

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

**Petition No.:** 08-002-09-1-1-00004  
**Petitioner:** Vern R. Grabbe  
**Respondent:** Carroll County Assessor  
**Parcel No.:** 08-14-17-000-022.000-002  
**Assessment Year:** 2009

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

**Procedural History**

1. The Petitioner initiated an assessment appeal with the Carroll County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated April 26, 2010.
2. The PTABOA issued notice of its decision on October 29, 2010.
3. The Petitioner filed a Form 131 petition with the Board on November 3, 2010. The Petitioner elected to have his case 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:<sup>1</sup> Neda Duff, Carroll County Assessor  
Brian Thomas, Ad Valorem Solutions<sup>2</sup>

### Facts

7. The property under appeal is 7.4144 acres of agricultural land improved with hog buildings located on South 400 East, Burlington, Burlington Township in Carroll County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2009, the PTABOA determined the assessed value of the Petitioner's property to be \$20,200 for the land and \$568,300 for the improvements, for a total assessed value of \$588,500.
10. For 2009, the Petitioner requested an assessed value of \$20,200 for the land and \$280,588 for the improvements, for a total assessed value of \$300,788.

### Issues

11. Summary of the Petitioner's contentions in support of an alleged error in his property's assessment:
  - a. The Petitioner argues that his property is over-valued based on its purchase price. *Grabbe testimony*. According to Mr. Grabbe, he purchased the subject property at an auction for \$357,000 on September 11, 2008. *Id.* In support of his contention, Mr. Grabbe offered the testimony of Mr. Todd Freeman of Schrader Real Estate & Auction Company, the settlement statement and a brochure advertising the auction, showing 1,222 acres of agricultural land offered for sale in twenty

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<sup>1</sup> Ms. Lauren Criswell, Carroll County Deputy Assessor, was also in attendance but was not sworn in as a witness to give testimony.

<sup>2</sup> 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.

different tracts. *Petitioner Exhibits 5 and 6*. Mr. Freeman testified that the auction was nationally advertised with the primary advertising being concentrated in the Midwest region. *Freeman testimony*. According to Mr. Freeman, roughly 200 to 250 people attended the auction and 71 people were registered to bid. *Id.* Mr. Freeman also testified that the owners of the property reserved the right to refuse the highest offer at auction. *Id.* But in the case of the property under appeal, Mr. Freeman testified, the owners accepted Mr. Grabbe's bid after a "spirited" competition for the owner's facilities. *Id.* Because of the nature of the competition at the auction, Mr. Freeman concluded that the Petitioner's purchase price represented the property's fair market value. *Id.*

- b. Based on his purchase price, the Petitioner contends the assessed value of the buildings on the property should be no more than \$280,588. *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 purchase price. *Id.* Then, to calculate the value of the remaining 6.4144 acres, Mr. Grabbe relied on the purchase of another nearby agricultural land tract by Ceres Farms, LLC, at the same auction for \$5,300 per acre. *Id.* Thus, Mr. Grabbe argues, the remaining 6.4144 acres of the subject property has a market value of \$33,996. *Id.* Finally, he subtracted \$31,176 for the value of the personal property on the site, such as feeders, waterers, heaters, and gates. *Id.; Petitioner Exhibits 10 and 12*. Subtracting the \$11,240 for the one-acre building site, \$33,996 for the remaining 6.4144 acres, and personal property in the amount of \$31,176 from his \$357,000 purchase price, Mr. Grabbe argues, results in a market value of \$280,588 for the buildings on the subject property. *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 property's land assessment should remain unchanged at \$20,200. *Id.* Adding the \$20,200 land value to his \$280,588 improvement value, Mr. Grabbe argues, results in a total assessed value of \$300,788 for the property under appeal. *Grabbe testimony; Petitioner Exhibit 7*.
- d. The Petitioner also contends that his property is over-assessed based on the income approach to value. *Grabbe testimony*. According to Mr. Grabbe, he used an income of \$120,000 based on "the predominate lease contract arrangements for these type of facilities" and expenses of \$54,828 based on "a combination of cost figures from the universities and private sources," resulting in a net income of \$65,172. *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 \$325,860 for the buildings.<sup>3</sup> *Id.* Next, Mr. Grabbe added back the \$8,960 land assessment and subtracted \$31,176 for the personal property, resulting in an estimated value of \$303,644 for the subject property based on the income approach.<sup>4</sup> *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 three of the hog buildings by \$3,240 each because the assessor overstated the size of the buildings by 242 square feet.<sup>5</sup> *Grabbe testimony; Petitioner Exhibits 11 and 15.* In addition, he increased the physical depreciation on one of the hog buildings from 5% to 25% because the building was constructed with used materials. *Id.* He also increased the obsolescence adjustment from 20% to 57.25% because of inadequate manure pump out stations, the out-dated design and use of the buildings, and an inefficient ventilation system at the facility.<sup>6</sup> *Id.* Mr. Grabbe testified that his "corrected" reproduction cost, minus \$57,691 for physical depreciation and \$374,214 for obsolescence results in a building value of \$279,515. *Grabbe testimony; Petitioner Exhibit 15.* Adding the \$20,200 assessed value of the land to \$279,515 building value, Mr. Grabbe argues, results in an estimated value of \$299,715 for the property under the cost approach. *Id.*

