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

Petition Nos.:	**08-002-09-1-1-00003**
	08-002-09-1-1-00002
Petitioner:	**Vern R. Grabbe**
Respondent:	**Carroll County Assessor**
Parcel Nos.:	**08-14-17-000-020.000-002**
	08-14-17-000-015.000-002
Assessment Year:	**2009**

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

Procedural History

1. The Petitioner initiated his assessment appeals with the Carroll County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated April 26, 2010.

2. The PTABOA issued notices of its decisions on October 6, 2010.

3. The Petitioner filed his Form 131 petitions with the Board on November 3, 2010. The Petitioner elected to have these cases heard according to the Board's small claims procedures.

4. The Board issued a notice of hearing to the parties dated January 10, 2011.

5. The Board held an administrative hearing on February 22, 2011, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.

6. The following persons were present and sworn in at hearing:

   a. For Petitioner: Vern R. Grabbe, property owner
   Todd Freeman, Schrader Real Estate & Auction Company
   Charles R. Bellar, Bellar Construction Management, Inc.

b. For Respondent:[1] Neda Duff, Carroll County Assessor
Brian Thomas, Ad Valorem Solutions[2]

Facts

7. The properties under appeal consist of two contiguous parcels: Parcel No 08-14-17-000-020.000-002 with 3.664 acres of agricultural land improved with a hog building (the 3.664 Acre Parcel); and Parcel No. 08-14-17-000-015.000-002 with 19.266 acres of land improved with two hog buildings and a utility shed (the 19.266 Acre Parcel). The parcels are located on South 400 East, Burlington, Burlington Township in Carroll County.

8. The ALJ did not conduct an on-site inspection of the properties under appeal.

9. For 2009, the PTABOA determined the assessed value of the 3.664 Acre Parcel to be $12,500 for the land and $150,700 for the improvements, for a total assessed value of $163,200; and the PTABOA determined the assessed value of the 19.266 Acre Parcel to be $18,400 for the land and $92,900 for the improvements, for a total assessed value of $111,300.

10. For 2009, the Petitioner requested an assessed value of $12,500 for the land and $112,252 for the improvements, for a total assessed value of $124,752 for the 3.664 Acre Parcel and $18,400 for the land and $75,110 for the improvements, for a total assessed value of $93,510 for the 19.266 Acre Parcel.

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in his properties' assessments:

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[1] Ms. Lauren Criswell, Carroll County Deputy Assessor, was also in attendance but was not sworn in as a witness to give testimony.

[2] The Petitioner objected to the Carroll County Assessor's power of attorney authorizing Brian Thomas to act as the county's local government representative. Mr. Grabbe contends the power of attorney was not properly executed because it included incorrect information, such as listing the assessor as taxpayer and failing to provide the last four digits of the assessor's social security number. The assessor also authorized Mr. Thomas to represent her for a period of "current-2020" which, Mr. Grabbe contends, is an error because the assessor failed to define "current" and "current" is not a specific date. Moreover, he argues, the assessor's term of office does not run until 2020.

The Board rules state that if the county is represented by a local government representative under 52 IAC 1-1-3-5, it must provide a power of attorney that contains "the authorized representative's name, address, and telephone number." *See* 52 IAC 2-3-2. The Board finds the Respondent's power of attorney contained the required information and therefore the Petitioner's objection is overruled.

Mr. Grabbe also objected to the county assessor authorizing Mr. Thomas to receive any of his confidential information. A local government representative that contracts with a county assessor is held to the same standards as the assessor in handling and disclosing any information that is deemed confidential. Ind. Code § 6-1.1-35-9. This objection is also overruled.

a. The Petitioner argues that his properties are over-valued based on their purchase price. *Grabbe testimony.* According to Mr. Grabbe, he purchased the 3.664 Acre Parcel and the 19.266 Acre Parcel together for $350,000 on April 19, 2009.[3] *Id.* Mr. Grabbe testified that because the properties were assessed by the county as two separate parcels, he allocated $146,611 of the purchase price to the 3.664 Acre Parcel and $203,389 of the purchase price to the 19.266 Acre Parcel. *Grabbe testimony; Petitioner Exhibit 8.*

