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

Petition #s:[1]	71-026-02-1-5-00043	71-026-02-1-5-00059
	71-026-02-1-5-00044	71-026-02-1-5-00060
	71-026-02-1-5-00045	71-026-02-1-5-00061
	71-026-02-1-5-00046	71-026-02-1-5-00062
	71-026-02-1-5-00047	71-026-02-1-5-00063
	71-026-02-1-5-00048	71-026-02-1-5-00064
	71-026-02-1-5-00049	71-026-02-1-5-00065
	71-026-02-1-5-00050	71-026-02-1-5-00066
	71-026-02-1-5-00051	71-026-02-1-5-00067
	71-026-02-1-5-00054	71-026-02-1-5-00068
	71-026-02-1-5-00055	71-026-02-1-5-00069
	71-026-02-1-5-00056	71-026-02-1-5-00070
	71-026-02-1-5-00057	71-026-02-1-5-00071
	71-026-02-1-5-00058	
Petitioner:	Weaver Property Services, LLC	
Respondent:	Penn Township Assessor (St. Joseph County)	
Parcel #s:	18-5035-1234	18-5013-0407
	18-4013-0433	18-7150-5351
	18-5029-107002	18-6056-1893
	18-6037-1174	18-2142-5337
	18-1075-3142	18-8045-1789
	18-2058-2105	18-8031-1372
	18-6056-1890	18-2092-3462
	18-7086-3101	18-2048-1695
	18-7046-1788	18-7064-2356
	18-2082-2985	18-6003-0056
	18-6076-2651	18-3027-1018
	18-6067-2303	18-6085-3008
	18-2094-3542	18-1054-2314
	18-4026-0915	
Assessment Year:	2002	

[1] The Form 131 petitions for petitions numbered 71-026-02-1-5-00046 and -00054 show the subject properties in the name of Brian K. Weaver, whereas the Form 115s show the properties are in the name of Weaver Property. At the hearing, the Petitioner confirmed that the properties are in the name of Weaver Property Services, LLC.

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

Procedural History

1. The Petitioner initiated twenty-seven assessment appeals with the St. Joseph County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated December 31, 2003.

2. The Petitioner received notices of the decisions of the PTABOA on June 23, 2004.

3. The Petitioner filed twenty-seven appeals to the Board by filing Form 131s with the county assessor on July 23, 2004. The Petitioner elected to have these cases heard in small claims.

4. The Board issued notices of hearings to the parties dated January 23, 2006.

5. The Board held administrative hearings on March 9, 2006, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.

6. The following persons were present and sworn in at the hearings:[2]

   a. For Petitioner: Brian K. Weaver, Owner
   John Miller, Certified Public Accountant
   Ronald A. Cukrowicz, Employee of the Petitioner
   Richard Lentz, Employee of the Petitioner

   b. For Respondent: Dennis Dillman, PTABOA Member
   Ross A. Portolese, PTABOA Member
   Ralph J. Wolfe, PTABOA Member
   Sue Tranberg, PTABOA Member
   David E. Wesolowski, St. Joseph County Assessor
   Terrance F. Wozniak, Attorney, representing St. Joseph County and Portage Township Assessors
   Rosemary Mandrici, Portage Township Assessor

Facts

7. The subject properties are classified as residential rental properties. Twenty-four of the properties are single family residences, two of the subject properties are duplexes, and one of the properties is a four-family unit. The subject properties are located in Portage

[2] Mr. Terrance Wozniak, Ms. Beth A. Szweda, and Ms. Sue Tranberg were present during the administrative proceedings on behalf of the Respondent, but they were not sworn in to present testimony.