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<sup>3</sup> 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.*

<sup>4</sup> Mr. Grabbe did not explain why he only added in \$8,960 - which is the assessed value of the 6.4144 acres, rather than \$20,200 - which is the assessed value of the 6.4144 acres and the 1 acre building site that comprises the entire property at issue in this appeal.

<sup>5</sup> Mr. Grabbe contends the hog buildings are each 41 feet wide by 410 feet long or 16,810 square feet. *Grabbe testimony; Petitioner Exhibit 11.* The assessor is showing that each hog building is 42 feet by 406 feet or 17,052 square feet, overstating the size of each building by 242 square feet. *Id.* Thus, the Petitioner contends, the hog buildings are over-assessed on the basis that their sizes are incorrect. *Grabbe testimony.*

<sup>6</sup> In order to show he has experienced problems with inadequate pump out stations on his hog buildings, Mr. Grabbe submitted an emergency spill response document filed with the Indiana Department of Environmental Management (IDEM). *Grabbe testimony; Petitioner Exhibit 19.* In addition, Mr. Bellar testified that the Petitioner's buildings are not as appealing or efficient as the newer "quad" hog facilities being constructed. *Bellar testimony.*

- 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 22.9 acres in April of 2009 for \$350,000.<sup>7</sup> *Id.*; *Petitioner Exhibit 16*. Mr. Grabbe testified that he allocated \$223,941 of the purchase price to the buildings and personal property. *Id.* Because the buildings on the 22.9 acre property could house 4,500 pigs, Mr. Grabbe calculated the property was worth \$49.76 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*. Based on the three comparable facilities, Mr. Grabbe argues that the average price per pig space is \$51.67 and applying this value to the 6,000 pig spaces on his property, results in a value of \$310,020 for the buildings and personal property. *Id.*; *Petitioner Exhibit 16*. Adding the \$20,200 land assessment and removing the \$31,176 of personal property, Mr. Grabbe contends, results in an estimated value of \$299,044 for the subject property under his “Market Data Approach.” *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, the calculations show that the county has assessed his hog facilities from 19.02% to 208.64% over their adjusted purchase prices. *Id.*

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

- a. The Respondent’s representative contends the Petitioner’s assessment is correct. *Thomas testimony*. According to Mr. Thomas, the Petitioner’s purchase price is not probative of the property’s market value-in-use. *Id.* In support of this

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<sup>7</sup> Mr. Grabbe testified that he did not time-adjust any of the comparable sales prices because the Carroll County Assessor did not trend the values of the Petitioner’s properties between March 1, 2007, and March 1, 2010, except that the assessor added pits and slats to the neighboring property for the March 1, 2010, assessment thereby increasing the assessed value for that year. *Grabbe testimony*; *Petitioner Exhibit 13*. Mr. Grabbe argues that the increase in assessment was not a result of the county applying a trending factor. *Grabbe testimony*.

argument, the Respondent's representative submitted a sales disclosure form showing the Petitioner purchased a contiguous property for \$350,000 approximately five months after purchasing the property under appeal. *Id.*; *Respondent Exhibits C, D, E and F*. Mr. Thomas argues that the buildings on the property under appeal are newer and 63% larger than the neighboring property's structures and they have connecting chutes between each building. *Thomas testimony; Respondent Exhibit B*. Despite these facts, Mr. Thomas argues, the Petitioner only paid \$7,000 more for the property under appeal than he did for the neighboring property with older and substantially smaller buildings. *Id.*

