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

Petition: **50-014-12-1-5-00068**
Petitioners: **Corrie & Susan Frank**
Respondent: **Marshall County Assessor**
Parcel: **50-21-21-101-333.000-014**
Assessment Year: **2012**

The Indiana Board of Tax Review ("Board") issues this determination in the above matter, finding and concluding as follows:

Procedural History

1. The Petitioners, Corrie and Sharon Frank, appealed the 2012 assessment for the above-referenced parcel. On July 18, 2013, the Marshall County Property Tax Assessment Board of Appeals ("PTABOA") issued notice of its determination denying the Petitioners relief.

2. The Petitioners timely filed a Form 131 petition with the Board, electing to have their appeal heard under our small claims procedures.

3. On March 17, 2015, our administrative law judge, Ellen Yuhan ("ALJ"), held a hearing on the petition. Neither she nor the Board inspected the property.

4. The following people were sworn as witnesses: Roy Michael Roush, Petitioners' counsel; Corrie Frank; Debra A. Dunning, Marshall County Assessor; and Mindy Penrose, Deputy Assessor.

Facts

5. The parcel under appeal is a vacant, lakefront parcel in Culver. It is one of three contiguous parcels owned by the Petitioners, one of which contains a house.

6. The PTABOA determined an assessment of $201,300 for the parcel under appeal.

Record

7. The official record contains the following:

    a. A digital recording of the hearing,

b. Petitioner Exhibit A: Table of Average Front Foot and Square Foot Values,
Petitioner Exhibit B: Aerial photograph of the Frank property,
Petitioner Exhibit C: Assessment information for 726 Peru Court,
Petitioner Exhibit D: Assessment information for 233 Winfield Street,
Petitioner Exhibit E: Spreadsheet showing upward trend of assessments,
Petitioner Exhibit F: Beacon report and property record card ("PRC") for the Sheerin property, beacon reports for the Poloncak and Groch properties, PRCs for Poloncak, Groch, Weirick, and Van Til properties,
Petitioner Exhibit G: Real Property Assessment Guideline for 2002 – Version A, p. 78, Influence Factor Codes,
Petitioner Exhibit H: Culver Zoning Ordinance, Sec. 3.2 – L-1 Lake District,
Petitioner Exhibit I: PRC for the Kiran property,
Petitioner Exhibit J: PRC for the property under appeal,
Petitioner Exhibit K: Sales analysis for Culver neighborhood 1500504,
Petitioner Exhibit L: PRCs for 15 properties on Peru Court,
Petitioner Exhibit M: Beacon report the Lane property, PRC for the Bracken property, beacon report for the DeWitt property,

Respondent Exhibit 1: Request for exchange of evidence,
Respondent Exhibit 2: Form 130,
Respondent Exhibit 3: Form 115,
Respondent Exhibit 4: Form 131,
Respondent Exhibit 5: Beacon report for the parcel under appeal with handwritten annotation, aerial photograph, and ground-level photograph of the Petitioners' house,
Respondent Exhibit 6: Warranty deed,
Respondent Exhibit 7: PRCs for the Petitioners' three contiguous parcels, and land orders,
Respondent Exhibit 8: Sales analysis for Culver neighborhood 1500504 and sales for West Shore and Lakefront Culver 2009-2012,
Respondent Exhibit 9: Spreadsheet of sales in Lakefront Culver (9-1), beacon aerial photograph, beacon reports, sales disclosure forms, and PRCs for the properties listed in the spreadsheet (9-2 - 9-11),

Respondent Rebuttal Exhibits:

Rebuttal Exhibit 10: Spreadsheet with information for properties listed in Petitioner Exhibit A,
Rebuttal Exhibit 11A-31B: PRCs and aerial photographs with parcel outlines for parcels listed in Rebuttal Exhibit 10,
Rebuttal Exhibit 32: 2011 Real Property Assessment Guidelines, p. 43, Depth Tables,

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice,
Board Exhibit C: Hearing sign-in sheet.

c. These Findings and Conclusions.

Objections

8. The Respondent objected to Mr. Frank's testimony because she had requested the names and addresses of all witnesses the Petitioners intended to call at the hearing, and the Petitioners did not include Mr. Frank on their witness list. The ALJ took the Respondent's objection under advisement.