Township, South Bend, at South Bend Avenue (Parcel 18-5035-1234); 1001 E. Washington (Parcel 18-5013-0407); 1814-1816 Western (Parcel 18-4013-0433); 221 Victoria (Parcel 18-7150-5351); 927 E. Sorin (Parcel 18-5029-107002); 1009 32nd Street (Parcel 18-6056-1893); 1111 S. 27th (Parcel 18-6037-1174); 1013 Beale (Parcel 18-2142-5337); 1036 Van Buren (Parcel 18-1075-3142); 2109 Kendall (Parcel 18-8045-1789); 2701 Fredrickson (Parcel 18-2058-2105); 1729 S. Scott (Parcel 18-8031-1372); 3109 Pleasant (Parcel 18-6056-1890); 1130 N. Huey Street (Parcel 18-2092-3462); 1746 Marine (Parcel 18-7086-3101); 1218 N. Meade (Parcel 18-2048-1695); 615 Dubail (Parcel 18-7046-1788); 1115 E. Ewing Ave., Lot 9 (Parcel 18-7064-2356); 1334 N. Johnson (Parcel 18-2082-2985); 212 S. St. Peter (Parcel 18-6003-0056); 45 S. 29th (Parcel 18-6076-2651); 407-411 E. South (Parcel 18-3027-1018); 2901 Mishawaka (Parcel 18-6067-2303); 3018 Hastings (Parcel 18-6085-3008); 1017 N. Johnson (Parcel 18-2094-3542); 533 N. Scott (Parcel 18-1054-2314); and 2418 Ford Street (Parcel 18-4026-0915).

8. The ALJ did not conduct an on-site visit to the subject properties.

9. The PTABOA determined the assessed value of the subject properties to be:

Parcel No.:	Land Value:	Improvement Value:	Total Value:
18-5035-1234	$8,900	$16,100	$25,000
18-5013-0407	$9,200	$33,400	$42,600
18-4013-0433	$1,800	$31,800	$33,600
18-7150-5351	$7,800	$18,600	$26,400
18-5029-107002	$7,600	$14,500	$22,100
18-6056-1893	$4,100	$25,000	$29,100
18-6037-1174	$3,500	$33,400	$36,900
18-2142-5337	$8,300	$19,600	$27,900
18-1075-3142	$1,600	$14,300	$15,900
18-8045-1789	$1,400	$25,600	$27,000
18-2058-2105	$800	$24,100	$24,900
18-8031-1372	$1,700	$26,200	$27,900
18-6056-1890	$3,900	$24,300	$28,200
18-2092-3462	$800	$25,100	$25,900
18-7086-3101	$1,700	$25,900	$27,600
18-2048-1695	$800	$27,700	$28,500
18-7046-1788	$2,400	$23,500	$25,900
18-7064-2356	$1,700	$36,700	$38,400
18-2082-2985	$500	$19,900	$20,400
18-6003-0056	$6,100	$31,100	$37,200
18-6076-2651	$4,000	$35,000	$39,000
18-3027-1018	$3,000	$47,600	$50,600
18-6067-2303	$10,800	$23,700	$34,500

18-6085-3008	$3,100	$22,100	$25,200
18-2094-3542	$800	$22,500	$23,300
18-1054-2314	$4,300	$23,600	$27,900
18-4026-0915	$2,000	$18,200	$20,200

10. The Petitioner requested a total assessed value for each of the subject properties as follows:

Parcel No.	Total Requested Assessed Value:
18-5035-1234	$24,058
18-5013-0407	$29,671
18-4013-0433	$30,674
18-7150-5351	$20,048
18-5029-107002	$18,043
18-6056-1893	$19,647
18-6037-1174	$26,063
18-2142-5337	$21,251
18-1075-3142	$13,232
18-8045-1789	$20,048
18-2058-2105	$18,645
18-8031-1372	$21,051
18-6056-1890	$19,046
18-2092-3462	$18,444
18-7086-3101	$19,046
18-2048-1695	$19,647
18-7046-1788	$20,048
18-7064-2356	$26,464
18-2082-2985	$17,041
18-6003-0056	$37,089
18-6076-2651	$25,261
18-3027-1018	$47,314
18-6067-2303	$25,261
18-6085-3008	$19,647
18-2094-3542	$20,048
18-1054-2314	$21,051
18-4026-0915	$17,041

