

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

**Petitions:** 41-026-07-1-4-40163  
41-026-07-1-4-40163a  
41-026-07-1-4-40163b

**Petitioner:** K L Presnell Companies Office Building LLC

**Respondent:** Johnson County Assessor

**Parcels:** 41-02-32-042-001.000-026  
41-02-32-042-002.002-026  
41-02-32-042-003.000-026

**Assessment Year:** 2007

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

**Procedural History**

1. The Petitioner initiated the assessment appeals process with the Johnson County Property Tax Assessment Board of Appeals (PTABOA) by filing a written document for all three appeals dated December 5, 2008.
2. The PTABOA mailed its decisions for petition 41-026-07-1-4-40163 and petition 41-026-07-1-4-40163b on January 25, 2010. It mailed a decision for petition 41-026-07-1-4-40163a on February 2, 2010.
3. The Petitioner appealed to the Board by filing a Form 131 for each parcel on March 2, 2010. The Petitioner elected to have all three appeals heard according to small claims procedures. Typically small claims procedures are for appeals with an assessed value not exceeding one million dollars, but the Respondent did not object or seek to remove these appeals from the small claims procedures.
4. The Board issued a notice of hearing on May 5, 2011.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on August 1, 2011. There was no inspection of the property.

6. Certified tax representative Duane Zishka and the Petitioner's vice-president, Roger Curry, testified for the Petitioner. Michael Watkins testified for the Respondent.

### Facts

7. The subject property is a branch bank building and a four-story office building with adjacent parking areas. It is located at 300 South Madison Avenue in Greenwood.
8. For all three parcels the total assessed value is \$1,837,000. The individual assessed values determined by the PTABOA are as follows:

<u>Petition number</u>	<u>land</u>	<u>improvements</u>	<u>total</u>
41-026-07-1-4-40163	\$123,300	\$11,500	\$134,800
41-026-07-1-4-40163a	\$437,000	\$1,200,600	\$1,637,600
41-026-07-1-4-40163b	\$61,500	\$3,100	\$64,600.

9. The Petitioner requested a total assessed value of \$1,450,725.

### Record

10. The official record contains the following:
- a) The Petitions,
  - b) Digital recording of the hearing,
  - c) Petitioner Exhibit A – Brief,
    - Petitioner Exhibit 1 – Seller's closing statement,
    - Petitioner Exhibit 2 – Floor plan of first floor,
    - Petitioner Exhibit 3 – Floor plan of second floor,
    - Petitioner Exhibit 4 – Floor plan of third floor,
    - Petitioner Exhibit 5 – Marian College lease,
    - Petitioner Exhibit 6 – Primerica lease,
    - Petitioner Exhibit 7 – Data sheet and location map of South Park office building,
    - Petitioner Exhibit 8 – Data sheet and location map of Vantage Centre,
    - Petitioner Exhibit 9 – Data sheet and location map of office building at 1680 West Main Street, Greenwood,
    - Petitioner Exhibit 10 – Subject rent roll,
    - Petitioner Exhibit 11 – Value-in-use calculation,
    - Petitioner Exhibit 12 – Value calculation marked CONFIDENTIAL,
    - Petitioner Exhibit 13 – 2006 Financial Statements,
    - Petitioner Exhibit 14 – 2006 Partnership Income Tax Return, Form 1065,
    - Petitioner Exhibits 15 through 33 – Photographs of first floor interior,
    - Petitioner Exhibits 34 through 48 – Photographs of third floor interior,
    - Petitioner Exhibit 49 – Floor plan of first floor identifying photograph locations,
    - Petitioner Exhibit 50 – Floor plan of third floor identifying photograph locations,

Petitioner Exhibit 51 – Photographs of subject building and aerial maps,  
Petitioner Exhibit 52 – Data sheet and location map of office building at 201 and  
225 South Emerson Avenue, Greenwood,  
Petitioner Exhibit 53 – Map with locations of subject property and comparable  
property noted,  
Petitioner Exhibit 54 – Loss in value summary,  
(Petitioner Exhibit 55 was discussed during the hearing, but a copy of that  
document was not offered into the record),  
Respondent Exhibit A – Subject property record cards,  
Respondent Exhibit B – Realtor listing of the subject property,<sup>1</sup>  
Board Exhibit A – Form 131 Petitions with attachments,  
Board Exhibit B – Notices of Hearing,  
Board Exhibit C – Hearing Sign-In Sheet,

d) These Findings and Conclusions.

