

ATTORNEY FOR PETITIONER:
MARILYN S. MEIGHEN
MEIGHEN & ASSOCIATES, PC
Carmel, IN

ATTORNEYS FOR RESPONDENT:
LARRY J. STROBLE
RANDAL J. KALTENMARK
ZIAADDIN MOLLABASHY
BARNES & THORNBURG
Indianapolis, IN

**IN THE
INDIANA TAX COURT**

WASHINGTON TOWNSHIP ASSESSOR,)	
(WASHINGTON COUNTY, IN),)	
)	
Petitioner,)	
)	
v.)	Cause No. 49T10-0604-TA-43
)	
KIMBALL INTERNATIONAL, INC.,)	
)	
Respondent.)	

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

NOT FOR PUBLICATION

May 3, 2007

FISHER, J.

The Washington Township Assessor of Washington County, Indiana (Assessor) appeals the final determination of the Indiana Board of Tax Review (Indiana Board) valuing the real property of Kimball International, Inc. (Kimball) for the 2002 tax year. The issue for the Court to decide is whether the Indiana Board's determination was improper.

FACTS AND PROCEDURAL HISTORY

Kimball owns an industrial plant in Washington Township, Washington County, Indiana. For the 2002 assessment, the Assessor valued Kimball's plant at \$8,004,000 (\$343,800 for the land and \$7,660,200 for the improvements). Kimball filed an appeal with the Washington County Property Tax Assessment Board of Appeals (PTABOA), claiming that the assessment did not accurately reflect the property's market value-in-use because it applied an incorrect amount of accrued depreciation to the improvements. The PTABOA, however, denied Kimball's appeal.

Kimball subsequently filed a Petition to the Indiana Board of Tax Review For Review of Assessment (Form 131). The Indiana Board held a hearing on Kimball's Form 131 on October 4, 2005. On March 14, 2006, the Indiana Board issued a final determination in which it reduced Kimball's assessment to \$4,500,000.

On April 27, 2006, the Assessor initiated an original tax appeal, claiming that the Indiana Board's final determination was not supported by substantial evidence. The Court heard the parties' oral arguments on February 2, 2007. 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).

DISCUSSION AND ANALYSIS

Under Indiana's assessment system, real property is assessed on the basis of its "true tax value." IND. CODE ANN. § 6-1.1-31-6 (West 2002). "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 A.I.C. § 6-1.1-31-6(c). 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.”¹ Manual at 2 (footnote added).

In order to determine market value-in-use,² 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 (footnote added). 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

¹ “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.

² The Manual recognizes three generally accepted appraisal techniques, which may be used to calculate a property’s market value-in-use. See Manual 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.

value-in-use.³ See Manual at 3; Guidelines, Book 1 at 1 (footnote added). 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 6. 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 so 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. (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.

At the administrative hearing, Kimball presented a cost approach analysis and a sales comparison analysis to show that its property's actual market value-in-use was

³ In other words, Indiana recognizes 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." Manual at 3. As a result, the primary method for Indiana assessing officials to determine a property's market value-in-use is the cost approach. *Id.*

between \$3,800,000 and \$4,600,000.⁴ (See Cert. Admin. R. at 85-138, 142-201, 207-243 (footnote added).) Mr. Tracey Carboni, Kimball's tax representative, explained that under the cost approach, he calculated the property's true tax value by reducing the replacement cost new of the improvements (RCN), as determined by the Assessor, by the improvements' accrued depreciation. (See Cert. Admin. R. at 219-23.) Mr. Carboni computed the accrued depreciation of the subject property by calculating the accrued depreciation of eleven allegedly comparable properties that were sold between 1996 and 2002.⁵ (See Cert. Admin. R. at 220-21 (footnote added).) As a result, Mr. Carboni concluded that the total value of the subject property under the cost approach was

⁴ Mr. Tracey Carboni, Kimball's tax representative, also submitted a sales comparison approach to value using a multiple regression analysis. (Cert. Admin. R. at 142.) Under that analysis, Mr. Carboni concluded that the value of the property as of January 1, 1999 was \$4,600,000. (Cert. Admin. R. at 144, 237.) The Indiana Board, however, rejected Mr. Carboni's multiple regression analysis because he failed to (1) provide a detailed, coherent explanation of the statistical methodology upon which the analysis was based; and (2) establish that he had any special qualifications in statistical analysis to lend credibility to the analysis. (See Cert. Admin. R. at 62.) The parties have not contested that finding; thus, the Court need not discuss the analysis in any further detail.

