

REPRESENTATIVE FOR RESPONDENT:
Shelby J. Ridenour, Eel Township Assessor
Brian Thomas, Ad Valorem Solutions

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | | |
|-------------------------|---|------------------|---------------------|
| LOGANSFORT CORPORATION, |) | Petition Nos.: | 09-010-03-1-4-00128 |
| d/b/a MANOR MOTEL |) | | 09-010-03-1-4-00129 |
| |) | | 09-010-03-1-4-00130 |
| Petitioner |) | | 09-010-03-1-4-00131 |
| |) | | 09-010-03-1-4-00132 |
| |) | | |
| |) | Parcel Nos.: | 2506027016 |
| |) | | 2506027017 |
| v. |) | | 2506028022 |
| |) | | 2506028023 |
| |) | | 2506028024 |
| |) | | |
| |) | County: | Cass |
| EEL TOWNSHIP ASSESSOR, |) | Township: | Eel |
| |) | | |
| Respondent. |) | Assessment Year: | 2003 |

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

FINAL DETERMINATION

The Indiana Board of Tax Review (the 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

ISSUES

1. The issues presented for consideration by the Board are whether the subject properties' assessed values exceed their market-value-in use and whether the subject properties should receive obsolescence depreciation.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-1, Surendra Patel, owner of Logansport Corporation d/b/a Manor Motel (Manor Motel), filed Form 131 Petitions for Review of Assessment on September 26, 2006, petitioning the Board to conduct an administrative review of the above petitions. The Cass County Property Tax Assessment Board of Appeals (the PTABOA) issued its determinations on August 29, 2006.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on April 11, 1007, in Logansport, Indiana.
4. The following persons were sworn as witnesses at the hearing:

For the Petitioner:

Surendra Patel, owner
Mayur Patel, motel manager

For the Respondent:

Shelby Ridenour, Eel Township Assessor,
Brian Thomas, Ad Valorem Solutions

5. The Petitioner presented the following evidence:

Petitioner Exhibit 1 – Income and expense statements for 2001, 2002, 2003, 2004 and 2005¹ for the subject properties.

6. The Respondent presented the following evidence:

Respondent Exhibit 1 – Multiple listing sheet (MLS) for the property, dated September, 2006,

Respondent Exhibit 2 – Sales Disclosure Form from Catherine P. Hrycak, Trustee to Mukerian Motel Management, Inc., dated March 30, 2007, and three property record cards for Catherine P. Hrycak,

Respondent Exhibit 3 – Sales Disclosure Form from Catherine P. Hrycak Revocable Trust to SNS Motel Management, Inc, dated March 30, 2007, and two property record cards for Catherine P. Hrycak, Trustee,

Respondent Exhibit 4 – Aerial photograph of the area,

Respondent Exhibit 5 – Notice of Appearance of Consultant on Behalf of Assessor between Brian Thomas, Ad Valorem Solutions, and Shelby Ridenour, Eel Township Assessor.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 131 petitions with attachments,²

Board Exhibit B – Notices of Hearing, dated February 27, 2007,

Board Exhibit C – Hearing sign-in sheet.

¹ The Petitioner submitted only the expense statement for the year of 2005.

² The Petitioner, in response to a Notice of Defect in Completion of Assessment Form 131 (Board Exhibit A) issued by the Board, attached a color coded sketch of the improvements and twenty-four pages of interior and exterior photographs of the subject properties. At the hearing the Respondent objected to the introduction of the sketch and photographs on the grounds that the Petitioner failed to provide the Respondent with a copy of the exhibits prior to the hearing. The Petitioner testified he submitted the sketch and photographs only with the Notice of Defect and failed to provide copies to the Respondent. The Board's rules require that "copies of documentary evidence or summaries of statements of testimonial evidence" be provided to other parties to the proceedings, "at least five (5) business days prior to the hearing." 52 IAC 2-7-1. The Board may waive the deadlines "for material that had been submitted at or made part of the record at the PTABOA hearing, a department hearing, or other proceeding from which the appeal arises." 52 IAC 2-7-1 (d). Here, however, the sketch and photographs are new evidence introduced by the Petitioner and the Respondent had no opportunity to verify the information or to prepare responsive evidence. The Respondent's objection is, therefore, sustained.

