REPRESENTATIVE FOR THE PETITIONER:
Abraham M. Benson, Faegre Drinker Biddle & Reath LLP
David A. Suess, Faegre Drinker Biddle & Reath LLP

REPRESENTATIVE FOR THE RESPONDENT:
Eric Grossman, Tippecanoe County Assessor

BEFORE THE INDIANA BOARD OF TAX REVIEW

Majestic Properties LLC	)	Petition Nos.: 79-023-16-1-5-01460-17
	)	79-023-17-1-5-02199-17
Petitioner,	)	
	)	Parcel No.: 79-06-01-100-008.000-023
	)	
v.	)	County: Tippecanoe
	)	
Tippecanoe County Assessor,	)	Township: Wabash
	)	
Respondent.	)	Assessment Years: 2016 & 2017

March 31, 2025

ORDER ON REMAND AND FINAL DETERMINATION

This matter having been appealed to the Tax Court and remanded to the Indiana Board of Tax Review ("Board"), we issue this Order on Remand and Final Determination, concluding as follows:

INTRODUCTION

1. Majestic Properties, LLC ("Taxpayer") appealed the assessment of a single-family residential property in Lafayette. Majestic and the Tippecanoe County Assessor ("Assessor") presented the opinions of three expert appraisers, Dale Webster ("Webster"), Deborah Lewellen ("Lewellen"), and John Sprunger ("Sprunger"). The Taxpayer's appraiser, Webster, relied entirely on the income approach. The Assessor's

appraisers, Lewellen and Sprunger, in separate appraisals, relied almost exclusively on the sales comparison approach. After concluding that both parties established prima facie cases as to the value of the property, we found Webster's analysis less supported and less credible than the opinions provided by Lewellen and Sprunger. Though these appraisals came in higher, based on the Assessor' request, we left the assessments unchanged.

2. Before us and on appeal, the Taxpayer argued that the Assessor's appraisals conflicted with Indiana law because they considered evidence of owner-occupied sales in valuing a residential rental property. Finding that the Taxpayer failed to show the property was more suitable as a rental property, we rejected this claim as contrary to clear statutory language and precedent. The Tax Court reversed, holding that we failed to properly decipher the "current use" of a house. The Tax Court announced a new test and remanded for us to apply it to the facts in the record. Based on our analysis, we find a house has substantial overlapping utility between single family homestead and rental uses, and we reach the same results as in our original Final Determination.

PROCEDURAL HISTORY

3. Majestic appealed the assessments of 52 properties, including the 2016 and 2017 assessments for the subject property located at 1902 Abnaki Drive in West Lafayette. The parties submitted an appeal management plan that stipulated trending factors for four groups based on the results of a representative appeal. The subject property is one of the representative properties. On July 27-28, 2021, Jennifer Thuma, the Board's Administrative Law Judge ("ALJ"), held a hearing on Majestic's petitions. The Board issued Final Determinations in each of the groups on April 26, 2022. Majestic appealed only this representative case to the Tax Court. Two years later the Tax Court issued its opinion on August 9, 2024. On January 2, 2025, the Board was fully briefed.[1] Neither party requested a hearing or oral argument.

[1] Upon remand, we requested the parties to submit briefs, and eventually both parties did so. The Taxpayer moved to strike the entirety of the Assessor's brief as addressing impertinent and irrelevant issues, evidence, and arguments. We note that both briefs strayed beyond the scope of the issue on remand. The motion to strike is denied.

FINDINGS OF FACT

4. We incorporate our findings of fact from our original Final Determination. The subject property is a ranch-style tract house with an attached garage. It is undisputed that the Taxpayer leased the subject property to a tenant as a single-family residence on the relevant assessment dates. We find that the Taxpayer used the property for single-family residential purposes by providing housing to its tenant in exchange for rent.

5. No evidence establishes that the subject property's location, condition, or amenities make it more suitable for rental rather than homestead use, and consequently, we find that the subject property competes within the general market for single-family homes. If the Taxpayer were to sell the subject property or replace it with a comparable home in the same neighborhood, the price would reflect the prevalence of owner-occupied properties within the subject property's market.

BURDEN OF PROOF

6. As concluded in our original Final Determination, the Taxpayer has the burden of proof.

ANALYSIS

A. STANDARD FOR CHALLENGING AN ASSESSMENT

7. The "overarching goal" of Indiana's property tax appeal system "is to measure a property's value using objectively verifiable data." *Westfield Golf Practice Ctr. v. Wash. Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007).

