

REPRESENTATIVE FOR PETITIONER:

Milus Skidmore, *pro se*¹

REPRESENTATIVE FOR RESPONDENT:

Marilyn Meighen, Meighen & Associates, P.C.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Milus Skidmore,	)	Petition No.:	43-034-08-1-5-00001
)		
Petitioner,	)	Parcel No.:	0271100022 002-068-028
)		
v.	)	County:	Kosciusko
)		
Kosciusko County Assessor,	)	Township:	Clay
)		
Respondent.	)	Assessment Year:	2008

Appeal from the Final Determination of the
Kosciusko County Property Tax Assessment Board of Appeals

March 17, 2011

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

¹ There is some confusion about whether Mr. Skidmore owned the subject property. *Board Ex. A.* On the Form 131 petition, Mr. Skidmore listed himself as the property owner. The Form 115 determination listed the property’s owner as “All American Property Corporation/Milus Skidmore.” *Id.* At the Board’s hearing, Mr. Skidmore said that All American Property Corporation owned the property and that he was there on behalf of the corporation. Given that confusion, the Board defers to the Form 131 petition and treats Mr. Skidmore as the taxpayer. To the extent that Mr. Skidmore did not own the property, the Board assumes that he was an officer or full-time employee of the corporation and was therefore authorized to represent the corporation before the Board without being an attorney or certified tax representative, especially in the absence of any objection to Mr. Skidmore’s representation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. The Petitioner, Milus Skidmore, attempted to offer market-based evidence to show the subject property's true tax value. That evidence, however, lacked probative value, largely because Mr. Skidmore did not explain how it related to the property's market value-in-use as of the relevant valuation date. While Mr. Skidmore pointed to other factors that might affect the property's value—most notably to a claim by a railroad that the subject house, garage, and driveway encroach on the railroad's right-of-way—he did not offer probative evidence to quantify how those factors affected the property's market value-in-use. Mr. Skidmore therefore failed to meet his burden of proof.

Procedural History

2. Mr. Skidmore appealed the subject property's March 1, 2008 assessment. On November 9, 2009, the Kosciusko County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying Mr. Skidmore's request to lower the property's assessment. Mr. Skidmore then timely filed a Form 131 petition asking the Board to review the PTABOA's determination. The Board has jurisdiction over Mr. Skidmore's appeal pursuant to Indiana Code §§ 6-1.1-15 and 6-1.5-4-1.
3. On November 17, 2010, the Board's administrative law judge, Patti Kindler ("ALJ"), held a hearing on Mr. Skidmore's petition.² Neither the Board nor the ALJ inspected the subject property.

Hearing Facts and Other Matters of Record

4. The following people were sworn in:
Milus Skidmore

² Immediately after the hearing on this petition, the ALJ conducted a hearing on another petition brought by Mr. Skidmore for a different property. Although the ALJ indicated that the parties had agreed to consolidate the two hearings, she conducted the hearings serially and they were noticed for separate times. The Board therefore treats the hearings independently and issues separate determinations for the two appeals.

For the Assessor: Laurie Renier, Kosciusko County Assessor
Christy Doty, part-time employee of the County Assessor

Marilyn Meighen appeared as Counsel for the Assessor.

5. Mr. Skidmore submitted the following exhibits:

- Petitioner Exhibit 1: July 28, 2008 e-mail from Karl Autenrieth to Milus Skidmore, All American Property Corp,
- Petitioner Exhibit 2: Norfolk Southern's "Valuation Map,"
- Petitioner Exhibit 3: Norfolk Southern's general plan of new track,³
- Petitioner Exhibit 4: Aerial photograph with the subject property outlined.

6. The Assessor submitted the following exhibits:

- Respondent Exhibit A: Aerial map,
- Respondent Exhibit B: Subject property record card ("PRC") & photograph,
- Respondent Exhibit C: MLS sheet and PRC for 108 E. Walnut,
- Respondent Exhibit D: Sales ratio study (4 pgs.),
- Respondent Exhibit E: Aerial photograph with parcels outlined and PRC for 400 S. Railroad Street.

7. The Board recognizes the following additional items as part of the record of proceedings:

- Board Exhibit A: Form 131 petition,
- Board Exhibit B: Hearing notice,
- Board Exhibit C: Hearing sign-in sheet,
- Board Exhibit D: Notice of Appearance by Marilyn Meighen.

8. The subject property contains a single-family home located at 107 West Walnut Street in Claypool, Indiana. It is a rental property.

