

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

Petition Nos.: 08-002-10-1-1-00001
08-002-10-1-1-00002
Petitioner: Vern R. Grabbe
Respondent: Carroll County Assessor
Parcel Nos.: 08-14-17-000-015.000-002
08-14-17-000-020.000-002
Assessment Year: 2010

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 (PTABOA) by filing "Request for Review" forms with the county dated October 26, 2010.
2. The PTABOA issued notices of its decisions on April 26, 2011.
3. The Petitioner filed his Form 131 petitions with the Board on May 31, 2011. The Petitioner elected to have his cases heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated January 12, 2012.
5. The Board held an administrative hearing on February 14, 2012, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. The following persons were present and sworn in at hearing:

For Petitioner: Vern R. Grabbe, property owner,
Chad Ostler, witness,
Adam P. Scott, witness

For Respondent: Neda K. Duff, Carroll County Assessor,
Brian Thomas, expert witness.

Facts

7. The properties under appeal are two contiguous parcels located on South 400 East Street in Frankfort: 08-14-17-000-015.000-002 with 19.266 acres of agricultural land improved with two hog confinement buildings and a utility shed (the 19.266 acre parcel); and 08-14-17-000-020.000-002 with 3.664 acres of agricultural land improved with one hog confinement building (the 3.664 acre parcel).
8. The ALJ did not conduct an on-site inspection of the properties under appeal.
9. For 2010, the PTABOA determined the assessed value of the 19.266 acre parcel to be \$19,000 for the land and \$124,700 for the improvements, for a total assessed value of \$143,700,¹ and 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.
10. For 2010, the Petitioner requested an assessed value of \$19,000 for the land and \$75,110 for the improvements, for a total assessed value of \$94,110 for the 19.266 acre parcel, and \$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.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in his properties' assessments:
 - a. The Petitioner argues that his properties are over-valued based on their purchase price. *Grabbe testimony*. According to Mr. Grabbe, he purchased the 19.266 acre parcel and the 3.664 acre parcel together for \$350,000 on April 19, 2009. *Id.* In support of this contention, Mr. Grabbe submitted the settlement statement. *Petitioner Exhibit 7S*. Mr. Grabbe testified that because the properties are assessed by the county as two separate parcels, he allocated \$203,389 of the purchase price to the 19.266 acre parcel and \$146,611 of the purchase price to the 3.664 acre parcel. *Grabbe testimony; Petitioner Exhibit 7*.
 - b. Based on the purchase price, the Petitioner contends the assessed value of the buildings on the 19.266 acre parcel should be no more than \$75,110 and the building on the 3.664 acre parcel should be no more than \$112,252. *Grabbe testimony; Petitioner Exhibits 19SF and 19SN*. According to Mr. Grabbe, to determine the amount of the sale price that should be allocated to the buildings, he deducted the \$3,890 assessed value of the one-acre building site from the amount of the purchase

¹ The Petitioner received two Form 11 R/A notices for the March 1, 2010, assessment. The first notice, dated October 5, 2010, valued the improvements at \$92,900. The second notice, dated October 7, 2010, increased the value of the improvement to \$124,700 because, according to the document, the assessor added pits and slats to both hog buildings on the parcel. Mr. Grabbe's witness, however, testified that at least part of the flooring was solid concrete on one building and neither of the buildings had the standard eight foot pits. *Scott testimony*.

price allocated to the 19.664 acre parcel and he deducted \$11,240 from the amount of the purchase price allocated to the 3.266 acre building site.² *Id.* Then to calculate the remaining value of the agricultural land, Mr. Grabbe relied on the purchase of adjacent agricultural land by Ceres Farms, LLC, and estimated an agricultural land value of \$5,300 an acre.³ *Petitioner Exhibit 17S.* Based on a value of \$5,300 an acre, Mr. Grabbe contends the remaining 18.266 acres of the 19.266 acre parcel has a market value of \$96,831 and the remaining 2.664 acres of the 3.664 acre parcel has a market value of \$14,098. *Grabbe testimony; Petitioner Exhibits 19SF and 19SN.* Finally, he subtracted \$27,558 from the amount of his allocated purchase price for the value of personal property on the 19.266 acre parcel and \$9,021 for the personal property on the 3.664 acre parcel. *Id.* Thus, Mr. Grabbe argues, 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, results in a market value of \$75,110 for the buildings on the 19.266 acre parcel and \$112,252 for the building on the 3.664 acre parcel. *Id.*

