

REPRESENTATIVE FOR PETITIONER:

Robert L. Browning, Scopelitis Garvin Light Hanson & Feary

REPRESENTATIVES FOR RESPONDENT:

Marilyn S. Meighen, Meighen & Associates, P.C.

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Donald F. Elliott, Jr.,	)	Petition Nos.: 50-013-07-1-5-00024
	)	50-013-08-1-5-00003
Petitioner,	)	50-013-09-1-5-00015
	)	
v.	)	Parcel No.: 50-21-27-000-067-000-013
	)	
	)	
Marshall County Assessor,	)	County: Marshall
	)	
Respondent.	)	Assessment Years: 2007, 2008 and 2009
	)	

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

October 13, 2011

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the Board) having reviewed the arguments and evidence, now finds and concludes the following:

## **ISSUE**

1. The issue presented for consideration by the Board is whether the assessed value of the Petitioner's property is over-stated for the 2007, 2008 and 2009 assessment years.

## **PROCEDURAL HISTORY**

2. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner, Donald F. Elliott, Jr., filed a written request with the Union Township Assessor for review of his property's March 1, 2007, assessment on April 22, 2008. On July 16, 2009, Mr. Elliott filed a written request with the Marshall County Assessor requesting review of his property's March 1, 2008, assessment, and on December 7, 2009, Mr. Elliott filed a written request with the Marshall County Assessor requesting review of his property's March 1, 2009, assessment. The Marshall County Property Tax Assessment Board of Appeals (the PTABOA) issued notices of its decision on May 13, 2010, for all three tax years. On June 23, 2010, the Petitioner filed his Form 131 Petitions requesting that the Board conduct a review of the PTABOA's determinations for 2007, 2008 and 2009.

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

3. On January 11, 2011, the Petitioner filed a Motion for Summary Judgment and supporting documents. The Respondent filed its Response and Designation of Evidence on February 25, 2011, and on March 18, 2011, the Petitioner filed his Reply Brief. The Board held a hearing on April 1, 2011, and on April 19, 2011, the Board issued a determination granting summary judgment to the Petitioner for the March 1, 2007, assessment year and denying summary judgment for the March 1, 2008, and March 1, 2009, assessment years.
4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Carol Comer, held a hearing on July 19, 2011, in Indianapolis, Indiana, on the 2008 and 2009 assessment years.

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

For the Petitioner:

Donald F. Elliott, Jr. – property owner

For the Respondent:

Debra A. Dunning – Marshall County Assessor  
Jennifer L. Becker – Ad Valorem Solutions, Inc.

6. The Petitioner presented the following exhibits:

- Petitioner Exhibit 1 – Petitioner’s Form 131 Petition for the property’s 2008 assessment,
- Petitioner Exhibit 2 – Petitioner’s Form 131 Petition for the property’s 2009 assessment,
- Petitioner Exhibit 3 – *Elliott v. Dunning*, 918 N.E.2d 786 (Ind. Tax Ct. 2009) (unpublished decision),
- Petitioner Exhibit 4 – *Elliott v. Marshall County Assessor*, Petition No. 50-013-06-1-5-00105, Final Determination on Remand from Tax Court, Indiana Board of Tax Review, (May 11, 2010),
- Petitioner Exhibit 5 – Letter from Mr. Elliott to Ms. Dunning, dated March 30, 2009, and Ms. Dunning’s response, dated April 3, 2009,
- Petitioner Exhibit 6 – Petitioner’s Brief and Proposed Testimony, filed with the Marshall County PTABOA on April 8, 2010,
- Petitioner Exhibit 7 – Marshall County PTABOA’s request for additional information, dated April 8, 2010, and Mr. Elliott’s response, dated April 17, 2010,
- Petitioner Exhibit 8 – Map of Lake Maxinkuckee,
- Petitioner Exhibit 9 – Plat map showing the subject property,
- Petitioner Exhibit 10 – Union Township Base Rate Schedule,
- Petitioner Exhibit 11 – GIS map and data for the subject property,
- Petitioner Exhibit 12 – GIS map and data for 1346 East Shore Drive, Culver,
- Petitioner Exhibit 13 – GIS map and data for 2314 East Shore Lane, Culver,
- Petitioner Exhibit 14 – GIS map and data for 1394 East Shore Drive, Culver,
- Petitioner Exhibit 14A – Sales Disclosure Form for 1394 East Shore Drive, Culver,

Petitioner Exhibit 15 – Excerpt of the Real Property Guidelines, Version A,  
Petitioner Exhibit 16 – Comparison of a Guidelines “Type 11 Lot” with the subject property,  
Petitioner Exhibit 17 – Calculation of the subject property’s value as of March 1, 2008, and March 1, 2009.