9. The PTABOA determined the following values for the subject property:

Land: \$2,000 Improvements: \$44,600 Total: \$46,600

10. On the Form 131 petition, Mr. Skidmore requested the following values:

Land: \$1,000 Improvements: \$23,000 Total: \$24,000

³ Mr. Skidmore did not mark his exhibits in advance of the hearing. When he handed Petitioner's Exhibits 2 and 3 to the ALJ, she described them as a "map of the site" and a legal survey, respectively. Those documents, however, were attachments to Karl Autenrieth's e-mail. In that e-mail, Mr. Autenrieth described the documents as "Norfolk Southern's Valuation Map" and a "general plan of the new track." *Pet'r Ex. 1.*

Administrative Review and the Parties' Burdens

11. A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
12. In making its case, the taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
13. If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to rebut or impeach the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Analysis

Parties' Contentions

A. Mr. Skidmore's Contentions

14. The subject property is assessed too high in light of serious problems that detract from its market value. The house is very small. It also sits down low and has moisture problems. *Skidmore testimony*. Mr. Skidmore bought the subject property at an auction for \$8,000, although he did not say when. *Skidmore testimony*. He believes that that he paid too much given the house's condition and the fact that it had been abandoned by the former owner. *Id.*
15. The property also sits right next to railroad tracks. In fact, the house, garage, and driveway sit partially on a right-of-way owned by the Norfolk Southern Corporation.

Skidmore testimony. To show that fact, Mr. Skidmore offered an e-mail from Karl Autenrieth, a property manager for Norfolk Southern. *Pet'r Ex. 1.* In that e-mail, Mr. Autenrieth writes, "It appears that two structures and a driveway are encroaching onto railroad property at this location." *Id.* Mr. Autenrieth attached two documents to his e-mail: (1) what he referred to as "Norfolk Southern's Valuation Map," which shows the 100-foot width of the railroad's property, and (2) a general plan for the new track. *Pet'r Exs. 1-3.* Mr. Autenrieth goes on to ask Mr. Skidmore if he has a survey plan of the subject property indicating where the buildings and driveway are located. *Pet'r Ex. 1.* Mr. Autenrieth concludes the e-mail by asking Mr. Skidmore to confirm the location of his structures and indicating that "[i]t will be necessary for you to relocate any encroachments (buildings and driveway) from our railroad right of way." *Id.*

16. Mr. Skidmore also offered an aerial photograph of the area immediately surrounding the subject property with the subject property outlined in blue. *Pet'r Ex. 4.* Mr. Skidmore got the photograph from the Assessor's website and he referred to it as a "county aerial survey." *Skidmore testimony.* According to Mr. Skidmore, the aerial survey shows the subject property as a very narrow lot with part of a house and garage extending outside the lot line and onto railroad property. *Id.* In light of those facts, Mr. Skidmore argued that no mortgage company would lend money to a prospective buyer. *Skidmore testimony.*
17. Sometime in April 2008, Mr. Skidmore listed the subject property for sale with an asking price "in the \$30,000 range." *Skidmore testimony.* The property was on the market for a year without Mr. Skidmore receiving any offers. *Id.*
18. When questioned, Mr. Skidmore testified that the subject property was worth \$24,000 as of the January 1, 2007 valuation date. *Skidmore testimony.* He based his answer on the opinion of a realtor. *Id.* Although Mr. Skidmore did not have anything in writing from the realtor, the realtor appeared at the PTABOA hearing. *Id.*

B. The Assessor's Contentions

19. Mr. Skidmore has a two-prong burden of proof: (1) he must show that the assessment is wrong, and (2) he must quantify what the market value-in-use should be. Mr. Skidmore did not quantify the property's market value-in-use. He mentioned values ranging from the \$8,000 that he paid for the property at auction and that he claimed was probably too much, to \$24,000, which he requested on his Form 131 petition, to \$30,000, which was his asking price when he listed the property for sale. But Mr. Skidmore did not offer probative evidence to support any of those values. *Meighen argument*. According to the Assessor, Mr. Skidmore did not buy the property in an arm's-length transaction. And the market for properties in the area was comprised primarily of arm's-length transactions. *Doty testimony; Meighen argument*.
20. Although Mr. Skidmore essentially claimed that the property was worthless because of the encroachments on the railroad's right of way, the property was actually being rented on the assessment date. *Meighen argument (referring to Skidmore testimony)*. And the aerial map that Mr. Skidmore offered to show those encroachments is not a survey. It is simply an aerial photograph with a plat overlaid on it. *Doty testimony*. While Ms. Doty agreed that the map shows the subject property's lot line running through the subject house, the map may not be correct. *Id.* The map is from the county's website. That website disclaims any warranties as to the accuracy or completeness of the data, and cautions that the data does not replace or modify site surveys, deed or other conveyance originals, such as built engineering plans, drawings, and other legal documents. *Id.*
21. Regardless, sales and assessment data for nearby properties supports the subject property's assessment. *See Meighen argument; see also, Doty testimony*. Christy Doty, a part-time employee of the Assessor's office, testified about that data. Although Ms. Doty is a licensed appraiser, she did not actually appraise the subject property. *Doty testimony*.
22. The subject house has 940 square feet of finished living area. Thus, the subject property's assessment equals \$49.57 per square foot. *Doty testimony; Resp't Ex. B*. On