8. Generally, an assessment issued by an assessing official is presumed to be correct for purposes of an appeal. 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. "To rebut the presumption that an assessment is correct, a taxpayer must make a prima facie case by presenting probative evidence to the Indiana Board." *Wigwam Holdings v. Madison Cnty. Assessor*, 125 N.E.3d 7, 12 (Ind. Tax Ct. 2019). The taxpayer must prove "that the assessment was incorrect." *Abraytis v. Porter Cnty. Assessor*, 220 N.E.3d 77, 80 (Ind. Tax Ct. 2023). Additionally, the taxpayer must make a showing sufficient to "establish a

more reasonable value." *Lake Cnty. Assessor v. O'Day Holdings*, 249 N.E.3d 677 (Ind. Tax Ct. 2024).

9. If a party succeeds in making a prima facie case, then the Board proceeds to "weigh the evidence before it and determine the market value-in-use of the subject property." *Marion Cnty. Assessor v. Square 74 Assocs.*, 228 N.E.3d 542, 545 (Ind. Tax Ct. 2024).

10. The Tax Court has long held that "one of the most effective methods for a taxpayer to rebut the presumption of correctness afforded to an assessment made pursuant to Indiana's assessing guidelines is through the presentation of a market value-in-use appraisal, completed in conformance with USPAP." *Meijer Stores v. Smith*, 926 N.E.2d 1134, 1139 (Ind. Tax Ct. 2010). An appraisal from a qualified appraiser is sufficient to make a prima facie case unless shown to be "inconsistent with the evidence or the requirements of the law." *Marion Cnty. Assessor v. Kohl's Indiana*, 179 N.E.3d 1, 15 (Ind. Ct. App. 2021).

11. If one or both parties have presented a prima facie case, then the Board proceeds to "weigh the evidence before it and determine the market value-in-use of the subject property." *Square 74 Assocs.*, 228 N.E 3d at 546.

B. TRUE TAX VALUE AND CURRENT USE

12. The question before the Board is whether Indiana's concept of "current use" prohibits the consideration of owner-occupied sales in valuing rental properties. Neither the Department of Local Government Finance ("DLGF") nor the Appraisal Institute classify property uses based on rental versus owner-occupied status.[2] If Indiana law bars the consideration of owner-occupied properties in valuing residential rentals, it is not based on any express statute or regulation, nor any generally accepted appraisal principle.

[2] For DLGF classifications, see 2011 REAL PROPERTY ASSESSMENT MANUAL at 16-20. For the Appraisal Institute, see *https://www.appraisalinstitute.org/getmedia/1b78c6ae-7302-476b-9f03-3bbc3d2a8a43/pucs* (last visited 2/14/2025). The Board takes official notice of this publication by the Appraisal Institute pursuant to 52 IAC 4-6-11(a)(4).

13. Indeed, not even the Taxpayer argues that the statute defining "true tax value" (Ind. Code § 6-1.1-31-5) or the DLGF definition of market value-in-use (2011 REAL PROPERTY ASSESSMENT MANUAL at 2) create two discrete classes separating leased and owner-occupied properties. Rather, the Taxpayer seeks to create a special rule applicable solely to residential properties based on an *implied* definition of "current use" found somewhere in the penumbras and emanations of the residential property assessment statute (I.C. § 6-1.1-4-39) and the graduated tax caps established in the Indiana Constitution (Ind. Const. Art. X § 1). *Remand Br. Pet'r. Majestic Properties* at 2.

14. The Tax Court did not adopt the Taxpayer's proposed interpretation in its opinion. But, because the Tax Court held open the possibility that discrete classes of "current use" might be based on rental or owner-occupancy status, we must apply the Tax Court's new test for determining "current use" by looking to "utility." We start with an overview of Indiana's valuation standard for true tax value.

15. Indiana assesses real property based on its "true tax value." Ind. Code § 6-1.1-31-5(a); Ind. Code § 6-1.1-31-6(f). "True tax value" does **not** mean either "fair market value" or "the value of the property to the user." Ind. Code § 6-1.1-31-6(c) and (e). Subject to these two directives, the Legislature delegated the crafting of the definition of true tax value to the DLGF. The DLGF defined "true tax value" as "[t]he market value-in-use of a property for its *current use*, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (emphasis added).

