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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Sharon L. Allport,	)	Petition No:	25-010-06-1-5-00002
	)		
Petitioner	)	Parcel No:	010-119422-00
	)		
v.	)		
	)	County:	Fulton
Fulton County Assessor,	)	Township:	Rochester
	)		
Respondent.	)	Assessment Year:	2006
	)		

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Appeal from the Final Determination of  
Fulton Property Tax Assessment Board of Appeals

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**February 2, 2009**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the 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**

**PROCEDURAL HISTORY**

1. Pursuant to Ind. Code § 6-1.1-15-1, Sharon Allport (the Petitioner) filed a Form 131 Petition for Review of Assessment on May 28, 2008, petitioning the Board to conduct an administrative review of the above petition. The Fulton County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination on May 2, 2008.

## **HEARING FACTS AND OTHER MATTERS OF RECORD**

2. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on November 6, 2008, in Rochester, Indiana.

3. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Sharon L. Allport, Property Owner  
Rod Kerr, Witness

For the Respondent:

Susan Carr, Fulton County Assessor  
Pamela J. Fish, PTABOA Member  
Dudley Scheumann, Appraisal Research Corporation

4. The Petitioner presented the following evidence:

Petitioner Exhibit 1 – Seven exterior photographs of the property,  
Petitioner Exhibit 2 – Nine aerial maps of the area,  
Petitioner Exhibit 3 – Property record card for 2916 South Country Club Drive,  
Petitioner Exhibit 4 – Property record card for 2924 Country Club Drive South,  
Petitioner Exhibit 5 – Property record card for 3008 Country Club Drive South,  
Petitioner Exhibit 6 – Property record card for 3012 Country Club Drive South,  
Petitioner Exhibit 7 – Property record card for 2918 South Country Club Drive,  
Petitioner Exhibit 8 – Property record card for 2918 Country Club Drive South,  
Petitioner Exhibit 9 – Property record card for 2920 Country Club Drive South,  
Petitioner Exhibit 10 – Property record card for 2922 Country Club Drive South,  
Petitioner Exhibit 11 – 2006 payable 2007 tax statement for 2916 Country Club Drive South,  
Petitioner Exhibit 12 – State of Indiana Board of Tax Commissioners, Findings of Fact and Conclusions of Law for Petition No. 25-010-98-1-5-00003, for the 1998 assessment year.

5. The Respondent presented the following evidence:

- Respondent Exhibit 1 – Notification of Final Assessment Determination – Form 115, dated May 2, 2008,
- Respondent Exhibit 2 – Respondent’s history, analysis and summary of the property on appeal,
- Respondent Exhibit 3 – Property record card and exterior photograph for 2916 South Country Club Drive,
- Respondent Exhibit 4 – Property record card, exterior photograph and sales disclosure form for 2918 Country Club Drive South,
- Respondent Exhibit 5 – Property record card, exterior photograph, sales disclosure form and plat map for 2818 Manitou Park Drive,
- Respondent Exhibit 6 – Property record card, exterior photograph, sales disclosure form and plat map for 2922 East Country Club Drive,
- Respondent Exhibit 7 – Property record card, exterior photograph, sales disclosure form and plat map for 2101 West Side Road,
- Respondent Exhibit 8 – Property record card, exterior photograph, sales disclosure form and plat map for 1903 Boulevard Street,
- Respondent Exhibit 9 – Property record card, exterior photograph, sales disclosure form and plat map for 2121 Poets Drive,
- Respondent Exhibit 10 – Property record card, exterior photograph, sales disclosure form and plat map for 2613 Barrett Road,
- Respondent Exhibit 11 – Property record card, exterior photograph, sales disclosure form and plat map for 2803 Barrett Road,
- Respondent Exhibit 12 – Two plat maps showing comparable properties in the area,
- Respondent Exhibit 13 – Ten exterior photographs of the area,
- Respondent Exhibit 14 – Respondent’s comparable analysis,
- Respondent Exhibit 15 – Notice of Appearance of Consultant on Behalf of Assessor from Susan Carr, Fulton County Assessor to Dudley Scheumann, Appraisal Research Corporation.

6. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

- Board Exhibit A – Form 131 petition with attachments,
- Board Exhibit B – Notice of Hearing, dated September 23, 2008,
- Board Exhibit C – Hearing sign-in sheet,

7. The property is a 1,344 square foot single-family dwelling on .34 of an acre located at 2916 South Country Club Drive, Rochester, Rochester Township in Fulton County.
8. The ALJ did not conduct an on-site inspection of the subject property.
9. For 2006, the PTABOA determined the assessed value of the property to be \$114,500 for the land and \$97,200 for the improvements, for a total assessed value of \$211,700.
10. For 2006, the Petitioner requested that the property be assessed for \$44,530 for the land and \$95,900 for the improvements, for a total assessed value of \$140,430.<sup>1</sup>

### **JURISDICTIONAL FRAMEWORK**

11. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, and (3) property tax exemptions, that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

### **ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN**

12. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would 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 Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

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<sup>1</sup> At the hearing, Ms. Allport argued the property should be assessed at \$112,700 as indicated on the original 2006 payable 2007 tax statement. *Petitioner Exhibit 11; Allport testimony.*

13. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township 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”).
14. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id*; *Meridian Towers*, 805 N.E.2d at 479.

