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**IN THE  
INDIANA TAX COURT**

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BANK OF HIGHLAND TRUST 13-3085,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cause No. 49T10-0606-TA-52
	)	
DEPARTMENT OF LOCAL	)	
GOVERNMENT FINANCE,	)	
	)	
Respondent.	)	

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ON APPEAL FROM THE FINAL DETERMINATIONS OF  
THE INDIANA BOARD OF TAX REVIEW

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**NOT FOR PUBLICATION**  
**January 30, 2007**

FISHER, J.

The Bank of Highland Trust 13-3085 (the Bank) appeals the final determinations of the Indiana Board of Tax Review (Indiana Board) that upheld the Department of Local Government Finance's (DLGF) assessment of two of the Bank's parcels of real property for the 2002 tax year. The issue for the Court to decide is whether the Bank made a prima facie case that its assessments were improper.

## **FACTS AND PROCEDURAL HISTORY**

The Bank owns two parcels of commercial property in Lake County, Indiana: a 4,269 square foot parking lot (parcel #1) and a 9,500 square foot lot with a two-story office building (parcel #2). For the 2002 assessment, the DLGF assessed parcel #1 with a value of \$33,700 (\$32,200 for the land and \$1,500 for the improvements) and parcel #2 with a value of \$572,000 (\$158,600 for the land and \$413,400 for the improvements).

Believing the assessments to be too high, the Bank filed a Petition for Review with the Indiana Board (Form 139L) for each parcel on April 29, 2004. In its Forms 139L, the Bank requested a total assessed value of \$1,500 for parcel #1 and \$375,000 for parcel #2. The Indiana Board held a hearing on the Bank's Forms 139L on November 1, 2005. On April 28, 2006, the Indiana Board issued its final determinations in which it denied the Bank's request for relief.

The Bank initiated this original tax appeal on June 2, 2006. The Court heard the parties' oral arguments on December 1, 2006. Additional facts will be supplied as necessary.

## **STANDARD OF REVIEW**

This Court gives great deference to final determinations of the Indiana Board when it acts within the scope of its authority. *Wittenberg Lutheran Vill. Endowment Corp. v. Lake County Prop. Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 486 (Ind. Tax Ct. 2003), *review denied*. Consequently, the Court will reverse a final determination of the Indiana Board only if it is:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial or reliable evidence.

IND. CODE ANN. § 33-26-6-6(e)(1)-(5) (West 2007).

The party seeking to overturn the Indiana Board's final determination bears the burden of proving its invalidity. *Osolo Twp. Assessor v. Elkhart Maple Lane Assocs.*, 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003). In order to meet that burden, the party seeking reversal must have submitted, during the administrative hearing process, probative evidence regarding the alleged assessment error. *Id.* If that party meets its burden of proof and prima facie establishes that the Indiana Board's final determination is erroneous, the burden then shifts to the opposing party to rebut the challenging party's evidence. *See Meridian Towers E. & W. v. Washington Twp. Assessor*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003).

### **DISCUSSION AND ANALYSIS**

Under Indiana's assessment system, real property is assessed on the basis of its "true tax value." "True tax value" does not mean fair market value, but rather "[t]he 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 (2004 Reprint) (hereinafter, Manual) (incorporated by reference at 50 IND. ADMIN. CODE 2.3-1-2 (2002 Supp.)) at 2. *See also* IND. CODE ANN. § 6-1.1-31-6(c) (West

2002). In turn, a property's market value-in-use "may be thought of as the ask price of property by its owner, because this value . . . represents the utility obtained from the property, and the ask price represents how much utility must be replaced to induce the owner to abandon the property."<sup>1</sup> Manual at 2 (footnote added).

In order to determine market value-in-use, Indiana has promulgated a series of guidelines that explain the valuation process for both land and improvements. See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (2004 Reprint) (hereinafter, Guidelines) (incorporated by reference at 50 I.A.C. 2.3-1-2(c)), Books 1 and 2. Because assessors often operate under the constraints of limited time and resources, Indiana employs a mass appraisal system; therefore, the Guidelines provide a *starting point* for an assessor to determine a property's market value-in-use. See Manual at 3; Guidelines, Book 1 at 1. To the extent that an assessor may err in applying the Guidelines, however, the assessment will not necessarily be invalidated so long as the assessment accurately reflects the property's market value-in-use. See 50 IND. ADMIN. CODE 2.3-1-1(d) (2002 Supp.).