16. In our reading of this definition, the first clause ("market value-in-use") is the object of the third clause ("as reflected by the utility received by the owner"). The DLGF regulation simply states that the true tax value of a property is measured by the utility received from it. This is a boilerplate notion of value: the DLGF defines "Property Wealth" as "the abundance of economic *utility* realized from property rights." *Id.* at 6 (emphasis added).

17. The second clause in the DLGF regulation, ("for its current use"), is an independent clause that prohibits valuing a *potential use* that is inconsistent with the property's *actual use*. From this standpoint, the "current use" clause applies as a limiting factor only in certain circumstances. True tax value is always based on value as measured by utility.

18. This construction is premised on our understanding of the Legislature's prohibition of "fair market value" as a rejection of "highest and best use." In accordance with that directive, the DLGF included the phrase "for its current use" as *a rejection of highest and best use*. Under basic appraisal theory, the incorporation of the term "use" is what distinguishes Indiana's valuation system from a true fair market value system.[3]

19. The DLGF describes utility as "*the price* at which the buyer would purchase the real property for a continuation of use of the property for its current use." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (emphasis added). Paraphrasing the DLGF regulation, the Tax Court has stated:

> "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 . . . how much utility must be replaced to induce the owner to abandon the property.'"

Stinson v. Trimas Fasteners, 923 N.E.2d 496, 497 (Ind. Tax Ct. 2010) (citing the Manual) (quotations and brackets in the original).[4] Thus, Indiana law has construed "utility" in terms of *price*.

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[3] The Indiana Supreme Court described this concept in its seminal *Town of St. John* decision:

> Focusing upon the taxpayer's *actual use* of land and improvements, rather than the possible uses which potential purchasers may choose, is an altogether appropriate way to evaluate property wealth for the purpose of assessment and taxation under the Property Taxation Clause. We find that property valuation for assessment based upon *value in use* is a reasonable measure of property wealth.

State Bd. of Tax Comm'rs v. Town of St. John, 702 N.E.2d 1034, 1042 (Ind. 1998) (emphasis added). The DLGF defines market value-in-use as "Value-in-Use" and as "Synonymous with Use Value." 2011 REAL PROPERTY ASSESSMENT MANUAL at 6. And in turn, DLGF has defined both "use value" and "value-in-use," as "The value of property for a specified use," "The value a specific property has for a specific use" and "Synonymous with Use Value and Market Value-in-Use." *Id.* at 8.

[4] *See also Todd S. v. Wash. Twp. Assessor*, 901 N.E.2d 1180, 1182, (Ind. Tax Ct. 2009) (holding that 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'").

20. Sale prices encapsulate utility unless the sales "are not representative of the utility to the owner." *Id.* 2011 REAL PROPERTY ASSESSMENT MANUAL at 2. Consequently, "[i]n markets where property types are frequently exchanged and used by both buyer and seller for the same general purpose, *a sale will be representative of utility* and market value-in-use will equal value-in-exchange." *Grant County Assessor v. Kerasotes Showplace Theatres*, 955 N.E.2d 876, 878 n.3 (Ind. Tax Ct. 2011) (emphasis added). The caveat is that "the price" must reflect "a continuation of use of the property for its current use." *Bougie v. Chapman*, 244 N.E.3d 987, 992 (Ind. Tax Ct. 2024) (citing the Manual).

21. Whether or not a value represents a "continuation of use" has usually been addressed by the Tax Court in the context of highest and best use. "'*[W]hen a property's current use is consistent with its highest and best use*[] and there are regular exchanges within its market so that ask and offer prices converge, a property's market value-in-use will equal its market value because the sales price fully captures the property's utility.'" *Howard Cnty. Assessor v. Kohl's Indiana*, 57 N.E.3d 913, 916 (Ind. Tax Ct. 2016) (emphasis added).[5] Conversely, "'*when a property's current use is inconsistent with its highest and best use*, then market value-in-use will not equal market value because the sales price will not reflect the property's utility.'" *Id.* (emphasis added); *see also Millennium Real Estate Inv. v. Assessor Benton Cnty.*, 979 N.E.2d 192, 196 (Ind. Tax Ct. 2012).

