

REPRESENTATIVE FOR PETITIONER:

Milus Skidmore, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Marilyn Meighen, Meighen & Associates, P.C.

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Milus Skidmore,	)	Petition No.:	43-034-08-1-5-00004
	)		
Petitioner,	)	Parcel No.:	1370100010 013-155-008
	)		
v.	)	County:	Kosciusko
	)		
Kosciusko County Assessor,	)	Township:	Harrison
	)		
Respondent.	)	Assessment Year:	2008

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

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**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:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Introduction**

1. Although the Petitioner, Milus Skidmore, claimed that the subject house had major structural problems, he neither described what any of those problems were nor offered probative evidence to quantify the extent to which they affected the property’s market value-in-use. And he failed to explain how the property’s unsuccessful listing and later

sale related to its value as of the relevant valuation date for this appeal. The Board therefore finds for the Assessor.

### **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 lowering the assessment but not to the value that Mr. Skidmore had requested. 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 under 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.<sup>1</sup> The second part of the hearing related to the petition that is the subject of these findings and conclusions. Neither the Board nor the ALJ inspected the subject property.

### **Hearing Facts and Other Matters of Record**

4. The following people were sworn in and testified:  
Milus Skidmore  
  
For the Assessor: Laurie Renier, Kosciusko County Assessor  
Christy Doty, part-time employee of the Assessor  
  
Marilyn Meighen appeared as counsel for the Assessor.
5. Mr. Skidmore submitted the following exhibits, all of which were admitted into evidence except Petitioner's Exhibit 4:  
Petitioner Exhibit 1: MLS listing for the subject property,  
Petitioner Exhibit 2: Subject property record card,  
Petitioner Exhibit 3: Sales disclosure form for the subject property,

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<sup>1</sup> Immediately before the hearing in this case, 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.

Petitioner Exhibit 4: One page of a sales disclosure form for 3688 S. Bruner Road, Warsaw,

Petitioner Exhibit 5: November 9, 2010 letter from Milus Skidmore to Laurie Renier.

6. The Assessor did not offer any exhibits.
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 9224 West State Road 25 in Mentone, Indiana.
9. The PTABOA determined the following values for the subject property:  
Land: \$14,200                      Improvements: \$70,100              Total: \$84,300
10. Mr. Skidmore requested a total assessment of \$24,000.

### **Objection**

11. The Assessor objected to Petitioner's Exhibit 4, a sales disclosure form for 3688 S. Bruner Road, on grounds that her counsel had not received a copy of that exhibit before the hearing.
12. In response, Mr. Skidmore offered a copy of a November 9, 2010 letter that he claimed to have faxed to both the Assessor and her counsel. *Skidmore testimony; Resp't Ex. 5*. The letter says in relevant part:

For both properties we will be using the sales disclosure form for the above properties and 3688 S Bruner Road as well as well as the corresponding property record cards. You have copies of this data. Therefore, it is not included in this exhibit exchange. If you want a copy, please tell me and I will send it to you.

*Pet'r Ex. 5.* The Assessor's counsel denied having received the letter. *Meighen statement.*

13. The Board sustains the Assessor's objection. The Board's procedural rules require each party to provide all other parties with (1) copies of documentary evidence and summaries of statements of testimonial evidence at least five days business days before the Board's hearing, and (2) a list of witnesses and exhibits at least 15 business days before the hearing. 52 IAC 2-7-1(b). From the wording of the letter, it appears that the letter was Mr. Skidmore's first notice to the Assessor that he intended to offer the sales disclosure form for 3688 S Bruner Road as an exhibit. And that was less than 15 business days before the hearing. Thus, even if the Assessor's counsel of record had received a copy of the letter, it does not appear that Mr. Skidmore provided timely notice that he would offer the sales disclosure statement as an exhibit. Also, Mr. Skidmore did not say what date the sales disclosure form had been filed or otherwise identify the sale to which it applied. Under those circumstances, simply telling the Assessor that she had the data instead of providing a copy of the what he intended to offer at the hearing did not meet his obligation to provide copies of his documentary evidence at least five business days before the Board's hearing.
14. In any event, the Board explains below why the excluded exhibit would not have helped Mr. Skidmore even if that exhibit had been admitted.

#### **Administrative Review and the Parties' Burdens**

15. 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).