7. The Respondent presented the following exhibits:

Respondent Exhibit A – Aerial map of the Petitioner’s property,  
Respondent Exhibit B – Aerial map of the Petitioner’s three parcels,  
Respondent Exhibit C – Property record cards for the Petitioner’s three parcels,  
Respondent Exhibit D – Depth factor calculations,  
Respondent Exhibit E – Excerpt of the Real Property Guidelines, Version A,  
Respondent Exhibit F – Property record cards for 2008 East Shore Drive,  
Respondent Exhibit G – Map of Lake Maxinkuckee; land analysis; and property record cards for 2550 East Shore Lane, 2738 East Shore Drive, 1910 East Shore Drive, 1540 East Shore Drive, 1394 East Shore Drive, and 1450 East Shore Drive.

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

Board Exhibit A – Form 131 Petitions,  
Board Exhibit B – Notices of Hearing, dated May 20, 2011,  
Board Exhibit C – Hearing sign-in sheet.

9. The subject property is a 57’ x 118’ parcel of land improved with a detached garage and a stone driveway. The property is adjacent to two additional parcels owned by the Petitioner that are improved with a single family home located at 2014 East Shore Drive, Culver.

10. The ALJ did not conduct an on-site inspection of the subject property.

11. For 2008, the PTABOA determined the assessed value of the subject property to be \$214,100 for the land and \$10,800 for improvements, for a total assessed value of \$224,900, and for 2009, the PTABOA determined the value of the land to be

\$216,300 and the value of the improvements to be \$10,900, for a total assessed value of \$227,200.

12. For 2008, the Petitioner contends the assessed value of the land on the subject property should be \$71,364, and for 2009, the Petitioner contends the assessed value of the land should be \$72,079. The Petitioner does not contest the assessed value of the improvements on the parcel.

### **JURISDICTIONAL FRAMEWORK**

13. 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, (3) property tax exemptions, and (4) property tax credits 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 Indiana 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**

14. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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 Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
15. 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. Wash. 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 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

#### **PETITIONER'S CONTENTIONS**

17. The Petitioner testified that Parcel No. 50-21-27-000-067-000-013 (Parcel No. 13) is a 118' x 57' x 121' x 66' parcel of land located near Lake Maxinkuckee. *Elliott testimony*. According to the Petitioner, the parcel has no view of the lake or access to the lake but it adjoins another lake-front parcel owned by the Petitioner. *Id.* Mr. Elliott argues that Parcel No. 13 is a small parcel bound by zoning restrictions which prevent any significant development. *Id.* Presently, the parcel has a single car garage and gravel driveway and it is used for parking. *Id.*
18. The Petitioner contends that the subject property was over-valued based on the Guidelines formula for determining the depth factor of a rear lot. *Elliott argument*. According to Mr. Elliott, the Indiana Tax Court in *Elliott v. Dunning*, 918 N.E.2d 786 (Ind. Tax Ct. 2010) (unpublished decision), determined the meaning of the word "overall" as that word was used in the Guidelines formula, and found that the depth factor for Parcel No. 13 was .08. *Elliott argument*. Because the Tax Court interpreted the meaning of the regulation, Mr. Elliott argues, the Tax Court's determination was not restricted to the 2006 tax year, but applied any time that the Assessor used the Guidelines formula to assess a rear lot, like the subject property. *Id.*
19. The Petitioner argues that, despite the Tax Court's decision in his favor, the Assessor continued to use an incorrect depth factor in its calculation of the subject property's assessed values for 2008 and 2009. *Elliott argument; Petitioner Exhibit 3*. According to Mr. Elliott, the Assessor assigned a depth factor of .24 to Parcel No. 13 for 2008 and 2009, contrary to the Tax Court's finding that the

proper depth factor was .08. *Elliott argument; Petitioner Exhibit 11*. Mr. Elliott testified that there have been no material changes to the property and the only change in assessed value between 2006 and 2010 for Parcel No. 13 was a result of the Assessor applying a trending factor to the lot. *Id.* Thus, using the proper .08 depth factor, Mr. Elliott contends, the assessed value of Parcel No. 13 should be \$71,364 for the March 1, 2008, assessment and \$72,079 for the March 1, 2009, assessment.