### Contentions

11. Summary of the Petitioner's case:

- a) Presnell Companies is well-known for operating retail strip malls with six or seven tenants. This property was its first venture into commercial office space and it encountered problems. *Zishka testimony*.
- b) The Petitioner purchased the subject property for \$1,629,900 on April 22, 2004. The current assessed value exceeds that amount, even though as a result of economic obsolescence the value had dropped to \$1,400,000 by January 1, 2006. This loss was caused by uncertainty related to the impact of a proposed downtown revitalization plan on local businesses. *Zishka testimony; Pet'r Ex. 1*.
- c) Rumors that Greenwood planned to renovate the area made the building hard to rent.<sup>2</sup> The property is hard to rent for other reasons, too. The first floor of the building has no windows and an outdated heat source where pictures (artwork)

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<sup>1</sup> The Petitioner objected to the 2008 realtor listing (*Resp't Ex. B*), claiming it is not relevant to the 2007 assessed value or the valuation date of January 1, 2006. This objection, however, goes more to the weight of the evidence, not its admissibility. Accordingly, this exhibit is admitted into the record.

<sup>2</sup> The Respondent objected to testimony regarding plans or rumors about renovating the main street making it difficult to get and keep tenants. The Respondent pointed out that no city official was available for cross examination on that point. This testimony involved matters that are hearsay and matters that are not. Some of the testimony was not sufficiently clear to distinguish one from the other. Nevertheless, hearsay evidence may be admitted. 52 IAC 2-7-3. Furthermore, the Respondent did not object to Petitioner Ex. A, which contained substantially the same kind of hearsay: “[P]rior to, on, and after January 1, 2006, Mayor Henderson advocated acquiring by condemnation buildings along Main Street in historic downtown Greenwood and widening the roadway. The Mayor advocated major changes to the character of the area. The changes specifically provided for major construction on the Main Street corridor, which would have adversely affected the conduct of business during the construction of the project. These proposed changes created economic uncertainty for the area.” This objection went to evidence that is merely cumulative. Therefore, the Respondent's hearsay objection is overruled.

permanently hanging on the walls are the heat source. The condition of the building is poor. Each floor is “chopped up.” Additionally, because of common areas such as the lobby, elevator, and restrooms, the total area available to lease is less than the Petitioner anticipated at the time of purchase. *Curry testimony; Resp’t Ex. 2, 3, 4, 15-48, 49, 50, 54.*

- d) The proposed \$1,450,725 value is based on the income approach. *Curry testimony; Pet’r Ex. 11.*
- e) Tenants in the subject property were paying from \$5.43 to \$17.00 per square foot. Several of the leases, however, were the result of special concessions. The Petitioner rented a portion of the first floor to the Christ Fellowship Church for approximately \$7.00 per square foot. Kevin Presnell, the company’s owner, wanted the church in the building and this rental agreement was not an arm’s-length transaction. A chiropractor leased space on the first floor for \$5.43 per square foot, an amount that did not cover expenses, and when the Petitioner attempted to increase the rent the chiropractor vacated the premises. Because a significant portion of the building was vacant, the decision was made for another Presnell company to occupy the entire fourth floor at \$15.40 per square foot. *Curry testimony; Pet’r Exs. 10, 11.*
- f) In addition to actual revenues, the calculation accounted for potential gross income from portions of the building that were not leased. The rental incomes from several office buildings in the same area were considered. Rents ranged from \$9.75 to \$14.00 per square foot. Based on this data, the market rent rate for similar properties was \$12.00 per square foot. *Curry testimony; Pet’r Ex. A at 2-3; Pet’r Ex. 7, 8, 9.* Combining the actual rents with the potential gross income of the vacant area results in a potential gross income of \$459,739. *Curry testimony; Pet’r Ex. 11.*
- g) The common area maintenance (CAM) was based on a triple net lease, which is common in retail, but not typical for commercial office space. In a normal shopping center, you pay a base rent and then you pay a pro rata share of the taxes, insurance, and common area maintenance expenses. That’s very consistent in a shopping center lease. Mr. Presnell had intended for the tenants to pay a base rent and a pro rata share of operating expenses. In an office lease, however, tenants just pay a gross rent. *Curry testimony; Pet’r Ex. 11.*
- h) Vacancy/collection allowance, CAM, taxes, insurance, and repair reserve were subtracted from potential gross income to get a net operating income of \$174,087. *Curry testimony; Pet’r Ex. 11.*
- i) The 12% capitalization rate is based on three sales. The Petitioner acquired its property in April 2004 and the capitalization rate for that transaction was 12%. *Curry testimony; Pet’r Ex. A at 3.* In January 2001 an office building located at 720 Executive Park in Greenwood sold with a capitalization rate of 11.76%.