#### **PETITIONER’S CONTENTIONS**

15. The Petitioner owns property on Lake Manitou. *Allport testimony*. According to the Petitioner, the Respondent incorrectly reclassified her neighborhood code from off-water to on-water for 2006. *Allport testimony*. The Petitioner contends her property does not sit on the main body of the lake, but sits on the channel off-water. *Id*. Therefore, Ms. Allport argues, the land value should be reduced. *Id*. In support of this contention, the Petitioner submitted aerial maps. *Petitioner Exhibit 2E – 2F*.
16. The Petitioner further contends the assessed value of the subject property is overstated in comparison with properties in the surrounding area. *Allport testimony*. According to the Petitioner, comparable properties within the same area are assessed from \$118,300 to \$177,300 for improved properties, and an unimproved parcel is assessed for \$38,000. *Petitioner Exhibits 4 – 10; Allport testimony*. The subject property, however, is assessed for \$211,700. *Petitioner Exhibit 3; Allport testimony*. In support of this contention, the Petitioner presented assessment information on seven properties. *Petitioner Exhibits 4 – 10*.
17. The Petitioner argues that while the subject property’s neighborhood classification was changed to “on-water,” the seven comparable properties are still classified as off-water for 2006. *Allport testimony*. Ms. Allport argues the subject property’s neighborhood

classification should be the same as the comparable properties. *Allport testimony*.

Therefore, the Petitioner contends, the market value-in-use of the land should be no more than \$16,800 and the improvements \$95,900, for a total value of \$112,700. *Petitioner Exhibit 3; Allport testimony*.

18. Ms. Allport further argues if the subject property's neighborhood classification is not corrected to the same classification as the surrounding properties it causes an inequity in the amount of taxes being paid on properties located in the same neighborhood. *Allport testimony*. In support of this contention, the Petitioner submitted her 2006 payable 2007 tax statement to show that the neighborhood classification adjustment resulted in an increase in her taxes of \$2,365.45. *Petitioner Exhibit 11; Allport testimony*.
  
19. Finally, the Petitioner contends the property would not sell for its assessed value because its lakefront area is mucky, contaminated, wetlands. *Allport testimony*. In support of this contention, the Petitioner submitted seven photographs of the lakefront area and aerial maps of the area. *Petitioner Exhibits 1 and 2A – 2I*. According to Ms. Allport, there was a breach in the dam in 1992 and, as a result of the breach, contaminated material flowed into Lake Manitou. *Allport testimony*. Ms. Allport testified that the Department of Natural Resources (DNR) intervened and removed Hydrilla from the lake, which in turn killed other weeds allowing access and use of the lake. *Id.* She argues, however, that the fix will only last a few years. *Id.*

#### **RESPONDENT'S CONTENTIONS**

20. The Respondent contends that the Petitioner's property is correctly assessed. *Scheumann testimony*. According to the Respondent's witness, Mr. Scheumann, properties in the area sold for \$252,000 to \$360,000, from September 2004, to February 2007. *Scheumann testimony*. In support of this contention, the Respondent submitted sales disclosure forms, property record cards and a comparable analysis for eight sales. *Respondent Exhibits 4 – 11 and 14*. Mr. Scheumann testified that the comparable properties were adjusted to account for the differences in amenities from the subject property.

*Scheumann testimony.* In addition, the comparables were time adjusted 3% per year to the applicable assessment date. *Id.* The time adjusted sales indicated properties were selling regardless of where the properties were located on the lake. *Id.*; *Respondent Exhibit 14.* Thus, the Respondent concludes, the sales support the property's assessed value. *Scheumann testimony.*

21. The Respondent and her witness testified that the county conducted a cyclical review of all property located in Rochester Township in 2007. *Carr and Scheumann testimony.* According to Ms. Carr and Mr. Scheumann, the cyclical review revealed that several properties on Lake Manitou were being assessed with an incorrect neighborhood classification. *Id.* More specifically, several properties including the Petitioner's were incorrectly classified as being off-water, when in fact the properties are on-water. *Id.* Mr. Scheumann testified that the Petitioner's neighborhood classification was corrected for 2006 payable 2007, which was reflected in Ms. Allport's tax statement as an adjustment. *Petitioner Exhibit 11; Scheumann testimony.*
22. The Respondent argues that the 2002 and 2003 aerial maps submitted by the Petitioner do not accurately reflect the quality of Lake Manitou for the assessment year of 2006. *Scheumann testimony.* In support of this contention, the Respondent submitted ten photographs of the area. *Respondent Exhibit 13.* According to the Respondent, the photographs show that the weed control and dredging of the lake over the last few years has greatly improved the water quality. *Scheumann testimony.*
23. Finally, the Respondent contends that, even if the lake was mucky and full of weeds in 2006, the condition of the lake did not affect the sales prices of homes in the area. *Scheumann testimony.* According to the Respondent, a property adjacent to the Petitioner's property sold in February of 2007 for \$360,000. *Respondent Exhibit 4; Scheumann testimony.* The Respondent, therefore, concludes that the selling prices of homes in the area are not affected by the weeds and muck on Lake Manitou. *Scheumann testimony.*