8. The subject properties are four vacant land parcels and one parcel improved with a motel facility located at 3315 East Market Street, Logansport, Eel Township, in Cass County.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2003, the PTABOA determined the assessed value of the properties to be \$8,400 for land for Parcel No. 2506027016 (Petition #09-010-03-1-4-00128) (Parcel 16); \$11,200 for land for Parcel No. 2506027017 (Petition #09-010-03-1-4-00129) (Parcel 17); \$60,700 for land for Parcel No. 2506028022 (Petition #09-010-03-1-4-00130) (Parcel 22); \$70,600 for land and \$233,200 for the improvements, for a total assessed value of \$303,800 for Parcel No. 2506028023 (Petition #09-010-03-1-4-00131) (Parcel 23); and \$8,900 for land for Parcel No. 2506028024 (Petition #09-010-03-1-4-00132) (Parcel 24). The total assessed value on the five parcels under appeal is \$393,000.
11. For 2003, the Petitioner contends the assessed value of the properties should be \$8,000 for land for Parcel 16; \$10,000 for land for Parcel 17; \$50,700 for land for Parcel 22; \$60,000 for land and \$175,00 for improvements, for a total assessed value of \$235,000 for Parcel 23, and \$5,000 for land for Parcel 24. The Petitioner requests a total assessed value of \$308,700 for the five parcels.

JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, and (3) property tax exemptions, that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

13. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. 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”).
15. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *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.

PARTIES' CONTENTIONS

16. The Petitioner contends that the five parcels under appeal are over-valued and should be valued using the income approach. *S. Patel testimony*. The Petitioner also contends the subject property suffers from functional obsolescence. *M. & S. Patel testimony*.
17. The Petitioner presented the following evidence and testimony in regard to these issues:
 - A. The Petitioner argues that the subject property should be valued using the income approach to value. *M. & S. Patel testimony*. In support of this contention, the Petitioner submitted 2001 through 2005 income and expense statements for the property showing revenue of \$119,000 for 2003. *Petitioner Exhibit 1*. The Petitioner

contends that the motel should be valued at 2 to 2 ½ times its 2003 revenue.

Petitioner Exhibit 1; S. Patel testimony. Thus, the Petitioner concludes, the market value-in-use of the property is between \$238,000 and \$297,000. *Id.*

- B. The Petitioner further argues that the entire building is not in operating condition which negatively impacts the market value of the subject property. *M. Patel testimony.* According to the Petitioner's witnesses, extensive interior and exterior maintenance is required in order for the motel to operate at a standard level. *M. & S. Patel testimony.* Moreover, 40% of the motel is closed due to severe foundation problems. *Id.* Surendra Patel argues that he would demolish the motel if the demolition expenses were not so high. *S. Patel testimony.*
- C. In rebuttal, Surendra Patel admitted that the subject property is for sale for \$550,000. *S. Patel testimony.* Mr. Patel argues, however, that the property has been on the market for almost one year and no potential buyers have shown an interest in the property at that price. *Id.*

18. The Respondent presented the following evidence and testimony in regard to this issue:

- A. The Respondent contends that the properties are valued correctly. *Thomas testimony.* According to the Respondent's witness, the township calculated the value of the subject property from the income and expense information received from the Petitioner at the PTABOA hearing which showed the current assessments are reasonable. *Petitioner Exhibit 1; Id.*
- B. The Respondent further contends that the Petitioner's income approach to value was not prepared in accordance with standard appraisal practices. *Thomas testimony.* Thus, the Respondent argues, the income and expense evidence should not be entitled to any weight. *Id.*

