

REPRESENTATIVE FOR PETITIONER:

Ronald F. Droscha, Pro Se

REPRESENTATIVES FOR RESPONDENT:

Nancy Hardwick-Gates, Miami County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Ronald F. Droscha,	)	Petition No: 52-016-07-1-5-10000
	)	
Petitioner,	)	Parcel No: 52-08-27-302-275.000-016
	)	
v.	)	
	)	
Miami County Assessor,	)	Miami County
	)	Peru Township
	)	2007 Assessment
Respondent.	)	

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Appeal from the Final Determination of the  
Miami Property Tax Assessment Board of Appeals

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**November 25, 2009**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings and conclusions of law.

**ISSUE**

1. Did the Petitioner prove that the current assessment fails to accurately reflect the market value-in-use of the subject property and did he prove what a more correct assessment should be?

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **PROCEDURAL HISTORY**

2. The Miami County Property Tax Assessment Board of Appeals (the PTABOA) determined the 2007 assessment is \$151,900 (land \$38,400 and improvements \$113,500).<sup>1</sup>
3. On December 10, 2008, the Petitioner filed a Form 131 Petition seeking a review of that determination.<sup>2</sup> The Petitioner opted out of small claims procedures.
4. At the hearing, the Petitioner contended the assessed value should be \$105,000. This amount differs from the value requested on his Form 131.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

5. The subject property is a 6,336 square foot general office building located at 52 East Main Street in Peru.
6. Administrative Law Judge Dalene McMillen held the hearing on August 27, 2009. She did not conduct an on-site inspection of the property.
7. Petitioner Ronald Droscha, County Assessor Nancy Hardwick-Gates, and Deputy Assessor Sara McAuliff were sworn and presented testimony at the hearing.

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<sup>1</sup> The PTABOA's Notification of Final Assessment Determination – Form 115 is dated October 8, 2008; however, on November 13, 2008, the Respondent sent a letter informing the Petitioner that the PTABOA had made its final determination. The parties agreed that neither one knows exactly when the Form 115 was mailed.

<sup>2</sup> To resolve uncertainty about the date of the Form 115 notice, the parties stipulated that the Form 131 Petition for Review of Assessment is timely. The Board accepts that stipulation.

8. The Petitioner presented the following exhibits:

- Petitioner Exhibit 1 – Note from Ron Droscha to “Reviewer” dated December 3, 2008,
- Petitioner Exhibit 2 – “The Petitioner’s Burden Filing An Appeal,”
- Petitioner Exhibit 3 – Sales comparison calculation prepared by Ron Droscha,
- Petitioner Exhibit 4 – Income approach calculation prepared by Ron Droscha,
- Petitioner Exhibit 5 – Cost approach calculation prepared by Ron Droscha,
- Petitioner Exhibit 6 – Property record card (PRC) for parcel at 1 South Broadway,
- Petitioner Exhibit 7 – PRC for parcel at 22-24 North Broadway,
- Petitioner Exhibit 8 – PRC for parcel at 18 North Broadway,
- Petitioner Exhibit 9 – PRC for parcel at 159 South Broadway.

9. The Respondent presented the following exhibits:

- Respondent Exhibit 1 – Respondent’s explanation of ratio study and sales information for neighborhood 15901,
- Respondent Exhibit 2 – Spreadsheet entitled “Assessed value & sales by story height” and “Assessed value & Sales by square foot,”
- Respondent Exhibit 3 – Coversheet,
- Respondent Exhibit 3A – Coversheet entitled “property record cards for assessed value & sales by story height,”
- Respondent Exhibit 3A-1 – PRC for parcel at 532 West Main Street,
- Respondent Exhibit 3A-2 – PRC for parcel at 105 West Main Street,
- Respondent Exhibit 3A-3 – PRC for parcel at 532 West Main Street,
- Respondent Exhibit 3A-4 – PRC for parcel at 3 East Canal Street,
- Respondent Exhibit 3B – Coversheet entitled “Petitioners property record cards for assessed value,”
- Respondent Exhibit 3B-1 – PRC for the subject property at 52 East Main Street (after appeal),
- Respondent Exhibit 3B-2 – PRC for the subject property at 52 East Main Street (before appeal),
- Respondent Exhibit 3C – Coversheet entitled “property record cards for assessed value & sales by square foot,”
- Respondent Exhibit 3C-1 – PRC for parcel at 16 North Broadway,
- Respondent Exhibit 3C-2 – PRC for parcel at 3 East Canal Street,
- Respondent Exhibit 3C-3 – PRC for parcel at 61 South Broadway,
- Respondent Exhibit 3C-4 – PRC for parcel at 608 West Main Street.