b. Based on his purchase price, the Petitioner contends the assessed value of the building on the 3.664 Acre Parcel should be no more than $112,252 and the assessed value of the buildings on the 19.266 Acre Parcel should be no more than $75,110. *Grabbe testimony; Petitioner Exhibit 7.* According to Mr. Grabbe, to determine the amount of his purchase price that should be allocated to the buildings, he first subtracted the $11,240 assessed value of the one-acre building site from the amount of the purchase price allocated to the 3.664 Acre Parcel and he subtracted the $3,890 assessed value of the one-acre building site from the amount of the purchase price allocated to the 19.266 Acre Parcel. *Id.* Then, to calculate the value of the remaining 2.664 acres of the 3.664 Acre Parcel and the value of the remaining 18.266 acres of the 19.266 Acre Parcel, Mr. Grabbe relied on the purchase of another nearby agricultural land tract by Ceres Farms, LLC, for $5,300 per acre. *Id.* Based on a value of $5,300 an acre for agricultural land, Mr. Grabbe argues, the remaining 2.664 acres of the 3.664 Acre Parcel has a market value of $14,098 and the remaining 18.266 acres of the 19.266 Acre Parcel has a market value of $96,831. *Id.* Finally, he subtracted $9,021 from the amount of his purchase price allocated to the 3.664 Acre Parcel for the value of the personal property on the site, such as feeders, waterers, heaters, and gates and $27,558 for the value of the personal property on the 19.266 Acre Parcel. *Id.; Petitioner Exhibits 10 and 12.* Thus, subtracting the assessed value of the one-acre building sites, the market value of the remaining agricultural acreage, and the value of the personal property on each site from each parcel's allocated purchase price, Mr. Grabbe argues, results in a market value of $112,252 for the buildings on the 3.664 Acre Parcel and $75,110 for the buildings on the 19.266 Acre Parcel. *Grabbe testimony.*

c. Further, Mr. Grabbe argues that the assessed value of farm land in Indiana is subject to a "cap." *Grabbe testimony; Petitioner Exhibit 7.* According to Mr. Grabbe, the purchase price of farm land is irrelevant because the base rate is set by the state each year. *Grabbe testimony.* Thus, Mr. Grabbe argues, the properties' land assessment should remain unchanged at $12,500 for the 3.664 Acre Parcel and $18,400 for the 19.266 Acre Parcel. *Id.* Adding the $12,500 land

[3] Mr. Grabbe contends it is not necessary to trend his purchase price or his calculations back to the January 1, 2008, valuation date because the county assessor did not increase the assessed values of any hog buildings in the county between March 1, 2007, and March 1, 2010. *Grabbe testimony; Petitioner Exhibit 13.*

value to his $112,252 improvement value, Mr. Grabbe argues, results in a total assessed value of $124,752 for the 3.664 Acre Parcel and adding the $18,400 land value to his $75,110 improvement value, results in a total assessed value of $93,510 for the 19.266 Acre Parcel. *Grabbe testimony; Petitioner Exhibit 7.*

d. The Petitioner also contends that the subject properties are over-assessed based on the income approach to value. *Grabbe testimony.* According to Mr. Grabbe, he used an income of $90,000 for both parcels together based on "the predominate lease contract arrangements for these type of facilities" and expenses of $47,558 based on "a combination of cost figures from the universities and private sources," resulting in a net income of $42,442. *Grabbe testimony; Petitioner Exhibit 14.* Mr. Grabbe applied a 20% capitalization rate that he testified he "took out of another appraisal," resulting in an estimated value of $212,210 for the buildings.[4] *Id.* Next, Mr. Grabbe added back the $15,770 land assessment for both parcels and subtracted $36,579 for the personal property on both parcels, resulting in an estimated value of $191,401 for the subject properties based on the income approach.[5] *Id.*

e. Similarly, the Petitioner contends his property is over-assessed based on his cost analysis of the property's value. *Grabbe testimony.* Mr. Grabbe testified that he used the Carroll County Assessor's reproduction cost of his buildings as a starting point, but he lowered the reproduction cost on the hog building on the 3.664 Acre Parcel by $17,344 because the assessor overstated the size of the building by 1,296 square feet.[6] *Grabbe testimony; Petitioner Exhibits 11 and 15.* In addition, he added an obsolescence adjustment of 35% to the buildings on the 3.664 Acre Parcel and an obsolescence adjustment of 45% to the buildings on the 19.266 Acre because of the out-dated design of the buildings and manure lagoon. *Id.* Mr. Grabbe testified that his "corrected" reproduction cost of the buildings on the two parcels, minus $103,932 in obsolescence, results in a building value of $157,420 for the improvements on the 3.664 Acre Parcel and the 19.266 Acre Parcel together. *Grabbe testimony; Petitioner Exhibit 15.* Adding back the

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[4] In his Exhibit 14, Mr. Grabbe contends that hog facilities are "very non-liquid" and therefore "an investor would want a higher rate of return" on his investment. *Petitioner Exhibit 14.* Mr. Grabbe contends that "it would seem reasonable that an investor would want at least a 20% return for this kind of investment. The comparable sales data indicate current returns from 8% to 20% for investments in existing hog facilities. I have chosen a 20% capitalization rate for this property." *Id.*

[5] Mr. Grabbe did not explain why he only added in $15,770 for the land on the two parcels when the land on the 3.664 Acre Parcel was assessed for $12,500 and the land on the 19.266 Acre Parcel was assessed for $18,400. While it appears to be the assessed value of the "remaining" agricultural acreage after the assessed value of the one-acre building site was removed from each parcel, it is unclear why Mr. Grabbe valued the land in the manner he did.

