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

Petition:	**53-003-14-1-5-00037**
Petitioners:	**John G. and Ann A. Marvel**
Respondent:	**Monroe County Assessor**
Parcel:	**53-01-35-100-008.000-003**
Assessment Year:	**2014**

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

PROCEDURAL HISTORY

1. The property under appeal is located at 9330 Oak Lane in Unionville. The Marvels filed a Form 130 petition challenging their 2014 assessment. On November 12, 2014, the Monroe County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination valuing the property as follows:

   2014: Land: $298,000 Improvements: $189,700 Total: $487,700

2. The Marvels timely filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On October 5, 2016, Jacob Robinson, our designated administrative law judge ("ALJ"), held a hearing. Neither he nor the Board inspected the subject property.

3. Michael L. Carmin appeared as counsel for the Marvels. Heather Scheel appeared as counsel for the Assessor. John G. Marvel, taxpayer, Ken Surface, Nexus Group, and Judith A. Sharp, Monroe County Assessor, were sworn as witnesses.

RECORD

4. The official record for this matter contains the following:

   a. A digital recording of the hearing

   b. Petitioners' Exhibit 1: Lot diagram, printed 10/17/2012
      Petitioners' Exhibit 2: Parcel Information – subject property
      Petitioners' Exhibit 3: Parcel Information – Parcel No. 53-01-35-200-006.000-003
      Petitioners' Exhibit 4: Parcel Information – Parcel No. 53-01-35-100-031.000-003
      Petitioners' Exhibit 5: Parcel Information – Parcel No. 53-01-35-100-003.000-003
      Petitioners' Exhibit 6: Parcel Information – Parcel No. 53-01-35-100-004.000-003
      Petitioners' Exhibit 7: Parcel Information – Parcel No. 53-01-35-200-026.000-003

Petitioners' Exhibit 8:	Parcel Information – Parcel No. 53-01-35-401-043.000-003
Petitioners' Exhibit 9:	Parcel Information – Parcel No. 53-01-35-100-024.000-003
Petitioners' Exhibit 10:	Parcel Information – Parcel No. 53-01-27-300-010.000-003
Petitioners' Exhibit 11:	Parcel Information – Parcel No. 53-01-27-300-009.000-003
Petitioners' Exhibit 12:	Parcel Information – Parcel No. 53-01-35-200-003.000-003
Petitioners' Exhibit 13:	Parcel Information – Parcel No. 53-01-35-100-012.000-003
Petitioners' Exhibit 14:	Form 11 Notice dated 06/03/2014 – Parcel No. 53-01-35-200-016.000-003
Petitioners' Exhibit 15:	Form 115 Notice dated 11/12/2014 – subject property
Petitioners' Exhibit 16:	Form 130 Petition dated 7/14/2014 – subject property
Petitioners' Exhibit 17:	Form 131 Petition dated 12/11/2014 – subject property
Petitioners' Exhibit 18:	Warranty Deed recorded 09/02/1988 – subject property
Petitioners' Exhibit 19:	Spreadsheet used as demonstrative exhibit
Petitioners' Exhibit 20:	Property Report Card ("PRC") – Parcel No. 53-01-35-100-024.000-003

