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**IN THE  
INDIANA TAX COURT**

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KOOSHTARD PROPERTY I, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cause No. 49T10-0502-TA-13
	)	
SCOTT COUNTY ASSESSOR and	)	
VIENNA TOWNSHIP ASSESSOR,	)	
	)	
Respondents.	)	

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

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**NOT FOR PUBLICATION**  
**February 21, 2006**

FISHER, J.

Kooshtard Property I, LLC (Kooshtard) appeals the final determination of the Indiana Board of Tax Review (Indiana Board) valuing its real property for the 2002 assessment year. The issue on appeal is whether the Indiana Board erred in upholding the assessment of the Vienna Township Assessor and the Scott County Assessor (the assessing officials) valuing Kooshtard's land on an acreage basis.

## **FACTS AND PROCEDURAL HISTORY**

Kooshtard owns land and an improvement in Vienna Township, Scott County, Indiana. For the March 2002 assessment, Kooshtard's property was valued at \$369,200 (\$310,000 for the land, \$59,200 for the improvement). The land was assessed as an unplatted parcel and on an acreage basis.

Kooshtard filed an appeal with the Scott County Property Tax Assessment Board of Appeals (PTABOA), arguing that because its land is platted, it should have been assessed on a front foot basis pursuant to the applicable Neighborhood Valuation Form.<sup>1</sup> The PTABOA, however, affirmed the assessment and Kooshtard subsequently filed a Petition for Review of Assessment (Form 131) with the Indiana Board. An administrative hearing was held and, on January 21, 2005, the Indiana Board issued its final determination upholding the assessment. In its final determination, the Indiana Board found that even assuming that the property was platted and should have been assessed on a front foot basis, Kooshtard did not present any probative evidence to demonstrate that the assessment did not accurately reflect the property's market value-in-use.

Kooshtard filed an original tax appeal with this Court on February 9, 2005. The Court heard the parties' oral arguments on November 3, 2005. Additional facts will be supplied as necessary.

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<sup>1</sup> Kooshtard argues that, when assessed on a front foot basis, the value of its land is \$84,990. (See Pet'r Reply Br. at 4; Cert. Admin. R. at 12.)

## ANALYSIS AND OPINION

### Standard of Review

This Court gives great deference to final determinations of the Indiana Board. *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 2006).

The party seeking to overturn the Indiana Board's final determination bears the burden of proving its invalidity. *Osoho Twp. Assessor v. Elkhart Maple Lane Assocs. L.P.*, 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 East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003).

## Discussion

Kooshtard argues that the assessing officials erred in valuing its property on an acreage basis. Instead, Kooshtard asserts that the land should have been valued on a front foot basis because it is a platted parcel and the applicable neighborhood valuation form requires that platted parcels be assessed on a front foot basis. (See Pet'r Br. at 1; Cert. Admin. R. at 48.) The Court, however, disagrees.

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 (hereinafter, Manual) (incorporated by reference at IND. ADMIN. CODE tit. 50, r. 2.3-1-2 (2002 Supp.)) at 2. See also IND. CODE ANN. § 6-1.1-31-6(c) (West 2006). 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>2</sup> Manual at 2 (footnote added).

In order to determine a property's market value-in-use and, in turn, its true tax value, Indiana (through the now non-existent State Board of Tax Commissioners) has promulgated a series of guidelines that explain the assessment process. See REAL

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<sup>2</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 (hereinafter, Manual) (incorporated by reference at IND. ADMIN. CODE tit. 50, r. 2.3-1-2 (2002 Supp.)) at 2.

PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (hereinafter, Guidelines) (incorporated by reference at 50 IAC 2.3-1-2), Books 1 and 2. Although the Guidelines provide general rules for assessing property, “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.” Manual at 2. Indeed,

[t]he purpose of [the 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[.]”*<sup>3</sup>

IND. ADMIN. CODE tit. 50, r. 2.3-1-1(d) (2002 Supp.) (emphasis added) (footnote added).