While a property's market value-in-use (i.e., true tax value), as ascertained through an application of the Guidelines, is presumed to be accurate, that presumption is rebuttable. See Manual at 5. Thus, a taxpayer

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<sup>1</sup> "In markets in which sales are not representative of utilities, either because the utility derived is higher than indicated sale prices, or in markets where owners are motivated by non-market factors such as the maintenance of a farming lifestyle even in the face of a higher use value for some other purpose, true tax value will not equal value in exchange. In markets where there are regular exchanges, so that ask and offer prices converge, true tax value will equal value in exchange[.]" 2002 REAL PROPERTY ASSESSMENT MANUAL (2004 Reprint) (hereinafter, Manual) (incorporated by reference at 50 IND. ADMIN. CODE 2.3-1-2 (2002 Supp.)) at 2.

shall be permitted to offer evidence relevant to the *fair market value-in-use* of the property to rebut such presumption and to establish the actual true tax value of the property so long as such information is consistent with the definition of true tax value provided in this [M]annual and was readily available to the assessor at the time the assessment was made. *Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals that are relevant to the market value-in-use of the property, and any other information compiled in accordance with generally accepted appraisal principles.*

*Id.* (emphases added). Accordingly, when a taxpayer chooses to challenge an assessment, he must show that the assessor's assessed value does not accurately reflect the property's market value-in-use.<sup>2</sup>

In challenging its assessments, the Bank presented four appraisals of the property and two statements from a realtor estimating the value and asking price for the property. (See Cert. Admin. R. at 68-125.) The appraisals and statements valued the property between \$250,000 and \$540,000 during the years of 1988, 1990, 1996,

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<sup>2</sup> This Court has previously stated that "the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP)." *Kooshtard Prop. VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005), *review denied*.

1997, and 2005.<sup>3</sup> Nevertheless, Indiana's assessment regulations provide that a 2002 general assessment is to reflect a property's market value-in-use as of January 1, 1999. See Manual at 4. See also *117 Republic Ltd. P'ship v. Brown Twp. Assessor, et. al*, 851 N.E.2d 399, 400 (Ind. Tax Ct. 2006). Therefore, the Bank's appraisals and statements have no bearing upon the property's 2002 assessment values without *some explanation* as to how the 1988, 1990, 1996, 1997, and 2005 values relate to the January 1, 1999 value. See *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-472 (Ind. Tax Ct. 2005), *review denied*. See also *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006) (explaining that as part of making a prima facie case, the taxpayer must walk the Indiana Board through every element of its analysis).

While the Court acknowledges that the Bank submitted a line graph charting its appraisals and the realtor's estimates of value, the graph does not indicate the property's market value-in-use as of January 1, 1999. (See Cert. Admin. R. at 126.) In fact, the graph does not include a point on either axis accounting for that date. (See Cert. Admin. R. at 126 (where the dates on the x-axis account for June of 1988, 1990,

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<sup>3</sup> Indeed, the four appraisals valued the property as follows:

- 1) \$525,000 as of May 31, 1988;
- 2) \$540,000 as of October 23, 1990;
- 3) \$475,000 as of November 11, 1996;
- 4) \$390,000 as of September 6, 2005.

(See Cert. Admin. R. at 68-90, 102-25.) The Bank also submitted statements from its realtor, Cyrus & Associates, indicating its opinion of the estimated value of the property and a potential asking price. (See Cert. Admin. R. at 93-101.) On October 28, 1996, Cyrus & Associates estimated the value of the building to be \$250,000; however, if the Bank increased its rental rates, the building could be worth \$370,000 to \$380,000. (See Cert. Admin. R. at 93.) In a July 28, 1997 letter, Cyrus & Associates indicated that a potential asking price of \$400,000 to \$450,000 was appropriate for the property. (See Cert. Admin. R. at 97-99.)

1992, 1994, 1996, 1998, 2000, 2002, and 2004).) Rather, the line graph merely indicates the Bank's "guesstimate" as to what the property's 1999 value would be.<sup>4</sup>

### CONCLUSION

Because the Bank failed to provide evidence as to the value of the property on January 1, 1999, it has failed to make a prima facie case that its assessment was improper.<sup>5</sup> For the above stated reasons, the Indiana Board's final determinations are AFFIRMED.

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<sup>4</sup> The Court notes that the Bank argues that the graph is probative because it establishes a downward trend with respect to the property's market value. (See Oral Argument Tr. at 8, 20-21.) Assuming arguendo that the graph does establish a downward trend, it still does not establish the January 1, 1999 market value-in-use of the property. *Cf. with Fleet Supply Co. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (where the Court explained that each assessment in each tax year stands alone), *review denied*.

<sup>5</sup> The Court also notes contention between the parties as to whether alleged ask and offer prices based on an attempt to sell the property between the years of 2000 and 2002 constitutes probative evidence of the property's market value-in-use for the 2002 assessment. (See Cert. Admin. R. at 3, 15, 149, 151-53; Pet'r Br. at 6; Resp't Br. at 8-9; Oral Argument Tr. at 9.) Again, because the alleged ask and offer values do not reflect nor are they linked to the relevant valuation date, the values are not probative.