

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition Nos.:** 50-013-06-1-5-00146  
50-013-06-1-5-00147  
**Petitioner:** Marian M. Costello  
**Respondent:** Marshall County Assessor  
**Parcel Nos.:** 50-21-28-000-081.000-013  
50-21-28-000-276.000-013  
**Assessment Year:** 2006

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. On May 4, 2007, Marian Costello appealed the March 1, 2006, assessment for two parcels. On April 4, 2008, the Marshall County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations upholding the parcels’ assessments.
2. On May 5, 2008, Ms. Costello filed Form 131 petitions with the Board. She elected to have those petitions heard under the Board’s small claims procedures.
3. On October 16, 2008, the Board issued hearing notices to the parties.
4. On December 15, 2008, the Board issued an order granting Ms. Costello’s request to appear at the hearing by telephone.
5. On December 18, 2008, the Board held a single administrative hearing before its duly appointed Administrative Law Judge, Patti Kindler (“ALJ”).
6. The following persons were sworn in at the hearing:

Marian M. Costello (by speakerphone)

For the Assessor: Jennifer Becker, County Consultant  
Debra Dunning, County Assessor

## Facts

7. Ms. Costello appealed the assessments for two parcels located at 233 West Shore Drive in Culver— parcel #50-21-28-000-081.000-013 (“parcel 081”) and parcel #50-21-28-000-276.000-013 (“parcel 276”). West Shore Drive bisects parcel 081 into a 40-foot-wide-by-62-foot-deep lakefront lot and a 40-foot-wide-by-82-foot-deep lot across the road. A home sits on that back part of parcel 081. Parcel 276 sits immediately behind the back portion of parcel 081. The Board refers to parcels 281 and 276 collectively as “the subject property.”
8. The ALJ did not inspect the subject property.
9. For March 1, 2006, the subject property was assessed as follows:

### Parcel 081

Land: \$346,900      Improvements: \$54,900      Total: \$461,100

### Parcel 276

Land: \$59,300      Improvements: \$0      Total: \$59,300

10. Ms. Costello did not challenge the assessment of her improvements. She, however, asked that Parcel 081’s land be assessed \$7.74 per square foot and that Parcel 276 be assessed \$2.95 per square foot. Ms. Costello did not give total values based on those rates. But she did submit an analysis from Rene’ Williams. Using those same rates, Ms. Williams calculated totals of \$25,387 for the back portion of parcel 081 and \$10,325 for parcel 276.

## Parties’ Contentions

11. Summary of Ms. Costello’s contentions:
  - a) The front part of parcel 081 is vacant land located along Lake Maxinkuckee. It is too narrow to build on. Ms. Costello’s house, which sits on the back portion of parcel 081 across the street from the lake, is just a small summer cottage. The cottage’s location diminishes its value because (1) it does not have beachfront access, and heavy summer traffic makes crossing over to the lake very difficult; and (2) its view of the lake is obstructed. *Costello testimony.*
  - b) Ms. Costello got parcel 276 from the Penn Central Railroad. It is taxed separately from parcel 081 and therefore should be valued separately. *Costello testimony.*
  - c) Rene’ Williams, a local appraiser, compared the two parcels’ assessments to the assessments for similar properties in the area and concluded that Ms. Costello’s parcels were assessed too high. *Pet’r Ex. 1.* In analyzing parcel 081’s assessment, Ms. Williams considered only the land across West Shore Drive,

which the assessor had valued at \$131,560. She compared that value to the assessments of the following two parcels:

- 201 West Shore Drive—a 55' x 158' roadside lot located a short distance south of the subject property that was assessed for \$67,300 (\$7.74 per square foot); and
- 184 West Shore Drive—a 50' x 58' roadside lot located a short distance south of the subject property that was assessed for \$58,100 (\$7.35 per square foot). *Pet'r Ex. 1.*

Based on those two assessments, Ms. Williams concluded that parcel 081 should have been assessed for no more than \$25,387 (\$7.74 per square foot).

d) Similarly, Ms. Williams compared parcel 276's assessment to the assessments of another two other parcels:

- 145 West Shore Drive—a 35' x 100' parcel located a short distance south of the subject property that was assessed for \$8,100 (\$2.95 per square foot); and
- 143 West Shore Drive—a 75' x 50' parcel located a short distance south of the subject property that was assessed for \$10,100 (\$2.69 per square foot). *Pet'r Ex. 1.*