9. If timely requested by another party in a small claims appeal, a party must provide copies of its documentary evidence and the names and addresses of its intended witnesses at least five business days before a hearing. 52 IAC 3-1-5(d). Failure to do so may be grounds for excluding evidence. 52 IAC 3-1-5(f). The rule is designed to avoid unfair surprises and promote organized, efficient, and fair consideration of appeals. We will not automatically impose the harsh sanction of exclusion where a party's failure to identify witnesses or exchange exhibits is unlikely to have surprised or prejudiced the opposing party. The Respondent hardly could have been surprised that one of the Petitioners would testify in his own appeal. We therefore overrule the Respondent's objection. In any case, we do not base our determination on Mr. Frank's testimony.

Burden

10. Generally, a taxpayer seeking review of an assessing official's determination must prove that his property's assessment is wrong and what its correct assessment should be. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances. Where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(b). The assessor similarly has the burden where a property's gross assessed value was reduced in an appeal, and the assessment for the following date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of increase…." I.C. § 6-1.1-15-17.2(d).

11. If an assessor has the burden of proof and fails to meet it, the taxpayer may offer evidence to prove the correct assessment. If neither party offers evidence sufficient to prove the correct assessment, it reverts to the previous year's level, as last corrected by an assessing official, stipulated to by the parties, or determined on review. I.C. § 6-1.1-15-17.2(b).

12. The Petitioners own three contiguous parcels but they have appealed only one. As discussed in more detail below, they believe the parcel under appeal should be valued individually, while the Respondent believes the three parcels should be valued together as a single property. We have repeatedly explained that where a taxpayer uses contiguous tax parcels for a single economic use, those separate parcels may be considered as a single unit both for valuation purposes and for determining whether the burden-shifting statute applies. That is true even where the taxpayer has not appealed one or more of the tax parcels that make up the unit.

13. We will address whether the parcel under appeal was part of a larger residential property when we discuss the parties' valuation evidence. For purposes of determining who has the burden of proof, the question is moot. Both the assessment for the parcel under appeal and the assessment for the larger three-parcel unit increased by more than 5% between 2011 and 2012.[1] The Respondent therefore has the burden of proof.

Contentions

14. Summary of the Respondent's case:

    a. As explained above, the Petitioners own three contiguous parcels. The narrow parcel under appeal fronts Lake Maxinkuckee. The parcel to the far west has a house, and there is another narrow vacant parcel in between. The parcel under appeal therefore gives the Petitioners lake access from their house. When considered in isolation, the parcel is "unbuildable." But the Petitioners bought the parcels together and they would probably sell them together. The PTABOA and Respondent therefore looked at the three parcels as one economic unit, which the Respondent argues is consistent with our holdings in other appeals. *Dunning testimony* (*citing Pachniak v. Marshall County Ass'r*, pet. nos. 50-014-06-1-5-00070 and -71 (IBTR March 9, 2009))*; Resp't Exs. 3, 5-6.*

    b. The parcel under appeal was part of the "Lakefront Culver" assessment neighborhood, while the other two parcels were part of "Central Culver." The lakefront parcel previously received a -60% influence factor. During the 2012 general reassessment, however, the Respondent removed negative influence factors from all lakefront parcels and recalculated land values. She then looked at each parcel to determine whether to apply negative influence factors. There was nothing to support applying a -60% influence factor to the parcel under appeal. Instead, the assessment for the Petitioners' property as a whole was in line with sale prices for comparable properties. *Dunning testimony.*

    c. The Respondent offered spreadsheets showing how she calculated land base rates for Lakefront Culver and Central Culver. Because she had to submit values to the Department of Local Government Finance ("DGLF") by July 1, 2011, she initially

[1] The assessment for the parcel under appeal increased from $68,800 to $201,300 between 2011 and 2012. The total assessment for the three-parcel unit increased from $246,400 to $371,200.

used sales from 2009-2011. For Lakefront Culver, she chose the average sale price of $15,500 per front foot as the neighborhood's base rate. Before finalizing assessments, she re-examined neighborhood sales, this time including sales from July 1, 2011 through March 1, 2012. If one considers only those later sales, the average price increases to $17,345 per front foot and the median to $17,482. Nonetheless, the Respondent kept the base rate at $15,500. *Dunning testimony; Resp't Ex. 8.*

d. The Respondent also prepared a spreadsheet with ten sales, most of which involved properties she believed were comparable to the Petitioners' property. The properties either had been combined into a single economic unit with lake access or were small, vacant waterfront parcels with a contiguous buildable lot. The first five sales were from 2007-2010. They included the two properties the Respondent believed were the most comparable to the Petitioners' property. The next five sales were from July 15, 2011, through June 20, 2012. The Respondent included two of those sales not because she believed the properties were comparable to the Petitioners' property, but because she felt they illustrated market prices along Lake Maxinkuckee. *Dunning testimony; Resp't Ex. 9*.