10. The following additional items are recognized as part of the record:

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

## SUMMARY OF PETITIONER'S CASE

11. A sales comparison analysis of three comparable properties (similar in age and location) supports the conclusion that the subject property is over-assessed compared to other properties in the area. *Petitioner Exhibits 3, 6-8; Droscha testimony.* The three comparable properties sold for \$65,000, \$84,500, and \$112,000. Those sales were \$16.00 to \$17.01 per square foot. The price per square foot was calculated using only the first floor square footage except for the property located at 18 North Broadway—Petitioner used two floors in his calculation for 18 North Broadway because it had a functioning second floor. The average sale was \$16.65 per square foot. When that average value is applied to the subject property's square footage (6,336 sq. ft.) the value would be \$105,494. *Petitioner Exhibits 3; Droscha testimony.*
12. The property at 159 South Broadway is assessed at \$19.44 per square foot. It is similar to the subject property, but it is owned by a non-profit entity. At \$19.44 per square foot, the value of the subject property would be \$123,171. The subject property should be assessed for no more than that amount. *Petitioner Exhibits 3, 9; Droscha testimony.*
13. The value of the subject property also was calculated using the income approach. By reducing the monthly income (\$1,350) by the tax burden (\$600) and then applying a 10% capitalization rate, this approach indicates a value of \$75,000. Possibly the capitalization rate could be reduced, but the result still would be less than the current assessment. In this case, the income approach probably is not as good as the sales comparison approach. *Petitioner Exhibit 4; Droscha testimony.*
14. Under the cost approach, the cost of construction in 1968 would be in the range of \$35 to \$45 per square foot. In arriving at this conclusion, information was taken from Marshall & Swift as well as a local contractor's construction costs during the 1960's. Based on \$45 per square foot, the estimated cost of construction would be \$285,120. With depreciation, the resulting value of the subject property would be \$125,453. (The

Petitioner testified that he used 68% depreciation, but his cost approach value suggests that he actually applied 56% depreciation.) *Petitioner Exhibit 5; Droscha testimony.*

15. The assessor erred in the amount of physical depreciation. Comparable properties that are approximately the same age as the subject property and that are located in the same area have depreciation ranging from 67% to 80%, while the subject property has only 56%. *Petitioner Exhibits 6-9; Droscha testimony.* The assessor has not applied depreciation equitably to like properties. If the assessor were to apply an additional 10% depreciation to the current \$151,900 assessment the value would be more consistent with comparable properties. *Droscha testimony.*

#### **SUMMARY OF RESPONDENT'S CASE**

16. Sales and assessment information for properties located in the Petitioners neighborhood from 2005 and 2006 supports the assessment of \$151,900. The assessed values of one-story properties in the area range from \$31.46 to \$60.23 per square foot, with a median of \$57.45. The sales for those properties range from \$40.62 to \$62.63 per square foot, with a median of \$54.62. The median assessed value of two and three story properties located in downtown Peru is \$29.05 per square foot. The Petitioner's property is assessed at \$23.97 per square foot, which is below the average for the area. *Respondent Exhibits 1-3; McAuliffe testimony.*
17. The effective year of construction shown on the PRC was established for the subject property because the county opted to change the effective age on properties rather than applying a larger market adjustment. *McAuliffe testimony.*
18. The valuation for the property at 159 South Broadway should not be given any weight because it is exempt from property taxes. The county inadvertently failed to update its assessed value. *Petitioner Exhibit 9; McAuliffe testimony.*

## ANALYSIS

19. 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 Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
20. 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 Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
21. Real property is assessed based on its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine value-in-use is the cost approach. MANUAL at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. Real Property Assessment Guidelines for 2002—Version A. The value established by use of the Guidelines, while presumed to be accurate is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

22. Regardless of the method used, the 2007 assessment must reflect the value of the property as of January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, that valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
23. The Petitioner testified that he is a certified appraiser. The Respondent did not dispute the point. But that fact has very little, if any, impact on this case. No appraisal was presented as evidence. There is no evidence that the facts and opinions that the Petitioner presented were compiled in accordance with generally accepted appraisal principles. Consequently, although the Petitioner is a certified appraiser, the evidence that he presented does not have the same weight or credibility that it might otherwise have had.
24. The Petitioner purported to have formed his opinion of the market value-in-use of the property under appeal using the three generally accepted appraisal approaches: comparables, income, and cost. In form, the Petitioner's valuation opinion might satisfy the criteria described by the Manual for evidence to rebut the presumption that an assessment is correct. In practice, however, the Petitioner's evidence is deeply flawed.
25. In order to effectively use a comparison approach as evidence, 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 being examined. *Long*, 821 N.E.2d at 470. One must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. One must also explain how any differences between the properties affect their relative values. *See Id.* at 470-71.