[6] Mr. Grabbe contends that the hog building measures 48 feet by 110 feet and 40 feet by 186 feet or 12,720 square feet. *Grabbe testimony; Petitioner Exhibit 11.* The assessor is showing the hog building is 48 feet by 292 feet or 14,016 square feet. *Id.* Thus, the Petitioner contends, the hog building is over-assessed on the basis that its size is incorrect. *Grabbe testimony.*

$15,130 assessed value of the building sites and $15,770 for the assessed value of the additional agricultural acreage, Mr. Grabbe argues, results an estimated value of $188,320 for both properties under the cost approach. *Id.*

f. Mr. Grabbe also contends his property is over-assessed based on the sale prices of comparable properties. *Grabbe testimony.* Mr. Bellar testified that it is common for hog buildings to be appraised on a "cost per pig space" basis. *Bellar testimony.* According to Mr. Grabbe, he purchased a nearby property with 7.4 acres of land in September of 2008 for $357,000. *Id.; Petitioner Exhibit 16.* Mr. Grabbe testified that he allocated $311,764 of the purchase price to the buildings and personal property. *Id.* Because the buildings on the 7.4 acre property could house 6,000 pigs, Mr. Grabbe calculated the property was worth $51.96 per pig space. *Id.* The second property is an 8.1 acre property in Clinton County that Mr. Grabbe purchased in November of 2008 for $239,325. *Id.* He subtracted out the house, the land and the tool sheds and allocated $143,825 of the purchase price to the buildings and personal property. *Id.* Because the buildings on the 8.1 acre property could house 3,584 pigs, Mr. Grabbe calculated the property was worth $40.13 per pig space. *Id.* The third property is a 9.9 acre property that sold in April of 2008 for $560,000. *Id.* Mr. Grabbe testified that he subtracted the house, the land, and the tool sheds from the purchase price and allocated $423,157 of the purchase price to the buildings and personal property. *Id.* Because the buildings on the 9.9 acre property could house 6,500 pigs, Mr. Grabbe calculated the property was worth $65.10 per pig space. *Id.; Petitioner Exhibit 13.* Mr. Grabbe argues that the 8.1 acre hog farm is the most comparable to the properties under appeal and therefore he applied a per pig space price of $42.50, resulting in a value of $191,250 for the properties' buildings and personal property. *Id.; Petitioner Exhibit 16.* Adding the $29,640 land assessment and removing the $36,579 of personal property, Mr. Grabbe argues, results in an estimated value of $184,311 for the two properties under his "Market Data Approach."[7] *Id.*

g. Finally, Mr. Grabbe argues that the county has consistently over-priced properties with hog buildings. *Grabbe testimony.* Mr. Grabbe testified that he compared the county's assessed values to his calculated adjusted purchase prices on five hog facilities that he owns in Carroll and Clinton counties. *Grabbe testimony; Petitioner Exhibit 18.* According to Mr. Grabbe, his calculations show that the county has assessed his hog facilities from 19.02% to 208.64% over their adjusted purchase prices. *Id.*

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[7] The Petitioner repeatedly referred to a land assessment totaling $30,900 for the two parcels. He either described it as an assessed value of $12,500 for the 3.664 Acre Parcel and $18,400 for the 19.266 Acre Parcel; or he described it as $15,130 for the assessed value of the two building sites and $15,770 for the assessed value of the additional agricultural acreage. Mr. Grabbe, however, gave no explanation as to where the land value of $29,640 came from that he used in his "Market Data Approach."

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

a. The Respondent's representative contends the assessed values of the Petitioner's properties are fair based on their 2008 purchase prices. *Thomas testimony.* According to Mr. Thomas, the 3.664 Acre Parcel and the 19.266 Acre Parcel sold individually on July 16, 2008, prior to Mr. Grabbe's purchase of the two parcels together on April 17, 2009. *Id.; Respondent Exhibits C through E.* Mr. Thomas testified that the 3.664 Acre Parcel was purchased in 2008 for $175,000, but was assessed for only $163,200 for the 2009 assessment year. *Thomas testimony; Respondent Exhibits B and D.* Similarly, the 19.266 Acre Parcel was purchased in 2008 for $155,000, but was assessed for only $111,300.[8] *Thomas testimony; Respondent Exhibits B and C.*

b. Further, the Respondent's representative argues, the assessed values of the properties are fair based on the Petitioner's purchase of the two parcels at issue in this appeal. *Thomas testimony.* According to Mr. Thomas, the 3.664 Acre Parcel and the 19.266 Acre Parcel were purchased by the Petitioner on April 17, 2009, for $350,000 together. *Thomas testimony; Respondent Exhibit E.* Moreover, Mr. Thomas argues, Mr. Grabbe's sales disclosure forms stated that no personal property was included in the sale. *Thomas testimony; Respondent Exhibits C through E.* Thus, Mr. Thomas concludes, the county's assessed values for the subject properties are correct for the 2009 assessment year. *Thomas testimony.*

Record

13. The official record for these matters is made up of the following:

a. The Form 131 petitions and related attachments.

b. The digital recording of the hearing.

c. Exhibits:[9]

