

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

**Petitions:** 50-013-12-1-5-00044  
50-013-12-1-5-00045  
**Petitioner:** James & Constance Grund Trust  
**Respondent:** Marshall County Assessor  
**Parcels:** 50-21-28-000-174.000-013  
50-21-28-000-175.000-013  
**Assessment Year:** 2012

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:

**PROCEDURAL HISTORY**

1. The Petitioner initiated the appeals with the Marshall County Property Tax Assessment Board of Appeals (the “PTABOA”) on October 8, 2012.
2. The PTABOA issued notices of final assessment determination on June 27, 2013, denying the Petitioner’s request to lower the assessed value of the subject property.
3. The Petitioner filed the Form 131 petitions for review with the Board on July 31, 2013. The Petitioner elected to have the appeals heard under the Board’s small claims procedures.
4. The Board issued notices of hearing to the parties on January 15, 2014.
5. On February 26, 2014, the Board’s administrative law judge Ellen Yuhan (the “ALJ”), held an administrative hearing with regard to the appeals
6. The ALJ did not inspect the subject properties.
7. Jeffrey A. Grund, Successor Trustee, appeared *pro se* for the Petitioner.<sup>1</sup> Marshall County Assessor Debra A. Dunning, and Marshall County Deputy Assessor Mindy Relos-Penrose, appeared for the Respondent. Grund, Dunning and Relos-Penrose all were sworn and presented testimony.

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<sup>1</sup> Constance Grund, Trustee, submitted a letter to the Board dated September 23, 2013, requesting that her son be allowed to represent her in the appeals. Mrs. Grund indicated that her husband, James Grund, passed away in 2012 and that her son had previously submitted a power of attorney to represent the trust as Successor Trustee. The Board granted the request pursuant to 52 Ind. Adm. Code 1-2-1.1.

**FACTS**

- 8. The subject properties contain one single-family dwelling on two contiguous parcels located at 410 South Shore Drive in Culver.
- 9. For parcel 50-21-28-000-174.000-013 (“Parcel 174”), the PTABOA issued a notice of final assessment determination for 2012 as follows:

|               |                  |
|---------------|------------------|
| Land:         | \$693,600        |
| Improvements: | <u>\$139,600</u> |
| Total:        | \$833,200        |

- 10. For Parcel 174, the Petitioner requested an assessment for 2012 as follows:

|               |                  |
|---------------|------------------|
| Land:         | \$467,600        |
| Improvements: | <u>\$139,600</u> |
| Total:        | \$607,200        |

- 11. For parcel 50-21-28-000-175.000-013 (“Parcel 175”), the PTABOA issued a notice of final assessment determination for 2012 as follows:

|               |             |
|---------------|-------------|
| Land:         | \$679,000   |
| Improvements: | <u>\$ 0</u> |
| Total:        | \$679,000   |

- 12. For Parcel 175, the Petitioner requested an assessment for 2012 as follows:

|               |             |
|---------------|-------------|
| Land:         | \$453,000   |
| Improvements: | <u>\$ 0</u> |
| Total:        | \$453,000   |

**RECORD**

- 13. The official record contains the following:
  - a. A digital recording of the hearing
  - b. Exhibits:

Petitioner’s Exhibits

Petitioner Exhibit 1 – Assessment information for 790 South Shore Drive

- Petitioner Exhibit 2 – Assessment information for 1974 South Shore Drive<sup>2</sup>
- Petitioner Exhibit 3 – Assessment information for 1100 South Shore Drive
- Petitioner Exhibit 4 – Assessment information for 814 East Shore Drive
- Petitioner Exhibit 5 – Assessment information for 834 West Shore Drive
- Petitioner Exhibit 6 – Assessment information for 576 South Shore Drive
- Petitioner Exhibit 7 – Assessment information for 204 South Shore Drive
- Petitioner Exhibit 8 – Assessment information for 394 South Shore Drive
- Petitioner Exhibit 9 – Opinion of value from Pam Baker of RE/MAX Oak Crest Realty
- Petitioner Exhibit 10 – Form 11 for parcel 175
- Petitioner Exhibit 11 – Form 11 for parcel 174