20. The Petitioner argues that his property should be assessed consistent with the rear lots of 1346 East Shore Drive and 2314 East Shore Lane, which are the Rocap and Smitson properties referenced in the Tax Court decision.<sup>1</sup> *Elliott argument*. According to Mr. Elliott, the rear lot of 1346 East Shore Drive is the most comparable lot to Parcel No. 13. *Id.* It has a width of about 89 feet and it has a depth of 57 feet and sits 198 feet from the lake; whereas the subject property is 57 feet wide and 118 feet deep and sits 125 feet from the lake. *Id.; Petitioner Exhibits 11 and 12*. The land on the rear lot of 1346 East Shore Drive was assessed for \$69,700 in 2008 and \$70,300 in 2009; whereas the land on the subject property was assessed for \$214,100 for 2008 and \$216,300 for 2009. *Id.* Similarly, the land on the rear lot of 2314 East Shore Lane, which is 40 feet by 50 feet, was assessed for \$78,300 for 2008 and \$79,100 for 2009. *Elliott testimony; Petitioner Exhibit 13*.
21. Moreover, the Petitioner contends that his property as a whole is over-assessed based on the sale of other nearby properties. *Elliott argument*. According to Mr. Elliott's written testimony, the property immediately next to the Petitioner's three parcels sold for \$1,580,000 on September 20, 2004. *Petitioner Exhibit 7*. Mr. Elliott testified that the neighboring property has 135 feet of lake frontage, which he contends, results in a front foot value of \$11,500. *Id.* Based on the neighboring sale, Mr. Elliott argues, the Petitioner's three parcels together,

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<sup>1</sup> In his decision, Judge Fisher determined that Mr. Elliott had shown that his interpretation of the Guidelines formula was supported "by other objectively verifiable market value-in-use evidence (i.e. the assessment data in the record relating to the Smitson and Rocap properties)." *Elliott*, 918 N.E.2d 786.

including Parcel No. 13, should be valued no higher than approximately \$900,000. *Id.* Another nearby property sold for \$1.7 million on May 25, 2007. *Elliott testimony.* After removing the value of the improvements and adjusting the property for its additional lake frontage, Mr. Elliott contends, the adjusted sale price would be \$1,230,713. *Petitioner Exhibit 7.*

22. Finally, the Petitioner contends that the Board should disregard the Respondent's evidence of comparable sales. *Elliott argument.* According to Mr. Elliott, the properties located at 2550 East Shore Lane and 2078 East Shore Drive are not comparable to the subject property. *Id.* In addition, the sale of the property located at 1394 East Shore Drive was not an "arms' length transaction" because the trustee of the trust that sold the property is a member of the limited liability company that bought the property. *Id.* Indeed, Mr. Elliott argues, the sales disclosure form indicates that there was a "family or business relationship between [the] buyer and seller." *Id.; Petitioner Exhibit 14-A.*

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

23. The Respondent's witness testified that properties on Lake Maxinkuckee are often comprised of several parcels. *Becker argument.* However, she argues, they sell as a single property. *Becker argument.* Thus, Ms. Becker argues, the Petitioner's property's assessed value should be viewed as a whole, rather than determining the value of Parcel No. 13 individually. *Id.* Ms. Becker testified that the assessed value of the Petitioner's three parcels together totaled \$1,426,700 for 2008 and \$1,440,900 for 2009. *Becker testimony.* In response to questioning, Ms. Becker testified that the Petitioner's three parcels would be assessed for \$131,000 less if the Board followed the Tax Court ruling in *Elliott v. Dunning*.<sup>2</sup> *Id.*
24. The Respondent argues that the Petitioner's property as a whole is properly assessed. *Meighen argument.* The Respondent's witness testified that she located