22. When a property's use is inconsistent with its highest and best use, it will be labeled a "misimprovement," and the assessor may apply "'[a] decrease indicating a lot that has been valued higher than its current use.'" *Indianapolis Racquet Club, Inc. v. Marion Cnty. Assesso*r, 15 N.E.3d 150, 156 (Ind. Tax Ct. 2014) (Citing the DLGF Guidelines). The most common examples are "1) properties 'where owners are motivated by non-market factors such as the maintenance of a farming lifestyle even in the face of a higher

[5] *See also Southlake Ind. v. Lake Cnty. Assessor*, 181 N.E.3d 484, 487 (Ind. Tax Ct. 2021) 2021 (holding that a "property's market value-in-use is equivalent to its market value when the property's *current use is consistent with its highest and best use*, and there are regular exchanges within its market so that ask and offer prices converge.") (emphasis added).

use value for some other purpose', or 2) special purpose properties." *Wigwam Holdings*, 125 N.E.3d at 13 (citing the Manual).[6]

23. Over the decades, the Tax Court "has repeatedly interpreted the meaning of 'current use' broadly." *Kohl's Indiana LP*, 57 N.E.3d at 918. Properties used for "the *same general purpose*," will reflect the same "utility" and "market value-in-use will equal value-in-exchange." *Kerasotes Showplace Theatres*, 955 N.E.2d at 878 n.3 (emphasis added).[7] Market value-in-use "is the value of a property for its use, not the value of its use' because Indiana's property tax system taxes the value of real property, *not business value, investment value, or the value of contractual rights*." *Lowe's Home Ctrs. v. Monroe Cnty. Assessor*, 160 N.E.3d 263, 270 (Ind. Tax Ct. 2020) (emphasis added); *see also Switz. Cnty. Assessor v. Belterra Resort Ind.*, 101 N.E.3d 895, 905 (Ind. Tax Ct. 2018).

24. Consequently, the Tax Court "has repeatedly rejected the contention . . . that a property's market value-in-use can only be measured in relation to other identical users and not in relation to participants within the commercial/retail market generally." *Marion County Assessor v. Wash. Square Mall*, 2015 46 N.E.3d 1, 9-10 (Ind, Tax Ct. 2015). When "both Appraisals provide that the industrial use of [the taxpayer's] property is consistent with its highest and best use as improved," the Board does not err in assigning more weight to the appraisal based on market value. *Millennium Real Estate Inv.*, 979 N.E.2d at 196. In

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[6] The Tax Court has noted that a special purpose property is:

> "[a] limited-market property with unique physical design, special construction materials, or a layout that restricts its utility to the use for which it was built." Guidelines, Bk. 2, App. F at 17. Generally, a sale will not be representative of utility with respect to a special-purpose property.

Stinson, 923 N.E.2d at 501 (quotations and brackets in original). This is a circumstance when market value-in-use requires a property to be assessed *higher* than reflected in sales prices.

[7] The Tax Court's opinion in this matter addressed this language, as cited in *Stinson (Trimas)*, 923 N.E.2d at 501 n.10, as not "establishing a test for determining current use," but rather articulating "a presumption that may apply when two uses are similar for assessment purposes." *Majestic Props. v. Tippecanoe Cnty. Assessor*, 241 N.E.3d 642, 646 (Ind. Tax Ct. 2024). Rather than rejecting *Stinson*, the Tax Court stated that, as precedent, it "does not require a different conclusion." *Id.*

appeals to the Tax Court, taxpayers have more frequently argued the Board erred in *too narrowly* construing comparable uses.[8]

25. The DLGF presumes that all "[t]hree standard approaches are used to determine market value-in-use," and that "[e]ach of these approaches is appropriate for determining the true tax value of property under the definition." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2. Thus, the definition of market value-in-use does not prescribe a particular appraisal approach for a particular type of property or property use. The Tax Court has expressly rejected the general argument that the value of a residential "rental property" must be "derived from a variation of the income approach." *Gillette v. Brown Cnty. Assessor*, 54 N.E.3d 454, 456 (Ind. Tax Ct. 2016).

26. In a related concept, the *comparability* of two competing uses is most often identified through considering a property's market or submarket. This is called market segmentation, and the statute defining true tax value specifically addresses this process:

> With respect to the assessment of an improved property, a valuation does not reflect the true tax value of the improved property if the purportedly comparable sale properties supporting the valuation *have a different market or submarket than the current use* of the improved property, based on a market segmentation analysis. Any market segmentation analysis must be conducted in conformity with generally accepted appraisal principles and is not limited to the categories of markets and submarkets enumerated in the rules or guidance materials adopted by the department of local government finance.