- b. To further illustrate the Petitioner's purchase price was not probative of the subject property's market value, the Respondent's representative submitted the sales price per square foot for the property under appeal and the neighboring property. *Thomas testimony; Respondent Exhibit G*. Mr. Thomas argues the Petitioner purchased the neighboring property from an individual for \$350,000. *Id.* The neighboring property included three buildings with a total of 33,216 square feet, or \$10.54 per square foot. *Id.* The Petitioner purchased the property under appeal at an auction for \$356,000. *Id.* The subject property has four buildings with a total of 52,836 square feet, or \$6.76 per square foot. *Id.* Thus, Mr. Thomas argues, the Petitioner paid significantly less per square foot of building space for the newer and larger buildings on the subject property that he bought at auction than he did for the older and smaller buildings he purchased from an individual. *Thomas testimony*. Thus, Mr. Thomas concludes, the difference in price per square foot of building space shows that the auction sale of the subject property did not represent a "market value" sale. *Id.*

### **Record**

13. The official record for this matter is made up of the following:
  - a. The Form 131 petition and related attachments.
  - b. The digital recording of the hearing.

c. Exhibits:<sup>8</sup>

- Petitioner Exhibit 1 – Form 131 petition for assessment year March 1, 2009,
- Petitioner Exhibit 2 – Notification of Final Assessment Determination – Form 115, dated October 29, 2010,
- Petitioner Exhibit 3 – Request for Review, Carroll County, dated April 26, 2010,
- Petitioner Exhibit 4 – Petitioner’s allocated purchase price worksheet,
- Petitioner Exhibit 5 – Petitioner’s settlement statement, dated November 6, 2008,
- Petitioner Exhibit 6 – Petitioner’s tax statement information for 2009 and 2010, Notification of Final Assessment Determination – Form 115, dated December 17, 2009, Form 131 petition for assessment year March 1, 2008, Requests for Review, Carroll County, dated September 22, 2009, Petitioner’s tax statement information for 2007, 2008 and 2009, electronic mail message, dated September 8, 2009, Co-Executor’s deed, dated November 6, 2008, announcement of real estate auction, and property record card for the 130.084 acre parcel from which the Petitioner’s property was split,
- Petitioner Exhibit 7 – Petitioner’s allocated purchase price worksheets,
- Petitioner Exhibit 9 – Petitioner’s 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 the Petitioner’s facilities,<sup>9</sup>

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<sup>8</sup> 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]he 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.

Mr. Grabbe did not submit a Petitioner Exhibit 8.

<sup>9</sup> 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 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 the Petitioner’s facilities,
- Petitioner Exhibit 11 – Petitioner’s obsolescence information and calculation,
- Petitioner Exhibit 12 – Petitioner’s market data approach,
- 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 Petitioner’s facilities, and Notification of Final Assessment Determination – Form 115 for the subject property,
- 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 19 – Indiana Department of Environmental Management (IDEM) Emergency Spill Response Document, dated April 25, 2009,
- 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,<sup>10</sup>
- Respondent Exhibit A – Respondent’s exhibit list,
- Respondent Exhibit B – Respondent’s written summary,

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<sup>10</sup> 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 C – Property record card and sales disclosure form for the 19.266 acre parcel of the Petitioner’s neighboring facility,

Respondent Exhibit D – Property record card and sales disclosure form for the 3.664 acre parcel of the Petitioner’s neighboring facility,

Respondent Exhibit E – Sales disclosure form for the neighboring facility,

Respondent Exhibit F – Aerial map and plat map of the subject property and surrounding properties,

Respondent Exhibit G – Respondent’s building comparison analysis,

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

Board Exhibit A – Form 131 petition 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 raised a prima facie case for a reduction in the assessed value of his property. 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 property for \$357,000 at a well-advertised and well-attended auction in September of 2008. *Grabbe testimony*. While the price that a purchaser pays at an auction may not be the strongest evidence of a property’s market value, where the party establishes that the property was advertised to the public for a reasonable amount of time and where there was open, competitive bidding, an auction price has some probative weight. Here, the Petitioner’s witness testified that the auction was nationally advertised; more than 200 people attended the auction; and there were 71 bidders. *Freeman testimony*. Therefore, the Petitioner’s purchase of the property at auction has probative weight sufficient to raise a prima facie case that his property is over-valued. Further, while generally the 2009 assessment is to reflect the value of a property as of January 1, 2008, pursuant to 50 IAC 21-3-3(a), local officials shall use sales occurring between

January 1, 2008, and December 31, 2008, in performing sales ratio studies for the March 1, 2009, assessment date. Thus, the purchase of a property occurring on September 11, 2008, must also be some evidence of the property's value as of January 1, 2008. The Board therefore finds that the Petitioner raised a prima facie case that the subject property is over-assessed based on his purchase of the property. *See Meridian Towers*, 805 N.E.2d at 479.