Issue

11. Summary of Petitioner's contentions in support of an error in the assessment:

    a. The Petitioner contends that the properties under review are rental properties and should be valued using the income approach. *Weaver testimony*. The Petitioner argues that while St. Joseph County's use of the gross rent multiplier (GRM) for

valuing one to four unit income producing properties is a valid strategy for establishing value based on location factors, it is only a starting point for determining market value-in-use. *Id.* According to the Petitioner, the income approach to valuation is a better indicator of value for a specific property. *Id.*

b. The Petitioner contends that the subject properties are over-valued based upon their market values. *Weaver testimony.* The Petitioner calculated the subject properties' values pursuant to the income approach. *Id.* The Petitioner alleges that the calculations he used are based on his 26 years of property management and data from his thirty-three rental properties.[3] *Id.*

c. The Petitioner testified that the income analyses provided for each of the subject properties under appeal was broken down into four colored coded areas for South Bend. *Weaver testimony.* According to the Petitioner, "red" represents the western area; "blue" represents the southern area; "yellow" represents the central area; and "green" represents the east. *Id.; Petitioner Exhibit A.* The Petitioner testified that for each of these areas he used the 2002 annual gross income for each individual property, subtracted the 1999 through 2002 average vacancy and collection loss calculated per area, subtracted the allowable expense calculated on all of the Petitioner's properties located in Penn and Portage Townships, and arrived at a net operating income per parcel. *Petitioner Exhibits A, A-6 – A-13, B-1 – B-6, G-1 – G-6, R-1 – R-11 & Y-1 – 5; Miller testimony.*

d. According to the Petitioner, he calculated the total allowable expense percentage by taking the total allowable expenses for all the properties he owned in Penn and Portage Townships and dividing these expenses by the total annual income of the same properties. *Petitioner Exhibit 5.* The Petitioner testified that, based on this calculation, he determined a 42% expense factor to be used in each area. *Id.; Miller testimony.*

e. The Petitioner further testified that he calculated a vacancy rate for each area based on an average for four years from 1999 to 2002. *Miller testimony.* Based on this calculation, the Petitioner determined the vacancy rate to be 18.8% for properties in the "red" area; 15.6% for properties in the "blue" area; 29.2 % for properties in the "yellow" area; and 11.5% for properties in the "green" area. *See Petitioner Exhibits A-6, A-8, A-10 and A-12.*

f. According to the Petitioner, he calculated the capitalization rate for each of the four areas by taking one sale for each area from a MLS listing sheet and dividing the listed net operating income by the selling price. *Miller testimony.* The

[3] The Petitioner submitted a map of St Joseph County showing the thirty-three properties on appeal in both Penn and Portage Townships broken down in five color coded areas with Penn Township being color coded "orange." *Petitioner Exhibit A.*

Petitioner testified that he determined the capitalization rate in the "red" area to be 20.82% based on the sale of a property in this area from the MLS with a net operating income of $10,203 and a sales price of $49,000. *See Petitioner Exhibit A-7.* In the "blue" area, the Petitioner contends the capitalization rate based upon Further, the Petitioner contends that the capitalization rate is 21.9% based on the sale of a property in this area from the MLS with a net operating income of $10,203 and a sales price of $49,000. *Petitioner Exhibit A-9.* In the "yellow" area, the Petitioner contends that the capitalization rate is 14.3%, using the sale of a property in this area from the MLS with a net operating income $9,157 and a sales price of $64,000 and in the "green" area, the Petitioner contends that the capitalization rate is 13.6% using the sale of a property in this area from the MLS with a net operating income $9,133 and a sales price of $67,000. *See Petitioner Exhibits A-11 and A-13.* The Petitioner testified that net operating income was divided by the capitalization rate determined for each area to establish a value. *Miller testimony.*

g. The Petitioner then testified as to how he calculated market value by providing a single example in each of the four color coded areas. For the "red" area, the Petitioner testified that he determined the value of 1013 Beale Street (Parcel 18-2142-5337) to be $14,944. According to the Petitioner, he used the four year vacancy rate from 1999 to 2002 for the red area of 18.8%, the 42% allowable expenses and the 20.82% capitalization rate for the "red" area. *See Petitioner Exhibit A-6 and A-7. See Petitioner Exhibit A-7.* The Petitioner testified that the annual gross income for this property was $6,600 ($550/month x 12 months). *Miller testimony.* Thus, the Petitioner contends, when the vacancy rate (18.8%), and the allowable expenses (42%) are subtracted from the annual gross income and the result is divided by the capitalization rate of 20.82%, the total value for the property is $14,944. *Id.*

h. The Petitioner testified that, using the same calculation, he determined the other properties in the "red" area are similarly over-valued. *Miller testimony.* According to the Petitioner, the property at 1334 N. Johnson has a market value of $13,585; the property at 1218 N. Meade has a market value of $15,216; the property at 1130 N. Huey has a market value of $17,253; and the property at 1017 N. Johnson has a market value of $15,487. *Id.*