I.C. § 6-1.1-31-6(d) (emphasis added). Market segmentation is a basic tenet of appraisal theory and can identify the comparability of two uses.[9]

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[8] *See Lowe's Home Ctrs. v. Monroe Cnty. Assessor*, 160 N.E.3d 263, 270 (Ind. Tax Ct. 2020) (taxpayer arguing that "the Indiana Board's steadfast focus on the lessees' identities rather than the general uses of the property was in direct contravention of Indiana Code § 6-1.1-31-6(e), the definition of market value-in-use, and this Court's case law").

[9] Challenges to "current use" should be distinguished from challenges to "comparable use." A dispute of "current use" addresses whether the assessed use is so different from the actual use that it violates the valuation standard of market value-in-use. A dispute over "comparable use" addresses the persuasiveness of the evidence. For example, a former fast-food restaurant used as a pawn shop must not be assessed as if its "current use" was still a restaurant, and such an appraisal would not be probative. In contrast, whether the pawn shop should be valued only on evidence of other former restaurants converted to retail use is a question of the credibility of the appraiser's opinion.

C. THE TAX COURT'S INSTRUCTIONS FOR REMAND

27. After summarizing the general standard of market value-in-use, the Tax Court's opinion announced a new test for determining current use:

> Under the regulations, the current use of a property is identified by looking to "the utility received by the owner or by a similar user, from the property." [citing the Manual]. To determine whether *two discrete uses* are equivalent for purposes of assessment, the fact-finder must identify and compare the utility received by owners and similarly situated users. This comparison should be based on evidence for each identified use.

Majestic Props., LLC v. Tippecanoe Cnty. Assessor, 241 N.E.3d 642, 645 (Ind. Tax Ct. 2024) (emphasis added). This is the first time the Tax Court has interpreted the utility clause of the definition of market value-in-use ("utility received by the owner") to apply to the current use clause ("for its current use"). As noted above, we previously understood "utility" to reflect the subject property's *value as a price* and "current use" to be a prohibition on valuing potential rather than actual uses.

28. The Tax Court referenced our conclusions that "single-family homes like the subject property 'frequently exchange for the same general purpose," and "a more narrow conception of use would risk violating the statutory prohibition against valuing a property for a specific user," but rejected them. Reversing, it held that:

> The Indiana Board did not examine the utility received by Majestic or other similar users of single-family homes as required by the regulations.

Id. But our error was only in our analysis, not necessarily our conclusion. The Tax Court conceded that "single-family homes used as rental and owner-occupied residences are frequently exchanged in the market [and that] may indicate overlap in the utility received by owners for different uses." *Id.*

29. Thus, the Tax Court did not create a presumption, much less a per se rule, that rental use and homestead use are different "current uses" of residential property. It expressly left open the issue:

> Examination of the utility received by landlords and owner-occupiers (e.g., shelter, foregone rent, rental revenues, or investment value) *may reveal*

> differences in the valuation each would attach to a single-family home resulting from differences in the utility received by each.

Id. (emphasis added). This is consistent with the clear declaration at the beginning of the Tax Court's opinion that "the Court does not reach the question presented by the taxpayer," i.e. whether owner-occupied properties and landlord-owned properties have "two uses [which] are distinct and represent different market values." *Id.* at 643.

30. Before analyzing utility, we address the main thrust of the Taxpayer's brief. The Taxpayer argues a broad notion of "current use" should apply to all "other classes of property (e.g., Commercial/Retail, Industrial)." *Remand Br. Pet'r. Majestic Properties* at 8. The Taxpayer asks us to find that the "Indiana Constitution and the Indiana Code provide different rules governing residential property." *Id.* The Taxpayer even suggests the Tax Court's analysis of current use "is not specifically relevant here." *Id.* at 9. This is not well taken.

31. First, the Taxpayer's argument is entirely contrary to the Tax Court's opinion. The Tax Court expressly rejected a bright-line rule and directed us to apply a new test for current use, on a case-by-case basis, through an examination of utility. We are not at liberty to ignore the Tax Court's directives on remand.

