

the Jennings County Property Tax Assessment Board of Appeals (PTABOA) assigned P/A's property a true tax value of \$336,600 (\$109,200 for land and \$227,400 for improvements). In arriving at that value, P/A's improvement was assigned an effective age of 8 years and a condition rating of "average." Accordingly, P/A's improvement received a twelve percent (12%) physical depreciation adjustment.

Believing its assessment to be too high, P/A filed a Petition for Review of Assessment with the Indiana Board (Form 131) on November 17, 2003. In its Form 131, P/A challenged the computation of its improvement's effective age. Specifically, P/A claimed that its improvement's effective age should be 65 and, with a condition rating of "average," it was entitled to receive a 35% physical depreciation adjustment.

The Indiana Board held a hearing on P/A's Form 131 on May 20, 2004. On September 14, 2004, the Indiana Board issued its final determination in which it denied P/A's request for relief.

P/A filed an original tax appeal on September 27, 2004.¹ The Court heard the parties' oral arguments on August 5, 2005. Additional facts will be supplied as necessary.

¹ In answering P/A's appeal, the Assessor raised the affirmative defense that this Court lacked: 1) jurisdiction of the subject matter; 2) jurisdiction of the person; and 3) jurisdiction of the particular case. (Resp't Answer at 2.) For the following reasons, however, the Assessor's affirmative defense is denied.

"Subject matter jurisdiction is the power of a court to hear and determine the general class of cases to which the proceedings before it belong." *Musgrave v. State Bd. of Tax Comm'rs*, 658 N.E.2d 135, 138 (Ind. Tax Ct. 1995) (citation omitted). A determination as to whether subject matter jurisdiction exists depends solely on "whether the type of claim advanced by the petitioner falls within the general scope of authority conferred upon the court by constitution or statute." *Id.* While the appropriate means for a party to challenge a court's subject matter jurisdiction is either as an affirmative defense in its responsive pleading (answer) or in a Trial Rule 12(B)(1) motion to dismiss, the issue of a court's subject matter jurisdiction cannot be waived. See Ind.

Trial Rules 8(C), 12(B); *Foor v. Town of Hebron*, 742 N.E.2d 545, 548 (Ind. Ct. App. 2001) (citation omitted).

The general scope of authority conferred upon the Tax Court is governed by Indiana Code § 33-26-3-1. This statute provides that the Tax Court has “exclusive jurisdiction over any case that arises under the tax laws of Indiana and that is an initial appeal of a final determination” of the Indiana Board. IND. CODE ANN. § 33-26-3-1 (West 2005). P/A’s appeal meets both jurisdictional prerequisites: it challenges the assessment of Indiana’s property tax and it requests review of a final determination of the Indiana Board. Accordingly, the Court finds that it has subject matter jurisdiction over P/A’s appeal.

“Personal jurisdiction is the court’s power to bring a person into its adjudicative process and render a valid judgment over [him or her].” *LinkAmerica Corp. v. Cox*, 828 N.E.2d 388, 391 (Ind. Ct. App. 2005) (citation omitted). The assertion that a court lacks personal jurisdiction must be timely raised or it is waived. *State v. Omega Painting, Inc.*, 463 N.E.2d 287, 290-91 (Ind. Ct. App. 1984). The proper method of challenging the personal jurisdiction of a court is as an affirmative defense in the answer or in a Trial Rule 12(B)(2) motion to dismiss. *Id.* at 290; *LinkAmerica*, 828 N.E.2d at 392. A party’s choice of one method over the other does not, however, alter the fact that that party bears the burden of proof on the matter. See T.R. 8(C); *Lee v. Goshen Rubber Co.*, 635 N.E.2d 214, 215 (Ind. Ct. App. 1994) (stating that when a person attacks the court’s jurisdiction over him, he bears the burden of proof upon that issue by a preponderance of the evidence, unless the lack of jurisdiction is apparent upon the face of the complaint), *trans. denied*.

Here, the Assessor has provided nothing to enlighten this Court as to why it does not have personal jurisdiction. (Resp’t Answer at 2.) Moreover, it is not apparent upon the face of the complaint why this Court lacks personal jurisdiction. The Court will not make the Assessor’s case for it. The issue that the Court lacks personal jurisdiction is therefore deemed waived.

Finally, “[j]urisdiction over the particular case refers to the right, authority, and power to hear and determine a specific case within the class of cases over which a court has subject matter jurisdiction.” *Carroll County Rural Elec. Membership Corp. v. Indiana Dep’t of State Revenue*, 733 N.E.2d 44, 50 (Ind. Tax Ct. 2000) (internal quotation and citation omitted). Like personal jurisdiction, the assertion that a court lacks jurisdiction over a particular case is voidable and must therefore be timely objected to or it is waived. *Foor*, 742 N.E.2d at 548. The appropriate means to challenge a court’s jurisdiction over a particular case is a Trial Rule 12(B)(6) motion to dismiss. See *Carroll Co.*, 733 N.E.2d at 50.

The Assessor has not filed a 12(B)(6) motion to dismiss. Furthermore, the Assessor’s answer has, again, provided nothing to explain or support its claim that the Tax Court lacks jurisdiction over the case. (*Cf.* Resp’t Answer *with* the *entire* P/A file.) The issue that this Court lacks jurisdiction over the particular case is therefore deemed waived.

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;
- (2) 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 2005).