i. In the "blue" area, the Petitioner testified that he determined the value of 1729 South Scott Street (Parcel 18-8031-1372) to be $14,619. According to the Petitioner, the average four year vacancy rate from 1999 to 2002 in the "blue" area was 15.6%. *See Petitioner Exhibit A-8.* Further, the Petitioner testified that he determined the capitalization rate to be 21.9%. *See Petitioner Exhibit A-9.* The Petitioner testified that annual gross income for this subject property was $6,540 ($545/month x 12 months). *Miller testimony.* Thus, the Petitioner contends, when the vacancy rate (15.6%) and the allowable expenses (42%) are

subtracted from the annual gross income and the result is divided by the capitalization rate (21.9%), the total value for this property is $14,619.

j. The Petitioner testified that, using the same calculation, he determined other properties in the "blue" area are similarly over-valued. *Miller testimony.* According to the Petitioner, the property at 2109 South Kendall has a market value of $14,216; the property at 615 East Dubail has a market value of $17,033; the property at 221 East Victoria has a market value of $13,948; the property at 1746 Marine has a market value of $14,484; and the property at 115 East Ewing has a value of $20,117. *Id.*

k. The Petitioner used the property at 715 South Bend Avenue (Parcel 18-5035-1234) as his sample property in the "yellow" area. According to the Petitioner, the average four year vacancy rate from 1999 to 2002 was 29.2% in the yellow area. *See Petitioner Exhibit A-10.* Further, the Petitioner contends that the capitalization rate is 14.3%. *See Petitioner Exhibit A-11.* The Petitioner testified that the annual gross income for this property was $7,320 ($610/month x 12 months). *Miller testimony.* Thus, according to the Petitioner, when the vacancy rate (29.2%) and the allowable expenses (42%) are subtracted from the annual gross income and the result is divided by the capitalization rate (14.3%), the total value for this property is $21,020.

l. The Petitioner testified that, using the same calculation, he determined other properties in the "yellow" area are similarly over-valued. *Miller testimony.* According to the Petitioner, the property at 1001 East Washington has a market value of $28,774; the property at 212 South St. Peter has a market value of $32,909; the property at 407 East South Street has a market value of $42,730; and the property at 927 East Sorin Street has a market value of $16,540. *Id.*

m. Similarly, the Petitioner presented 3018 East Hastings (Parcel 18-6085-3008) as his sample property in the "green area." According to the Petitioner, the average four year vacancy rate from 1999 to 2002 in the "green" area was 11.5%. *See Petitioner Exhibit A-12.* The Petitioner argues that the capitalization rate is 13.6%. *See Petitioner Exhibit A-13.* The Petitioner further testified that annual gross income for this property was $5,580 ($490/month x 12 months). *Miller testimony.* Thus, according to the Petitioner, when the vacancy rate (11.5%) and the allowable expenses (42%) are subtracted from the annual gross income and the result is divided by the capitalization rate (13.6%), the total value for this property is $22,193. *Id.*

n. The Petitioner testified that, using the same calculation, he determined other properties in the "green" area are similarly over-valued. *Miller testimony.* According to the Petitioner, the property at 745 South 29th Street has a market value of $35,101; the property at 2901 Mishawaka Avenue has a market value of

$30,572; the property at 1111 South 27th has a market value of $32,836; the property at 3109 Pleasant has a market value of $24,910; and the property at 1009 S. 32nd has a market value of $25,816.

o. The Petitioner further testified that he also used a GRM for the subject properties' calculations. *Miller testimony.* According to the Petitioner, the GRM is a good procedure to use but is not as accurate as the income approach. *Weaver testimony.*

j. Finally, the Petitioner testified that high crime rates in the area, negatively impact the market value of the subject properties. *Weaver testimony.* According to the Petitioner, several articles and statistics from London, New York, Merrillville, Gary and South Bend show property values have declined in areas of high criminal activity. *Weaver testimony; Petitioner Exhibit A-1.* The Petitioner contends that the articles further show that crime impacts the capitalization rate of an area and what an investor is willing to take on as a burden of risk in investing in real estate. *Id.*