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[8] Mr. Thomas testified that, due to a computer error, the pits and slats in the hog buildings were not priced on the 19.266 Acre Parcel for the assessment year of March 1, 2009. *Thomas testimony.* Therefore, he argues, the $111,300 assessment is "erroneously deflated" due to the pricing error. *Id.* According to Mr. Thomas, the pits and slats were added to the Petitioner's March 1, 2010, assessment. *Thomas testimony.*

[9] Mr. Grabbe objected to the Respondent's witnesses and evidence because the information was not exchanged five days prior to the hearing. The Board rules state that "[i]f requested by any party, the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small claims hearing." 52 IAC 3-1-5 (d). The Board rules also state "[t]the day of the act, event or default from which the designated period of time begins is not counted." 52 IAC 2-3-1 (b). Mr. Grabbe admitted that he requested the county's evidence on February 16, 2011. The Board's hearing was conducted on February 22, 2011. Thus, the Petitioner's request was made only three business days prior to the Board's hearing, making it impossible for the Respondent to timely comply. The Petitioner's objection is therefore overruled.

Petitioner Exhibit 1(1) – Form 131 petition for the 3.664 Acre Parcel,
Petitioner Exhibit 1(2) – Form 131 petition for the 19.266 Acre Parcel,
Petitioner Exhibit 2 – Notification of Final Assessment Determination – Form 115, dated October 6, 2010, for both parcels,
Petitioner Exhibit 3 – Request for Review, Carroll County, dated April 26, 2010, for both parcels,
Petitioner Exhibit 4(1) – Petitioner's allocated purchase price worksheet for the 3.664 Acre Parcel,
Petitioner Exhibit 4(2) – Petitioner's allocated purchase price worksheet for the 19.266 Acre Parcel,
Petitioner Exhibit 5 – Petitioner's settlement statement, dated April 17, 2009, for the purchase of both properties,
Petitioner Exhibit 6(1) – Petitioner's tax statement information for 2009 and 2010 for the 3.664 Acre Parcel,
Petitioner Exhibit 6(2) – Petitioner's tax statement information for 2009 and 2010 for the 19.266 Acre Parcel,
Petitioner Exhibit 7 – Petitioner's allocated purchase price worksheets for the 3.664 Acre Parcel and the 19.266 Acre Parcel,
Petitioner Exhibit 8 – Petitioner's purchase price allocation for both parcels,
Petitioner Exhibit 9 – Petitioner's original March 1, 2010, Farmer's Tangible Personal Property Assessment Return – Form 102, **(confidential)**, Information Return of Owned Personal Property – Form 103-O, **(confidential)**, and Business Tangible Personal Property Return – Form 104 for Unger and Shaffer facilities,[10]
Petitioner Exhibit 10 – Petitioner's amended March 1, 2010, Farmer's Tangible Personal Property Assessment Return – Form 102, **(confidential)**, Information Return of Owned Personal Property – Form 103-O, **(confidential)**, and Business Tangible Personal Property Return – Form 104 for Unger and Shaffer facilities,
Petitioner Exhibit 11(1) – Petitioner's obsolescence information and calculation for the 3.664 Acre Parcel,

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Mr. Grabbe did not submit a Petitioner Exhibit 19.

[10] Farmer's Tangible Personal Property Assessment Return – Form 102 forms and Information Return of Owned Personal Property – Form 103-O forms are confidential pursuant to Ind. Code § 6-1.1-35-9.

Petitioner Exhibit 11(2) – Petitioner's obsolescence information and calculation for the 19.266 Acre Parcel,
Petitioner Exhibit 12 – Property descriptions for the 3.664 Acre Parcel and the 19.266 Acre Parcel,
Petitioner Exhibit 13 – Hog facilities assessed value trends 1-1-2007, to 3-1-2010, property record cards and Notice of Assessments – Form 11 R/A – C/I for the 19.266 Acre Parcel and the 3.664 Acre Parcel and the property record card and Notification of Final Assessment Determination – Form 115 for the neighboring facility owned by the Petitioner,
Petitioner Exhibit 14 – Income approach analysis of the value of the Petitioner's facilities,
Petitioner Exhibit 15 – Cost approach analysis of the value of the Petitioner's facilities,
Petitioner Exhibit 16 – Market data analysis of the value of the Petitioner's facilities,
Petitioner Exhibit 17 – A correlation of values for the Petitioner's facilities,
Petitioner Exhibit 18 – Petitioner's worksheet showing the percentages that the Petitioner's hog facilities are over-assessed,
Petitioner Exhibit 20 – Appraisal process information,
Petitioner Exhibit 21 – Letter from Vern Grabbe to Carroll County Assessor, dated February 16, 2011, out-going fax sheet and proof of mailing,
Petitioner Exhibit 22 – Letter from Brian Thomas to Vern Grabbe, dated February 18, 2011,
Petitioner Exhibit 23 – The Petitioner's personal calendar for February of 2011,[11]

Respondent Exhibit A – Respondent's exhibit list,
Respondent Exhibit B – Respondent's written summary,
Respondent Exhibit C – Property record card and sales disclosure form for the 19.266 Acre Parcel,
Respondent Exhibit D – Property record card and sales disclosure form for the 3.664 Acre Parcel,
Respondent Exhibit E – Sales disclosure form for both properties,
Respondent Exhibit F – Aerial map and plat map of the subject properties and surrounding properties,
Respondent Exhibit G – Respondent's building comparison analysis,

[11] The Petitioner claims his February 2011 personal calendar is confidential. However, Mr. Grabbe cited to no statutes or case law supporting his claim. Therefore, the Board rejects the Petitioner's claim of confidentiality.