- C. In addition, the Respondent argues, the Petitioner has the subject property listed for sale at \$550,000. *Thomas testimony; Respondent Exhibit 1.* According to Mr. Thomas, the property's current assessment is well below the Petitioner's list price for the property. *Thomas testimony.*
- D. The Respondent also contends that the township has consistently assessed motel/hotel properties within an acceptable range of their market values as demonstrated by two properties that sold in 2007. *Thomas testimony; Respondent Exhibits 2 and 3.* According to Mr. Thomas, a Super 8 Motel sold for \$900,000, while the assessed value for 2003 was \$852,400. *Id.* Similarly, a Ramada Inn sold for \$1,760,000 and the assessment was \$1,878,900. *Id.*
- E. Finally, the Respondent contends that the township has accounted for the areas of the motel that need extensive repairs and the areas that are not in service in the property's assessment by adjusting the use-type of those areas to utility storage and by applying 10% to 30% functional obsolescence to the structure. *Thomas testimony.* The Respondent's witness testified that the township is also aware that in the near future the subject property may suffer some economic obsolescence with the construction of a new hotel two miles from the property. *Id.* According to Mr. Thomas, however, the property was not suffering from any economic obsolescence as of the 2003 assessment date. *Id.*

ANALYSIS

19. The Petitioner contends that his property is over-valued based on its income. *M. & S. Patel testimony.* In support of this contention, the Petitioner submitted income and expense statements from 2001 through 2005. *Petitioner Exhibit 1; Id.* The Petitioner argues that the market value of the property should be calculated by taking 2 to 2 ½ times

the generated income. *Id.* Based on the property's income of \$119,000 for 2003, the Petitioner argues, the market value-in-use of the subject property would be \$238,000 to \$297,000. *Id.*

20. The 2002 Real Property Assessment Manual defines the "true tax value" of real property 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). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual's definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property's market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Thus, a taxpayer may establish a prima facie case based upon an appraisal quantifying the market value of a property through generally recognized appraisal principles. *See Meridian Towers*, 805 N.E. 2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements' obsolescence through cost and income capitalization approaches).

21. The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4. The valuation date applies to assessments from subsequent years through and including 2005. *See* MANUAL at 2 ("This assessment manual contains the rules for assessing real property located in Indiana for the March 1, 2002, through March 1, 2005, assessment dates).³ Consequently, in an appeal of a 2003, 2004 or 2005 assessment, a party relying on evidence regarding the market value-in-use of a property as of a date substantially removed from the relevant valuation date must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999.

³ Beginning with the March 1, 2006, assessment date, assessing officials are required to adjust assessments of real property annually to account for changes in value since the last general reassessment. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-1-1 through 21-12-1. The valuation date for such adjustments will be January 1 of the year preceding the assessment date. 50 IAC.21-3-3(b).

See Long v. Wayne Township Assessor, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal for the 2002 assessment of that property); *see also O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90 (Ind. Tax Ct. 2006) (“[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).

22. “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 Petitioners’ 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 the 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 lack thereof to the aggregate data”).

23. Here, the Petitioner contends that his property has a value of \$238,000 to \$297,000 based on the income approach to value. *S. Patel testimony*. In support of these values, the Petitioner testified that he had provided income and expense information to the PTABOA showing the income and expenses for the motel for 2001 through 2005. *Petitioner Exhibit 1*. The Petitioner used a multiplier of two to two and half applied to his income to derive his income approach valuation. *Id.*

24. Under the income approach to value, fair market value can be determined by capitalizing the net income that the property produces, more specifically by converting the net income at reasonable rate of return to give an indication of value. *See Lacy Diversified Indus., Ltd. v. Dep't Local Gov't Fin.*, 799 N.E.2d 1215, 1223 (Ind. Tax Ct.2003). *See also Lucre Corp. v. County of Gibson*, 657 N.E.2d 150, 153 (Ind.Ct.App.1995), *trans. denied*.
25. When allowing an income capitalization method for property valuation, some explanation must be given to the steps of the calculations and where the numbers come from. “Under the income capitalization approach, the income expected to be earned by the subject property is estimated, allowing for reasonable expenses, vacancy, and/or collection loss, to arrive at net operating income (NOI). The NOI is subsequently converted to a present value by dividing it by a capitalization rate.” *See Lacy Diversified*, 799 N.E.2d at 1224. The capitalization rate generally 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.’” *Id.*
26. Here, the Petitioner’s income capitalization valuation failed to raise a prima facie case for several reasons. First, the Petitioner bore the burden of demonstrating that the calculation was probative of the market value-in-use of the subject property for January 1, 1999. *See Long*, 821 N.E.2d at 471. Further, the Petitioner failed to explain how it calculated its capitalization rate. The Petitioner’s “two to two and a half times” calculation is wholly unsupported by evidence. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); *and Herb v. State Bd. of Tax Comm’rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). Finally, the Petitioner presented no evidence to demonstrate whether the income and expenses were typical for comparable properties in the market. This is contrary to the assessment

