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**IN THE
INDIANA TAX COURT**

BKMM HOLDINGS, LLC,)
)
Petitioner,)
)
v.) Cause No. 49T10-0601-TA-9
)
PERRY TOWNSHIP ASSESSOR,)
)
Respondent.)

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

NOT FOR PUBLICATION
October 4, 2006

FISHER, J.

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

FACTS AND PROCEDURAL HISTORY

BKMM owns industrial real property in Perry Township, Monroe County, Indiana. For the 2002 assessment date, the Perry Township Assessor (Assessor) assigned BKMM's property a true tax value of \$461,200 (\$93,200 for land and \$368,000 for improvements) based on an application of the General Commercial Kit (GCK) pricing schedule.

Believing this value to be too high, BKMM filed a Petition for Review of Assessment (Form 130) with the Monroe County Property Tax Assessment Board of Appeals (PTABOA). In its Form 130, BKMM challenged the Assessor's land pricing and replacement costs of the improvements; it requested an assessed value of \$223,000 (\$45,000 for land and \$178,000 for improvements). On October 22, 2003, after conducting a hearing on the matter, the PTABOA changed a portion of the improvement's use from GCK to General Commercial Industrial (GCI) wall type 3, changed the usage to light manufacturing, and changed the grade. As a result of these changes, the PTABOA increased the assessed value of the improvements to \$520,000 and made no change to the value of the land.

BKMM subsequently filed a Petition for Review of Assessment with the Indiana Board (Form 131) on November 10, 2003. In its Form 131, BKMM claimed the PTABOA erred when it changed its assessment and that its improvement was properly assessed using the GCK schedule. BKMM requested that the assessed value of the land remain at \$93,000, but that the improvements be valued at \$340,000. The Indiana Board held a hearing on BKMM's Form 131 on September 15, 2005. On December 15,

2005, the Indiana Board issued its final determination in which it denied BKMM's request for relief.

BKMM filed an original tax appeal on January 23, 2006. The Court heard the parties' oral arguments on August 25, 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;
- (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. *Osoyo 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 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 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."¹ 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

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 IND. ADMIN. CODE tit. 50, r. 2.3-1-2 (2002 Supp.)) at 2.

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. 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.² 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 2.³

² “[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.

³ “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[.]”

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

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 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.

BKMM asserts that the PTABOA erroneously changed its assessment because the Assessor's original assessment is prima facie evidence that its improvement should

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.).

be assessed under the GCK schedule. Therefore, at the administrative hearing, BKMM submitted photographs, portions of the Guidelines, and testimony to show that its improvement had components listed and priced in the GCK schedule. (Cert. Admin. R. at 63-66; 87-105; 117-119; 123-130.) BKMM also introduced a property record card indicating that the assessed value of its improvements (based on the GCK schedule) should be \$322,200. (Cert. Admin. R. at 96-99.)

BKMM, however, misses the mark; whether or not the improvement should have been priced using the GCK schedule concerns the methodology by which its assessment was determined. As previously stated, the goal under Indiana's new assessment scheme is to ascertain the property's market value-in-use. Challenging an assessment on the theory that the regulations were misapplied does not in itself show that an assessment is not a reasonable measure of true tax value. See IND. ADMIN. CODE tit. 50, r. 2.3-1-1(d) (2002 Supp.). Rather, a taxpayer must present evidence indicating the property's *actual* market value-in-use.⁴ Because it did not, BKMM has not

⁴ BKMM argues that, in 2006, this Court announced a "new" rule that requires a party challenging an assessment to present an "appraisal or other market value-in-use evidence" to make a prima facie case. (Pet'r Reply Br. at 1-3 (*citing Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006)).) BKMM asserts that because it had no way of knowing about this requirement during its September 2005 administrative hearing, the "new" rule should have prospective effect only.

In *Eckerling*, the Court stated:

when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct. Indeed, 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

demonstrated that the PTABOA's assessment is not a reasonable measure of the property's market value-in-use.⁵

Professional Appraisal Practice (USPAP).” In addition, taxpayers may utilize “actual construction costs, sales information regarding the subject or comparable properties, ... and any other information compiled in accordance with generally accepted appraisal principles” so long as such information was readily available to the assessor at the time the assessment was made. If, through the use of this evidence, the taxpayer can demonstrate that their suggested value accurately reflects the property's true market value-in-use (and, consequently, that the assessor's assessed value failed to accurately reflect market value-in-use), then the taxpayer will have established a prima facie case[.]

Eckerling v. Wayne Twp. Assessor, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006) (internal citations omitted). While the Court in *Eckerling* applied the rule that market value-in-use evidence must be submitted during the administrative hearing, it did not make the rule. Rather, the rule was established and first announced in the Manual, which was incorporated by reference in the Indiana Administrative Code in 2002, years before BKMM's hearing. See Manual at 5-6. See also IND. ADMIN. CODE tit. 50, r. 2.3-1-2 (2002 Supp.).

⁵ BKMM also argues that the Assessor's original assessment and a property record card submitted by the Assessor at the administrative hearing constitute market-value-in-use evidence. (See Pet'r Br. at 2-4; Pet'r Reply Br. at 5-7; Oral Argument Tr. at 8-9.) The Court disagrees. BKMM does not rely on the values the Assessor derived, rather it relies on the use of the GCK schedule – i.e., the methodology. In fact, throughout the administrative process, BKMM requested three different values for its improvements (i.e., \$178,000, \$340,000, and \$322,200).

Furthermore, by challenging the PTABOA's assessment of \$520,000, BKMM was required to present prima facie evidence to show that *that* assessment did not accurately reflect the property's market value-in-use. To the extent that an Assessor's original assessment is presumed to be an accurate measure of market value-in-use, the PTABOA's assessment “trumps” that of the Assessor and is afforded the same presumption. See IND. CODE ANN. § 6-1.1-13 (West 2002) (outlining the PTABOA's authority to alter assessments within its jurisdiction). See also *Lentz v. Trs. of Indiana Univ.*, 221 N.E.2d 883, 884 (Ind. 1966) (suggesting that within the administrative realm of assessing Indiana property, there is a hierarchy of assessment officials); *King Indus. Corp. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 338, 341 (Ind. Tax Ct. 1998) (explaining that the goal of the entire assessment process is to arrive at correct assessments).

CONCLUSION

BKMM did not present a prima facie case at the administrative level; therefore, the Indiana Board's final determination is AFFIRMED.