Respondent Exhibit H – Letter from Vern Grabbe to Brian Thomas, dated February 21, 2011,

Board Exhibit A – Form 131 petitions with attachments,
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 Bd. of Tax Comm'rs,* 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 case. *Id; Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioner failed to raise a prima facie case for a reduction in the assessed values of his properties. The Board reached this decision for the following reasons:

a. The 2002 Real Property Assessment Manual defines "true tax value" 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 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 approach, the sales comparison approach and the income approach to value. *Id.* at 3, 13-15. In Indiana, assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.

b. 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 the 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 (USPAP) often will suffice. *Id.; Kooshtard Property VI,* 836 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.

c. 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, 2009, assessment date, the valuation date was January 1, 2008. 50 IAC 21-3-3.

d. The Petitioner first argues that his property is over-valued based on his purchase of the properties for $350,000 in April of 2009. *Grabbe testimony.* The purchase price of a property is often the best indication of the property's value. *See Hubler Realty, Inc. v. Hendricks Cty. Ass'r,* 938 N.E.2d 311, 314 (Ind. Tax Ct. 2010) (the Tax Court upheld the Board's determination that the weight of the evidence supported the property's purchase price over its appraised value). In this case, however, the purchase took place on April 17, 2009 – which is more than fifteen months after the January 1, 2008, valuation date for the 2009 assessment year. Therefore, the Petitioner must provide evidence relating his April 17, 2009, purchase price to the properties' January 1, 2008, value. *See Long,* 821 N.E.2d at 471. Here, Mr. Grabbe testified that the county is required to trend real property assessments to account for changes in the market value of real estate in the area each year.[12] Because the county did not increase the assessment of his land or hog buildings from 2007 through 2010, Mr. Grabbe argues, the assessor must have concluded that the value of hog farms did not change during that time period. Therefore, Mr. Grabbe argues his 2009 purchase price would also be valid as of January 1, 2008.

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[12] Under Indiana Code § 6-1.1-4-4.5, beginning in 2006 and each year thereafter, assessors are required to adjust or "trend" property values each year to account for changes in the values of properties since the last general reassessment of property occurred.

e. The Board finds that the Petitioner presented some evidence relating his April 17, 2009, purchase price to the January 1, 2008, valuation date. However, the Petitioner's April 17, 2009, purchase price for the two parcels far exceeds the assessed value of those parcels. Therefore, the Petitioner's purchase alone is insufficient to raise a prima facie case that the subject properties are over-assessed. Even removing the personal property from the purchase price of the properties fails to show that the parcels are over-assessed. *Grabbe testimony.* According to Mr. Grabbe, his purchase price for the two parcels included items such as feeders, waterers, heaters and gates, valued at $36,579. *Id.; Petitioner Exhibits 10 and 12.* In support of this contention, the Petitioner submitted his March 1, 2010, personal property return – Form 102.[13] *Id.* Subtracting $36,579 value of the personal property from the Petitioner's $350,000 purchase price for the two parcels, however, results in a value of $313,421 – which still exceeds the $276,200 assessed value of the two parcels for the March 1, 2009, assessment date. Thus, Mr. Grabbe failed to present a prima facie case that the value of the real estate that he purchased was less than the parcels' assessed values.

f. The Petitioner argues, however, that his purchase price for the two parcels must be further reduced to account for the "cap" on Indiana's farmland. *Grabbe testimony.* According to Mr. Grabbe, after deducting the "un-taxed" value of the agricultural land, the value of the two parcels would be $218,262 for the March 1, 2009, assessment date. *Id.*

g. The Board assumes that the farmland "cap" referenced by the Petitioner means the regulation basing agricultural land value on the productive capacity of the land, regardless of the land's potential highest and best use. GUIDELINES, ch. 2 at 99. Indiana law provides that local assessors shall determine the value of all classes of commercial, industrial and residential land, using guidelines determined by the Department of Local Government Finance (DLGF). Ind. Code § 6-1.1-4-13.6 (2002). By separate statute, the Indiana Legislature instructed the DLGF to establish guidelines for the assessment of agricultural land, utilizing distinctive factors. Ind. Code § 6-1.1-4-13 (2002).[14] This statute expressly provided that the codified criteria used in assessing the value of agricultural land did not apply to

