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**IN THE
INDIANA TAX COURT**

DONALD COLLER,)
)
Petitioner,)
)
v.) Cause No. 49T10-0601-TA-10
)
PERRY TOWNSHIP ASSESSOR,)
)
Respondent.)

ON APPEAL FROM A FINAL DETERMINATION OF
THE INDIANA BOARD OF TAX REVIEW

NOT FOR PUBLICATION
January 17, 2007

FISHER, J.

Donald Coller (Coller) appeals the final determination of the Indiana Board of Tax Review (Indiana Board) valuing his real property for the March 1, 2002 assessment date. The sole issue before the Court is whether the Indiana Board erred in valuing Coller's improvement.

FACTS AND PROCEDURAL HISTORY

Coller owns residential real property in Perry Township, Monroe County, Indiana. Coller purchased the property in 1995. The property is located in a very desirable subdivision in Perry Township, where the existing houses were built in the late 1960's to the late 1970's and ranged in price from \$200,000 to \$400,000. After purchasing the property, Coller completely demolished the house thereon and built another house measuring over 8,100 square feet. For the 2002 assessment date, the Perry Township Assessor (Assessor) assigned Coller's property an assessed value of \$1,543,200 (\$50,600 for land and \$1,492,600 for improvements). In arriving at that value, the Assessor applied the same 1.60 neighborhood factor that was applied to the other properties in the surrounding neighborhood.¹

Believing his assessment to be too high, Coller filed a Petition for Review of Assessment (Form 130) with the Monroe County Property Tax Assessment Board of Appeals (PTABOA) alleging that the assessment of his improvement was incorrect

¹ A neighborhood factor is applied to all residential and agricultural improvements. Indiana's assessment manual provides:

The neighborhood factor accounts for the impact on value caused by physical characteristics in the neighborhood such as type and layout of streets, availability of support services, and utilities. It also takes [into] account the economic characteristics such as demand for property and mortgage interest rates; governmental characteristics such as police protection, fire protection, and zoning; and social characteristics such as crime rates, owner-occupant ratios, and family size. Neighborhood factors are assigned to each neighborhood based upon an analysis of residential properties that have sold within the neighborhood.

because it exceeded its replacement cost. The PTABOA, however, sustained the Assessor's valuation.

Coller subsequently filed a Petition for Review of Assessment with the Indiana Board (Form 131) on August 28, 2003. In his Form 131, Coller claimed his assessed value exceeded the improvement's replacement cost because the 1.60 neighborhood factor was used.² Coller requested that the assessed value of the improvement be reduced to \$990,000. The Indiana Board held a hearing on September 15, 2005 and, on December 15, 2005, it issued a final determination denying Coller's request for relief.

Coller filed an original tax appeal on January 23, 2006. The Court heard the parties' oral arguments on November 16, 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. *Miller Village Prop. Co. v. Indiana Bd. of Tax Review*, 779 N.E.2d 986, 988 (Ind. Tax Ct. 2002), *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;

² Coller also alleged the assessment exceeded the improvement's replacement cost because his improvement received an "AA" grade factor. Coller did not pursue this issue in his appeals to the Indiana Board or this Court.

- (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.* (footnote omitted). 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 2007). 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.”³ Manual at 2 (footnote added).

Three generally accepted appraisal techniques may be used to calculate a property’s market value-in-use. See *id.* at 3. More specifically:

The first approach, known as the *cost approach*, estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. The second approach, known as the *sales comparison approach*, estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market. The third approach, known as the *income approach*, is used for income producing properties that are typically rented. It converts an estimate of income, or rent, the property is expected to produce into value through a mathematical process known as capitalization.

Id. (emphasis in original). Indiana recognizes, however, that because “assessing officials are faced with the responsibility of valuing all properties within their jurisdictions during a reassessment[, they] often times do not have the data or time to apply all three approaches to each property.” *Id.* Accordingly, the primary method used by Indiana assessing officials to determine a property’s market value-in-use is the cost approach.⁴ To that end, Indiana (through the now non-existent State Board of Tax Commissioners) has promulgated a series of guidelines that explain the application of the cost approach

³ “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.

⁴ “[T]he cost approach has historically been used in mass appraisal by assessing officials [because] data is available to apply it to all properties within a jurisdiction.” *Id.* at 3.

in detail. See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (2004 Reprint) (hereinafter, Guidelines), Books 1 and 2.⁵

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

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 as long as such information is consistent with the definition of true tax value provided in this [M]anual 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.

Whatever approach is utilized, the Manual provides that the goal, or end-result, should be the same: to ascertain a property's market value-in-use. Consequently, while "[a]ll three [] approaches, when properly processed, should produce approximately

⁵ "The calculation of cost [under the Guidelines, however,] is merely the starting point for estimating the true tax value of the improvements or structures. It sets the upper limit of value for the improvements." Guidelines, Book 1 at 1. Furthermore,

[t]he purpose of [the Manual/Guidelines] is to accurately determine "True Tax Value" . . . not to mandate that any specific assessment method be followed. . . . No technical failure to comply with the procedures of a specific assessing method violates this rule so long as the individual assessment is a reasonable measure of "True Tax Value[.]" and failure to comply with the . . . Guidelines . . . does not in itself show that the assessment is not a reasonable measure of "True Tax Value[.]"