## ANALYSIS

24. Real property is assessed based on its “true tax value,” which means “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, for the property.” Ind. Code § 6-1.1-31-6 (c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal method as evidence consistent with the Manual’s definition of true tax value, such as actual construction cost, appraisals, or sales information regarding the subject property or comparable properties that are relevant to the property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Regardless of the method used to show a property’s market value-in-use, however, a 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Petitioners who present evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property’s value as of January 1, 2005. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
25. Here, the Petitioner first contends that the Assessor erred in assigning an on-water neighborhood classification to the property. *Allport testimony*. According to Petitioner, the property is not located on the main body of the lake but at the head of the lake. *Id.* Thus, Ms. Allport contends, the property should be classified as “channel off-water”. *Id.* The Petitioner, however, pointed to nothing in her evidence to show that her property is on the channel rather than on the lake. To the contrary, the pictures provided by the Petitioner, particularly photographs 1-A, 1-B and 1-G, seem to show that the Petitioner’s home is located on the main body of water. *Petitioner Exhibit 1*. This is also evidenced by the aerial photographs provided by the Petitioner. *Petitioner Exhibit 2*. Therefore, the Assessor did not err in assigning the on-water neighborhood classification to the property.
26. Even if the Board were to find that the property is located “off water” as the Petitioner claims, the Petitioner’s allegations would not rebut the presumption that the assessment



accurately reflects the property's market value-in-use. The Petitioner's 2006 assessment must be considered under Indiana's current assessment system, which seeks to determine a property's market value-in-use without being tied to a specific set of classifications, models, cost tables or depreciation tables. While the new system has assessment Guidelines that are a starting point for assessors, other generally accepted valuation methods can also be used to establish what the property assessment should be. *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana and stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*"). A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).

27. Next, the Petitioner contends her property is over-valued based on the assessment of neighboring properties. *Petitioner Exhibit 4 – 10; Allport testimony*. The Petitioner did not argue that her property was assessed for more than its market value-in-use. She merely argued that her property was assessed for more than other properties in the same area. *Allport testimony*. This argument, however, was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer's lack of uniformity and equality claim where the taxpayer showed neither its own property's market value-in-use nor the market values-in-use of purportedly comparable properties). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.* Here, the Petitioner

did not show the market value-in-use of her property or of any property that she claimed was more favorably assessed.

28. The Petitioner also argued the property value should be lowered because the lakefront is mucky, covered in weeds and contaminated by a breach in the dam. *Allport testimony*. In support of this contention, the Petitioner provided aerial photos of the lake dated as recently as 2004 which shows that the progression of the contamination had reached Petitioner's property. *Petitioner Exhibit 2-I*. The Petitioner also provided photographs of the property dated November 6, 2007, which show that the mucky condition of the water was present as of 2007. *Petitioner Exhibits 1-B, 1-E and 1-F*. Although the Petitioner provided evidence to show that the condition was present before and after the 2006 assessment year, the Petitioner did not provide evidence to prove that the condition was present in 2006. Further, even if the condition was present in 2006, the Petitioner failed to prove that the value of her property was in any way affected by the mucky condition of the water. While alleged limitations or conditions on the property may be relevant to the issue of whether a negative influence factor or external obsolescence should be apply, the Petitioner failed to show how these conditions would impact the market value-in-use of the property or show the actual market value of the property. *See Talesnick v. State Board of Tax Commissioners*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).
  
29. Finally, to the extent that the Petitioner contests the increase in the amount of her taxes, as opposed to the property's assessment, the Board lacks jurisdiction to hear her claim. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Department of Local Government Finance*. 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001) (citing *Matonovich v. State Board of Tax Commissioners*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). The Board addresses appeals from determinations made by local assessing officials or county PTABOAs that concern property valuations, property tax deductions, or property tax exemptions. Ind. Code § 6-1.5-4-1. The Board has no jurisdiction over the tax rate applied to any assessment.

30. Where a Petitioner fails to provide probative evidence for an assessment change, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221 – 1222 (Ind. Tax Ct. 2003).

**SUMMARY OF FINAL DETERMINATION**

31. The Petitioner failed to provide sufficient evidence to support a change in the assessment. The Board finds in favor of the Respondent.

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 pursuant to 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 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/bills/2007/SE0287.1.html>.**