- c. Mr. Grabbe contends that the assessed value of the land is correct. *Grabbe testimony.* According to Mr. Grabbe, the state sets the agricultural base rate and the productivity factors for the agricultural land. *Id.* Moreover, Mr. Thomas agreed that agricultural land is assessed below its market value. *Thomas testimony.* Thus, Mr. Grabbe argues, the land values on both parcels should remain unchanged at \$19,000 for the 19.266 acre parcel and \$12,500 for the 3.664 acre parcel despite his purchase price. *Grabbe testimony.* The problem is, the Petitioner contends, that the county consistently over-prices properties with hog buildings. *Grabbe testimony.* According to Mr. Grabbe, in every case that he has bought property, he paid less than the property's assessed value. *Id.; Petitioner Exhibit 16S.*
- d. The Petitioner further contends his properties are over-assessed based on the income approach to value. *Grabbe testimony.* According to Mr. Grabbe, he rents the facilities to Mr. Scott for \$90,000 per year. *Id.; Scott testimony.* Mr. Grabbe deducted the actual expenses he attributed to the property and calculated a net income of \$42,442. *Grabbe testimony; Petitioner Exhibit 12S.* Mr. Grabbe applied a 20% capitalization rate that he argues was used in an appraisal of a similar property and estimated the value of the hog facilities to be \$212,210. *Id.* Next, Mr. Grabbe added back the land assessment for the tillable acres that he rents to Mr. Ostler and

² Mr. Grabbe called the Assessor's witness, Mr. Thomas, who testified that the one-acre "home site" values were established through sales. *Thomas testimony.* Thus, Mr. Grabbe argues, the assessed values of the one acre "home site" on each parcel represent the fair market value of those building sites. *Grabbe argument.*

³ Mr. Grabbe asserts that Ceres Farms, LLC, purchased 200.528 acres on two parcels in Carroll County for \$1,647,513, or \$8,216 an acre. *Petitioner Exhibit 17S.* According to Mr. Grabbe, he used \$5,300 an acre in his calculations even though using a lower value was detrimental to his purpose. *Grabbe testimony.* In fact, Mr. Grabbe argues, his land is actually worth more than the Ceres Farm's property because land purchased for a hog operation would cost more than land purchased for a grain operation. *Grabbe argument; Scott testimony; Ostler testimony.* Mr. Grabbe further contends his land is more valuable than Ceres Farms' land because the soil indexes for his land are higher than those for Ceres Farms. *Grabbe testimony; Petitioner Exhibit 18S.*

- subtracted \$36,579 for the personal property, resulting in an estimated value for both properties of \$191,401.⁴ *Id.*
- e. Similarly, the Petitioner contends his properties are over-assessed based on the cost approach to value. *Grabbe testimony.* According to Mr. Grabbe, he used the Carroll County Assessor's reproduction cost, but reduced the reproduction cost of the hog building on the 3.664 acre parcel by \$17,424 because the assessor overstated the size of the building by 1,296 square feet. *Id.*; *Petitioner Exhibit 13S.* In addition, Mr. Grabbe applied an obsolescence adjustment of 35% to the buildings on the 3.664 acre parcel and a 45% obsolescence adjustment to the buildings on the 19.266 acre parcel because of the out-dated design of the buildings and the obsolete manure lagoon system, resulting in a value of \$157,420 for the hog buildings on both parcels. *Id.* Adding back the \$15,130 assessed value for the building sites and \$15,770 for the value of the additional agricultural land, Mr. Grabbe argues, results in an estimated value of \$188,320 for both properties. *Id.*
- f. Finally, the Petitioner contends his properties are over-assessed based on the sale prices of three comparable properties that sold in 2008 and 2009. *Grabbe testimony;* *Petitioner Exhibit 14S.* According to Mr. Grabbe, he purchased a nearby property with 7.4 acres of land in September of 2008 for \$357,000. *Id.* Mr. Grabbe allocated \$311,764 of the purchase price to the hog 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 the value of the house, the land and the tool sheds and allocated \$143,825 of the purchase price to the hog 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 subtracted the value of the house, the land, and the tool sheds from the purchase price and allocated \$423,157 of the purchase price to the hog 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.* Mr. Grabbe argues that the 8.1 acre hog farm is the most comparable property to the properties under appeal and therefore he applied a price of \$42.50 per pig space, resulting in a value of \$191,250 for the properties' buildings and personal property. *Id.* 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." *Id.*

