the potential growth of the property.² *Petitioner Exhibit C; Ponnezhan testimony*. Based on his income approach analysis, Mr. Ponnezhan testified, the property's value is \$837,600. *Petitioner Exhibits B and C; Ponnezhan testimony*.
17. The Petitioner further argues that the apartment complex is not worth its assessed value. *Ponnezhan testimony*. Mr. Ponnezhan testified that the complex is 42 years old and is located in the middle of Elkhart which is economically depressed. *Id.* According to Mr. Ponnezhan, he offered rental incentives but the property still experienced high vacancy rates in 2007 and 2008. *Id.* Similarly, while he could charge \$600 for a two bedroom apartment five years prior, Mr. Ponnezhan testified, the same apartment was renting for \$419 a year ago. *Id.*
18. The Petitioner also contends the property is over-valued based on sales of similar properties. *Ponnezhan testimony*. According to Mr. Ponnezhan, comparable apartment complexes in the Elkhart, Kokomo and Indianapolis markets sell from \$10,000 to \$20,000 per unit. *Id.* Mr. Ponnezhan argues that due to the economic conditions in Elkhart the subject property would only sell for \$13,000 to \$14,000 per unit. *Id.* Thus,

² In response to questions, the Petitioner testified in 2004 and 2005 investors were willing to pay higher amounts for investment property because there was an abundance of money in the market. *Ponnezhan testimony*. Therefore the cap rate in 2004 would have been between 7% to 8%. *Id.*

the Petitioner concludes, the Assessor's \$26,114 per unit valuation using the cost approach is over-stated. *Id.*

19. Finally, the Petitioner contends the property's assessment was increased in error in 2007. *Ponnezhan testimony.* According to Mr. Ponnezhan, the value of the property under appeal increased from \$1,365,000 in 2006 to \$1,671,300 in 2007. *Petitioner Exhibit A; Ponnezhan testimony.* The Assessor then reduced the property's assessed value in 2009 to \$1,551,300. *Id.* Thus, the Petitioner concludes, the 2007 assessment increase was an error and should be reduced. *Ponnezhan testimony.*

RESPONDENT'S CONTENTIONS

20. The Respondent contends the property is valued correctly at \$1,671,300. *Searcy testimony.* According to the Respondent, the PTABOA sustained the township's assessed value because the Petitioner failed to appear at the PTABOA hearing. *Respondent Exhibit 1 and 2; Searcy testimony.*
21. The Respondent also argues the Petitioner's income calculation is flawed and therefore should be given little weight. *Searcy testimony.* According to Ms. Searcy, the Petitioner's income calculation used the subject property's actual income and expense information for 2008. *Id.* Ms. Searcy argues that local officials used historical data from 2004 and 2005 to establish assessed values for the March 1, 2007, assessment. *Id.* Thus, the Respondent concludes, the Petitioner's representative has not shown how his 2008 income calculation is relevant to the March 1, 2007, assessment date, which must reflect the market value-in-use of the property as of January 1, 2006. *Id.* Further, the Petitioner's representative included property taxes in his expenses which the Respondent contends is not an allowable expense. *Id.* Most importantly, the Respondent argues, Mr. Ponnezhan did not provide any documentation to substantiate the capitalization rate that he applied to his net income. *Id.*

22. Similarly, the Respondent argues that the Petitioner’s sales comparable analysis should be given little weight. *Searcy testimony*. According to Ms. Searcy, the Petitioner failed to provide any documentation to support the price per unit he contends apartment complexes are selling for in the Elkhart area. *Id.*

ANALYSIS

23. 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.” 2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales comparison approach, and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (the GUIDELINES).
24. 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 Township Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). 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*, 826 N.E.2d at 505, 506 n.1. A taxpayer may also offer actual construction costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5
25. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the subject property’s market value-in-use as of

the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment date, the valuation date is January 1, 2006. 50 IAC 21-3-3.