*Curry testimony; Pet'r Ex. A at 3; Pet'r Ex. 8.* In March 2004 the property at 201 S. Emerson in Greenwood, sold with a capitalization rate of 14.33%. *Curry testimony; Pet'r Ex. A at 3; Pet'r Ex. 52.* Admittedly, no time-adjustments were made to relate these sales to the required valuation date. *Curry testimony.*

12. Summary of the Respondent's case:

- a) The three parcels were correctly assessed in 2007 for a total of \$1,837,000. *Watkins testimony; Resp't Ex. A.* The Petitioner's claim that certain properties are comparable does not establish that in fact they are comparable to the subject property. *Watkins testimony.*
- b) The Petitioner acknowledged that its rental income calculation included amounts paid to itself, rents that were inadequate to cover expenses, and a lease with a church that was not an arm's-length transaction. None of these transactions support the market rent claims in the income capitalization calculation that is the basis of the Petitioner's case. *Watkins testimony.*
- c) In 2008 the Petitioner listed this property for sale at \$3,400,000. *Watkins testimony; Resp't Ex. B.* The Petitioner cannot claim the assessed value of \$1,837,000 is too high when it listed the property for sale with that asking price. *Watkins testimony.*

### Analysis

13. The most applicable governing cases are the following:

- a) A Petitioner seeking review of a determination of an assessing official has the burden to establish 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).
- b) In making a 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”).
- c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official. *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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

14. The Petitioner did not make a case for any assessment change.
- a) Real property is assessed based on its "true tax value," which 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); MANUAL at 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 market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002–VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer may 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.
  - b) The valuation date for a 2007 assessment is January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required 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).
  - c) The Petitioner purchased the property for \$1,629,900 on April 22, 2004, but neither party related this purchase price to the valuation date of January 1, 2006. Therefore, this evidence does not help prove what the assessment should be. *Long*, 821 N.E.2d at 471.
  - d) The Petitioner offered some evidence about things such as condition, obsolescence, and low occupancy. Its claim, however, really depends on a value calculation purportedly using the income capitalization approach to determine the actual market value-in-use of the subject property.<sup>3</sup> Of course, an income capitalization approach *that conforms to generally accepted appraisal principles* would be an acceptable way to prove the market value-in-use of a property and overcome the presumption in favor of the existing assessment. MANUAL at 3.
  - e) Roger Curry did the income capitalization calculation that is shown on Petitioner Exhibit 11. The credibility of his work and valuation opinion is critical to the Petitioner's case. Several things, however, negatively impact that credibility. He clearly has an interest in the outcome of this appeal because he is the Petitioner's

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<sup>3</sup> The Petitioner must show that the total assessment is not a reasonable measure of true tax value. Arguments based on strict application of the Guidelines are not sufficient to rebut the assumption that the assessment is correct. *O'Donnell*, 854 N.E.2d at 95; *Eckerling v. Wayne Twp. Assessor*, 841 N. E. 2d764, 768 (Ind. Tax Ct.).

vice-president. His qualification to value property apparently rests on many years of business experience with Presnell. Although he testified that he “took several courses in valuation” (without providing any details), Mr. Curry is not an appraiser and his calculations do not purport to be a certified appraisal. Even though his testimony and his income capitalization calculations resemble the kind of thing appraisers commonly do, under these circumstances the evidence from Mr. Curry does not have the same kind of impact that an independent, professional, certified appraiser/appraisal probably would have.<sup>4</sup>