procedures that govern the assessment of property in Indiana. MANUAL at 5. Further, the level of income and expenses may be attributed to the Petitioner's management of the property as opposed to the market value. *See Thorntown Telephone Company*, 588 N.E. 2d at 619. *See also, Lake County Trust Co. No. 1163 v. State Board of Tax Commissioner*, 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). Thus, the Petitioner failed to raise a prima facie case that its property is over-valued on the basis of its income approach calculation.

27. The Petitioner also contends that the subject property suffers from functional obsolescence due to the condition and inadequacies of the structure. *M. & S. Patel testimony*.

28. The Real Property Assessment Guidelines provide for the determination of the replacement cost new of structures through reference to cost tables. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES), intro. at 1. The cost tables were developed from objectively verifiable data by drawing cost information from publications of Marshall & Swift, L.P. *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 the property's boundaries. *Id.* The GUIDELINES account for normal obsolescence through the assignment of typical life expectancies and structure condition classifications. GUIDELINES, app. F at 4 – 7. This normal depreciation includes both typical physical deterioration and typical obsolescence. *Id.* at 8. Any additional loss in value from

atypical forms of obsolescence must be estimated separately from normal depreciation.
Id.

29. For a Petitioner to show that he is entitled to receive an adjustment for obsolescence, the Petitioner must both identify the causes of obsolescence the Petitioner believes is present in his improvement and also quantify the amount of obsolescence he believes should be applied to its property. *Clark v. State Board of Tax Commissioners*, 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 resulting in an actual loss in value to the property. *See Miller Structures, Inc. v. State Board of Tax Commissioners*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001). “Probative evidence is evidence sufficient to establish a given fact that, if not contradicted, will remain sufficient.” *College Corner, L.P. v. Department of Local Government Finance*, 840 N.E.2d 905 (Ind. Tax Ct. 2006). Further, the Petitioner’s quantification of the amount of obsolescence must be converted into a percentage reduction and applied against the structure’s overall value. *See Clark*, 694 N.E.2d at 1238.

30. Here, the Petitioner was required to show how the condition and inadequacies of the structure resulted in a more extensive loss in value than was recognized by the local assessing officials. The Petitioner provided no such information. The Petitioner did not show how inadequacies in the foundation or the interior and exterior repairs caused a loss in the market value of the property. The Petitioner merely alleged that 40% of the building is vacant. The Petitioner presented income and expense information, however, such information was not tied to market value, nor was a percentage reduction calculated and applied to the motel’s overall value. It is not sufficient for a Petitioner to merely identify random factors that may cause the property to be entitled to an obsolescence adjustment. The Petitioner must explain how those purported causes of obsolescence cause the property’s improvements to suffer an actual loss in value. *See Champlin Realty Co. v. State Board of Tax Commissioners*, 745 N.E.2d 928, 936 (Ind. Tax Ct. 2001),

review denied. See also Indian Industries, Inc. v. Department of Local Government Finance, 791 N.E.2d 286, 290 (Ind. Tax Ct. 2003) (“All Indian has done in this case is provide the State Board with a laundry list of factors that may cause obsolescence to its improvements and then say ‘as a result, we’re entitled to a 70% obsolescence adjustment.’ However, Indian needed to link one with the other by showing an actual loss of value.”) Thus, in failing to tie its income information to the alleged causes of obsolescence, the Petitioner has failed to raise a prima facie case that the subject property’s assessment was incorrect.

31. The Petitioner failed to present probative evidence in support of its contentions. 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. Department of Local Government Finance*, 799 N.E.2d 1215, 1221 – 1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

32. The Petitioner failed to establish a prima facie case. The Board finds in favor of the Respondent.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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>