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

a. The Respondent contends that the properties are valued correctly. According to the Respondent, the Township determined the values for one to four unit income producing properties using a GRM. *Wesolowski testimony.* The Respondent testified that the assessments were calculated using the Petitioner's annual gross incomes on the subject properties. *Id.* According to the Respondent, the annual gross incomes were then multiplied by the GRM that was appropriate for this area to determine market values for the subject properties. *Respondent Exhibit 8; Bock testimony.*

b. The Respondent questioned the accuracy of the Petitioner's calculations because the Petitioner presented no supporting documentation to show how the capitalization rate, vacancy and loss calculation, and the income and expenses of the subject property compare to other like properties. *Dillman testimony; Wozniak argument.* The Respondent further argued that Petitioner's capitalization rate was based on one MLS listed sale rather than multiple sales from the area. *Id.* The Respondent concluded that the Petitioner's income approach calculations had not been prepared in accordance with standard appraisal practices and should not be entitled to any weight. *Id.*

c. Finally, the Respondent contends that the articles and statistics on crime submitted by the Petitioner have not been adequately explained. The Petitioner did not show how such information impacts the market value-in-use of the property under appeal. *Wozniak argument.*

Record

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

    a. The Petition,

    b. The tape recording of the hearing labeled STB #2293 and #2294,

    c. Exhibits:

Petitioner Exhibit A - Color coded map Portage and Penn Township properties,
Petitioner Exhibit A-1 - The following information on crime; Urban Property Crime Erodes The Value Of Your Home by Dr. Steve Gibbons, The Fruman Center's Current Research Agenda by New York University School of Law, South Bend City TownInfo.com, Crime Stories Should Take Public Safety Angle by Post-Tribune Merrillville, Core Indicators Report by Healthy Communities Initiative, Crime Statistics by CityRating.com, Offenses by Area from 1999 through 2002 by South Bend Police Department, Combined Crime Statistics by areas on appeal and Combined Crime Statistics Totals prepared by Mr. Weaver,
Petitioner Exhibit A-3 – Transcript of Penn Township meeting, dated 5-19-04,
Petitioner Exhibit A-4 – Department of Local Government Finance Memorandum on Overview of the Income Approach to Valuation, dated November 12, 2003,
Petitioner Exhibit A-5 – Weaver Property Services, LLC total annual income and allowable expenses calculation,
Petitioner Exhibit A-14 – Calculation of the average vacancy rate for Petitioner's five properties located in Penn Township,
Petitioner Exhibit A-15 – MLS listing sheet for a property located at 228 Lawrence, Mishawaka,
Petitioner Exhibit A-16 – Weaver Property Services, LLC profit and loss statement from January 1999 through December 2002,
Petitioner Exhibit A-17 – U.S. Return of Partnership Income – Form 1065 for 2002,
Petitioner Exhibit A-18 – U.S. Return of Partnership Income – Form 1065

for 2001,
Petitioner Exhibit A-19 – U.S. Return of Partnership Income – Form 1065 for 2000,
Petitioner Exhibit A-20 – U.S. Return of Partnership Income – Form 1065 for 1999,
Petitioner Exhibit A-21 – Copies of the Form 131 petitions for the properties under appeal in Portage and Penn Townships,
Petitioner Exhibit O-4 – Income approach and GRM calculations for 107 East Tenth,

Respondent Exhibit 1 – Form 130 petition,
Respondent Exhibit 2 – Notification of Final Assessment Determination – Form 115,
Respondent Exhibit 3 – Form 131 petition,
Respondent Exhibit 4 – Brian K. Weaver's annual income and allowable expenses presented at the PTABOA hearing,
Respondent Exhibit 5 – Real estate tax statements for 2002 payable 2003,
Respondent Exhibit 6 – Subject 1989 property record card (PRC),
Respondent Exhibit 7 – Subject 2002 PRC,
Respondent Exhibit 8 – Township's rental property worksheet,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

a. 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners,* 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

b. 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. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis").

c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to 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.

15. The Petitioner failed to provide sufficient evidence to establish prima facie cases for reductions in the values. The Board reached this decision for the following reasons:

a. The Petitioner contends that his properties are over-valued based on their market values. The Petitioner further contends that the subject properties' high crime rate negatively impacts the values.