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<sup>2</sup> The Board notes that the actual difference in assessed value would be \$142,736 for 2008 and \$144,221 for 2009.



sales in the same area as Mr. Elliott's property and abstracted the value of the improvements to determine the value of the land in each sale.<sup>3</sup> *Becker testimony*. According to Ms. Becker, the comparable properties' land sold for between \$26.13 and \$115.14 per square foot, with a median sales price of \$74.85 per square foot. *Id.*; *Respondent Exhibit G*. Similarly, she testified, the comparable properties' land sold for between \$7,054 and \$23,359 per front foot, with a median sales price of \$19,540 per front foot. *Id.* Based on the median front foot sales value, the Petitioner's property's value was \$1,348,260 during the relevant time period, and based on the median square foot sales value, the Petitioner's property's value was \$1,676,714.85. *Id.*

25. The Respondent further argues that the Board should give little weight to the Petitioner's comparable sales evidence. *Meighen argument*. According to the Respondent's witness, while the neighboring property has 130 feet of lake frontage, seventy feet of that lot is only 120 feet deep; whereas the Petitioner's property is 230 feet deep for the most part. *Becker testimony*.
26. Finally, the Respondent contends that the Tax Court erred when it determined the depth factor for Parcel No. 13 was .08 in the *Elliott v. Dunning* decision. *Meighen argument*. The Respondent's witness testified that Parcel No. 13 is located adjacent to the Petitioner's two additional lots and behind a parcel owned by the neighboring property owner. *Becker testimony*; *Respondent Exhibit D*. According to Ms. Becker, despite the Tax Court determination to the contrary, the proper method of determining the depth factor for Parcel No. 13 is to use the depth factor resulting from the distance from the water to the back lot line of the rear lot, or 1.05, and subtract the depth factor resulting from the depth of the front lot, or .81, which results in a depth factor of .24 for Parcel No. 13. *Id.* The Tax Court's determination, on the other hand, treats Parcel No. 13 as if the lot was

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<sup>3</sup> For example, the property located at 2550 East Shore Lane, which has a rear lot used for parking similar to the subject property, sold in May of 2008 for \$2,310,000, or \$2,032,200 after the value of the improvements was removed. *Becker testimony*; *Respondent Exhibit G*. Ms. Becker calculated the front foot value of the property to be \$23,359. *Id.* In addition, Ms. Becker testified, the rear lot on 2550 East Shore Lane was assessed for \$224,330, which she argues, is very comparable to the assessed value of the subject property. *Id.*

located behind the Petitioner's additional parcels (Parcel No. 1 and Parcel No. 2) rather than next to the lots.<sup>4</sup> *Id.* Ms. Becker admitted, however, that there were no changes to the use or character of the property and the only assessment change that occurred was that the property's assessed value was trended to reflect the increase in property values in the area between assessment years. *Becker testimony.*

27. In addition, the Respondent argues that the rear lots used as "comparable" properties in the *Elliott v. Dunning* determination were not comparable to the Petitioner's Parcel No. 13. *Becker argument.* According to Ms. Becker, the depth of the rear lot of 1346 East Shore Drive is only 57 feet; whereas the subject property has 120 feet of depth. *Id.* Likewise, the rear lot of 2314 East Shore Lane is only 45 feet deep. *Id.* All three rear lots were assessed using the same base rate and the assessed values of all three lots were calculated in the same manner. *Id.* Thus, Ms. Becker argues, the differences in the assessed values of the three rear lots were attributable to the size of the properties, rather than to any inequitable assessment practice. *Id.*
28. In response to questioning, Ms. Becker admitted that the Assessor did not use the sales comparable approach to assess the subject property; rather she testified that the property was assessed using the Guidelines' cost approach. *Becker testimony.* However, she argues, her sales comparable analysis shows that the value of the Petitioner's three parcels together as determined by the Assessor pursuant to the Guidelines was a fair and accurate valuation for the Petitioner's property as a whole. *Id.*
29. In addition, Ms. Becker testified that, although the property located at 1394 East Shore Drive may not have been an arms' length transaction, the abstracted sale