[13] Mr. Grabbe admitted that he omitted reporting the personal property on his sales disclosure form. *Grabbe testimony.* Further, he failed to file a March 1, 2009, personal property return reporting the value of the personal property on the site because, he testified, he was not aware that personal property was taxed separately from the real estate. *Id.* In fact, his 2009 Form 103-O has a note that states "If their [sic] is any personal property, its value has been included in the real estate value." *Petitioner Exhibit 9.* However, Mr. Grabbe presented his 2010 personal property return showing that he had personal property valued at $102,255; $31,176 of which he testified was attributable to the subject property as of the March 1, 2009, assessment date. *Petitioner Exhibit 10.*

[14] For purposes of assessing agricultural land, the DLFG must provide local assessors with soil productivity factors based on the United States Department of Agriculture's soil survey data. Ind. Code § 6-1.1-4-13(b) (2002). All assessing officials shall use the data in determining the true tax value of agricultural land. *Id. See also* GUIDELINES, ch. 2 at 106-08.

land purchased for industrial, commercial or residential uses. *Id*. This distinction, in and of itself, did not make clear the Legislature's intent. However, subsequent legislative actions that have made changes in the rules support the Board's finding that the Legislature intended to treat the assessment of agricultural land differently from the assessment of other types of property.

h. The Guidelines value agricultural land utilizing a mass-appraisal income approach, rather than the mass-appraisal cost approach or the mass-appraisal sales comparison approach used to value other land types. MANUAL, pg. 13-14. *See also* GUIDELINES, ch. 2 at 99. For 2002, the statewide market value-in-use, or base rate, for agricultural land was established at $1,050 per acre.[15] For the assessment year of March 1, 2006, the DLGF's unpublished base rate had similarly been calculated at $1,050 based on data from 2000, 2001, 2002, and 2003. Senate Enrolled Act (SEA) 327, however, froze the agricultural land base rate at $880. P.L. 228, Sec. 34; 2005 Ind. Acts 3764. The Act further instructed the DLGF to adjust the method used in determining the annual adjustment to a six-year rolling average rather than the four-year rolling average the DLGF had previously used. P.L. 228, Sec. 4; 2005 Ind. Acts 3724. The statewide agricultural land base rate value in 2009 was $1,250 per acre based on a six-year rolling average of market value-in-use as calculated by the DLGF pursuant to 50 IAC 21-6-1(a).[16] The legislature has not established any base rate for residential, commercial or industrial properties. Nor has it codified any method of calculating a base rate for such properties. Thus, in instructing the DLGF to modify the Guidelines' calculation of the base value of agricultural land, the Legislature again demonstrated its intent to treat the assessment of agricultural land differently from that of land purchased for industrial, commercial or residential use.

i. Here, in essence, the Petitioner does not dispute the assessed value of the land on the two parcels – in fact, he contends, the assessor is bound by the assessment of the properties' land values because they are indisputably agricultural land. Instead he argues that the improvements were over-valued by the assessor. In order to show the market value of the improvements, Mr. Grabbe purports to have "abstracted" the fair market value of the land from his purchase price. The

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[15] The base rate is calculated using the formula "Market Value in Use = Net Income/Capitalization Rate," where net income is represented by a four-year rolling average of owner-occupied production income and cash rental income, and the capitalization rate is based on the annual average interest rate on agricultural real estate and operating loans in Indiana for the same four-year rolling period. GUIDELINES, ch. 2 at 99-100. The 2002 base rate of $1,050 was based on the four year period of 1995 – 1998. *Id*.

[16] The $1,250 agricultural base rate does not apply to one acre of agricultural land which is the "homesite." GUIDELINES, ch. 2 at 68. It is valued to include the cost of landscaping, ingress and egress from the property, a water well and septic system. *Id.* In addition, the agricultural land assessment formula also values farmland, in part, based on the productivity of each parcel's soil resources. GUIDELINES, ch. 2 at 106. Soil maps prepared by the United States Department of Agriculture categorize land according to its productivity. *Id.*

Petitioner first removed the $11,240 assessed value of the one-acre building site from the amount of the purchase price allocated to the 3.664 Acre Parcel. *Grabbe testimony.* Similarly, he subtracted the $3,890 assessed value of the one-acre building site from the amount of the purchase price allocated to the 19.266 Acre Parcel. *Id.* Then, to calculate the value of the remaining 2.664 acres of the 3.664 Acre Parcel and the value of the remaining 18.266 acres of the 19.266 Acre Parcel, Mr. Grabbe relied on the purchase of a nearby agricultural land tract. *Id.* Mr. Grabbe testified that another purchaser had bought the land contiguous to his property at a widely advertised, well-attended auction on September 11, 2008, for $5,300 per acre. *Id.* But Mr. Grabbe presented no evidence of this purchase other than the bald, unsupported statement that "Ceres Farms, LLC, paid $5,300 an acre for the farm land around" the subject properties. *Id.; see also e.g. Petitioner Exhibit 4.* 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). The Petitioner presented no evidence of how many acres were purchased and for what price. Nor did the Petitioner present any evidence of the use of the property or that the property was comparable to the subject property.[17] Further, Mr. Grabbe submitted no purchase agreement, sales disclosure form or other document supporting his testimony. Moreover, it is unclear why Mr. Grabbe subtracted the assessed value of the one acre "building sites" from the purchase price of the two parcels. This is like mixing apples and oranges. Deducting the assessed value of the land from the sales price of the properties as a whole is not probative of the market value of the improvements on the properties.