Market Valuations

b. The Petitioner contends that the subject properties are over-valued based on income approach to value calculations. *Petitioner Exhibit R-1 thru R-11, B-1 thru B-6, Y-1 thru Y-5 and G-1 thru G6.* In support of this contention, the Petitioner presented an income approach summary showing the values of the twenty-seven properties on appeal. The Petitioner based the calculations on the income and expenses of the subject properties and the Petitioner's thirty-three properties located in Penn and Portage Townships. *Petitioner Exhibits A, A-5 thru A-13, A-16, B-1 thru B-6, G-1 thru G-6, R-1 thru R-11 and Y-1 thru Y-5.* The Petitioner testified that the income approach to value is the best indicator of value for the subject properties because it reflects the market value-in-use. *Weaver testimony*.

c. The 2002 REAL PROPERTY ASSESSMENT MANUAL (the MANUAL) defines the "true tax value" of real estate as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property." 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, including the cost approach, sales comparison approach or the income approach, to establish the actual true tax value of a property. *See* MANUAL at 5.

d. The Petitioner seeks to value its properties based on the income approach to value. "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 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).

e. The Petitioner offered rental and expense information solely from Petitioner's personal data on the subject properties and other properties it owns. The Petitioner provided no evidence to demonstrate whether the income and expenses were typical for comparable properties in the market. Thus, any low rental income or high expense levels may be attributable to the Petitioner's management of the properties as opposed to their 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 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). Also, the Petitioner failed to explain what criteria he used to determine his neighborhoods (color coded areas) or how they compare to the County's delineated neighborhoods. More importantly, the Petitioner did not adequately support his capitalization rates. The Petitioner based the calculation of capitalization rate from a single MLS sales listing in each area. A 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." *See Hometowne Associates, L.P. v. Maley,* 839 N.E.2d 269, 275 (Ind. Tax Ct. 2005). The Respondent correctly notes that selecting the correct capitalization rate is critical to use the income approach. Here, the Petitioner failed to show that his one MLS sale is representative of the market. Nor did the Petitioner show that his income approach methodology conformed to the Uniform Standards of Professional Appraisal Practice (USPAP) or any other generally accepted standards. Consequently, the Petitioner's income approach calculations lack relevance or probative value in these cases.

f. Alternatively, the Petitioner contends that the subject properties could be valued by using GRMs. Instead of using the multiplier of 6 that the township used, the Petitioner used a multiplier of 4. The Petitioner failed, however, to provide any support for the use of a four-time multiplier. As such, the Petitioner failed to walk the Board through every element of the analysis. *See Indianapolis Racquet Club, Inc.*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004). The Petitioner has failed to raise prima facie cases on the basis of the income approach.

Obsolescence

g. The Petitioner also argued that statistics have shown that property values are negatively impacted by criminal activity within a neighborhood. *Weaver*

testimony; Petitioner A-1. In support of this contention, the Petitioner submitted several articles and statistics to show that criminal activity affects the value on property and what risk a potential investor is willing to take. *See Petitioner Exhibit A-1.*

h. According to the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A, intro at 1, (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES), depreciation consists of physical depreciation, functional obsolescence and external obsolescence. *Id.* External obsolescence represents a loss in value caused by an influence outside of the property's boundaries. *Id.* 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 improvement and also quantify the amount of obsolescence it 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 causing an actual loss in value to its property. *See Miller Structures, Inc. v. State Board of Tax Commissioners*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001). 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. 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.*

i. It is not sufficient for the Petitioner to allege that there is a high crime rate in the properties' neighborhood. The Petitioner must show the amount of loss in value caused by that crime. In failing to provide this evidence, the Petitioner has not quantified the obsolescence to which he believes he is entitled. Further, while the Petitioner's articles do state there can be an affect on property value, the Petitioner failed to meaningfully explain how or what affect there may be on the property under appeal. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Board of Tax Commissioners,* 704 N.E. 2d 1113, 1119 (Ind. Tax Ct. 1998). Thus the Petitioner failed to raise prima facie cases that the subject properties assessments were incorrect in failing to apply an obsolescence factor.

j. Where Petitioner has not supported the claim with probative evidence, Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus., LTD v. Department of Local Government Finance,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to provide sufficient evidence to establish a prima facie case. The Board finds in favor of the Respondent.

Final Determination

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

ISSUED: _____

_____
Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.