⁴ Mr. Grabbe testified that he included the real estate taxes in the expenses even though he realized that was not an expense usually included for ad valorem tax purposes. *Grabbe testimony.* Mr. Grabbe further contends the 20% capitalization rate is appropriate because of the age and inefficiencies of the buildings compared to quad barns with new technology. *Id.*

g. Because the values from his income approach, the cost approach, and the sales comparison approach analysis are all lower than his purchase price allocation, Mr. Grabbe argues, his evidence shows that he over-paid for the properties. *Grabbe argument; Petitioner Exhibit 15S*. Thus, Mr. Grabbe concludes, the properties are worth even less than the \$94,110 for the 19.266 acre parcel and \$124,752 for the 3.664 acre parcel that he is asking for on appeal. *Id.*

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

- a. The Respondent's witness contends that the Petitioner's properties are assessed correctly. *Thomas testimony*. According to Mr. Thomas, the land on the parcels is assessed according to the state agricultural base rate and all of the hog buildings in the county are valued the same except for market adjustments made as a result of trending. *Id.*
- b. Moreover, Mr. Thomas argues, the properties' assessed values are lower than the Petitioner's purchase price for the parcels. *Thomas testimony*. Mr. Thomas agreed, however, that the measurement for the hog building on the 3.664 acre parcel should be corrected as well as the assessment for slat and pit flooring. *Id.*

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

- a. The Form 131 petitions,
- b. A digital recording of the hearing labeled Vern Grabbe,
- c. Exhibits:

Exhibits for Petition No. 08-002-10-1-1-00001(the 19.266 acre parcel):

Petitioner Exhibit 1SF –	Form 131 petition,
Petitioner Exhibit 2SF –	Form 115 – Notification of Final Assessment,
Petitioner Exhibit 3SF –	Request for Review, dated October 26, 2010,
Petitioner Exhibit 4SF –	Petitioner's allocated purchase price worksheets,
Petitioner Exhibit 5SF –	Form 11R/A-C/I (original and corrected),
Petitioner Exhibit 6SF –	Property record card for the 19.266 acre parcel,
Petitioner Exhibit 9SF –	Petitioner's obsolescence information and calculation,
Petitioner Exhibit 10SF –	Description of the property,
Petitioner Exhibit 19SF –	Allocation of fair market value and calculation of assessed values,
Petitioner Exhibit 21SF –	Indiana Code § 6-1.1-15-17 and Form 11 R/A,

Exhibits for Petition No. 08-002-10-1-1-00002 (the 3.664 acre parcel):

Petitioner Exhibit 1SN –	Form 131 petition,
Petitioner Exhibit 2SN –	Form 115 – Notification of Final Assessment,
Petitioner Exhibit 3SN –	Request for Review, dated October 26, 2010,
Petitioner Exhibit 4SN –	Petitioner’s allocated purchase price worksheets,
Petitioner Exhibit 5SN –	Form 11R/A-C/I,
Petitioner Exhibit 6SN –	Property record card for the 3.664 acre parcel,
Petitioner Exhibit 9SN –	Petitioner’s obsolescence information and calculation,
Petitioner Exhibit 10SN –	Description of the property,
Petitioner Exhibit 19SN –	Allocation of fair market value and calculation of assessed values,

Exhibits for both petitions:

Petitioner Exhibit 7S –	Settlement statement and allocation of purchase price,
Petitioner Exhibit 8S –	Petitioner’s March 1, 2010, Farmer’s Tangible Personal Property Assessment Return-Form 102 (confidential) and Information Return of Owned Personal Property – Form 103-O (confidential), ⁵
Petitioner Exhibit 11S –	Assessed value changes between 2008 and 2010 for the hog buildings,
Petitioner Exhibit 12S –	Income approach analysis of the Petitioner’s facilities,
Petitioner Exhibit 13S –	Cost approach analysis of the Petitioner’s facilities,
Petitioner Exhibit 14S –	Market data analysis of the Petitioner’s facilities,
Petitioner Exhibit 15S –	Correlation of values for the Petitioner’s facilities,
Petitioner Exhibit 16S –	Chart comparing sale prices to assessed values for hog farm properties,
Petitioner Exhibit 17S –	Sales disclosure forms for the Ceres Farms, LLC, properties,
Petitioner Exhibit 18S –	Soil index comparisons,
Petitioner Exhibit 20S –	Indiana Board of Tax Review Determination in the Petitioner’s 2009 appeals, Petition No. 08-002-09-1-1-00002 and Petition No. 08-002-09-1-1-00003,
Petitioner Exhibit 21S –	Instructional bulletins from the Department of Local Government Finance and Board of Tax Review,

⁵ 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 Indiana Code § 6-1.1-35-9.

Petitioner Exhibit 22S – Letter to Neda Duff dated January 23, 2012,
requesting information from the Respondent,

Board Exhibit A – Form 131 petitions,
Board Exhibit B – Notices of hearing, dated January 12, 2012,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Burden of Proof

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17.2, which shifts that burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

15. Here, both parcels were purchased together and are effectively used together. Therefore, the Board views the two parcels as a single property. The evidence shows that the assessment for the 19.266 acre parcel increased from \$111,300 in 2009 to \$143,700 in 2010; while the assessed value of the 3.664 acre parcel remained \$163,200 for both 2009 and 2010. Thus, the value of the two parcels together increased from \$274,500 to \$306,900 between 2009 and 2010. This represents an increase of over 11% on the total property. The Assessor therefore has the burden of proving the assessment was correct for 2010.

Analysis

16. The Respondent failed to show that the properties' 2010 assessments were correct.
- a. The Respondent's witness, Mr. Thomas, argues that the value of the improvements on the 19.266 acre parcel increased because the assessor discovered an error in the

- property's assessment as a result of the Petitioner's 2009 appeal. *Thomas testimony*. According to Mr. Thomas, the assessor added the value of the pit and slat flooring to the hog buildings, which increased the assessed value of the improvements. *Id.*
- b. The Petitioner's witness, however, testified that half of one barn floor was solid cement and neither barn had the standard eight foot deep pit. *Scott testimony*. According to Mr. Scott, the pits were only 3 to 3 ½ feet deep and were simply a collection area that had to be drained to the lagoon. *Id.*
 - c. Because the Respondent presented no market evidence to show that the properties' assessments were correct and, in fact, the Respondent's witness admitted that the assessed values of the Petitioner's improvements on the 19.266 acre parcel were incorrect, the property's assessments must be reduced to the previous year's assessment of \$111,300 for the 19.266 acre parcel and \$163,200 for the 3.664 acre parcel.
17. The Petitioner failed to establish a prima facie case that the subject properties' assessments should be reduced below their 2009 assessed values. The Board reached 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers have traditionally 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 Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. 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 principles. MANUAL at 5.
 - c. Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471

(Ind. Tax Ct. 2005). For assessment dates after December 31, 2009, “an adjustment in the assessed value of real property under this section shall be based on the estimated true tax value of the property on the assessment date that is the basis for taxes payable on that real property.” Ind. Code § 6-1.1-4-4.5(f) (2010). Thus, the valuation date for a March 1, 2010, assessment is March 1, 2010. *Id.*

- d. The Petitioner first argues that the subject properties are 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). While the valuation date for the March 1, 2010, assessment is March 1, 2010, county assessors are instructed to use sales of properties occurring after January 1 of the calendar year immediately preceding the March 1 assessment date for their sales ratio studies. 50 IAC 27-3-2(a). Thus, sales beginning on January 1, 2009, are used for the March 1, 2010, assessment date. *Id.* Because the Petitioner purchased the property within the time period assessors use to determine the March 1, 2010, assessments, the Board finds that the sale is some evidence of the properties’ value.
- e. However, the Petitioner’s \$350,000 purchase price for the two parcels far exceeds the assessed value of those parcels. Therefore, the Petitioner’s purchase price 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. According to Mr. Grabbe, his purchase of the two parcels included personal property items valued at \$36,579. *Petitioner Exhibits 4SF, 4SN, 12S, and 14S*. Subtracting the \$36,579 for personal property from the Petitioner’s purchase price of \$350,000 for the two parcels results in a value of \$313,421, which still exceeds the assessed value of the properties for the March 1, 2010, assessment.
- f. But the Petitioner contends that the land on his properties was assessed correctly based on the state mandated agricultural rate and the productivity factors. *Grabbe testimony*. The Petitioner also agrees with the assessed values of the one-acre home sites because the values were based on sales. *Id.* The Petitioner only argues that the improvements on the properties are over-valued. *Grabbe argument*.
- g. 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 Petitioner first removed the \$11,240 assessed value of the one-acre building site from the amount of the purchase allocated to the 3.664 acre parcel. *Petitioner Exhibit 4SN*. Similarly, he subtracted the \$3,890 assessed value for the one-acre building site from the amount of the purchase price allocated to the 19.266 acre parcel. *Petitioner Exhibit 4SF*. 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 contiguous property. According to Mr. Grabbe,