32. Second, we can find no reasonable interpretation of the Indiana Constitution or the residential property assessment statute that would support a special definition of "current use" that applies solely to landlords.[10] Had the Legislature intended to prohibit the sales comparison approach in appeals of residential rentals, it could have written such a clause into the statute. The Legislature did not, and we will not pretend it did.

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[10] The Taxpayer cites to subsection I.C. § 6-1.1-4-39(a), which applies only to multi-tenant properties ("more than four (4) rental units") and has no application to the subject property. Subsection (b), which applies to "at least one (1) and not more than four (4) rental units," does not create any rule applicable solely to single-family rentals. As for the Constitution's graduated tax cap structure (Ind. Const. Art. X § 1), we find no reason to believe that a provision related to *tax rates* has any application *to valuation and assessment*. Nor can we logically find that a constitutional provision that taxes rentals *higher* than homesteads compels a standard where rentals must be *assessed lower* than homesteads.

D. The Taxpayer Has Failed to Present Evidence that Establishes Two Discrete Uses Between the Subject Property and a Homestead Property

33. We start with the premise that we are considering the utility of the use of the property by *the person in possession* of the property. An owner is not actually using the property if it is leased. The more narrowly we inquire into an owner's purposes, and consequently expand the categories of classes of uses, the more abstract and subjective the valuations:

- Does the "use" of a vacant home have any utility at all?
- Does a homeowner who uses a lakehouse year-round receive more utility than the homeowner next door who only uses it a few weeks out of the year?
- If an owner lets a family member use a house rent-free, how does that differ from the utility received by a conventional landlord?

These potential discrete classes of use might cause identical homes within the same neighborhood to have very different assessments based on factors entirely irrelevant to the *objective value* of the real estate. We will not lose sight of the forest for the trees.

34. The Taxpayer seeks to bar the Board from considering the market data of owner-occupied sales in valuing rental properties. As a practical matter, this would result in two identical houses side-by-side, one owned by a large residential landlord, and the other owned by the homeowner, being assessed differently based on ownership alone. We are mindful that property assessments must be uniform and equal. Ind. Const. Art. X § 1. Our entire property tax system will be compromised if the Board is arbitrarily excluded from considering relevant, objective market evidence in valuing a property.

35. The narrow issue here is whether the Taxpayer has sufficiently identified evidence of the utility of the competing uses (i.e. providing housing to an owner vs. providing housing to a tenant) to support a finding of two discrete classes of "current use." We begin by comparing the subject property's current use with its highest and best use. Webster, the Taxpayer's appraiser, described the "highest and best use" of the subject property as "Single Family Residential." *Webster Appraisal* at 10, 12, 26-27; *Tr.* at 31. None of the expert witnesses testified that the subject property's current use differs from its highest

and best use. As the subject property is currently used as a single-family residence, we find no indication of two discrete classes based on a highest and best use analysis.

36. We next look to market segmentation to determine whether the subject property has a different submarket than owner-occupied properties. No evidence establishes that any particular characteristic of the subject property distinguishes it from owner-occupied properties. The Taxpayer has not argued, much less proven, that the subject property's location, condition, or amenities make it more suitable for rental use or more likely to be purchased for rental rather than homestead use. Webster's appraisal assignment was premised on rental use and largely confined to a particular landlord's business model, and we do not find that his testimony and evidence objectively and credibly establish that the market for the subject property excludes owner-occupied properties.

37. Now we turn to the Tax Court's new test and consider the abstract economic utility of the two competing uses. The Tax Court directs us to consider whether the utility of the two uses is "discrete" or "overlapping." The Assessor's brief offers no analysis, stating that "the IBTR did not examine or weigh the utility received by Majestic or other similar users of single-family homes because none was presented by either party." *Remand Br. Tippecanoe Cnty. Assessor* at 4. This is accurate—neither party had interpreted the DLGF regulation to require an inquiry into utility to determine current use—but this is unresponsive to the Tax Court's directions on remand. However, we do not believe it is the Assessor's burden to prove the subject property's "current use" in terms of utility.[11] The Taxpayer is challenging the validity of the Assessor's USPAP-compliant appraisals as contrary to law, and we place the burden on the Taxpayer to establish that the appraisals fail to value the subject property's "current use" as a matter of fact and law.