Respondent’s Exhibits (Parcel 174)

- Respondent Exhibit A – Form 130
- Respondent Exhibit B – Form 115
- Respondent Exhibit C – Form 131
- Respondent Exhibit D – 2012 property record card (“PRC”) for the subject property
- Respondent Exhibit E – 2012 land order
- Respondent Exhibit F – Department of Local Government Finance (“DLGF”) memo regarding the 2012 reassessment of land
- Respondent Exhibit G – Aerial maps of the subject property
- Respondent Exhibit H – Photos of the subject property
- Respondent Exhibit I – Spreadsheet showing eight comparable sales
- Respondent Exhibit J – Sales disclosure form and PRC for 810 South Shore Drive
- Respondent Exhibit K – Sales disclosure form and PRC for 820 South Shore Drive
- Respondent Exhibit L – Sales disclosure form and PRC for 166 South Shore Drive
- Respondent Exhibit M – Sale disclosure form and PRC for 30 South Shore Drive
- Respondent Exhibit N – Sales disclosure form and PRC for 790 South Shore Drive
- Respondent Exhibit O – Sales disclosure form and PRC for 30 West Shore Drive
- Respondent Exhibit P – Sales disclosure form and PRC for 1074 South Shore Drive
- Respondent Exhibit Q – Sales disclosure form and PRC for 124 South Shore Drive
- Respondent Exhibit R – Spreadsheet showing listings on South Shore Drive

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<sup>2</sup> The Petitioner’s evidence list lists Petitioner Exhibit 2 as assessment information for “1974 South Shore Drive.” However, Petitioner Exhibit 2 as submitted is actually assessment information for 1074 South Shore Drive.

Respondent's Exhibits (Parcel 175)

- Respondent Exhibit A – Form 130
- Respondent Exhibit B – Form 115
- Respondent Exhibit C – Form 131
- Respondent Exhibit D – 2012 PRC for the subject property
- Respondent Exhibit E – 2012 Land Order
- Respondent Exhibit F – DLGF memo regarding the 2012 reassessment of land
- Respondent Exhibit G – Aerial maps of the subject property
- Respondent Exhibit H – Spreadsheet showing eight comparable sales
- Respondent Exhibit I – Sales disclosure form and PRC for 810 South Shore Drive
- Respondent Exhibit J – Sales disclosure form and PRC for 820 South Shore Drive
- Respondent Exhibit K – Sales disclosure form and PRC for 166 South Shore Drive
- Respondent Exhibit L – Sale disclosure form and PRC for 30 South Shore Drive
- Respondent Exhibit M – Sales disclosure form and PRC for 790 South Shore Drive
- Respondent Exhibit N – Sales disclosure form and PRC for 30 West Shore Drive
- Respondent Exhibit O – Sales disclosure form and PRC for 1074 South Shore Drive
- Respondent Exhibit P – Sales disclosure form and PRC for 124 South Shore Drive
- Respondent Exhibit Q – Spreadsheet showing listings on South Shore Drive

Board Exhibits

- Board Exhibit A – Forms 131
- Board Exhibit B – Notices of hearing, dated January 15, 2014
- Board Exhibit C – Hearing sign-in sheet

c. These Findings and Conclusion

**OBJECTIONS**

11. The Respondent objected to the admission of the Petitioner's exhibits. The Respondent submitted its exhibits to the Petitioner without solicitation and apparently expected the Petitioner to respond in kind. The Petitioner did not submit any exhibits to the Respondent and responded to the Respondent's objection by citing the hearing notice instructions which read "*If requested* not later than 10 business days prior to the hearing by any party, the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the

hearing at least 5 business days before the small claims hearing.” The Petitioner asserted that the Respondent had made no such request.