j. To show that the assessor over-valued the hog buildings on his property, the Petitioner must sufficiently show what portion of his purchase price should be allocated to the improvements on the property and what portion of the purchase price should be allocated to the land. This he failed to do. Thus, the Petitioner failed to raise a prima facie case that the two parcels at issue in this appeal were over-valued.

k. The Petitioner also contends his properties are over-assessed based on an income approach valuation. *Grabbe testimony; Petitioner Exhibit 14.* According to Mr. Grabbe, he used an income of $90,000 based on "the predominate lease contract arrangements for these type of facilities" and expenses of $47,558 based on "a combination of cost figures from the universities and private sources," resulting in a net income of $42,442. *Id.* The Petitioner applied a 20% capitalization rate to the properties' net income, added in the county's farm land assessments and

[17] Agricultural land used for crop production may have a different market value in use than agricultural land used for a dairy or pig farm.

subtracted the personal property from the calculation, resulting in an estimated value of $191,401 for the subject properties based on the income approach to value. *Id.*

l. "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 Petitioner, however, only made vague references to "predominate lease contract arrangements" to support his income estimate and unnamed "universities and private sources" to support his expense calculations. Again, statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products,* 704 N.E.2d at 1119. Additionally, the Petitioner did not 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 based the capitalization rate on a rate used in an appraisal and his knowledge of the market. But he failed to offer the appraisal as evidence. Further Mr. Grabbe presented no evidence of the appraiser who preformed the appraisal, the date of the appraisal, whether the appraisal was for the subject properties or for a comparable property and whether the appraisal was performed according to USPAP standards. Moreover, while his Exhibit 14 states that "comparable sales data indicate current returns from 8% to 20% for investments in existing hog facilities," Mr. Grabbe gives no explanation as to why he chose a 20% capitalization rate for his calculation other than "it would seem reasonable an investor would want at least a 20% return for this kind of investment." Thus, the Board concludes that the Petitioner's income analysis fails to raise a prima facie case that the subject properties' assessed values should be lowered.[18]

m. The Petitioner also argues that the properties are over-valued based on a cost approach analysis. *Grabbe testimony.* In his analysis, Mr. Grabbe testified that he used the county's reproduction cost. *Id.; Petitioner Exhibits 11 and 15.* The Petitioner then "corrected" the building area in the hog building on the 3.664 Acre

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[18] The Petitioner's evidence also shows he deducted real estate taxes as an expense. *Petitioner Exhibit 14.* "[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 amount of property tax is contingent upon the correct value of the real estate. *Id.*

Parcel and added an obsolescence adjustment to the buildings on both parcels.[19] *Id.* According to Mr. Grabbe, his cost approach analysis shows the properties under appeal should be valued at no more than $188,320 together. *Id.*

n. The cost approach is based on the assumption that potential buyers will pay no more for a given property than it would cost them to purchase an equally desirable parcel of vacant land and construct an equally desirable substitute improvement. MANUAL at 13. However, the calculation of cost only sets the upper limit of value for improvements. *Id.* The Guidelines also require that accrued depreciation be accounted for in valuing an improvement. GUIDELINES, app. F at 4. Under the Guidelines, depreciation consists of physical depreciation, functional obsolescence and external obsolescence. *Id.* Physical depreciation is a loss in value caused by building materials wearing out over time. *Id.* Functional obsolescence is a loss in value caused by inutility within the improvement. *Id.* External obsolescence represents a loss in value caused by an influence outside of the property's boundaries. *Id.*

o. Mr. Grabbe argues that he is entitled to an obsolescence adjustment of 35% to the buildings on the 3.664 Acre Parcel and an obsolescence adjustment of 45% to the buildings on the 19.266 Acre because of the out-dated design of the buildings and manure lagoon. 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 improvements and also quantify the amount of obsolescence it believes should be applied to its property. *Clark v. State Bd. of Tax Comm'rs*, 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 Bd. of Tax Comm'rs*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001). It is not sufficient for a Petitioner to merely identify random factors that may cause the property to be entitled to an obsolescence adjustment. *See Champlin Realty Co. v. State Bd. of Tax Comm'rs*, 745 N.E.2d 928, 936 (Ind. Tax Ct. 2001). The Petitioner must explain how those purported causes of obsolescence cause the property's improvements to suffer an actual loss in value. *Id.* Here, the Petitioner identified factors that could cause obsolescence but he only assigned a random value to those factors. There is no evidence, for example,

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[19] Mr. Grabbe contends that the hog building on the 3.664 Acre Parcel measures 48 feet by 110 feet and 40 feet by 186 feet or 12,720 square feet total; whereas the assessor shows the hog building to be 48 feet by 292 feet or 14,016 square feet, which overstates the size of the building by 1,296 square feet. Mr. Thomas agreed that the assessor misreported the area of the hog building. Therefore, the Board directs the Assessor to correct the dimensions of the hog building on the 3.664 Acre Parcel to 48 feet by 110 feet and 40 feet by 186 feet or 12,720 square feet total. The Board notes, however, that it is not directing any specific change to the value of the property with this determination. The Board only orders a correction in the area of the buildings on the site. *See Eckerling v. Wayne Township Assessor,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (a Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment).

