

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

**Petition #:** 49-101-02-1-4-08131  
**Petitioners:** Howard C. & Patsy N. Jansen  
**Respondent:** Center Township Assessor (Marion County)  
**Parcel #:** 1080693  
**Assessment Year:** 2002

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

**Procedural History**

1. The Petitioners initiated an assessment appeal with the Marion County Property Tax Assessment Board of Appeals (“PTABOA”) on October 13, 2003. The PTABOA mailed notice of its determination on December 15, 2006.
2. On January 16, 2007, the Petitioners filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment. The Petitioners elected to proceed under the Board’s rules for small claims.
3. The Board’s duly appointed Administrative Law Judge, Alyson Kunack (“ALJ”), held an administrative hearing on July 26, 2007.
4. Persons present and sworn as witnesses at the hearing:  
For Petitioners – Charles McDonald, DuCharme, McMillen & Associates  
For Respondent – Frank Corsaro, Center Township Assessor’s Office

**Facts**

5. The subject property contains a seven-story brick apartment building with 54 apartments. It is located at 1 West 28<sup>th</sup> Street, Indianapolis.
6. The ALJ did not inspect the property.
7. The PTABOA determined the following assessed values:  
Land \$59,400                      Improvements \$557,800                      Total \$617,200.
8. On their Form 131 petition, the Petitioners requested the following assessed values:  
Land \$59,400                      Improvements \$271,450                      Total \$330,850.

9. At the hearing, the Petitioners requested a total assessment of \$516,850.

### Contentions

10. Summary of Petitioners' contentions:

- a) The Respondent assessed the subject property for more than its market value-in-use. *McDonald argument*. The Petitioners' representative, Mr. McDonald, estimated the property's market value at \$516,850 using the income approach. His estimate reflects declines from progressively higher vacancy and credit losses and increased maintenance and repair expenses. *McDonald testimony; Pet'rs Exs. 1, 4-6*.
- b) Mr. McDonald performed separate analyses for 2000, 2001, and 2002. He arrived at estimates of \$539,700, \$607,600, and \$403,200, respectively. The Petitioners requested value— \$516,850—is the median of those three estimates. Mr. McDonald used actual income and expense information from the subject property, although he estimated the property's reserves. *McDonald testimony; Pet'rs Exs. 4-6*.
- c) Mr. McDonald capitalized the property's net operating income for each year using a "loaded" rate of 12.54%. That loaded rate consisted of a 10% capitalization rate plus a 2.54% property-tax rate. Mr. McDonald did not explain why he chose the underlying 10% capitalization rate. *McDonald testimony; Pet'rs Exs. 4-6*.
- d) The subject property was built in 1928, and it has significant maintenance issues. The Petitioners offered photographs of the building's exterior, windows, interior hallways, common-area walls, and utility areas. They show deferred maintenance, graffiti, and other deterioration. *McDonald testimony; Pet'rs Exs. 1-2, 7*.

11. Summary of Respondent's contentions:

- a) The Respondent used the cost approach to value the subject property. The subject building receives 80% physical depreciation and has a C grade. *Cosaro testimony; Resp't Ex. 1*.
- b) Before the 2002 general reassessment, the subject property was assessed for \$565,100. Its assessment increased to \$617,200 following that reassessment. *Cosaro testimony; Resp't Ex. 1*.
- c) The Petitioners' taxes, however, decreased from \$19,819 in 2001 to \$15,669 in 2002. Currently, the per-unit taxes are \$290 per year, or \$24 per month. Those taxes help pay for fire and police departments, city utilities, and schools. *Cosaro testimony; Resp't Exs. 3-4*.

- d) The Respondent submitted a list containing assessment information for all apartment buildings in Center Township. *Resp't Ex. 2.*

### **Record**

12. The official record for this matter is made up of the following:

- a) The Form 131 petition.
- b) A digital recording of the hearing.
- c) Petitioners Exhibit 1 – Cover letter and summary of case,  
Petitioners Exhibit 2 – Subject property record card (“PRC”),  
Petitioners Exhibit 3 – Plat map of the subject property,  
Petitioners Exhibit 4 – 2000 income statement,  
Petitioners Exhibit 5 – 2001 income statement,  
Petitioners Exhibit 6 – 2002 income statement,  
Petitioners Exhibit 7 – Photographs of the subject property,  
  
Respondent Exhibit 1 – Subject PRC,  
Respondent Exhibit 2 – Center Township apartment data,  
Respondent Exhibit 3 – 2001 tax summary,  
Respondent Exhibit 4 – 2002 tax summary<sup>1</sup>,  
  
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**

13. The most applicable governing cases are:

- a) A petitioner seeking review of an assessing official’s determination must establish a prima facie case proving both that the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
- b) In making its case, the petitioner must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington*

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<sup>1</sup> At the hearing, the ALJ marked the four exhibits offered by the Respondent as *Petitioners’ Exhibits 1-4*. The Board has relabeled those documents to reflect that they are the Respondent’s exhibits.