e. The Respondent subtracted the assessments for improvements to extract the portion of each sale price attributable to land. She then converted the prices to values per front foot and per square foot. The front-foot prices ranged from $12,080 to $72,500, with a median of $15,938 and an average of $17,707.[2] The square-foot prices ranged from $40.27 to $132.75, with a median of $56.62 and an average of $71.76. By contrast, the parcel under appeal was assessed at only $10,595 per front foot and $120.39 per square foot. The land as a whole (including all three parcels) was assessed at $12,237 per front foot and $18.30 per square foot. *Dunning testimony; Resp't Ex. 9*.

f. In their Exhibit A, the Petitioners pointed to assessments for 21 out of Lakefront Culver's 117 parcels. The Petitioners listed assessments for 2014 rather than for 2012, which is the assessment year under appeal. The Respondent's deputy assessor, Mindy Penrose, prepared her own version of the exhibit using assessments from 2012. She also noted where the Petitioners had included information for only one of several parcels that were used as a single property and what the assessments for those larger properties were. *Penrose testimony; Resp't Rebuttal Exs. 10-32B*

g. The Petitioners made other comparisons that suffer from similar flaws. For example, the DLGF's assessment guidelines require assessors to use a depth factor to adjust base rates if a property is either deeper or shallower than the neighborhood's standard 200-foot-deep lot. In their Exhibit F, however, the Petitioners compared the parcel under appeal to a few smaller properties with lower assessments. The parcel under appeal is 88 feet deep with a depth factor of .67. Several of the parcels to which the Petitioners compare it had depth factors of .13, .33, .24, .51, respectively. The lower

[2] The Respondent's first comparable property actually sold twice—once in 2007 for $800,000 and again in 2014 for $762,500. She used the first sale in her analysis. *Dunning testimony; Resp't Ex. 9*.

depth factors translated to lower base rates. *Penrose testimony; Resp't Rebuttal Ex. 32.*

h. In any case, the Petitioners point only to assessments for other properties rather than to sales. Sales, not assessments, are used to establish market value. *Penrose testimony*.

15. Summary of the Petitioners' case:

a. According to the Petitioners, the Respondent's reliance on our decision in *Pachniak* for her assertion that the Petitioners use all three of their parcels as a single unit is misplaced. In that case, the taxpayers' house was located on a lakefront parcel across the road from their garage. Those parcels were therefore dependent on each other. By contrast, the parcel under appeal here is a narrow, vacant lot. According to the Culver zoning ordinance, it is unbuildable. Its only feasible use is for walking down to the lake. Multiple parcels with interdependent uses may be viewed as one unit. But where, as here, one parcel of several owned by the same person has limitations on its use, the DLGF's assessment guidelines call for negative influence factors to be applied. *Roush argument; Pet'rs Ex. H; Resp't Ex. 3.*

b. The Respondent merely assumes the Petitioners would sell their three parcels as one unit. There is no law requiring the Petitioners to do so; they could sell the lakefront lot to anyone they choose. In fact, the Petitioners decided not to have the parcels combined in order to preserve their flexibility. Each property must be judged based on its own size, shape, and use restrictions. *Frank testimony; Roush argument.*

c. The properties in the Respondent's spreadsheet are not comparable to the parcel under appeal. The first one has road frontage, unlike the parcel under appeal. With one exception, all of the other properties have houses with unobstructed views of the lake. By contrast, other houses obstruct the Petitioners' view.[3] *Roush argument; Resp't Ex. 9.*

d. The Petitioners identified 21 properties on Peru Court and Winfield Street, both of which are in the Petitioners' neighborhood. The parcel under appeal has one of the highest assessments per square foot. *Roush argument; Pet'rs Ex. A.*

e. The property at 726 Peru Court has 80 feet of frontage. It has negative influence factors for size and excess traffic, as well as a generic -25% factor. It was assessed at only $296,000, while the much narrower parcel under appeal was assessed at $203,000. *Roush argument; Pet'rs Ex. C.*

[3] While portions of two lots owned by other people are situated between the Petitioners' house and the lakefront, the existing houses on those lots do not appear to significantly obstruct the view of the lake from the Petitioners' house. One of those houses does appear to obstruct the view from the Petitioners' attached garage. *See Pet'rs Ex. B*.

