

REPRESENTATIVE FOR PETITIONER:

Glen Roberson, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Kelly Hisle, Delaware County Appeals Clerk

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Glen Roberson,	)	Petition No.:	18-003-06-1-4-01060
	)		
Petitioner,	)	Parcel No.:	18-11-05-152-009.000-003
	)		
v.	)	County:	Delaware
	)		
Delaware County Assessor,	)	Township:	Center
	)		
Respondent.	)	Assessment Year:	2006

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Appeal from the Final Determination of the  
Delaware County Property Tax Assessment Board of Appeals

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*September 22, 2010*

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Introduction**

1. In support of his claim that the subject rental property was assessed too high, the Petitioner, Glen Roberson, offered the 1991 purchase price for the property, some raw

income and expense data, photographs showing damage caused by flooding, and a property record card for a property that bore little resemblance to the subject property. Because none of that evidence was probative of the subject property's true tax value, Mr. Roberson failed to carry his burden of proof.

### **Procedural History**

2. On May 7, 2007, Mr. Roberson filed a written notice with the Delaware County Assessor contesting the subject property's 2006 assessment. On May 30, 2008, the Delaware County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying Mr. Roberson the relief he had requested.
3. Mr. Roberson then timely filed a Form 131 petition with the Board. The Board has jurisdiction over Mr. Roberson's appeal under Indiana Code §§ 6-1.1-15 and 6-1.5-4-1.
4. On June 24, 2010, the Board's Administrative Law Judge, Patti Kindler ("ALJ"), held a hearing. Neither the Board nor the ALJ inspected the subject property.

### **Hearing Facts and Other Matters of Record**

5. The following people were sworn in as witnesses:

Glen Roberson, *pro se*  
Kelly Hisle, Delaware County Appeals Clerk

6. Mr. Roberson submitted the following exhibits:

Petitioner Exhibit 1: Photograph of front entrance of triplex  
Petitioner Exhibit 2: Close-up photograph of front entrance of triplex  
Petitioner Exhibit 3: Photograph of flooded interior carpeting  
Petitioner Exhibit 4: Photograph of flooding in interior foyer of triplex  
Petitioner Exhibit 5: Photograph of doorway in interior foyer of triplex  
Petitioner Exhibit 6: Photograph of tile used to control flooding  
Petitioner Exhibit 7: Photograph of trenches used to control flooding  
Petitioner Exhibit 8: Photograph showing the elevation of Bethel Avenue  
Petitioner Exhibit 9: Photograph of the single-family rental home

- Petitioner Exhibit 10: Photograph showing the layout of the three rental structures
- Petitioner Exhibit 11: Photograph showing condition of triplex roofing
- Petitioner Exhibit 12: Photograph showing the condition of converted garage
- Petitioner Exhibit 13: Photograph showing back of neighboring apartment units
- Petitioner Exhibit 14: Property record card for 3211 West Bethel Avenue
- Petitioner Exhibit 15: Closing worksheet from Merchants National Bank for the 1991 purchase of the subject property
- Petitioner Exhibit 16: Undated letter from Mr. Roberson to Mr. Carmichael
- Petitioner Exhibit 17: IRS Form 1040 - Schedule E, 2007 Supplemental Income and Loss statement
- Petitioner Exhibit 18: IRS Form 1040 – Schedule E, 2008 Supplemental Income and Loss statement

7. The Assessor did not submit any exhibits.
  
8. The Board recognizes the following additional items as part of the record of proceedings:
  - Board Exhibit A: Form 131 petition
  - Board Exhibit B: Notice of hearing
  - Board Exhibit C: Hearing sign-in sheet
  
9. The subject property is a rental property with three structures, including a single-family home, a converted garage, and a triplex located at 3101, 3105, 3107, 3109, and 3111 West Bethel Avenue, in Muncie Indiana.
  
10. The PTABOA determined the following values for the subject property:
 

Land: \$108,500	Improvements: \$143,400	Total: \$251,900
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11. On his Form 131 petition, Mr. Roberson requested the following assessment:
 

Land: \$85,000	Improvements: \$75,000	Total: \$160,000
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**Administrative Review and the Parties' Burdens**

12. A taxpayer seeking review of an assessing official's determination must make 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).

13. In making its case, the taxpayer must explain how each piece of evidence relates to its 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”).
14. If the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to rebut or impeach the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

## **Analysis**

### **Parties' Contentions**

#### **A. Mr. Roberson's Contentions**

15. The subject property is assessed too high. According to realtors that Mr. Roberson has spoken to, a fair assessment would be \$150,000-\$165,000. *Id.*
16. The subject property's condition has deteriorated in the past few years due to continual flooding. *Roberson testimony; Pet'r Exs. 1-7*. The flooding stems from two things: (1) the city reconstructed Bethel Avenue, raising its elevation above the subject property; and (2) an investor built multi-unit commercial apartments adjacent to the property. *Roberson testimony; Pet'r Exs. 8, 13*. The subject triplex's interior has watermarks and mold growing up the drywall. *Roberson testimony; Pet'r Exs. 4-6*. Mr. Roberson has tried to alleviate water damage by replacing carpeting, cleaning and replacing moldy drywall, placing sandbags at the door, and digging trenches. *Roberson testimony; Pet'r Ex. 3*.