Respondent Exhibit A:	Form 130 Petition dated 7/14/2014 – subject property
Respondent Exhibit B:	Form 115 Notice dated 11/12/2014 – subject property
Respondent Exhibit C:	Form 131 Petition dated 12/11/2014 – subject property
Respondent Exhibit D:	Board's Final Determination dated 7/14/2015 – Marvel v. Monroe County Assessor
Respondent Exhibit E:	Burden Grid
Respondent Exhibit F:	2013 PRC – subject property
Respondent Exhibit G:	2014 PRC – subject property
Respondent Exhibit H1:	Photograph – subject property
Respondent Exhibit H2:	Photograph – subject property
Respondent Exhibit I:	Aerial photograph – subject property
Respondent Exhibit J:	Aerial photograph – subject property
Respondent Exhibit K:	PRC – Parcel No. 53-01-35-200-006.000-003
Respondent Exhibit L:	PRC – Parcel No. 53-01-35-200-026.000-003
Respondent Exhibit M:	PRC – Parcel No. 53-01-35-100-003.000-003
Respondent Exhibit N:	Residential Neighborhood Analysis
Respondent Exhibit O1:	Aerial photograph – Parcel No. 53-01-28-100-010.000-003
Respondent Exhibit O2:	Sales Disclosure Form filed 07/01/2013 – Parcel No. 53-01-28-100-010.000-003
Respondent Exhibit O3:	PRC – Parcel No. 53-01-28-100-010.000-003
Respondent Exhibit P:	Gayle Norman's appraisal report dated Dec. 17, 2010
Respondent Exhibit Q:	Appraisal Trend Analysis
Respondent Exhibit R-1 through R-4:	Market Overview
Respondent Exhibit R2:	PRC – subject property
Respondent Exhibit R3:	PRC – Parcel No. 53-01-35-200-006.000-003
Respondent Exhibit R4:	PRC – Parcel No. 53-01-35-100-031.000-003
Respondent Exhibit R5:	PRC – Parcel No. 53-01-35-100-003.000-003
Respondent Exhibit R6:	PRC – Parcel No. 53-01-35-100-004.000-003
Respondent Exhibit R7:	PRC – Parcel No. 53-01-35-200-026.000-003
Respondent Exhibit R8:	PRC – Parcel No. 53-01-35-401-043.000-003

Respondent Exhibit R9:	PRC and aerial photograph – Parcel No. 53-01-35-100-024.000-003
Respondent Exhibit R10:	PRC – Parcel No. 53-01-27-300-010.000-003
Respondent Exhibit R11:	PRC – Parcel No. 53-01-27-300-009.000-003
Respondent Exhibit R12:	PRC – Parcel No. 53-01-35-200-003.000-003
Respondent Exhibit R13:	PRC and aerial photograph – Parcel No. 53-01-35-100-012.000-003
Respondent Exhibit R14:	PRC and aerial photograph – Parcel No. 53-01-35-200-016.000-003
Respondent Exhibit S:	Indiana Housing Market Update

Board Exhibit A:	Form 131 Petition
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Hearing Sign-In Sheet

c. These Findings and Conclusions

SUMMARY OF CONTENTIONS

5. The Marvels' case:

a. The Marvels acquired the subject property in 1988. It is located approximately 300-400 feet from Lake Lemon on a 100-150 foot cove. At the time they acquired it, the property included a 0.23-acre parcel and a 2.09-acre parcel. There is a residence located on the original 0.23-acre parcel and a connected garage located on the original 2.09-acre parcel. In 2009, the Assessor combined the parcels for tax purposes and changed the classification for one acre of the property from lakeview to lakefront. For 2014, the Assessor assessed the Marvels' one acre of lakefront property at a rate of $265,000/acre, with the remaining 1.32 acres assessed at a lower rate. The Marvels' admit to having a boatlift and a boat ramp, but maintain that they are located on a 30-foot wide cove which they had to dredge out to allow access to the lake. *Marvel Testimony; Pet'r Exs. 1, 2, 18.*

b. The Marvels' neighbor immediately to the west, John Barto, owns two adjacent parcels that provide him with better access to the water. The distance from Barto's cove to the open water is about 30-40 feet shorter than from the Marvels' cove. Yet the Assessor classified Barto's property as off-water, making his rate a fraction of the rate applied to the Marvels' acre of lakefront property. John Hamell's property also has a better view of the lake than the Marvels' and has similar access to the lake from a cove along the north shore. However, the Assessor classified his property as lakeview and it therefore has a rate of $40,000/acre as opposed to $265,000/acre. *Marvel Testimony; Pet'r Exs. 1, 9, 12, 13, 20.*

c. The Marvels disagree with the combination of their two original parcels and the characterization of one acre of their property as lakefront. They contend that if the Assessor taxed their original 0.23-acre parcel at the lakefront rate of $265,000/acre,

the resulting assessment would be $60,950. Furthermore, taxing the original 2.09-acre parcel at the $25,000/acre rate would result in an assessment of $52,250. *Marvel Testimony; Pet'r Exs. 19, 12, 13, 20.*