- e. However, the Petitioner argues that his purchase price must be reduced to account for the "cap" on Indiana's farmland and the personal property included in his purchase price. *Grabbe testimony*. According to Mr. Grabbe, after deducting the "un-taxed" value of the agricultural land and the personal property that was included with his purchase of the property, the value of the subject property should be \$300,788 for the March 1, 2009, assessment date. *Id.*
- f. 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).<sup>11</sup> This statute expressly provided that the codified criteria used in assessing the value of agricultural land did not apply to 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.
- g. 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.<sup>12</sup> For the

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<sup>11</sup> 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.

<sup>12</sup> 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.*

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).<sup>13</sup> 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.

- h. In prior cases, the Board has held that 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). Here, however, because the Petitioner's purchase included personal property that is assessed separately from real property and agricultural land that is assessed based on a statewide rate calculated by the income approach rather than on a comparable sale basis, the Petitioner argues that his purchase price would be over-stating the true tax value of the property as of the March 1, 2009, assessment date. In essence, Mr. Grabbe does not dispute the assessed value of the land on his property – in fact, he contends, the assessor is bound by the assessment of the property's land value because it is indisputably agricultural land. Instead he argues that the improvements were over-valued by the assessor.
- i. When analyzing Mr. Grabbe's calculation allocating his purchase price between the land, the buildings and the personal property on the subject property, some explanation must be given to the steps of his calculation. First, the Petitioner removed the personal property from the purchase price of the subject property to determine the value of the real estate. *Grabbe testimony*. The Petitioner testified that his purchase price included items such as feeders, waterers, heaters and gates, valued at \$31,176. *Id.*; *Petitioner Exhibits 10 and 12*. In support of this

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<sup>13</sup> 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.*

contention, the Petitioner submitted his March 1, 2010, personal property return – Form 102.<sup>14</sup> *Id.* Because personal property is assessed separately from real property, *see* Indiana Code § 6-1.1-3, Mr. Grabbe presented a prima facie case that the value of the real estate that he purchased was \$325,824.

- j. Next, the Petitioner purports to have “abstracted” the fair market value of the land from the purchase price by removing the \$11,240 assessed value of the one-acre building site. *Grabbe testimony.* He then determined the value of the remaining 6.4144 acres by multiplying the acreage by \$5,300 per acre for a value of \$33,996. *Id.* Mr. Grabbe testified that another purchaser bought the land contiguous to his property at the same auction 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 property. *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.<sup>15</sup> 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 site” from the purchase price of the property. This is like mixing apples and oranges. Deducting the assessed value of the land from the sales price of the property as a whole is not probative of the market value of the improvements on the property.
- k. To show that the assessor over-valued the improvements on his property, the Petitioner must sufficiently show what portion of his purchase price should be allocated to the hog buildings on the property and what portion of the purchase price should be allocated to the land. This he failed to do. Therefore, the Board holds that for the March 1, 2009, assessment date, the Petitioner raised a prima facie case that the true tax value of his property was \$325,824 based on his

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<sup>14</sup> 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.*

<sup>15</sup> Agricultural land used for crop production may have a different market value in use than agricultural land used for a dairy or pig farm.

September 11, 2008, purchase of the property at issue on appeal less the personal property purchased in that transaction. However, the Board finds that there is insufficient evidence based on Mr. Grabbe's analysis of the market value of agricultural land to make any further reduction in the property's value.

- l. The Petitioner also contends his property is over-assessed based on an income approach valuation. *Grabbe testimony; Petitioner Exhibit 14*. According to Mr. Grabbe, he used an income of \$120,000 based on "the predominate lease contract arrangements for these type of facilities" and expenses of \$54,828 based on "a combination of cost figures from the universities and private sources," resulting in a net income of \$65,172. *Id.* The Petitioner applied a 20% capitalization rate to the property's net income, added in the county's farm land assessment and subtracted the personal property from the calculation, resulting in an estimated value of \$303,644 for the subject property based on the income approach to value. *Id.*
- m. "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*, at 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 unidentified 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 performed the appraisal, the date of the appraisal, whether the appraisal was for the subject property 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 property's value should be lower than its purchase price.<sup>16</sup>

- n. The Petitioner also argues that the property is 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 amount of square feet in each building and subtracted that from the reproduction cost.<sup>17</sup> *Id.* Next, the Petitioner increased the physical depreciation on one hog building from 5% to 25% because it was constructed with used material. Finally, Mr. Grabbe argued that the obsolescence depreciation should be increased from 20% to 57.25%. *Id.* According to Mr. Grabbe, his cost approach analysis shows the property under appeal should be valued at no more than \$299,715. *Id.*
- o. 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. Depreciation is estimated by considering the chronological age of a structure, the effective age of the structure, the quality of materials, workmanship and design used in the construction of the structure, the condition rating of the structure and the neighborhood factor. GUIDELINES, app. B at 4. While the Petitioner assigned 25% depreciation to one of his buildings because it was built with used trusses, Mr. Grabbe failed to show how the condition or grade of the building changed because of the building materials used or how those factors changed the structure's effective age in order to show that the proper depreciation adjustment of that building was 25% rather than the 5% assigned by the assessor.