Based on those two assessments, Ms. Williams concluded that parcel 276 should have been assessed for no more than \$10,325 (\$2.95 per square foot). *Id.* As further proof that parcel 276 was over assessed, Ms. Costello testified that two roadside parcels near the subject property had recently sold for \$500 and \$700, respectively. *Costello testimony.*

e) While the Assessor argued that the properties in Ms. Williams's analysis were not in the same neighborhood as the subject property, they were located near the subject property and should not be discounted. The Assessor, by contrast, looked to sales of properties that were dissimilar to Ms. Costello's parcels. *Costello testimony.* The properties that the Assessor identified had homes sitting along the lake, while a busy road separates Ms. Costello's home from the lake. *Costello argument.*

12. Summary of the Marshall County Assessor's contentions:

a) When contiguous parcels are owned by the same person, their true tax value must be considered as a whole. *Becker testimony.* Most property sales along Lake Maxinkuckee involve multiple parcels; few parcels are sold individually. *Id.* Two sales support the subject property's overall assessment:

- 254 West Shore Drive has several contiguous parcels including a vacant lakefront lot, a roadside lot with a 680-square-foot home, and a rear lot.

*Becker testimony; Resp't Ex. 4.* Those three parcels sold for a total of \$425,000 in 2004. Combined, their March 1, 2006, assessments totaled \$462,300. *Id.*

- 240 West Shore Drive is located next door to the subject property. It is comparable to the subject property because it contains contiguous lots, including a lakefront lot with a 567-square-foot home, a roadside lot, and a rear lot. *Id.* The three parcels sold in 2004 for a combined price of \$655,000 and their March 1, 2006, assessments totaled \$492,830. *Id.*
- b) Ms. Williams, by contrast, ignored the significance of common ownership of contiguous parcels. *Becker argument.* The subject property contains three lots (under two parcel numbers) all in a row with lake access through one of the lots. Only one of Ms. Williams's purportedly comparable properties involved a similar configuration—184 West Shore Drive. And the total assessment for that multi-parcel property was \$553,900. *Becker testimony; Resp't Ex. 5.* While the other parcels that Ms. Williams identified were owned by taxpayers who also owned lakefront parcels, those multi-parcel conglomerations were not configured like the subject property. For example, the lakefront parcel associated with 201 West Shore Drive was a triangular lot with only six feet fronting the lake and a narrow three-foot-wide strip leading to that triangle. *Id.* Similarly, while the owner of 145 West Shore Drive also owned a parcel with lake frontage, that lake parcel was a 10' x 14' lot located a quarter mile away from her house. *Id.* And the 10' x 14' foot lot providing lake access to 143 West Shore Drive is located 200 feet across the road from its house. *Id.*
- c) Also, the parcels Ms. Williams used were not in the same assessment neighborhood as the subject property. *Becker testimony; Resp't Ex. 5.* For assessment purposes, properties are grouped into neighborhoods based on similarities to, and distinctions from, other nearby properties. Depending on their distinct characteristics and values, properties that are close to each other may be classified into different neighborhoods. *Becker testimony.*

### **Record**

13. The official record for this matter is made up of the following:
- a) The Form 131 petitions,
  - b) A digital recording of the hearing,
  - c) Exhibits:

Petitioner's Exhibit 1: Assessment analysis prepared by Rene' D. Williams of Charles Lienhart & Associates on May 28, 2007,

- Respondent's Exhibit 1: Notice of Appearance of the Consultant on Behalf of Assessor,
- Respondent's Exhibit 2: Property record cards ("PRCs") and GIS plat map for the subject property,
- Respondent's Exhibit 3: Union Township's response to Ms. Costello's Form 130,
- Respondent's Exhibit 4: GIS maps and PRCs for parcels located at 254 West Shore Drive and 240 West Shore Drive,
- Respondent's Exhibit 5: GIS maps and PRCs for the properties used in Ms. Williams's assessment analysis,
- Respondent's Exhibit 6: Respondent Signature and Attestation Sheet<sup>1</sup>,

- Board Exhibit A – Form 131 petitions,
- Board Exhibit B – Notice of hearing,
- Board Exhibit C – Hearing sign-in sheet,
- Board Exhibit D – Order Allowing Marian M. Costello to Appear at Hearing by Telephone.

d) These Findings and Conclusions.

### **Analysis**

#### Burden of Proof

14. A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect, and specifically 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).
15. In making its case, the petitioner 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").
16. Once the petitioner establishes a prima facie case, the burden shifts to the respondent to impeach or rebut the petitioner'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.

#### Ms. Costello's Case

17. Ms. Costello failed to make a prima facie case for changing the subject property's land assessments. The Board reaches this conclusion for the following reasons:

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<sup>1</sup> The Assessor also submitted a three-page document with a list of her exhibits and a summary of testimony. She did not offer that document as an exhibit.