Ceres Farms, LLC, purchased approximately 200 acres in Carroll County for \$1,647,513, or \$8,216 an acre, in February 2009. *Petitioner Exhibit 17S*. However, the sales disclosure forms that Mr. Grabbe submitted indicate Ceres Farms purchased six parcels of land for \$2.8 million. *Id.* According to a hand-written notation, two of the six parcels are located in Clinton County. *Id.* In addition, the sales disclosure form shows the typed \$2.8 million sale price struck out by pen and “1,647,513” (no dollar sign) written beside the figure by hand. While it is possible the handwritten notation of “1,647,513” was an allocation of that sale price to the four parcels in Carroll County, it is not clear on the record. Even if the Board assumed that the handwritten “1,647,513” was intended to be an allocation of the sale price to the four Carroll County parcels, there is no evidence showing the basis for that allocation. In fact, there is no evidence of who made the handwritten notation or when the “allocation” was made. More importantly, the Petitioner supplied the sales disclosure forms for only *two* of the four parcels in Carroll County. *Id.* There is no information as to the size of the other parcels included in the purchase. Thus, Mr. Grabbe’s contention that agricultural land is worth \$8,216 based on Ceres Farms’ purchase of farmland is unsupported by the evidence. And Mr. Grabbe’s use of \$5,300 an acre is completely without support in the record. While Mr. Grabbe provided some evidence that agricultural land is assessed below its market value-in-use, Mr. Grabbe’s evidence fails to sufficiently show the land’s actual value. Without probative evidence of the value of his land, Mr. Grabbe’s attempt to “abstract” the value of the properties’ improvements from his purchase price fails to raise a prima facie case that his hog barns are over-valued.

- h. The Petitioner also contends his properties are over-assessed based on an income approach to value. According to Mr. Grabbe, he used the properties’ actual rent of \$90,000 and deducted depreciation, an estimated amount for repairs, and the actual cost of insurance and real estate taxes, resulting in a net operating income of \$42,442. The Petitioner then applied a 20% capitalization rate to the properties’ net income, added in \$15,000 for the extra farm land and deducted \$36,579 for personal property from the calculation, resulting in an estimated value of \$191,401.
- i. “The income approach to value is based on the assumption that potential buyers will pay no more for the subject property ... than it would cost them to purchase an equally desirable substitute investment that offers the same return and risk as the subject property.” *MANUAL* at 14. The income approach thus focuses on the intrinsic value of the property, not upon the Petitioner’s operation of the property because property-specific rents or expenses may reflect elements other than the value of the property “such as quality of management, skill of work force, competition and the like.” *Thorntown Telephone Company, Inc. v. State Board of Tax Commissioners*, 588 N.E.2d 613, 619 (Ind. Tax Ct. 1992). *See also* *MANUAL* at 5 (“[C]hallenges to assessments [must] be proven with aggregate data, rather than individual evidence of property wealth. ... [I]t is not permissible to use individual data without first establishing its comparability or thereof to the aggregate data”). Here Mr. Grabbe used site-specific income and expense information, but he provided no evidence to demonstrate that the properties’ income or expenses were typical for comparable

properties in the market. Thus, any low rent or high expense levels may be attributed to the Petitioner's management of the property as opposed to the property's market value. See *Lake County Trust Co. No. 1163 v. State Board of Tax Commissioners*, 694 N.E.2d 1253, 1257-58 (Ind. Tax Ct. 1998) (economic obsolescence was not warranted where taxpayer executed unfavorable leases resulting in a failure to realize as much net income from the subject property).