*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”).

- c) Once the petitioner establishes a prima facie case, the burden shifts to the assessing official to impeach or rebut the petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *see also, Meridian Towers*, 805 N.E.2d at 479.
14. The Petitioners failed to make a prima facie case rebutting the current assessment’s presumption of accuracy. The Board reaches this conclusion 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 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property’s market value: the cost, sales-comparison and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
  - b) A property’s assessment under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005). But a taxpayer may rebut that presumption with evidence compiled according to generally accepted appraisal principles. MANUAL, at 5.
  - c) Here, the Petitioners relied on Mr. McDonald’s value estimate, which he arrived at using the income approach. But it is not enough for a witness to assert that he applied a recognized valuation approach; he must show that he used generally accepted appraisal principles. Thus, he must offer support for his underlying data and assumptions. When the witness has used the income approach, that includes explaining his chosen capitalization rate.
  - d) An opinion witness’s need to justify his chosen capitalization rate flows from the basic theory underlying the income approach. The income approach assumes that a buyer will pay no more for a property than it would cost to purchase an equally desirable substitute investment offering the same risk and return. MANUAL at 14. The property’s value, therefore, is based on the rent it will produce. *Id.* And one can convert that expected rent into an overall value through dividing the property’s net operating income by an appropriate capitalization rate. *Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 275 (Ind. Tax Ct. 2005).
  - e) Obviously, the capitalization rate a witness uses greatly influences his ultimate value estimate. Therefore, he must use great care in choosing that rate. It should generally reflect the annual rate of return necessary to attract investment capital. *See id.* And many factors influence it, including “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.” *Id.* (quoting *Lacy Diversified Industries, LTD. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1224 (Ind. Tax Ct. 2003)).

- f) Here, Mr. McDonald did not even attempt to explain why he used a loaded capitalization rate of 12.54%. At most, he testified that he added 2.54% to his chosen capitalization rate of 10% to account for property taxes. But he did not say why he chose the underlying 10% rate. *See McDonald testimony; Pet’rs Exs. 1, 4-6.*
- g) That lack of explanation rendered Mr. McDonald’s overall value estimate conclusory. The Board therefore gives it no weight.
- h) Even if Mr. McDonald’s failure to explain his capitalization-rate choice was not, by itself, fatal to the Petitioners’ claims, his value estimate suffers from other problems that cumulatively deprive his estimate of probative value. First, the income approach focuses on a property’s intrinsic value—not upon the current owner’s relative efficiency in operating the property. Mr. McDonald, however, relied solely on the subject property’s actual income and expenses without comparing them to the income and expenses of comparable properties in the same market. There may be reasons why a market comparison would not have been helpful. For example, the subject property might have unique features that affect its relative income and expenses. But Mr. McDonald did not offer any reasons for failing to test the subject property’s income and expenses against the market.
- i) Second, for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. *See MANUAL* at 4, 8. Thus, parties must explain how their evidence relates to an appealed property’s value as of January 1, 1999. Otherwise, the evidence lacks probative value. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property’s value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- j) Mr. McDonald failed to explain how his estimate related to the subject property’s value as of January 1, 1999. At best, he used income and expenses from 2000—only one year after the January 1, 1999 valuation date—as part of his three-year-average calculation. But given that his results varied widely from year-to-year (\$539,700, \$607,600, and \$403,200), using data from 2000 did little to relate his final estimate to the property’s value as of January 1, 1999.
- k) Thus, the cumulative shortcomings in Mr. McDonald’s analysis deprive his estimate of any probative value, even if any individual shortcoming does not.
- l) Finally, the Petitioners offered photographs to show deterioration in the subject building’s exterior, windows, hallways, and utility areas. *McDonald testimony;*

*Pet'rs Ex. 7.* While those photographs may show deferred maintenance, the Petitioners did not offer any evidence to quantify that deferred maintenance's effect on the subject property's market value-in-use. Those photographs are therefore insufficient to make a prima facie case of error.

### **Conclusion**

15. The Petitioners failed to make a prima facie case. The Board finds in the Respondent's favor.

### **Final Determination**

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

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

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Commissioner,  
Indiana Board of Tax Review

## IMPORTANT NOTICE

### - Appeal Rights -

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