16. 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”).
17. 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**

18. The subject property’s assessment was too high in light of the house’s “structural problems from the roof to the foundation, to the plumbing, to everything.” *Skidmore testimony*. Mr. Skidmore bought the property at tax sale for “a couple thousand” dollars. *Skidmore testimony*. According to Mr. Skidmore, the fact that the former owner walked away from the property and let it be sold at tax sale shows how many problems the property had. *Id.*
19. After owning the subject property for several years and constantly putting money into it, Mr. Skidmore decided to sell it. On April 29, 2008, he listed the subject property in the multiple listing service (“MLS”) for \$45,000. *Skidmore testimony; Pet’r Ex. 1*. He received offers that were contingent on the buyers obtaining financing. Unfortunately, the property repeatedly failed inspection, so the prospective buyers could not get financing. *See id.* The listing expired after 367 days. *Id.* The highest cash offer that Mr. Skidmore received was for \$24,000. *Id.* Because a property is valued at what a person will sell it for and another will pay for it, the subject property should be assessed for \$24,000. *Id.*

20. Mr. Skidmore eventually sold the subject property for \$15,000 in December 2009. *Skidmore testimony; Pet'r Ex. 3.* On cross examination, Mr. Skidmore admitted that there had been a fire at the house before the sale. In fact, in the portion of the sales disclosure form calling for the county assessor to list "additional special circumstances relating to validation of sale," someone wrote, "house burned and is now being sold." *Pet'r Ex. 3.*
21. According to Mr. Skidmore, several of his properties in Kosciusko County have been over assessed. *Skidmore testimony.* He therefore asked that the subject property be fairly and accurately assessed.

### **B. The Assessor's Contentions**

22. Mr. Skidmore has a two-prong burden of proof: first, he must show the subject property's assessment was wrong, and second, he must prove what the property's market value-in-use should be. *Meighen argument.* Mr. Skidmore failed to meet his burden. He simply made conclusory remarks about the property's condition without offering any evidence to support those claims. *Id.*
23. Although Mr. Skidmore offered a MLS listing for the property, that listing did not begin until after the assessment date at issue in this appeal. *Meighen argument.* And the disclosure form from the 2009 sale shows that, even after a fire, the property was still worth \$15,000. *Id.; Pet'r Ex. 3.*
24. Because Mr. Skidmore did not make a prima facie case, the Assessor did not offer any evidence of her own. *Meighen argument.*

### **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 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 his 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 failed to offer probative evidence to rebut the presumption that the subject property was accurately assessed. Mr. Skidmore conclusorily testified that the subject property had "major flaws." *Skidmore testimony*. But aside from asserting that those flaws included "structural problems from the roof to the foundation, to the plumbing, to everything," he did not even attempt to explain what those flaws were. *Id.* Thus, Mr. Skidmore's testimony was too vague and conclusory to carry any probative weight. Even

if the Board were to find that Mr. Skidmore's testimony was sufficiently specific to carry at least some weight, it would not suffice to make a prima facie case. The conditions to which Mr. Skidmore referred might be used to support other probative evidence tending to show the property's market value-in-use. By themselves, however, they do little to show a specific value for the property, or even a likely range of values.

29. Mr. Skidmore also offered evidence to show that the subject property was listed for sale for more than a year. In some circumstances, unsuccessful attempts to sell a property may tend to show that the property is worth no more than its list price. Like other market evidence, however, the party offering that evidence must explain how it relates to the property's value as of the relevant valuation date. Here, the property was not listed until more than 16 months after the January 1, 2007 valuation date at issue in this appeal. And Mr. Skidmore did not even attempt to explain how that listing related to the property's value as of January 1, 2007. Mr. Skidmore's evidence about the property's listing and the cash offer for \$24,000 therefore lacks probative value.
30. The same is true for the property's \$15,000 sale price from December 2009. Even if Mr. Skidmore had explained how that sale price related to the subject property's value as of a date almost three years earlier, which he did not, he acknowledged that the house had been damaged in a fire. Without knowing when that fire happened, the Board cannot infer that the property was in the same condition on the sale date as it was on the assessment date.
31. Finally, the Board notes that Mr. Skidmore offered a sales disclosure form for a property he owned at 3688 S. Bruner Road in Warsaw. *Pet'r Ex. 4*. The Board has excluded that exhibit in response to the Assessor's objection. Even if the Board had admitted that exhibit, it would not have helped Mr. Skidmore. Mr. Skidmore made no attempt to compare the Bruner Road property to the subject property. He merely pointed out that the Bruner Board property had been assessed for \$35,000 but that it had only sold for \$5,000. The fact that one property might have been assessed for more than its market

value-in-use, however, does nothing to show the subject property's market value-in-use. Nor, by itself, does it make a case for relief based on a lack of uniformity and equality in assessments.

#### **SUMMARY OF FINAL DETERMINATION**

32. Because Mr. Skidmore offered no probative market-based evidence to rebut the presumption that the subject property's assessment was accurate, he failed to make a prima facie case. 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.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>>.