that a facility with an obsolete manure storage system is worth 15% less than a building with deep pit manure storage. Similarly, the Petitioner presented no evidence that "quad barns" sell for 15% more than his "conventional finishing barns." The Board therefore finds that the Petitioner's cost approach analysis is too unreliable to be given any probative weight.

p. Further, in simply applying an obsolescence factor to the reproduction cost determined by the assessor, the Petitioner has merely recalculated the mass appraisal version of the cost approach set out in the Guidelines. This the Indiana Tax Court held fails to make a case that a property's assessment should be changed. *See Eckerling v. Wayne Township Assessor,* 841 N.E.2d 764 (Ind. Tax Ct. 2006). In *Eckerling,* Judge Fisher found that it is insufficient to simply dispute the method by which a property is assessed. A Petitioner must show through the use of market-based evidence that the assessed value does not accurately reflect the property's market value-in-use. The Board is unconvinced that labeling a Guidelines-based argument as a "cost approach valuation" is sufficient to overcome the Tax Court's ruling in *Eckerling. See also O'Donnell v. Department of Local Government Finance,* 854 N.E.2d 90 (Ind. Tax Ct. 2006).

q. The Petitioner also contends his property is over-valued based on the sales prices of three additional properties – two properties that the Petitioner purchased in 2008 and a third property in Carroll County that sold in 2008. *Grabbe testimony; Petitioner Exhibit 16.* According to Mr. Grabbe, the subject properties' value is $184,311 for the two properties under appeal based on a price per pig space of $42.50. *Id.* In making this argument the Petitioner essentially relies on a sales comparison approach to establish the market value-in-use of his property. *See* MANUAL at 3 (stating that the sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market."). In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. *Long,* 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property 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.*

r. Here, although the Petitioner presented some evidence that the value of a hog farm can be estimated based on the price per pig space, he failed to sufficiently substantiate the "price per pig space" that he calculated from other properties' sale prices. In order to determine the value of the hog buildings on the comparable properties, Mr. Grabbe deducted an amount for the value of the house, land and

tool sheds on the properties from each property's sale price. But nowhere in the record is there any evidence of how he determined the value of the house, land and tool sheds. For example, there is no evidence in the record that the value of the buildings and personal property on the 7.4 acre parcel the Petitioner purchased in September of 2008 for $357,000, was $311,764. Similarly, there is no evidence in the record that the value of the buildings and personal property on the 8.1 acre parcel Mr. Grabbe purchased in November of 2008 was $143,825. Further, to the extent that the Petitioner allocated $5,300 per acre for the land value of the 7.4 acre parcel or the 8.1 acre parcel, the Board has already determined that Mr. Grabbe failed to sufficiently show that the market value of the land on hog farms in the area of the subject property was $5,300 as of January 1, 2008. Thus, the Petitioner's "market value" analysis fails to show that the subject properties should be valued any lower than their assessed values for the March 1, 2009, assessment year.

s. Most importantly, the Petitioner failed to show that his income approach, cost approach or sales comparison approach valuations conformed to the Uniform Standards of Professional Appraisal Practice (USPAP) or any other generally accepted standards. Consequently, the Petitioner's income approach, cost approach and sales comparison approach calculations lack 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). Ultimately, Mr. Grabbe's assertions may not differ significantly from those made by a certified appraiser in an appraisal report. But the appraiser's assertions are backed by his education, training, and experience. The appraiser also typically certifies that he complied with USPAP. Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data, where available, to quantify his adjustments. And where objective data was not available, the Board can infer that the appraiser relied on his education, training and experience to estimate a reliable quantification. Mr. Grabbe, however, is not a certified appraiser, he did not establish that he has any particular expertise in applying generally accepted appraisal principles, and he did not certify that he complied with USPAP in performing his valuation analysis. Moreover, Mr. Grabbe, as the owner of the property, has an interest in the subject property's value being lowered and therefore cannot be relied upon to provide an unbiased assessment of the subject properties' values. The Board therefore will not simply defer to Mr. Grabbe's "market observations" without evidence showing the data upon which he grounded his observations.

t. Based on the above, the Board concludes that the Petitioner failed to raise a prima facie case that the true tax values of the properties at issue in this appeal were over-valued for the March 1, 2009, assessment date. Where the Petitioner has not

supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to raise a prima facie case that the subject properties were over-valued for the March 1, 2009, assessment year. The Board finds in favor of the Respondent.

Final Determination

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

ISSUED: ___________________________________

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Chairman,
Indiana Board of Tax Review

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Commissioner,
Indiana Board of Tax Review

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Commissioner,
Indiana Board of Tax Review

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 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 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/bills/2007/SE0287.1.html.