⁵ More specifically, Mr. Carboni collected sales data of eleven properties that he claimed were similar to the subject property in terms of utilization, size, building characteristics and other amenities. (See Cert. Admin. R. at 90, 220-21.) He calculated the accrued depreciation in the comparable improvements by deducting the land value from the total sales price to arrive at the residual building value for each property. (Cert. Admin. R. at 222.) Mr. Carboni deducted the residual building value from the replacement cost new (RCN) for each building at the time of sale to get the total depreciation of the building, which he expressed as a percentage of the RCN for each property. (Cert. Admin. R. at 222-23.) Using those percentages, he then determined an annual rate of depreciation based on the age of the buildings. Mr. Carboni concluded that the subject improvements had an annual rate of accrued depreciation of four percent (4.00%); he multiplied that rate by the building's age to arrive at a total accrued depreciation of sixty percent (60%) or \$6,204,450. (See Cert. Admin. R. at 91, 223.)

\$4,500,000 as of January 1, 1999.⁶ (See Cert. Admin. R. at 91 (footnote added).) See also Manual at 4 (explaining that a 2002 general assessment is to reflect a property's market value-in-use as of January 1, 1999).

Under the sales comparison analysis, Mr. Carboni used the same eleven comparable properties used in the cost approach analysis. (See Cert. Admin. R. at 92-93, 223-26.) Mr. Carboni adjusted the sale prices of the comparable properties to account for differences between those properties and the subject property (i.e., age, location, size, land to building ratio, construction class, wall height, construction quality, and condition); he also adjusted each sales price to reflect the 1999 value of those properties, using the Consumer Price Index. (See Cert. Admin. R. at 92, 225-26.) Based on these adjusted sales prices, Mr. Carboni concluded that the subject property would have a sales price in the range of \$3,800,000 to \$4,425,000. (Cert. Admin. R. at 93, 226.) Mr. Carboni reconciled the sales comparison approach with the cost approach and concluded that the final estimate of value for the property based on the two approaches was \$4,250,000. (Cert. Admin. R. at 95.)

In its final determination, the Indiana Board stated that while Mr. Carboni provided little explanation as to the comparability of the allegedly comparable properties used in his cost and sale comparison approaches, his analysis was generally consistent with the Manual's description of the methodology behind those approaches. (See Cert. Admin. R. at 59-62.) Consequently, the Indiana Board held that Kimball presented evidence sufficient to establish that its assessment of \$8,004,000 was incorrect and,

⁶ After subtracting the accrued depreciation from the RCN, Mr. Carboni added back the value of the land and concluded that the total value of the property was \$4,480,100; Mr. Carboni rounded that value up to \$4,500,000. (Cert. Admin. R. at 91, 223.)

therefore, the burden shifted to the Assessor to rebut that evidence. (Cert. Admin. R. at 62.)

On rebuttal, the Assessor questioned the probative nature of Kimball's evidence, stating that the subject property was a profitable plant and that Kimball received more utility from its property than the sellers of the comparable properties Kimball relied on in its cost and sales comparison approaches. (See Cert. Admin. R. at 247-53.) The Assessor, however, did not present any evidence whatsoever to substantiate those claims. (See *generally* Cert. Admin. R.) Accordingly, the Indiana Board concluded that the property's market value-in-use should be reduced to \$4,500,000.⁷

