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**IN THE
INDIANA TAX COURT**

MERCANTILE NATIONAL BANK)	
OF INDIANA, TRUST #2624,)	
)	
Petitioner,)	
)	
v.)	Cause No. 45T10-0601-TA-1
)	Cause No. 45T10-0601-TA-2
DEPARTMENT OF LOCAL)	
GOVERNMENT FINANCE,)	
)	
)	
Respondent.)	

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

NOT FOR PUBLICATION
September 21, 2006

FISHER, J.

Mercantile National Bank of Indiana, Trust #2624 (Mercantile) appeals the final determination of the Indiana Board of Tax Review (Indiana Board) upholding the Department of Local Government Finance's (DLGF) assessment of its industrial property for the 2002 tax year. While Mercantile raises several issues on appeal, the

Court consolidates and restates them as: whether Mercantile made a prima facie case that its assessments are improper.

FACTS AND PROCEDURAL HISTORY

Mercantile owns two parcels of land in Lake County, Indiana. Specifically, parcel # 009-12-14-0007-0003 (Parcel 3) and parcel # 009-12-14-0007-0029 (Parcel 29) are located at 1716 Sheffield Avenue in Dyer, Indiana. Parcel 3 consists of 5.158 acres of land. Parcel 29 consists of 2.685 acres of land. Both parcels are zoned for industrial usage.

For the 2002 assessment, the DLGF valued Parcel 3 at \$503,800 (\$167,200 for the land and \$336,600 for improvements). The DLGF valued Parcel 29 at \$135,900 (\$135,900 for the land and \$0 for the improvements). Believing each land assessment to be too high, Mercantile filed Petitions for Review with the Indiana Board (Forms 139L). In Mercantile's Forms 139L, it complained that its land assessments were too high based upon a 1994 appraisal.

The Indiana Board held two hearings on Mercantile's Forms 139L on August 24, 2004 and on October 4, 2005. On November 22, 2005, the Indiana Board issued one final determination in which it denied Mercantile's requests for relief on both parcels.

Mercantile filed two original tax appeals on January 5, 2006.¹ The Court heard

¹ The appeal relating to Parcel 3 was assigned a cause number of 45T10-0601-TA-2 and the appeal relating to Parcel 29 was assigned a cause number of 45T10-0601-TA-1. This Court consolidated the appeals on March 7, 2006. Thus, for ease of reference in this opinion, the Court will refer to the administrative record for Parcel 3 as "Cert. Admin. R2" and the administrative record for Parcel 29 as "Cert. Admin. R1."

The Court also notes that in its petition, Mercantile argued the Indiana Board improperly disregarded the summary of evidence offered by its attorney at the administrative hearing. (Pet'r Pet. at 3-4.) Because Mercantile never discussed this issue in its brief or at oral argument, the Court deems the issue waived.

the parties' oral arguments on July 28, 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 2006).

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. 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.* 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 (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."² 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 valuation process for both land and improvements. See REAL 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

² "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.

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 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[.]”*

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

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 a property’s market value-in-use. See Manual at 3; Guidelines, Book 1 at 1. Thus, to the extent that an assessor may err in applying the Guidelines, 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).

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 6. 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 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). Thus, 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.³

In challenging its assessment, Mercantile alleges that the DLGF made several errors in valuing its land. For instance, Mercantile argues that because both Parcel 3 and Parcel 29 are located within the same neighborhood, the same base rates should apply to the portions of land classified as "primary" and as "usable undeveloped."⁴ (Oral Argument Tr. at 9-10, 16-17 (footnote added).) Additionally, Mercantile argues that a negative influence factor of 90% should have been applied to Parcel 29 to account for its lack of access and utility. (Cert. Admin. R1 at 132-133.) Finally, Mercantile argues that only 0.147 acres of Parcel 29, as opposed to one full acre, should have been

³ 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).

⁴ The DLGF assessed the "primary" portion of Parcel 3 at \$60,113 per acre and the "usable undeveloped" portion at \$40,875.80 per acre. (See Cert. Admin. R2 at 122.) In contrast, the DLGF assessed the "primary" portion of Parcel 29 at \$100,188 per acre and the "usable undeveloped" portion at \$60,843.90 per acre. (See Cert. Admin. R1 at 110.)

classified as “primary.”⁵ (Pet’r Br. at 18-19 (footnote added).)

Unfortunately, Mercantile has missed the point. As previously stated, the goal under Indiana’s new assessment scheme is to ascertain the property’s market value-in-use. 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). The errors that Mercantile complains of focus solely on the methodology by which the DLGF determined the assessments. Mercantile has not, however, demonstrated that the DLGF’s assessments do not accurately reflect its land’s market value-in-use.

Mercantile presented a 1994 appraisal to show that its land was appraised at approximately \$6,100 per acre in 1994. (Cert. Admin. R2 at 99, 182.) Mercantile explained that the appraisal “show[s] that there’s this disparity[;] that it’s unreasonable . . . [to conclude] that the property would increase . . . 10 or 20 fold from what it was [worth] in 1994.” (Oral Argument Tr. at 25-26.)

Nevertheless, Indiana’s assessment regulations provide that a 2002 assessment is to reflect a property’s market value-in-use as of January 1, 1999. See Manual at 4; Guidelines, Book 1, Chapter 2 at 7. Consequently, Mercantile’s 1994 appraisal has no bearing upon its 2002 assessment values because Mercantile failed to trend that value back to the January 1, 1999 value. See *117 Republic Ltd. P’ship v. Brown Twp.*

⁵ Mercantile reasons that because a shed is the only improvement on Parcel 29, only the portion of land under the shed should be classified as “primary.” (See Pet’r Br. at 18-19). See also REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (hereinafter, Guidelines) (incorporated by reference at 50 IAC 2.3-1-2), Book 1, Chapter 2 at 85.

Assessor, 851 N.E.2d 399, 400 n.2 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005). Mercantile has not demonstrated that its land's assessed value is different from its market value-in-use for the 2002 tax year. Accordingly, Mercantile has failed to make a prima facie case that its assessment is improper.

CONCLUSION

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