12. 52 Ind. Adm. Code 3-1-5(d) states, “*If requested* not later than ten (10) business days prior to hearing by any party, the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small claims hearing” (emphasis added).
13. The Respondent admitted that she had provided her evidence to the Petitioner but had not actually requested the Petitioner’s evidence. Consequently, the Board overrules the Respondent’s objection and admits the Petitioner’s exhibits into evidence.

### **BURDEN OF PROOF**

14. Generally, the taxpayer has the burden of proving that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East and 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). A burden-shifting statute creates two exceptions to that rule.
15. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana Tax Court. Ind. Code § 6-1.1-15-17.2(b).
16. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code 6-1.1-15.” Under those circumstances,

if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.

17. Ind. Code § 6-1.1-15-17.2 was amended on March 25, 2014, to include the above language and the amendment applies to all appeals pending before the Board. *See P.L. 97-2014.*

18. The two parcels at issue contain a single residence. In 2011, the two parcels had a total assessment of \$1,571,100. In 2012, the combined assessed value of the two parcels decreased to \$1,512,200. Consequently, the burden-shifting provision of Ind. Code § 6-1.1-15-17.2 does not apply. As a result, and to which the parties had no objection at the hearing, the Petitioner has the burden of proving that the 2012 assessment is incorrect.

### CONTENTIONS

19. Summary of the Petitioner's case:
- a. The Petitioner contends that, in 2008, there was a "substantial real estate collapse" during which property values dropped all across the country with the exception of, in the opinion of the Petitioner, Lake Maxinkuckee. The Petitioner contends that the value of his properties in Carmel and in Florida declined substantially. *Petitioner testimony.*
  - b. The house on the subject properties was built in 1949. In the mid-1980s a family room, a garage and two bedrooms were added to the house. The house consists of approximately 3,388 square feet of living area. The subject parcels also include approximately 100 feet of lakefront property. The Petitioner contends that the assessment of \$1,512,000 is outside of any reasonable amount they would receive if they sold the house. *Petitioner testimony.*
  - c. The Petitioner contends that his real estate broker believed that the value of the property would be no more than \$1,060,000. The Petitioner listed the property with the broker for \$1,295,000 and, during the time it was listed, he received no offers to purchase the property. *Petitioner testimony; Petitioner Exhibit 9.*
  - d. The Petitioner presented information with regard to eight neighboring properties and compared their assessed values with their actual sales prices:
    - The property at 790 South Shore Drive had a 2012 assessed value of \$1,518,000. The property sold for \$1,100,000 after being on the market for over three years. *Petitioner Testimony; Petitioner Exhibit 1.*
    - The property at 1074 South Shore Drive had a 2012 assessed value of \$1,208,000. The property sold for \$1.6 million but it had had been completely gutted and redone. The Petitioner contends that the property was in "AAA highest quality" when it sold which is the reason he believes it brought that value. *Petitioner Testimony; Petitioner Exhibit 2.*
    - The property at 1100 South Shore Drive had a 2012 assessed value of \$1,364,800. The property sold for \$955,000. *Petitioner Testimony; Petitioner Exhibit 3.*
    - The property at 814 East Shore Drive had a 2012 assessed value of \$1,410,000. The property sold for \$950,000. The Petitioner contends that property on the east shore of the lake is presumably more valuable than

property on the south or west shores of the lake. *Petitioner Testimony; Petitioner Exhibit 4.*

- The property at 834 West Shore Drive had a 2012 assessed value of \$930,000 and sold for \$975,000. The house on the property had an area of 4,587 square feet which is larger than the subject property. The house has since been razed. *Petitioner Testimony; Petitioner Exhibit 5.*
- The property at 576 South Shore Drive had a 2012 assessed value of \$710,700. The property sold for \$700,000. The property consisted of a smaller lot and a smaller house than the subject property *Petitioner Testimony; Petitioner Exhibit 6.*
- The Petitioner contends that the property at 204 South Shore Drive “appraised at” \$1,120,000.<sup>3</sup> The property sold for \$900,000. The Petitioner contends that the lot is the same size as the subject property lot, but the house is smaller. *Petitioner Testimony; Petitioner Exhibit 7.*
- The property at 394 South Shore Drive, which is next door to the subject property, had a 2012 assessed value of \$1,497,000. The property sold for \$835,000. *Petitioner Testimony; Petitioner Exhibit 8.*

e. The Petitioner contends that most of the properties the Respondent referenced in her analysis are much larger than the subject property. For example:

- The property at 810 South Shore Drive is 8,692 square feet and sold for \$3,200,000. *Petitioner Testimony; Respondent Exhibit J.*
- The property at 820 South Shore Drive is 5,200 square feet and sold for \$1,750,000. *Petitioner Testimony; Respondent Exhibit K.*
- The property at 166 South Shore Drive is 6,782 square feet and sold for \$2,650,000. *Petitioner Testimony; Respondent Exhibit L.*
- The property at 790 South Shore Drive is 4,146 square feet and sold for \$1,100,000. *Petitioner Testimony; Respondent Exhibit N.*
- The property at 1074 South Shore Drive is 2,770 square feet (which is smaller than the subject property, but newly built and renovated), sold for \$1,600,000. *Petitioner Testimony; Respondent Exhibit P.*
- The property at 124 South Shore Drive is 9,434 square feet and sold for \$2,450,000. *Petitioner Testimony; Respondent Exhibit Q.*

f. The Petitioner contends that the property referenced by the Respondent at 474 South Shore Drive belongs to one of his relatives. The Petitioner contends that while the property has 50 feet of lake frontage, the house is actually across the street on a large piece of land. The property has been for sale for over three years and has not sold. *Petitioner Testimony; Respondent Exhibit R.*

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<sup>3</sup> While the Petitioner testified that the property at 204 South Shore Drive “appraised at” \$1,120,000, Petitioner Exhibit 7 consists of information regarding three parcels with a total 2012 assessed value of \$1,215,300.

- g. The Petitioner contends that the property referenced by the Respondent at 344 South Shore Drive is next door to the subject property. The property has been on the market for two years and has not sold. *Grund testimony; Respondent Exhibits Q & R.*

20. Summary of the Respondent's case:

- a. The Respondent contends that the housing market in Culver is obviously different than the markets in Indianapolis and Florida. *Relos-Penrose testimony.*
- b. The Respondent contends that the Petitioner listed the subject property after the March 1, 2012 assessment date. *Relos-Penrose testimony.*
- c. The Respondent contends that, of the sales the Petitioner submitted, one occurred after the assessment date and two of the others are in different neighborhoods. Further, the Respondent contends that there is no indication that the sales are valid sales or if the Petitioner included all of the parcels that were transferred in the sales because no sales disclosures were submitted. *Relos-Penrose testimony.*
- d. The Respondent contends that the assessed values contained in the information presented by the Petitioner may be incorrect because the source of his information is the Beacon website. The Respondent contends that the Beacon website is only updated once a year when the Forms 11 go out and, consequently, the assessed values may not be accurate. For example, the Respondent contends that the Petitioner shows the property at 814 East Shore Drive assessed at \$1,410,000, but the actual assessment is \$976,400. *Dunning testimony; Relos-Penrose testimony; Petitioner Exhibit 4.*
- e. The Respondent contends that Marshall County has established five different waterfront neighborhoods on Lake Maxinkuckee. Sales have shown a difference between neighborhoods and only sales from the subject neighborhood, which is "Lake Max South," were used to calculate the land base rate of \$14,900 per foot of frontage. *Dunning testimony; Respondent Exhibits E & I.*
- f. The Respondent contends that Book 1 of the Real Property Assessment Manual provides a description of the extraction method. Basically, the assessed value of the improvements is subtracted from the sale price and the remainder is attributable to the land. The Respondent contends that by subtracting the assessed value of the improvements, the differences in the properties' characteristics are taken into consideration. *Relos-Penrose testimony.*
- g. The Respondent created a spreadsheet to show eight properties that sold in the South Shore neighborhood. The Respondent used the Craftsman cost tables as provided by the DLGF to calculate the cost of the structures less depreciation. The Respondent then extracted the assessed value of the improvements from the sale price to show the amount of the sale that was attributable to the land. Finally, the Respondent calculated the price per square foot and the price per foot of frontage. The median