The party seeking to overturn the Indiana Board's final determination bears the burden of proving its invalidity. *Osolo Township 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 Township 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." IND. CODE ANN. § 6-1.1-31-6(c) (West Supp. 2005-2006); 2002 REAL PROPERTY ASSESSMENT MANUAL (2004 Reprint) (hereinafter, Manual) (incorporated by reference at IND. ADMIN. CODE tit. 50, r. 2.3-1-2 (2002 Supp.)) at 2. 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).

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

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 (2004 Reprint) (hereinafter, Manual) (incorporated by reference at IND. ADMIN. CODE tit. 50, r. 2.3-1-2 (2002 Supp.)) at 2.

produce into value through a mathematical process known as capitalization.

Id. 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 for Indiana assessing officials to determine a property’s market value-in-use is the cost approach.³ 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 in detail. See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (2004 Reprint) (hereinafter, Guidelines), Books 1 and 2.⁴

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

⁴ “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.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (2004 Reprint) (hereinafter, 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[.]”

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

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 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.

P/A asserts that pursuant to instructions set forth in the Guidelines' cost approach, its improvement should have an effective age of 65 and, therefore, it is entitled to a greater physical depreciation adjustment. (See Pet'r Br. at 3; Cert. Admin. R. at 102, 104.) The Assessor argues, however, that P/A's assessment should remain unchanged for two reasons: 1) P/A's calculation of effective age fails to take into

account the improvement's 2001 remodeling; and 2) P/A's argument is based entirely on methodology and not on ascertaining the property's *true* true tax value. (Resp't Br. at 5-7.)

The market value-in-use of an improvement must reflect, among other things, the presence of any physical depreciation. See Guidelines, Book 2, App. F at 4. Physical depreciation "is [the] loss in value caused by the building materials wearing out over time. It may be caused by wear and tear, use or abuse, action of the elements, and/or insect infestation." *Id.* Determining the degree of physical depreciation from which an improvement suffers involves, at its most basic level, a comparison of the improvement's condition⁵ relative to its age. See *id.* at 4-6, 24, 25, 31. Here, as P/A correctly explains, the Guidelines *do* provide that an improvement with an actual age of 66⁶ and a condition rating of "average" has an effective age of 65 and is therefore entitled to a 35% physical depreciation adjustment. See *id.* at 24, 25, 31. P/A, however, misses the bigger picture.

⁵ An improvement's condition rating must take into account any and all maintenance and modernization to the improvement. See Guidelines, Book 2, App. F at 6. For instance, a condition rating of "excellent" indicates that "[a]ll items that can normally be repaired or refinished have recently been corrected, such as new roofing . . . HVAC overhaul or replacement, etc." *Id.* at 23. A condition rating of "average" indicates "[n]o evidence of deferred maintenance; need for a few minor repairs along with some refinishing. All major components still functional for age of the structure." *Id.* In contrast, an improvement with a condition rating of "very poor" reflects the fact that "[e]xtensive repairs [are] needed; the structure suffers from extensive deferred maintenance and is near the end of its physical life." *Id.*

⁶ For purposes of the 2002 assessment, an improvement's actual age is the difference between its date of construction and January 1, 1999. See *id.* at 5. Thus, P/A's improvement's actual age is 66 (1999-1933).

As indicated earlier, the goal under Indiana's property assessment scheme is to determine a property's market value-in-use. Accordingly, it may be necessary for assessing officials to make certain adjustments to an assessment made under the Manual/Guidelines' cost approach in order to make it consistent with other probative evidence as to a property's market value-in-use. Manual at 2-3. Here, the Assessor indicated that it "tweaked" the effective age of P/A's improvement to reflect the modernization and maintenance to the improvement as a result of its 2001 remodeling. (See Cert. Admin. R. at 105, 107 (footnote added).)

To the extent that P/A suggests that the Assessor should have perhaps "tweaked" the improvement's condition rating rather than its effective age (see Pet'r Reply Br. at 1), the Court agrees.⁷ Nevertheless, the point is that, in determining the true tax value of P/A's improvement, the effects of its 2001 remodel were to be taken into account. The administrative record reveals that while the Assessor accounted for those effects in determining the true tax value of P/A's improvement, P/A's position did

⁷ An improvement's effective age is computed by correlating its actual age with its condition rating. See *id.* at 24. Thus, it seems that the Assessor "skipped" a step when it could have adjusted the condition rating of P/A's improvement rather than its effective age. A technical failure to comply with the procedures set forth in the Guidelines' cost approach, however, does not render an assessment invalid as long as the individual assessment is a reasonable measure of true tax value. 50 IAC 2.3-1-1(d). Here, the Assessor took into account the effect of the 2001 remodel on P/A's improvement's life. If P/A believed either that the 2001 remodel had no effect on its improvement or that it did not have the same effect as quantified by the Assessor (i.e., its entitlement to a certain amount of physical depreciation), P/A was required to present some form of evidence to support that claim. See *Osolo Township Assessor v. Elkhart Maple Lane Assocs. L.P.*, 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003) (stating that in order to prove the invalidity of an Indiana Board final determination, a taxpayer must present probative evidence regarding the alleged assessment error). It did not do so.

not. (See Cert. Admin. R. at 90-126.) Thus, the Court cannot say that P/A presented a prima facie case that its assessment was in error.

CONCLUSION

For the above stated reasons, P/A has not demonstrated that its assessment was in error. Accordingly, the Indiana Board's final determination is AFFIRMED.