March 31, 2006, a property located at 108 East Walnut Street, just two blocks from the subject property, sold for \$71,000, or \$55.47 per square foot. *Doty testimony; Resp't Ex. C.* Similarly, a property located at 400 South Railroad Street, right across from the railroad, sold for \$41,000 or \$47.45 per square foot in November 2006. *Doty testimony; Resp't Exs. D-E.* While 400 S. Railroad may not be particularly comparable to the subject property, it shows the value of property by the railroad. *Doty testimony.*

23. For some reason, the subject property was placed in an assessment neighborhood that included all acreage parcels outside of Claypool. The properties surrounding the subject property, however, are in the Claypool neighborhood for platted land. Those surrounding properties are more comparable to the subject property than are the properties in the subject property's actual assessment neighborhood. *Doty testimony; Resp't Exs. A-B, D.*
24. The Assessor offered a copy of a sales ratio study, which shows all property transfers in Claypool from January 1, 2006 through December 31, 2007. *Resp't Ex. D.* Most of the sales were arm's length transactions. *Doty testimony.* The sale prices and assessments were generally pretty close. *Id.; Resp't Ex. D.* The subject property had a lower assessment per square foot of finished living area than the per-square-foot sale prices for all but one of the arm's length transactions in the study. *Id.*

Discussion

25. Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines as “the 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property's market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.

26. A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. See MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom.*; *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice ("USPAP") often will suffice. *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
27. Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. See *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); see also *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For March 1, 2008 assessments, that valuation date was January 1, 2007. 50 IAC 21-3-3(2006).
28. Mr. Skidmore pointed to several facts to support his claim that the subject property was worth substantially less than what it was assessed for. First, he pointed to the fact that he bought the property for \$8,000. Mr. Skidmore, however, did not give the date on which he bought the property, much less explain how the sale price related to the property's value as of January 1, 2007. Also, Mr. Skidmore acknowledged that he bought the property at an auction after it had been abandoned. That raises significant questions about whether the auction was a forced sale. At a minimum, the Board would need more information before concluding that the sale price was a reliable indicator of the property's market value-in-use.

29. Next, Mr. Skidmore testified that, beginning in April 2008, he listed the property for sale with an asking price “in the \$30,000 range” but received no offers. *Skidmore testimony*. Under some circumstances, unsuccessful attempts to sell a property may tend to show that the property is worth no more than its list price. Of course, that presumes that sufficient evidence has been offered about the list price and the attempts that were made to market the property. Given Mr. Skidmore’s vagueness on those points, the Board hesitates to give his testimony any probative weight. More importantly, the listing was from a period beginning more than 16 months after the January 1, 2007 valuation date. And Mr. Skidmore did not explain how that listing related to the property’s value as of January 1, 2007. Mr. Skidmore’s testimony about the subject property’s listing therefore lacks probative value.
30. Mr. Skidmore did testify about one value indicator that he claimed related to the January 1, 2007 valuation date—the opinion of an unnamed realtor. Without anything to show who the realtor was or what he based his opinion on, however, Mr. Skidmore’s testimony about that opinion lacks any probative value.
31. Mr. Skidmore also testified about various factors that he believed affected the subject property’s value. For example, he testified that the house sat low and had problems with moisture. Once again, Mr. Skidmore’s testimony was not very specific. Nonetheless, the conditions to which he referred might affect the property’s market value and could perhaps be used to support other probative evidence tending to show the property’s market value-in-use. By themselves, however, those conditions do little to show a specific value for the property, or even a likely range of values.
32. Finally, Mr. Skidmore pointed to the e-mail from Mr. Autenrieth, in which Mr. Autenrieth claims that the subject house, garage, and driveway are encroaching on Norfolk Southern’s right-of-way and asks Mr. Skidmore to confirm whether that is the case. Mr. Skidmore, however, has done little to investigate whether Norfolk Southern’s claims are valid. And there is no evidence that Norfolk Southern’s claim has been litigated or adjudicated.

33. Mr. Autenrieth did attach two documents, which he described as a “Valuation Map” and a plan for railroad’s expansion of its right of way. And the plan purports to show that structures on the subject property are within Norfolk Southern’s existing right-of-way. But there is nothing to show the origin of those documents or what they are based upon. Similarly, while Petitioner’s Exhibit 4—the aerial photograph with an outline of the subject property superimposed on it—purports to show the subject house and garage extending over the subject property’s lot line, the website from which Mr. Skidmore printed the photograph and overlay disclaims any representations as to the accuracy of the data.
34. On those facts, the Board cannot say that the subject house, garage, or driveway encroach on Norfolk Southern’s right-of-way or that any such encroachment necessarily means that those structures are valueless. In fact, the subject property had some value-in-use on the assessment date, because it was being rented at that time. That being said, the potential cloud on Mr. Skidmore’s title might well have affected the property’s market value-in-use. Again, though, without probative evidence to quantify that effect or to show a likely range of values for the property, Mr. Skidmore failed to make a prima facie case for reducing the subject property’s assessment.

SUMMARY OF FINAL DETERMINATION

35. Because Mr. Skidmore offered no probative evidence to show the subject property’s market value-in-use, or even to show a likely range of values, he failed to meet his burden of proof. The Board therefore finds for the Assessor.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>.