26. The Petitioner failed to provide a meaningful comparison between the subject property and the purportedly comparable properties. His entire analysis for the comparable properties centered on location and age. The Petitioner failed to deal with any differences between the properties. For example, he made no adjustments for land size, building size, location or the age of the buildings. He merely concluded that they were comparables because these properties were older buildings located in the downtown area of Peru. The Petitioner's conclusory opinion fails to make a prima facie case for a change in value based on comparing sales or assessments of other properties.
27. Alternatively, the Petitioner attempted to prove his case with the income approach to value. He testified that the property generates a monthly income of \$1,350. From that amount he deducted \$600 for the monthly tax burden. Then he applied a 10% capitalization rate to his income (\$750) to derive his income approach valuation. According to the Petitioner, this approach indicates a value of \$75,000.
28. "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. It focuses on the intrinsic value of the property, not on the Petitioner's operation of the property because property-specific rents or expenses may reflect elements other than the value of the property "such as quality of management, skill of work force, competition and the like." *Thorntown Telephone Co., Inc. v. State Bd. of Tax Comm'rs*, 588 N.E.2d 613, 619 (Ind. Tax Ct. 1992). "Under the income capitalization approach, the income expected to be earned by the subject property is estimated, allowing for reasonable expenses, vacancy, and/or collection loss, to arrive at net operating income (NOI). The NOI is subsequently converted to a present value by dividing it by a capitalization rate." See *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1224 (Ind. Tax Ct. 2003). The capitalization rate generally reflects the annual rate of return necessary to attract investment capital and is influenced

by such factors as risk, market attitudes, inflation, the rate of return for alternative investments, *etc.* *Id.*

29. The Petitioner's very summary version of an income capitalization approach failed to make a prima facie case. Most notably, he failed to provide a factual basis or substantial explanation for how he came up with a capitalization rate of 10% and that rate is one of the key elements for the income capitalization approach. Statements (such as the 10% capitalization rate) that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998). In addition, the Petitioner failed to offer the kind of detailed, factual evidence about the income and expenses related to the subject property that would be required to properly consider the income approach to value. He presented no evidence to demonstrate the income and expenses he attributed to the subject property were typical for comparable properties—his income and expenses might simply be the result of his management. *See Thorntown Telephone Company*, 588 N.E.2d at 619. The Petitioner's income approach to valuation failed to make a prima facie case for any assessment change.
  
30. The Petitioner also attempted to prove value based on the cost approach, which 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. To use this approach, the appraiser first calculates the existing improvement's replacement cost new. Then the appraiser subtracts an amount reflecting the improvement's accrued depreciation. Finally, the appraiser adds the value of the land, as if it were vacant, to determine the property's total value. *MANUAL* at 13.

31. The Petitioner failed to present a meaningful, relevant cost approach analysis. His evidence about cost and depreciation was entirely conclusory. Conclusory statements, unsupported by factual evidence are not sufficient to establish an error in an assessment. *Whitley Products, Inc.*, 704 N.E.2d at 1119, 1120. There was no evidence about how the Petitioner’s purported cost figures might relate to the required valuation date, January 1, 2006. Furthermore, there was no probative evidence about what the value of the land might be in his cost analysis. Consequently, the Petitioner’s cost approach analysis also failed to make a case for any assessment change.
  
32. As a final point, the Petitioner claimed his current assessment did not allow a sufficient amount of physical depreciation—his building got 56%, while purportedly comparable properties of approximately the same age got 67% to 80%. Again, the Petitioner failed to establish the purported comparability. But more importantly, such an inconsistency does not, by itself, prove that the current assessment is wrong. A Petitioner does not rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (stating that under the old system, assessed value was correct when the assessment regulations were applied correctly; however, the new system shifts the focus from mere methodology to determining whether the assessed value is *actually correct*). Merely arguing about the amount of physical depreciation misses the point of Indiana’s new assessment system and fails to make a prima facie case.
  
33. Where the taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *See Lacey Diversified*, 799 N.E.2d at 1221–1222.

## SUMMARY OF FINAL DETERMINATION

34. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent. Consequently, the assessment will not be changed.

This Final Determination of the above captioned matter is issued on the date written above.

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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

### - Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.