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<sup>4</sup> According to Ms. Becker, Judge Fisher added the effective depths of Parcel No. 1 and Parcel No. 13, resulting in depth factor of 1.11 and subtracted the depth factor resulting from the effective depth of Parcel No. 1, or 1.03, to arrive at a depth factor of .08 for Parcel No. 13. *Becker testimony.* The result of the Tax Court's determination that the Assessor should add the depth of Parcel No. 13 to the depth of Parcel No. 1, Ms. Becker argues, is a hypothetical lot that would extend across East Shore Drive and into the property located on the other side of the street. *Id.; Respondent Exhibit D.*

price of the land was comparable to the value of other land sales in the area and therefore she felt it was a valid sale to consider when determining the market value of land in the neighborhood. *Becker testimony*. Moreover, Ms. Becker testified the sale of 1450 East Shore Drive was a foreclosure sale. *Id.* But despite the fact that the abstracted land value of the property fell substantially below the land values of other sales in the neighborhood, Ms. Becker testified that she still considered the sale in her market analysis. *Id.* In fact, Ms. Becker testified, she included all of the sales that occurred between 2007 and 2010 in the Petitioner's neighborhood when she prepared her sales comparable analysis. *Id.* According to Ms. Becker, she did not "cherry pick" or hide any valid sale that occurred. *Id.*

#### ANALYSIS

30. The 2002 Real Property Assessment Manual defines "true tax value" 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). The appraisal profession traditionally has used three methods to determine a property's market value: the cost approach, the sales-comparison approach and the income approach to value. *Id.* at 3, 13-15. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (the GUIDELINES).
31. A property's assessment under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). 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. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer

sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles.

MANUAL at 5.

32. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2008, assessment, the valuation date was January 1, 2007, and the valuation date for the March 1, 2009, assessment was January 1, 2008. 50 IAC 21-3-3.
33. Here the Petitioner contends that his Parcel No. 13 was over-assessed based on the Indiana Tax Court's decision in *Elliott v. Dunning*. *Elliott argument*. In that decision, the Court determined that Mr. Elliott had both shown that the Guidelines were misapplied to his property for the 2006 tax year and that his interpretation of the Guidelines formula was supported by the assessed values of the rear lots of the Smitson and Rocap properties, which Judge Fisher referred to as "other objectively verifiable market value-in-use evidence." *Id.*, *citing Elliott v. Dunning*, 918 N.E.2d 786 (Ind. Tax Ct. 2010) (unpublished decision). In support of his argument that the same analysis should apply to the assessed value of Parcel No. 13 for the 2008 and 2009 assessment years, Mr. Elliott testified that there were no material changes to the property and he submitted 2008 and 2009 assessment information for the rear lots of the properties located at 1346 East Shore Drive and 2314 East Shore Lane, which are the Smitson and Rocap properties referred to in the Tax Court decision. *Elliott testimony*.
34. Judge Fisher in *Elliott v. Dunning* conclusively determined the value of Parcel No. 13 for the March 1, 2006, assessment year. The Petitioner also showed that the property did not materially change between 2006 and 2009, and he explained how the property's value for the March 1, 2008, and the March 1, 2009,

assessment years related to the property's value as of the 2006 assessment date, by submitting assessment information for the Smitson and Rocap properties for 2008 and 2009. Because the Tax Court found that evidence to be sufficient to show an error in the subject property's assessed value for the 2006 assessment year, the Board finds that the Petitioner raised a prima facie case that Parcel No. 13 was also over-valued for the 2008 and 2009 assessment years.

