PETITIONERS APPEARING PRO SE:
GEORGE PARKS
Hartford City, Indiana

ATTORNEYS FOR RESPONDENT:
STEVE CARTER
ATTORNEY GENERAL OF INDIANA
JENNIFER E. GAUGER
DEPUTY ATTORNEY GENERAL
Indianapolis, IN

IN THE
INDIANA TAX COURT

MARIAN PARKS and GEORGE PARKS,	)	
	)	
Petitioners,	)	
	)	
v.	)	Cause No. 49T10-0603-TA-29
	)	
LICKING TOWNSHIP ASSESSOR,	)	
	)	
Respondent.	)	

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

NOT FOR PUBLICATION
August 23, 2007

FISHER, J.

Marian and George Parks (the Parkses) appeal the final determination of the Indiana Board of Tax Review (Indiana Board) valuing their real property for the 2002 assessment year (the year at issue). The issue on appeal is whether the Indiana Board erred in upholding the Licking Township Assessor's (Assessor) valuation of the Parkses' improvements.

FACTS AND PROCEDURAL HISTORY

During the year at issue, the Parkses owned land and two apartment buildings in Hartford City, Indiana. The first building, constructed in 1976, is one-story and has three 880-square foot rental units. The second building, constructed in 1978, is two-stories: the first level contains six garages and the second level contains two 900-square foot rental units.

For the March 1, 2002 assessment date, the Assessor valued the subject property at $263,600 ($12,300 for land and $251,300 for improvements) using the residential pricing guidelines and a neighborhood factor of 1.03. The Parkses subsequently filed an appeal with the Blackford County Property Tax Assessment Board of Appeals (PTABOA), arguing that their improvements should have been assessed according to the General Commercial Residential (GCR) pricing schedule rather than the residential pricing guidelines. While the PTABOA rejected the Parkses' argument, it did, however, reduce the neighborhood factor applied to their property to 0.82. As a result of this change, the value of the Parkses' property was reduced to $212,600 ($12,300 for land and $200,300 for improvements).

Still believing their assessment to be too high, the Parkses filed an appeal with the Indiana Board on May 20, 2004. On February 1, 2006, after conducting an administrative hearing on the matter, the Indiana Board issued a final determination upholding the assessment.

The Parkses filed an original tax appeal on March 15, 2006.[1] The Court heard the parties' oral arguments on June 25, 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. *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 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. L.P.*, 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." *See* IND. CODE ANN. § 6-1.1-31-6 (West 2007). "True tax value" is

[1] Shortly after initiating their appeal, Marian Parks passed away.

"[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." *Id.* at (c); 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. 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:

> [t]he 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. Indiana recognizes, however, that because "assessing officials are faced with the responsibility of valuing all properties within their jurisdictions during a reassessment[,

[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 50 IND. ADMIN. CODE 2.3-1-2 (2002 Supp.)) at 2.

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 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.

The calculation of cost under the Guidelines, however, "is merely the starting point for estimating the true tax value of [an] improvement[] or structure[]. It sets the upper limit of value for the improvement[]." Guidelines, Book 1 at 1. 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[.]"

50 IND. ADMIN. CODE 2.3-1-1(d) (2002 Supp.). Consequently, while 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, 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 th[e M]anual and was

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

> 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.

On appeal, the Parkses assert that their apartment buildings should have been valued under the GCR pricing schedule because "they were built as and always listed as apartments. Thus, they are commercial buildings and should be taxed as such." (Cert. Admin. R. at 3, 25.) To support their claim, the Parkses presented, among other things, information regarding permitted uses for land zoned as "R-3 residential" (the zoning designation for the subject property) and copies of the subject property's insurance statements titled "commercial policy" and "apartment policy." (Cert. Admin. R. at 37, 39, 40.) The Parkses, however, have missed the point.

As previously stated, the goal under Indiana's assessment scheme is to ascertain a property's market value-in-use and 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. The fact that an assessor may not apply the Guidelines correctly will not necessarily, however, invalidate the assessment; indeed, as long as the assessment accurately reflects the property's market value-in-use, it will stand. *See* 50 I.A.C. 2.3-1-1(d). Therefore, when a taxpayer chooses to challenge its assessment, it must present evidence that demonstrates that the assessor's assessed value does not accurately reflect the property's market value-in-use – *the taxpayer cannot merely claim that the assessor misapplied the Guidelines. See id*. As this Court has previously explained, "the most effective method [for a taxpayer] 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)."[4] *Kooshtard Prop. VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005), *review denied* (footnote added).

In challenging their assessment, the Parkses have focused strictly on the Assessor's methodology for computing the assessment. They have proffered no evidence as to what they believe the market value-in-use of their property is. As a result, the Parkses have not shown that the Assessor's methodology resulted in an

[4] 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. *Id.* at 5.

assessment that did not accurately reflect their property's market value-in-use.[5] Accordingly, the Parkses did not present a prima facie case that their assessment was in error.[6]

CONCLUSION

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

[5] Interestingly enough, it appears that at some point *prior* to the Indiana Board hearing, the Parkses submitted appraisals indicating that, as of March 1, 2002, their property was worth between $200,000 and $210,000. (*See* Cert. Admin. R. at 7,10). Mr. Parks explained that he did not submit these appraisals to the Indiana Board because "I paid for these appraisals and I feel they are mine and private. My contention is not about an appraisal [] but about the fact my buildings were a[ssessed] as [r]esidential and not [c]ommercial." (Cert. Admin. R. at 3.)

[6] The Court notes that the Parkses have also asserted that their assessment is unfair when compared to the assessment of another, allegedly comparable apartment building in Hartford City. (*See* Pet'r letter, file-stamped March 13, 2007, to this Court (hereinafter, Pet'r Br.) with attachments.) Indeed, the Parkses explain that while the replacement cost of their improvements is $20,000 less than that of the other property, they pay approximately $3,000 more than the other property in taxes. (Pet'r Br.; Oral Argument Tr. at 5-7.) "Common sense and fairness should tell anyone . . . [that this] is not fair." (Pet'r Br.) Nevertheless, to succeed on this theory, the Parkses were required to show that the market value-in-use of the comparable apartment building was similar to the market value-in-use of the Parkses' apartment building.