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<sup>3</sup> Kooshtard argues that this regulation is invalid because it conflicts with Indiana Code § 6-1.1-4-13.6, which establishes the procedures for creating a neighborhood valuation form. (See Pet’r Reply Br. at 2.) See also IND. CODE ANN. § 6-1.1-4-13.6 (West 2006). After describing those procedures, the statute states that “[t]ownship assessors *shall* use the values determined under this section.” A.I.C. § 6-1.1-4-13.6(c) (emphasis added). According to Kooshtard, the use of the word “shall” leaves assessors no discretion in determining what values to use. (Pet’r Reply Br. at 2.) Thus, “[b]ecause the statute requires assessors to use the values in the neighborhood valuation form, [Indiana Administrative Code title 50, rule 2.3-1-1(d)], which appears to give the assessors the choice of [] not following the neighborhood valuation form, is invalid.” (Pet’r Reply Br. at 2 (footnote omitted).)

The Court, however, sees no conflict between the statute and the regulation. Whereas the statute requires assessors to apply the values in the neighborhood valuation form, the regulation provides that an assessor’s mistake in applying these values will not necessarily render the assessment invalid so long as the assessment is a reasonable measure of the property’s true tax value.

The overarching goal of Indiana's new assessment scheme is to ascertain a property's market value-in-use. 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 the assessor to determine the property's market value-in-use. See Manual at 3; Guidelines, Book 1 at 1. Likewise, a neighborhood valuation form created pursuant to the Guidelines will also provide a starting point for the assessor. See Guidelines, Book 1, Chapter 2 at 7-28 (describing land valuation process). Thus, to the extent that an assessor may err in applying the Guidelines or a neighborhood valuation form correctly, the assessment will not necessarily be invalidated so long as the assessment accurately reflects the property's market value-in-use. See 50 IAC 2.3-1-1(d). Indeed, with respect to selecting base rates for land valuation, the Guidelines stress that "the pricing method for valuing the neighborhood is of less importance than arriving at the *correct* value of the land as of the valuation date." Guidelines, Book 1, Chapter 2 at 16 (emphasis added).

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. See Manual at 5. That presumption, however, is rebuttable. Accordingly, 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 . . . 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.* Thus, when a taxpayer chooses to challenge an assessment, it must show, through the use of the above-referenced evidence, that the assessor's assessed value does not accurately reflect the property's market value-in-use.<sup>4</sup> Strict application of the Guidelines, therefore, is not enough to rebut the presumption that an assessment is correct.

In challenging its assessment, Kooshtard has offered none of the aforementioned market value-in-use evidence. Instead, it has focused solely on the assessing officials' methodology and argues for a strict application of the Guidelines (i.e., a strict application of the neighborhood valuation form). In support of its argument, Kooshtard presented, among other things, a copy of the neighborhood valuation form, a copy of the legal description of the subject property, and a copy of the property's record card. (See Cert. Admin. R. at 48, 54-56.) None of these items, however, demonstrate that the assessing officials' methodology resulted in an assessment that failed to accurately reflect the property's market value-in-use.<sup>5</sup> Accordingly, the Court cannot say that Kooshtard presented a

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<sup>4</sup> This Court has previously stated its belief 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), *reh'g denied*.

<sup>5</sup> The assessing officials, on the other hand, presented sales disclosure forms for the subject property as well as several comparable properties. (See Cert. Admin. R. at 65-66, 68, 72, 76, 80, 84, 89-90.) These forms revealed that Kooshtard purchased the subject property (including land and improvements) in 2001 for \$608,165.48, which is \$238,965.48 more than its total assessed value of \$369,200.00. In addition, the average sale price for several comparable properties was \$511,811.00.

prima face case that its assessment was in error.<sup>6</sup>

### **CONCLUSION**

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

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<sup>6</sup> Kooshtard points out that the Indiana Board's final determination did not resolve the issue of whether the subject property is platted or unplatted. (See Pet'r Br. at 3; Cert. Admin. R. at 26 (Indiana Board final determination stating that "the evidence is ambiguous regarding whether the subject property is even a platted lot").) Thus, Kooshtard argues that rather than deciding whether the assessing officials erred in assessing its property on an acreage basis, the Court could, in the alternative, remand the case to the Indiana Board for a determination of a "material fact." (See Pet'r Br. at 3.) Nevertheless, even if the Indiana Board concluded that the land was platted and the assessing officials mistakenly assessed it as unplatted, Kooshtard was still required to show that this mistake resulted in an assessment that does not accurately reflect the property's market value-in-use. Accordingly, the determination of this fact would have no bearing on the Court's holding in this case.