Now, in its appeal to this Court, the Assessor claims that the Indiana Board's determination was not supported by substantial evidence. (See Pet'r Br. at 9 (stating that the Indiana Board "reduced the value of the property because some evidence appears in the Record[; s]ome evidence is simply not enough").) More specifically, the Assessor contends that because Kimball did not properly explain/establish the comparability of the properties used in its cost and sales comparison approaches, nor did it establish the validity of its accrued depreciation calculation, it did not make a prima facie case. (See Pet'r Br. at 4-8.) To support its claims, the Assessor cites to some of this Court's previous opinions upholding an Indiana Board final determination that a taxpayer did not establish a prima facie case because the taxpayer failed to provide a thorough presentation of its own evidence. (See Pet'r Br. at 4-8 (*citing e.g., Long v.*

⁷ The Indiana Board found that Mr. Carboni provided more explanation regarding his cost approach calculations than he did with respect to the sales comparison approach or his reconciliation of the two approaches. Therefore, the Indiana Board concluded that Mr. Carboni's estimate of \$4,500,000 under the cost approach was the best evidence of the subject property's market value-in-use. (Cert. Admin. R. at 63.)

Wayne Twp. Assessor, 821 N.E.2d 446, 471 (Ind. Tax 2005) (explaining that taxpayers have the duty to walk the Indiana Board through every element of its analysis; thus, taxpayers cannot simply cite to the record as though the evidence speaks for itself.) Those holdings, however, do not have the same applicability in the case at bar.

The cases to which the Assessor cites involve situations where a taxpayer challenges the Indiana Board's determination that it did not establish a prima facie case. Consequently, those decisions stand for the proposition that the taxpayer is required to make the Indiana Board (as the finder of fact) understand the evidence in order for the evidence to be considered probative – in other words, the taxpayer must make its evidence work for it. Accordingly, in those cases, the Court will not overturn an Indiana Board determination denying an appeal if the taxpayer did not, as a threshold matter, adequately present its evidence at the administrative hearing. If, however, the Indiana Board understands the evidence presented and determines it has probative value, the Court typically will not overturn a determination that a taxpayer established a prima facie case, absent an abuse of discretion.⁸

As the party challenging the propriety of an Indiana Board final determination, the Assessor bears the burden of demonstrating its invalidity. See *Elkhart Maple Lane Assoc.*, 789 N.E.2d at 111. Here, the Assessor has done nothing more than raise open-ended questions concerning Kimball's evidence. (See Pet'r Br.) The Assessor never presented any market value-in-use evidence to contradict Kimball's showing nor did it

⁸ As a point of clarification, the applicable burden assigned to each party is dictated by the role of the petitioner and respondent at each level of the appeals process. Therefore, if an assessor were the petitioner challenging a PTABOA assessment determination to the Indiana Board, the assessor's burden would be the same as the taxpayer's in the aforementioned example.

refute the validity of Mr. Carboni's calculations.⁹ Because the Assessor failed to meet its burden, this Court will not now reweigh Kimball's initial case.¹⁰ See *Elkhart Maple Lane Assoc.*, 789 N.E.2d at 113 n.6 (footnote added).

CONCLUSION

For the above stated reasons, the Indiana Board's final determination is AFFIRMED.

⁹ As evidenced by this case, assessing officials should be prepared to defend their assessments by providing their own evidence at the administrative level, rather than counting on a taxpayer's failure to make a prima facie case.

¹⁰ When determining whether an administrative decision is supported by substantial evidence, the reviewing court must determine from the entire record whether the agency's decision lacks a reasonably sound evidentiary basis. *Crooked Creek Conservation and Gun Club, Inc. v. Hamilton County N. Bd. of Zoning Appeals*, 677 N.E.2d 544, 548-49 (Ind. Ct. App. 1997), *trans. denied*. Therefore, evidence will be considered substantial if it is more than a scintilla and less than a preponderance or if it would be accepted as adequate to support a conclusion by a reasonable mind. See *id.* at 549. In this case, Kimball's evidence in its entirety was certainly more than a scintilla and enough that a reasonable mind could accept the conclusion that the original assessment was erroneous.