17. The triplex's major flooding issues and the single-family home's wet basement severely diminish the subject property's income-producing capacity and marketability. For example, the triplex originally had four rental units, but Mr. Roberson had to convert one unit to storage. *Roberson testimony*. Although Mr. Roberson did not offer his 2004 and 2005 federal tax returns, he claimed rental losses of \$31,769 and \$24,769, respectively in those years. *Id.*; *Pet'r Ex. 16*. And Mr. Roberson continued to claim losses on his federal tax returns in 2007 and 2008. *Roberson testimony*; *Pet'r Exs. 17-18*.
18. The total monthly income from all five rental units averages about \$2,225. On average, though, the units are only occupied about 70% of the time. *Roberson testimony*; *Pet'r Exs. 17-18*. The 2004 and 2005 rents, which Mr. Roberson gave to the Assessor before the PTABOA hearing, were similar to the rents reported on Mr. Roberson's 2007 and 2008 federal income tax returns. *Roberson testimony*; *Pet'r Exs. 16-18*. Occasionally, Mr. Roberson's total monthly rental income will drop to \$1,000 because his tenants fail to pay rent, he is unable to find occupants for all the units, or he is forced to give discounts to compensate for flooding. *Roberson testimony*.
19. Mr. Roberson bought the subject property for \$100,000 in 1991. *Roberson testimony*; *Pet'r Ex. 15*. At that time, the property taxes were reasonable, but they now hamper Mr. Roberson's ability to turn a profit. *Roberson testimony*. And there is no reason for the property's assessment to have increased so greatly, because Mr. Roberson has made only cosmetic improvements since buying the property. *Id.* Still, the structures need both interior and exterior repairs; their roofing, siding, gutters, and windows are deteriorating. *Id.*; *Pet'r Exs. 9-12*.
20. The subject neighborhood consists mostly of commercial properties. Thus, comparable residential properties are hard to find. A property located at 3211 West Bethel has only a single-family home, but it is comparable to one of the subject structures. It is in better

condition than the subject property and it was assessed for only \$57,400 in 2006.

*Roberson testimony; Pet'r Ex. 14.*

## **B. The Assessor's Contentions**

21. None of Mr. Roberson's evidence relate to January 1, 2005—the valuation date for the March 1, 2006 assessment at issue in this appeal. *Hisle argument.*
22. The house to which the Mr. Roberson compared the subject property is smaller than two of the subject property's dwellings. And it is only a single-family dwelling as opposed to the multiple units on the subject property. *Hisle argument.*

## **Discussion**

23. Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines 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 set forth in the Real Property Assessment Guidelines for 2002 – Version A.
24. 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) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But 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. *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales

information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

25. Regardless of the method used to rebut an assessment's presumed accuracy, however, 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. Dept' of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *See id.* (“[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment values without *some explanation* as to how these values relate to the January 1, 1999 value.”)(emphasis in original). For March 1, 2006 assessments, the valuation date was January 1, 2005. Ind. Code § 6-1.1-31-6 (c); 50 IAC 21-3-3.
26. Here, Mr. Roberson points mainly to ongoing flooding problems, which he claims severely limit the subject property's marketability and income-producing capacity. The flooding and related damage likely do affect the subject property's market value-in-use. But Mr. Roberson needed to offer probative evidence to quantify that effect. And he failed to do so.
27. Mr. Roberson did testify that he claimed rental losses on the property in 2004-05 2007-08. And his 2007-08 tax returns include some income and expense information for the property, both of which are relevant to estimating a property's value under the income approach. But that raw data does not, by itself, yield a value. The income approach to value assumes that an investor will pay no more for a property than it would cost to buy an equally valuable substitute investment with the same risk and return. MANUAL at 14. To make that determination, a person applying the income approach converts anticipated future benefits, such as rent and reversion of the property, to present value. *See Lacy Diversified Indus. V. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1233 (Ind. Tax Ct. 2003)(explaining that, under the income approach, one divides a property's net operating income by an appropriate capitalization rate to convert that income to present value). There are different techniques for doing that. By statute, the preferred technique for

properties with between one and four rental units is to use a gross rent multiplier. *See* Ind. Code § 6-1.1-4-39(b). Mr. Roberson, however, offered no evidence to show what an appropriate gross rent multiplier would be or to otherwise explain how his raw income and expense data translated to a specific value for the subject property.

28. Mr. Roberson's other two pieces of evidence—his testimony that he bought the subject property for \$100,000 in 1991 and the property record card for the single-family residence at 3211 Bethel Ave.—similarly lack probative value. The 1991 purchase was too far removed from January 1, 2005 to have any bearing on the property's true tax value. And Mr. Roberson did not explain how the single-family residence was even remotely comparable to the subject property much less account for how any differences between the two properties affected their relative market values-in-use. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005)(finding that comparative sales data lacked probative value where taxpayers did not explain how the characteristics of their property compared to purportedly comparable properties or how any differences affected the properties' market values-in-use).

#### **SUMMARY OF FINAL DETERMINATION**

29. Because Mr. Roberson did not offer probative evidence to rebut the presumption that the subject property's 2006 assessment was correct, he failed to make a prima facie case. The Board therefore finds for the Assessor.



The Indiana Board of Tax Review issued this Final Determination of the above captioned matter on the date first 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

### **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>>