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<sup>16</sup> 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.*

<sup>17</sup> The Petitioner contends that the Respondent inaccurately measured his hog buildings. *Grabbe testimony*. According to Mr. Grabbe, each of the three hog buildings are 41 feet by 410 feet or 16,810 square feet. *Grabbe testimony; Petitioner Exhibit 11*. Similarly, the Schrader Real Estate & Auction's advertisement shows that the three buildings are 40 feet by 410 feet or 16,400 square feet each. *Petitioner Exhibit 6*. In contrast, the property record card shows that the county assessor identifies the three hog buildings as being 42 feet by 406 feet or 17,052 square feet each. *Grabbe testimony; Petitioner Exhibit 11*. The Board finds that the best evidence of the hog buildings' dimensions is Mr. Grabbe's testimony supported by the Real Estate Auction brochure. Therefore, the Board directs the Assessor to correct the dimensions of the three hog buildings to 41 feet by 410 feet. 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).

- p. Moreover, for a Petitioner to show it is entitled to receive an adjustment for obsolescence, the Petitioner must both identify the causes of obsolescence it believes is present in its improvement and also quantify the amount of obsolescence it believes should be applied to its property. *Clark v. State 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, that a building with tunnel ventilation is worth 11.25% less than a building with natural air flow. Similarly, the Petitioner presented no evidence that “quad barns” sell for 15% more than his “conventional finishing barns” or that a manure pump out station poured as an integral part of the pits would increase the value of the property 16%. The Board therefore finds that the Petitioner’s cost approach analysis is too unreliable to be given any probative weight.
- q. Further, in simply applying a different depreciation deduction or 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).
- r. 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 2009 and a third property in Carroll County that sold in 2008. *Grabbe testimony; Petitioner Exhibit 16*. According to Mr. Grabbe, the subject property’s value is \$299,044 based on an average price per pig space of \$51.67. *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.*

- s. 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 22.9 acre parcel the Petitioner purchased in April of 2009 for \$350,000, was \$223,941. 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 22.9 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 property should be valued any lower than the Board determined above based on the property’s purchase price.
- t. 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 property's value. The Board therefore will not simply defer to Mr. Grabbe's "market observations" without evidence showing the data upon which he grounded his observations.

- u. Based on the above, the Board concludes that the Petitioner raised a prima facie case that the true tax value of the property at issue in this appeal was \$325,824 for the March 1, 2009, assessment based on his purchase of the real estate and the personal property. 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 Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise his prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
- v. Here, the Respondent's representative argues that the Petitioner failed to make a case for a reduction in the assessed value of his property based on his purchase of a contiguous hog farm which has older and smaller buildings. *Thomas testimony; Respondent Exhibits C, D, E, and F*. Mr. Thomas does not appear to suggest that the Petitioner's purchase of the neighboring hog farm proved that the subject property's assessment was correct; he only seems to be arguing that because Mr. Grabbe paid only \$7,000 more for the subject property with its newer and larger buildings than he paid for the neighboring property, that the Petitioner's purchase of the subject property could not be considered a market value sale. Similarly, Mr. Thomas argues that, because the Petitioner purchased the property at an auction, the sale therefore was not a sale for fair market value. As determined above, however, the Board finds that property bought at an auction that is widely advertised and sufficiently attended can provide some evidence of the property's value. Without the Respondent providing its own probative evidence of the property's market value-in-use, the Board declines to infer that the Petitioner's purchase price did not represent the property's fair market value.

**Conclusion**

- 16. The Petitioner raised a prima facie case that his property was over-valued for the March 1, 2009, assessment year. The Respondent failed to rebut the Petitioner’s evidence. The Board finds in favor of the Petitioner and holds that the value of the subject property was \$325,824 for the March 1, 2009, assessment year based on the Petitioner’s purchase price for the property less the value of the personal property on the site.

**Final Determination**

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioner’s property should be changed.

ISSUED: \_\_\_\_\_

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Chairman,  
Indiana Board of Tax Review

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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 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>.**