[11] While the Tax Court states that "the fact-finder must identify and compare the utility" and faults the Board for failing to "examine the utility," we interpret the opinion as merely setting forth the test for "current use." *Majestic Props.*, 241 N.E.3d at 645. We presume the burden remains on the parties to present evidence of utility and argue how the law should be applied to the facts in the record. *See, Jamestown Homes of Mishawaka v. St. Joseph Cnty. Assessor*, 914 N.E.2d 13, 15 (Ind. Tax. Ct. 2009) (holding that "a taxpayer has a duty to walk the Indiana Board through every element of its analysis; it cannot assume the evidence speaks for itself").

38. The Taxpayer in its brief identified several utilities that we group as follows:[12]

- The subject property was used as a rental. *Remand Br. of Pet'r. Majestic Properties* at 4.
- There is a consensus that "all things considered the value is less" in rentals than homesteads. *Id.* at 4-5.
- Income potential is an investment characteristic, and purchasers for rental and purchasers for homestead use have different motivations. *Id.* at 5, 6.
- Landlords have less favorable property tax liabilities and a different expense structure. *Id.* at 4, 5, 6, 7.

39. Absent from the Taxpayer's brief is a discussion of "shelter," a utility identified by the Tax Court in its opinion. This is a fatal error in the Taxpayer's analysis of current use. The primary use and utility of a residential property lies in providing shelter. A party cannot establish two discrete uses when it fails to identify and address the most fundamental utility of both proposed classes. We find an obvious substantial overlap in utility between shelter provided to a tenant and shelter provided to a homeowner.

40. As for the subject property being a rental, the Tax Court has rejected a per se rule that rental use, standing alone, establishes a discrete use distinct from homestead use. As noted above, neither the DLGF nor the Appraisal Institute classify properties based on the status of leased versus owner-occupied.

41. Next, we consider the vague consensus that "all things considered the value is less" in rentals than owner-occupied. This is a conclusory generalization not based on any empirical evidence. Overall, rentals are probably less well-maintained and have fewer upgrades than homesteads. But, as noted in our analysis of market segmentation, the Taxpayer has failed to show that the subject property's utility in terms of condition, amenities, or location render it dissimilar to the utility of a typical homestead.

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[12] We reject the Taxpayer's claim that the Assessor made an admission regarding discrete classes of utility. The Assessor's commentary at the original trial regarding whether the Lewellen and Sprunger appraisals measured market value, rather than market value-in-use, is vague and was not directed at the question of utility as framed by the Tax Court.

42. In regard to the utility of "investment value," we conclude that both landlords and homeowners purchase single-family homes as a long-term investment, and we find a substantial overlap in utility. The landlord's expectation of short-term profits is not shared by a homeowner. However, the Tax Court identified "foregone rent" as a measure of utility that inures to a homeowner. The Taxpayer has failed to identify this utility, which may indicate that the utility of foregone rent to a homeowner is a short-term benefit that overlaps with a landlord's utility of short-term rent. We find and conclude that investment value does not clearly establish two discrete classes.

43. As for expenses, we find a large degree of overlap in expenditures for landlords and homeowners: insurance, maintenance, repairs, HOA dues, lawn care, etc. To the extent the expenses are greater for a landlord due to tax structure and other management costs, those are simply factors related to the landlord's profits from a rental. We do not find and conclude that landlord expenses, in isolation of profits, are a measure of utility.

44. Having reviewed the utilities identified by the Taxpayer (and the Tax Court), we find the Taxpayer has failed to establish that the subject property, as a rental, occupies a discrete class from homestead properties based on a comparison of utility. Rather, we find a substantial overlap in the utility of rental and homestead uses. Accordingly, we conclude that the Taxpayer has not established that the Sprunger and Lewellen appraisals violated market value-in-use by relying on owner-occupied comparable sales. We reject the Taxpayer's arguments that the Assessor failed to make a prima facie case as to the true tax value of the subject property.

45. As in our original Final Determination, we conclude that both parties made prima facie cases. In weighing the evidence, as finder of fact, for the reasons set forth in our original determination, we find by a preponderance of the evidence that Webster offered the least credible valuation.

CONCLUSION

46. After examining the utilities of rental and homestead uses, we conclude that the Taxpayer has failed to establish discrete classes of "current use." We reject the Taxpayer challenges to the Assessor's evidence, and we find both Sprunger and Lewellen presented a more credible opinion of value than did Webster. As in our Final Determination, we order the 2016 assessment of $85,910 remain unchanged and apply a stipulated trending factor for the 2017 assessment to arrive at $86,800.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.