26. The Petitioner first contends the property under appeal should be valued using the income approach. *Ponnezhan testimony*. “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 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). *See also* MANUAL at 5 (“[C]hallenges to assessments [must] be proven with aggregate data, rather than individual evidence of property wealth. ... [I]t is not permissible to use individual data without first establishing its comparability or lack thereof to the aggregate data”).
27. According to Mr. Ponnezhan, he calculated the value of the property under appeal using the property’s 2008 actual income and expenses.³ *Petitioner Exhibit B; Ponnezhan testimony*. The Petitioner, however, provided no evidence to demonstrate whether the property’s income and expenses were typical for comparable properties in the market. Thus, any low rental income or high expense levels may be attributed to the Petitioner’s management of the property as opposed to the property’s market value. *See Thorntown Telephone Company*, 588 N.E.2d at 619. *See also, Lake County Trust Co. No. 1163 v.*

³ The Petitioner’s evidence also shows he deducted real estate taxes as an expense. *Petitioner Exhibit B; Ponnezhan testimony*. The Respondent, however, argues that real estate taxes are accounted for in the capitalization rate. *Searcy testimony*. “[W]hen property is valued for ad valorem tax purposes, taxes should not be considered an expense item”. INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, PROPERTY ASSESSMENT VALUATION 240 (2d ed. 1996). Real estate taxes are not an allowable expense for ad valorem purposes because the correct amount of property tax is contingent upon the correct value of the real estate. *Id.*

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).

28. Additionally, the Petitioner failed to adequately support his capitalization rate. A capitalization rate “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). Here the Petitioner’s representative based the rate on his experience and knowledge of the market. While the rules of evidence generally do not apply in the Board’s hearings, the Board requires some evidence of the accuracy and credibility of the evidence. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
29. Moreover, the Petitioner’s representative estimated the property’s market value from the property’s 2008 income and expenses. *Petitioner Exhibit B*. However, the statutory valuation date for the March 1 2007, assessment date is January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Mr. Ponnezhan failed to show his income valuation demonstrates or relates to the property’s value as of January 1, 2006. *See Long*, 812 N.E.2d 466, 469-471. Mr. Ponnezhan also failed to show that his income approach methodology conformed to the Uniform Standards of Professional Appraisal Practice or any other generally accepted standards. Consequently, the Petitioner’s income approach calculation lacks probative value in this case. *See Inland Steel Co. v. State Board of Tax Commissioners*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser’s opinion lacked probative value where the appraiser failed to explain what a producer

price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).⁴

30. The Petitioner also contends that the property is valued incorrectly based on comparable sales. *Ponnezhan testimony*. The only evidence the Petitioner presented, however, was Mr. Ponnezhan's testimony that the property would not sell for more than \$13,000 to \$14,000 per unit. The Petitioner presented no appraisal, sales information or other market data in support of this argument. Conclusory statements regarding the property's value do not constitute probative evidence. *Whitley Products, Inc.*, 704 N.E.2d at 1113, 1119.
31. Finally, the Petitioner argues that the property's 2006 and 2008 assessed values prove the Assessor erred in determining the property's 2007 assessment. *Petitioner Exhibit A*. However, assessments are annually adjusted to reflect changes in value between general reassessment years. *See* Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Thus, evidence as to a property's assessment in one tax year does not prove its assessment in a different tax year. *See Thousand Trails Inc. v. State Board of Tax Commissioners*, 747 N.E.2d 1072, 1077 (Ind. Tax Ct. 2001) (each assessment and each tax year stands alone). Consequently, Mr. Ponnezhan's testimony that the property's assessed values were lower in 2006 and 2008, provides no evidence that its value in 2007 was in error.
32. Where the taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is

⁴ To the extent the Petitioner can be seen as arguing that its property suffers from obsolescence based on the apartment complex's high vacancy rate or the depressed economic conditions in the area, the Board finds that the Petitioner failed to adequately present such a case. For a Petitioner to show that it is entitled to receive an adjustment for obsolescence, the Petitioner must both identify the causes of obsolescence the Petitioner believes is present and 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). Here, the Petitioner failed to present evidence regarding either the cause of the purported obsolescence or the amount of the obsolescence it contends is present in the property. Merely contending the property has a high vacancy rate or that the area suffers from depressed economic conditions is insufficient to prove an error in the assessment. *See Champlin Realty Co. v. State Board of Tax Commissioners*, 745 N.E.2d 928, 936 (Ind. Tax Ct. 2001); *Indian Industries, Inc. v. Department of Local Government Finance*, 791 N.E.2d 286, 290 (Ind. Tax Ct. 2003).

not triggered. *See Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

33. The Petitioner failed to raise a prima facie case. The Board finds in favor of the Respondent.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date 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>.