- a) Indiana assesses real property based on its “true tax value,” which the 2002 Real Property 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).
- b) Assessors typically use a mass-appraisal version of the cost approach to assess individual properties. The Real Property Assessment Guidelines for 2002 – Version A detail that approach. But those Guidelines are merely a starting point for determining value. *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). Thus, while a property’s market value-in-use, as ascertained by applying those Guidelines, is presumed to be accurate, that presumption may be rebutted using relevant evidence that is consistent with the Manual’s definition of true tax value. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006); *see also* MANUAL at 5. That evidence includes market-value-in-use appraisals, actual construction costs, sales information regarding the subject property or comparable properties, and other evidence compiled using generally accepted appraisal principles. *Id.*
- c) Regardless of the method that that a party uses to rebut an assessment’s presumed accuracy, the party must explain how his evidence relates to the appealed property’s market value-in-use as of the relevant valuation date. *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). For March 1, 2006, assessments, that valuation date was January 1, 2005. IND. ADMIN. CODE tit. 50, r. 21-3-3.
- d) Ms. Costello offered little market-based evidence to rebut the presumption that the subject property’s assessment was correct. She testified that her next-door neighbor recently bought a parcel like parcel 276 for \$500 and that another person recently bought an acre of land behind those parcels for \$700. *See Costello testimony.*
- e) In pointing to those sales, Ms. Costello recognized that a given property’s value can be estimated by comparing it to similar properties that have sold in the market. In fact, that is precisely what sales-comparison approach—a generally accepted valuation method—does. MANUAL at 3. But, when offering sales-comparison evidence in an assessment appeal, a taxpayer must explain “the characteristics of [the subject] property, how those characteristics compare to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties.” *Long*, 821 N.E.2d at 471. Conclusory statements that a property is “comparable” to another property do not suffice. *Id.* at 470. And Ms. Costello did little to show how the two sold properties compared to the subject property other than saying that they were located nearby and that one was an acre in size. Also, the sales had “just”

occurred and Ms. Costello did not explain how those sale prices related to the relevant January 1, 2005, valuation date.

- f) Even if Ms. Costello had offered more information about the sales and had related them to the appropriate valuation date, those sale prices likely would have done little to show the subject property's true tax value. The properties sold independently from contiguous parcels. Ms. Costello, by contrast, uses parcels 081 and 276 together as one property with both road and lake access. Although her two parcels are assessed and taxed separately, Ms. Costello receives utility from the property as a whole, not from its separate components. The real question, then, is whether the parcels' combined assessment exceeds the whole property's market value-in-use. And Ms. Costello offered no evidence on that point.
- g) Ms. Costello also submitted Ms. Williams's analysis comparing the assessments of four other properties to the land assessment for the roadside portion of parcel 081 and the entire assessment for parcel 276. As evidence of the subject property's market value-in-use, that comparison fails for two of the same reasons as Ms. Costello's sales comparison—Ms. Williams did little to compare the properties' features or adjust for relevant differences, and she looked at the parcels separately rather than as one property. But Ms. Williams's analysis suffers from a third problem as well. She looked to the other properties' assessments instead of their sale prices. Thus, Ms. Williams used only estimates of the properties' values, and mass-appraisal estimates at that. Without more, the Board will not assume that such an approach complies with generally accepted appraisal principles. In fact, there is good reason to infer otherwise this case. Ms. Williams herself believed that assessments throughout the neighborhood were inconsistent. That hardly inspires confidence that the assessments for the purportedly comparable properties accurately reflected their market values-in-use.
- h) The thrust of Ms. Williams's analysis, however, was less to show the two parcels' market values-in-use than to show inconsistencies in assessments. Given the market-value-in-use universe we now live in, the clearest way for a taxpayer to demonstrate a lack of uniformity and equality in assessments is by showing that his property is assessed at a higher percentage of its market value-in-use than other properties. *See Westfield Golf*, 859 N.E.2d at 399 (rejecting a taxpayer's lack-of-uniformity-and-equality claim where the taxpayer did not show that market values-in-use of its own property or of any purportedly comparable properties). Ms. Costello, however, did not offer probative evidence to show the market values-in-use for either the subject property or Ms. Williams's purportedly comparable properties. And Ms. Williams looked at only at four properties, without doing much to compare their features to the subject property's features. On this record, the Board concludes that Ms. Costello failed to make a prima facie case of a lack of uniformity and equality.

**Conclusion**

18. Ms. Costello failed to make a prima facie case. The Board therefore finds for the Marshall County Assessor.

**Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the appealed parcels' March 1, 2006, assessments should not be changed.

ISSUED: \_\_\_\_\_

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Commissioner, 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>>.