- f) Furthermore, the Petitioner failed to prove that the evidence it offered conforms to generally accepted appraisal principles. The failure involves all three major segments of this income capitalization approach: the effective gross income, the net operating income, and the 12% capitalization rate.
- g) Mr. Curry’s income capitalization approach relied primarily on the Petitioner’s own income and expense data. Considering historic and projected income as well as expense data of the subject property can be appropriate in the income capitalization approach, but it is also necessary to consider data from other comparable properties in order to make accurate, realistic projections about the income stream a property can be expected to produce. Where income and expense data for the subject property is out of step with what the market data shows, generally accepted appraisal principles require further examination and analysis to determine why. Considering both types of income and expense data helps to protect against distortions and inaccurate value estimates that might be caused by extraneous factors (such as bad management, poor business decisions, or lack of experience) that have nothing to do with the inherent value of a property. This point is particularly significant when coupled with the testimony about how this property was the Petitioner’s first venture into commercial office space and it encountered problems. But here that kind of evidence and comprehensive analysis is lacking.
- h) The Petitioner failed to show that the potential gross income in Mr. Curry’s calculation (\$459,739) is consistent with the kind of income similar properties in the market would be expected to bring. His calculation included actual revenues received by the Petitioner, even though part of that revenue included a lease with a church that was not an arm’s-length transaction and a lease with a chiropractor that did not cover expenses. For the portions of the property that were not actually occupied, Mr. Curry figured potential income at \$12.00 per square foot, but only a cursory, conclusory basis for that rent rate was provided. None of the leased space in the Petitioner’s building rented for \$12.00 per square foot. Furthermore, four of the seven tenants had lease agreements for \$15.40, \$16.00,

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<sup>4</sup> Many determinations from the Board and the Tax Court have recognized that a certified appraisal prepared according to the Uniform Standards of Profession Appraisal Practice (USPAP) is often the best way to prove an accurate property valuation. It has also been recognized, however, that providing such an appraisal is not an absolute requirement for success in appealing an assessment.

or \$17.00 per square foot, which casts additional doubt on the credibility of the potential gross income figure that Mr. Curry used.

- i) The Petitioner also failed to establish that Mr. Curry's method of determining net operating income satisfies generally accepted appraisal principles. He deducted the actual operating expenses of the subject property. Even though he testified about how commercial office space was a new venture for the Presnell Companies and unexpected problems were encountered, there is no indication of how those actual operating expenses compare to what is normal for the market. If the actual expenses are unusually high (for example, because of the Petitioner's inexperience with this kind of property or bad management decisions), it would be inappropriate to consider only the actual expenses in determining a net operating income figure to capitalize. In this case it is simply impossible to determine whether the net operating income figure Mr. Curry used conforms to generally accepted appraisal principles. This point is another significant failure in the Petitioner's case.
- j) Selecting an appropriate capitalization rate for this kind of calculation is fundamental to the credibility of the result. Making an appropriate selection, however, is not a simple matter. Nevertheless, in this case the Petitioner offered only limited, conclusory explanation in attempting to support the selected capitalization rate. Mr. Curry's testimony provided no meaningful explanation or analysis for his use of 12%. The Petitioner's Brief, Exhibit A at 3, provides a little more information, stating as follows:

For purposes of determining appropriate capitalization rate for the income approach, there were only three comparable sales. The first sale was the acquisition by the Petitioner of the property from National City Bank on April 22, 2004. The capitalization rate for that transaction was 12%.

In addition, Vantage Center at 720 Executive Park, was sold for \$1.825 Million on January 18, 2001 with an estimated potential NOI of \$212,994 with a capitalization rate of 11.67%. (See Exhibit #8)

Finally, a 27,485 square foot building constructed in 1989 at 201 South Emerson was sold to Ohio Properties in March of 2004 for \$1.8 Million, with a potential NOI of \$257,916 with a capitalization rate of 14.33%. (See Exhibit #52)

This explanation is problematic for several reasons. The Petitioner failed to establish that using its own purchase of the subject property to determine a capitalization rate conforms to generally accepted appraisal principles. Apparently the data about the other two sales came from Mitchell Appraisals, Inc., but it is not clear that Mr. Curry's use of that data conforms to generally



accepted appraisal principles. Other than the data shown on Exhibits 8 and 52, the record contains almost nothing to establish comparability with the subject property. The biggest problem, however, is the complete failure to establish how the capitalization rates from 2001 and 2004 might relate to January 1, 2006. *See Long*, 821 N.E.2d at 471. This failure alone entirely destroys the probative value of Mr. Curry's income capitalization approach. The Petitioner did not make a case for any assessment change.

15. When a taxpayer fails to provide probative evidence supporting the position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

### **Conclusion**

16. The Petitioner failed to prove its case. The Board finds in favor of the Respondent.

### **Final Determination**

In accordance with the above findings and conclusions, there will be no change in the assessment.

ISSUED: January 31, 2012

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Commissioner, 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>>