price per front foot is \$16,821 and the average price per foot of frontage is \$17,827. *Dunning testimony; Respondent Exhibit I.*

- h. The Petitioner's property is assessed at \$1,512,200. After deducting \$139,600, which is the assessed value of the improvements, the remainder of \$1,372,600 results in an assessment of \$13,726 per foot of frontage for the Petitioner's property. *Dunning testimony; Respondent Exhibit I.*
- i. Two current listings in the subject neighborhood are indicative of the market trend. Initially, 10% was subtracted from the listing price to account for a more realistic sale price. Subsequently, the 2013 assessed value of the improvements was extracted which resulted in a \$16,734 average and a median price per foot of frontage which is higher than the land base rate for 2012. *Dunning testimony; Respondent Exhibits Q & R.*

#### ANALYSIS

- 21. The Petitioner failed to make a prima facie case that the assessed value is incorrect for the March 1, 2012, assessment. The Board reached this decision for the following reasons:
  - a. For 2012, 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, from the property." Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 Ind. Adm. Code 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* at 2. Assessing officials primarily use the cost approach. *Id.* at 3. Other kinds of permissible evidence include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
  - b. Regardless of the type of evidence, a party must explain how its evidence relates to the required 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). The valuation date for a 2012 assessment was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f); 50 Ind. Adm. Code 27-5-2(c). Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, value as of that date. *Long, supra* at 471.
  - c. The Petitioner presented the assessments and sales prices for eight properties in the Lake Maxinkuckee area in an effort to show that the subject property was over-assessed. Other assessments do not automatically show the market value-in-use of a property under appeal. The party relying on those assessments must (1) show that the other properties are comparable to the property under appeal, and (2) explain how any relevant differences affect the properties' relative values. *See* Ind. Code § 6-1.1-15-

- 18(c) (2) (requiring the use of generally accepted appraisal and assessment practices to determine whether properties are comparable); *see Indianapolis Racquet Club, Inc. v. Marion County Assessor*, 2014 Ind. Tax LEXIS 48 (Ind. Tax Ct. 2014); *see also Long supra* at 471 (finding sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected value). The Petitioner did not explain how any differences among the properties affect their market values-in-use. Accordingly, the evidence offered has no probative value.
- d. The Petitioner offered an opinion of value from real estate broker Pam Baker. Ms. Baker stated that the value of the subject property would be no more than \$1,060,000. Ms. Baker based her opinion on the pending sale of the property next door to the subject property. There was no information presented regarding the characteristics of the comparable property as it relates to the subject property, other than to state that the lake frontage is similar and the house is of lesser value. Additionally, there is no date on the letter from Ms. Baker to the Petitioner. Accordingly, the opinion with regard to the value of the subject property is not probative. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119, (Ind. Tax Ct. 1998) (explaining that unsupported conclusory statements are not probative evidence).
- e. The Petitioner stated that the subject property was listed for \$1,295,000. However, no offers were ever made with regard to the property. Even if a listing price were to be considered evidence of value, the Petitioner did not submit the listing showing the asking price or the time when the house was actually on the market.

### CONCLUSION

22. In light of the discussion above, the Petitioner failed to make a prima facie case that the assessed value of the property for 2012 is incorrect. Consequently, the Respondent's duty to prove the correctness of the assessment with substantial evidence was not triggered and the Board need not make inquiry with regard thereto. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003).

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, the 2012 assessed value of the subject property will not be changed.

ISSUED: September 22, 2014

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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>>.