50 IND. ADMIN. CODE 2.3-1-1(d) (2002 Supp.).

the same estimate of value[,]" *id.* at 3, "situations may arise that are not explained or that result in assessments that may be inconsistent with th[e] definition [of market value-in-use]. In those cases the assessor shall be expected to adjust the assessment to comply with this definition and may . . . consider additional factors . . . to accomplish th[at] adjustment." *id.* at 2.

Coller claims that his improvement was over-assessed because the neighborhood factor applied to his property was too high. Coller argues that because his house is "dramatically newer, bigger and more expensive" than the other homes in the surrounding neighborhood, his house should be classified as being in its own neighborhood. (See Cert. Admin. R. at 84-91; see also Pet'r Br.) As a result, Coller believes that the appropriate neighborhood factor to be applied to "his" neighborhood should have been 1.00. (See Cert. Admin. R. at 77-78; Pet'r Br. at 7.)

Coller's argument, however, misses the mark: whether or not the neighborhood factor should be reduced concerns the methodology by which his assessment was determined. As previously stated, the goal under Indiana's new assessment scheme is to ascertain a property's market value-in-use. Challenging an assessment on the basis that the regulations were misapplied does not in itself show that an assessment is not a reasonable measure of true tax value. See 50 I.A.C. 2.3-1-1(d). Rather, Coller needed to present evidence demonstrating that his property's *actual* market value-in-use was less than his assessed value.

Having said that, the Court notes that Coller presented an affidavit in which he averred that "the subject residence was built for a construction cost of \$956,000 at the time of construction in 1995." (Cert. Admin. R. at 76.) Coller's tax representative then

applied a Marshall and Swift Valuation multiplier to the alleged \$956,000 construction cost to account for 1999 cost figures. (See Cert. Admin. R. at 39-40, 77-78, 87-88, 91.)

In its final determination, the Indiana Board held that Collier's affidavit was not probative because it did not indicate what costs made up the \$956,000 figure. (Cert. Admin. R. at 44-45.) In making that determination, the Indiana Board reasoned that because assessing officials are required to account for all direct and indirect costs of construction when assessing property, taxpayers, who challenge their assessments by presenting evidence of actual construction costs are subject to the same standard.⁶ (See Cert. Admin. R. at 44-45 (footnote added).) Indeed, the Indiana Board stated:

while a taxpayer may establish a prima facie case based upon construction cost information, that information must include all costs. . . . Here, [Collier's] affidavit is insufficiently detailed to determine what costs have been included. There is no information regarding the purchase of the property or the costs of tearing down the existing structure. Nor is there any information regarding the administrative and permitting costs of the construction. Further, no evidence is offered as

⁶ The Guidelines specifically state that:

[t]he cost [of an improvement] to be estimated by the assessor is made up of all the direct labor and material costs plus the indirect expenses required to construct an improvement. Examples of direct costs include labor, materials, supervision, utilities used during construction, and equipment rental. Indirect cost examples are building permits, fees, insurance, taxes, construction interest, overhead, profit, and professional fees such as those charged by architects, engineers, consultants, and attorneys. The cost tables contain both direct and indirect costs. When comparing the costs in this guideline to actual construction costs it is critical that the actual construction costs represent all costs (direct and indirect) regardless of whether or not they were realized, as in the case of do-it-yourself construction.

Guidelines at 1.

to contractor costs, mark up or other costs that would reflect the market value of the property. Further, the lack of receipts or documentation of the Petitioner's costs and the unavailability of the Petitioner to respond to questions make Petitioner's affidavit nothing more than a conclusory statement with no probative value.

(Cert. Admin. R. at 44-45 (*citing Whitley Prod., Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax Ct. 1998) (explaining that statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination)), *review denied*.) The Indiana Board's conclusion is correct.

Coller's affidavit, the only evidence he submitted to demonstrate his property's construction cost, consisted of one sentence stating that the costs equaled \$956,000. Coller provided no subsequent explanation as to how that figure was derived. Because the affidavit was unaccompanied by an explanation as to which costs were included in the total construction costs, it is not probative evidence of the property's market value-in-use. *See Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999) (stating that evidence unaccompanied by an explanation will be rejected by the Court). *See also Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (stating that in presenting its case, it is the taxpayer's duty to walk the Indiana Board through every element of its analysis), *review denied*.

CONCLUSION

Coller did not demonstrate that his assessment did not accurately reflect his property's market value-in-use. Thus, the Indiana Board's final determination is
AFFIRMED.