35. 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 Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Respondent argues that the Petitioner's property as a whole was properly assessed for the 2008 and 2009 assessment years based on the property's market value-in-use.<sup>5</sup> *Meighen argument*. According to the Respondent's witness, the assessed value of the Petitioner's three parcels together totaled \$1,426,700 for 2008 and \$1,440,900 for 2009. *Becker testimony*. Based on seven comparable sales, however, the median sales price per square foot in the Petitioner's neighborhood was \$74.85, resulting in a market value of \$1,676,714.85 for the Petitioner's three parcels. *Id.*; *Respondent Exhibit G*.
36. Despite the fact that Parcel No. 13 is assigned a different parcel number than the Petitioner's two other parcels, the evidence is clear that Mr. Elliott uses all three parcels as a single property. *See Cedar Lake Conference Assoc. v. Lake Cty. Property Tax Assessment Bd. of Appeals*, 887 N.E.2d 205, 208-209 (Ind. Tax Ct. 1008) ("the fact that the RV Park and the Conference Center are delimited (i.e., they are separate parcels with distinct key numbers) neither alters the manner in which CLCA used those properties nor diminishes CLCA's religious purpose. *Cf. Ind. Code Ann.* § 6-1.1-1-8.5 (West 2000) (indicating that a "key number" is merely a tool used by assessing officials to distinguish properties from one

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<sup>5</sup> The Respondent also contends that the Tax Court simply got it wrong in *Elliott v. Dunning* and that the Assessor correctly calculated the depth factor of Parcel No. 13 to be .24. *Meighen argument*. The Board, however, will not disregard a Tax Court Determination specifically ruling upon an issue. Thus, the Board finds the depth factor of Parcel No. 13 is .08 as determined by Judge Fisher.

another for various administrative purposes)"). Thus, evidence of the property's value as a whole may be used to rebut a Petitioner's evidence that a portion of the property separate from the whole property is over-valued. In addition, evidence of a property's value based on comparable sales may be submitted to rebut evidence of the property's value based on evidence of other properties' assessed values. Here, however, the Board finds that the Respondent failed to make a sufficient showing to rebut or impeach the Petitioner's prima facie case.

37. To rebut or impeach the Petitioner's case, a Respondent has the same burden to present probative evidence that the Petitioner faces to raise its prima facie case. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), "the Court has frequently reminded taxpayers that statements that another property 'is similar' or 'is comparable' are nothing more than conclusions, and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case." 836 N.E.2d at 1082 (citations omitted).
38. The Respondent's witness testified that all land on Lake Maxinkuckee is comparable.<sup>6</sup> *Becker testimony*. However, when seeking to establish comparability between parcels of land, the relevant characteristics to compare include things such as location, accessibility, topography. See *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that taxpayer failed to establish comparability of parcels of land where, among other things, taxpayer did not compare the topography and accessibility of parcels). Because the Respondent failed to provide any meaningful information

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<sup>6</sup> "What we found on this particular lake and it is an animal of its own, is that the land on Lake Maxinkuckee...the land is the land is the land. Um, there is really no large swings between sizes as far as the sales prices are concerned." *Becker testimony*.

regarding the comparability of the neighboring properties, the Respondent's evidence fails to rebut the Petitioner's prima facie case.

39. More importantly, the Respondent merely subtracted the assessed value of the comparable properties' improvements from the sales values of the properties to determine the market value of the land. *Becker testimony*. The Respondent, however, failed to sufficiently show that such a calculation is probative evidence of the market value-in-use of the properties. Here the Respondent mixes two approaches to value – the mass appraisal cost approach utilized by the Guidelines and the sales comparison approach. In essence, the Respondent has subtracted apples from oranges and urges the Board to find that the resulting figure represents the market value-in-use of the comparable properties. This we decline to do.

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

40. The Petitioner's Motion for Summary Judgment was granted with respect to the 2007 assessed value of Parcel No. 13 and the Board finds that the Petitioner raised a prima facie showing that the land values of Parcel No. 13 were over-stated for the 2008 and 2009 assessment years. The Respondent failed to rebut or impeach the Petitioner's case. The Board therefore finds in favor of the Petitioner and holds that the assessed value of the land on Parcel No. 13 is \$71,364 for the March 1, 2008, assessment and \$72,079 for the March 1, 2009, assessment.<sup>7</sup>

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

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<sup>7</sup> The Petitioner's counsel argued that, under Indiana Code § 6-1.1-15-17, the Respondent had the burden in this appeal. Given the Board's determination that the Respondent failed to rebut or impeach the Petitioner's prima facie showing, the result would be the same if the Respondent had the burden of proof. Thus, the Board need not determine if the provisions of Indiana Code § 6-1.1-15-17 apply in this matter.

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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>.**