f. A parcel owned by the Sheerins is similar to the parcel under appeal in that it can only be used to access the lake. It was assessed for only $19,000. Similarly, parcels owned by the Polonacks and Grochs have both lake and road access, making them more valuable than the parcel under appeal. Yet both those properties are assessed at substantially reduced front foot rates. *Roush testimony; Pet'rs Ex. F*.

g. Several lakefront properties on the same street (Peru Court) as the Petitioners' property have negative influence factors for traffic. Similarly, a property taxed to Margaret L. Bracken has a -25% influence factor for size and shape.[4] The parcel under appeal is much narrower than the standard lot. It should likewise receive a negative influence factor. The Respondent has not applied influence factors uniformly throughout the neighborhood. *Roush testimony; Pet'rs Exs. C, L-M*

Analysis

16. The Respondent failed to make a prima facie case that the assessment was correct. We reach this decision for the following reasons:

a. Real property in Indiana 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 by a similar user, from the property." I.C. § 6-1.1-31-6(c): 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). A party's evidence in an assessment appeal must be consistent with that standard. For example, a market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *See id.; see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Kooshtard Property VI*, 836 N.E.2d at 506; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).

b. In any event, a party must explain how its evidence relates to 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. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2012 assessments, the valuation date was March 1, 2012. *See* 50 IAC 27-5-2(c).

c. The Petitioners have appealed the assessment for only one of their three parcels. But they bought the parcels together, and the parcel under appeal gives the Petitioners access to the lake from their house. The Respondent therefore argues that the parcels should be valued as a single economic unit. We have no quarrel with that. The

[4] According to the property record card, the -25% influence factor was for excess depth. *Pet'r Ex. L; Penrose testimony*.

Respondent may meet its burden of proof by showing that the true tax value for the property as a whole is equal to or greater than the parcels' combined assessments.

d. But the Respondent did not offer sufficient probative evidence of true tax value regardless of whether we view the parcel in isolation or as part of a larger unit. She first pointed to sales information used to determine base rates for Lakefront Culver and Central Culver—the assessment neighborhoods for the Petitioners' three parcels. She presumably did so to show she followed the 2011 Real Property Assessment Guidelines in determining land values. Strict compliance with the Guidelines, however, does not show that an assessment reasonably measures a property's true tax value. As the Tax Court has explained, Indiana overhauled its property tax system in 2002, and the new system "shifts the focus from examining how the regulations were applied (i.e., mere methodology) to examining whether a property's assessed value actually reflects the external benchmark of market value-in-use." *Westfield Golf Practice Center v. Washington Twp. Ass'r*, 859 N.E.2d 396 (Ind. Tax Ct. 2007); *see also*, *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 679 (Ind. Tax Ct. 2006) (holding that strict application of the Guidelines is not enough to rebut the presumption that an assessment is correct and show that a taxpayer's proposed value accurately reflects his property's market value-in-use).

e. The Respondent's reliance on her assessment methodology is particularly unconvincing in this case given her claim that the parcels should be valued as a single economic unit. She assessed the parcels largely as if they were individual entities by assigning them to different assessment neighborhoods and applying different base rates.

f. Perhaps recognizing those problems, the Respondent also pointed to ten sales, most of which involved properties she claimed were comparable to Petitioners' parcels when viewed as a single unit. Again, despite her claim that one should look at the property's value as a whole, she focused solely on land.

g. Leaving that aside, the sales-comparison approach, in which one locates sales of comparable properties and adjusts the selling prices to reflect a subject property's total value, is a generally accepted appraisal approach. *See* 2011 MANUAL at 2, 9. A party offering comparative sales data in an assessment appeal, however, must show how relevant characteristics of the sold properties compare to those of the property under appeal and how and how any relevant differences affect the properties' values. *Long*, 821 N.E.2d at 470-71. The Respondent showed each property's location, lake frontage, depth, and total size. Those are doubtlessly relevant characteristics. But they are far from the only ones. More importantly, the Respondent failed to explain how relevant differences affected the properties' values. Thus, her analysis fell short of what the Tax Court required in *Long*. Also, five of her comparable sales, including the sales of the two properties she testified were most comparable to the Petitioners' property, occurred more than 20 months before the March 1, 2012 valuation date that applies to the Petitioners' appeal. She did not explain how those sale prices related to the valuation date.

h. For those reasons, the Respondent failed to make a prima facie case that the assessment under appeal was correct. It must therefore be reduced to the previous year's level of $68,800.

FINAL DETERMINATION

In accordance with the above findings of facts and conclusions of law, we order the assessment changed to $68,800.

ISSUED: September 2, 2015

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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

- 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>.