- j. Additionally, the Petitioner failed to adequately support his capitalization rate. A capitalization rate "reflects the annual rate of return necessary to attract investment capital and is influenced by such factors as apparent risk, market attitudes toward future inflation, the prospective rates of return for alternative investments, the rates of return earned by comparable properties in the past, the supply of and demand for mortgage funds, and the availability of tax shelters." See *Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 275 (Ind. Tax Ct. 2005). Here the Petitioner based his capitalization rate on the rate used in an appraisal of a different – and more importantly an *unidentified* – property by an appraiser without even submitting the entire appraisal for the Board's review.⁶ 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. *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). Mr. Grabbe's assurance that the unidentified appraised property was "comparable" to the properties under appeal falls well below the standard of proof required in a property tax appeal. See *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005) (conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties).⁷ 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 further reduced.
- k. The Petitioner also argues that his 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 Exhibit 13S*. The Petitioner then "corrected" the building area in the hog building on the 3.664 acre parcel and added

⁶ The Board notes that if it used the assumptions in the appraisal excerpt of a gross income of \$34.00 per pig for the Petitioner's properties' 4,500 pig spaces with all expenses paid by the owner of the property rather than the lessee, a 20% capitalization rate results in a value of \$765,000 for the Petitioner's properties. Given the Petitioner's purchase price of \$350,000 for the two properties, the assumptions in the income analysis excerpt are clearly unreasonable for the Petitioner's properties. As the Board has often noted, an appraiser's analysis is not purely mathematical – one cannot simply plug in different data and automatically say what result he would have reached had he used that revised data. In this case, the Board cannot simply assume that an appraiser in a USPAP compliant appraisal would have valued the Petitioner's properties in the same manner in which the appraiser valued the lease for the unidentified property in Petitioner Exhibit 12S.

⁷ The Petitioner also deducted depreciation as an operating expense. Depreciation is considered in the income approach as recapture and handled as part of the capitalization rate. INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, PROPERTY ASSESSMENT VALUATION, 219 (2nd edition, 1996).

an obsolescence adjustment to the buildings on both parcels.⁸ *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.*

- l. 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. The calculation of cost 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.*

- m. Here, 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 parcel because of the out-dated design of the buildings and the obsolete manure lagoon system. 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, 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.

⁸ Mr. Grabbe contends 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 building by 1,296 square feet. In the Board's determination in the 2009 appeals of these properties, the Board directed the assessor to correct the dimensions of the building. Mr. Thomas testified that he believed the correction had been made for the 2012 reassessment. The Board again directs the assessor to correct the dimensions of the hog building at issue and orders that the correction be made for each assessment year unless and until a change occurs to the size of the building.

- n. 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).
- o. Finally, the Petitioner contends that his properties are 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 based on a price per pig space of \$42.50. *Id.*
- p. 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.*
- q. Here, the Petitioner merely testified "I'm just going to let this record speak for itself." *Id.* According to Mr. Grabbe, "I compared [the other properties] as good as any appraiser has ever done." The Petitioner, however, made no attempt to explain the deductions he made for houses, land and tool sheds on the comparable properties. "[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis." *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004). It is not the Board's responsibility to determine how Mr. Grabbe calculated the value of other land and buildings on nearby properties. Thus, the Petitioner failed to raise a prima facie case that his properties were over-valued based on a sales comparison analysis.
- r. 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.⁹ 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.

- s. Based on the above, the Board concludes that the Petitioner failed to raise a prima facie case for a further reduction in the assessed values of his properties for the March 1, 2010, assessment date.
- t. 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

- 18. The Respondent failed to show that the properties' 2010 assessments were correct. Therefore, the properties' assessed values must be reduced to the previous year's assessment of \$111,300 for the 19.266 acre parcel and \$163,200 for the 3.664 acre parcel. The Petitioner, however, failed to establish a prima facie case that the subject properties' assessments should be reduced below their 2009 assessed values.

⁹ Mr. Grabbe contends that, although he is not a qualified appraiser, he has taken appraisal classes and has done appraisals in the past. *Grabbe testimony*.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed values of the subject properties should be returned to the 2009 assessed values.

ISSUED: May 10, 2012_____

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

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