6. The Assessor's case:

   a. Ken Surface gave a general overview of the information contained on a PRC. He explained that assessors develop a neighborhood factor to adjust their cost basis calculations to reflect the market value-in-use of any improvements. They look at all of the sold properties within a given neighborhood, add the totals of those properties, subtract the sum of the land values of those properties, then divide by the remainder value. Assessors then apply the resulting neighborhood factor to all of the improvements within that neighborhood. *Surface Testimony.*

   b. Mr. Surface also highlighted portions of the Marvels' PRC, including their assigned neighborhood (North Shore Drive – lakefront) and their two land type designations (9rr and 91rr). He clarified that the neighborhood name is merely descriptive. When delineating properties into neighborhoods, they attempt to lump like-properties together. Under the land pricing section, the "rr" designation stands for rural residential. Land Type "9" denotes land designated for a homesite and Land Type "91" is land classified as excess residential. The Indiana Manual (presumably referring to the DLGF's 2011 REAL PROPERTY ASSESSMENT MANUAL), dictates that if an improved residential property is greater than one acre, the first acre is designated as the homesite and any additional land is excess residential. *Surface Testimony; Resp't Ex. R2.*

   c. The Assessor introduced PRCs for five properties within the North Shore Drive – lakefront neighborhood with base rates of $265,000 applied to their homesites and rates of $25,000 applied to any excess residential land. The Assessor treated these properties similarly for valuation purposes. A property owned by James D. and Mary Ann Bale has a base rate of $230,000/acre applied to it because it has a different neighborhood code (lakewood – lakefront). *Surface Testimony; Resp't Exs. R3, R4, R5, R6, R7, R8.*

   d. The Hammel property falls within the North Shore Drive – lakeview neighborhood. Similar to the Marvels' property, it has a one-acre homesite and some excess residential land. However, the Assessor did not deem it as being comparable to the Marvels' property. The base rates applied to it are much lower than the Marvels' base rates because it is grouped with other properties situated on a pond that do not necessarily have direct access to the lake. While he has a dock or patio on the pond, Hammel does not have a boat dock on Lake Lemon. *Surface Testimony; Resp't Ex. R9.*

   e. The two Barto properties discussed by Mr. Marvel are part of a neighborhood that is off-water (Lake Lemon Area – off-water). They are both unimproved properties classified as excess residential land. Parcel No. 53-01-35-100-012.000-003 does not

extend to the water. Further, although Parcel No. 53-01-35-200-003.000-003 does appear to have a small sliver that reaches the lake, the lack of a house or other improvements makes it difficult to determine whether it is lakefront, lakeview, or off-water. *Surface Testimony; Resp't Exs. R12, R13.*

f. The Assessor also introduced PRCs for two properties assigned to the North Shore Woods – lakefront neighborhood. They are valued on a front foot basis, which is a common appraising practice for lake property. It attempts to measure the utility of land on the water, but an acreage rate is more appropriate to value irregularly shaped properties. The Indiana Manual allows assessors to value property using front footage, square footage, acreage, or by developing a site value. The Assessor treats everyone similarly, but may use different methods to value property in different neighborhoods. *Surface Testimony; Resp't Exs. R10, R11.*

BURDEN OF PROOF

7. Generally, a taxpayer seeking review of an assessing official's determination has the burden of making a prima facie case both that the current assessment is incorrect and what the correct assessment should be. If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence.

8. Indiana Code § 6-1.1-15-17.2, also known as the burden shifting statute, creates an exception to that rule where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) a successful appeal reduced the previous year's assessment below the current year's level, regardless of the amount. I.C. § 6-1.1-15-17.2. Under those circumstances, the assessor has the burden of proving the assessment is correct. *Id.* If she fails to do so, it reverts to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).

9. Here, the assessment increased just over 4% from 2013 to 2014 and the Marvels agreed that they bear the burden of proof.

OBJECTIONS

10. The Marvels' counsel objected to a portion of Surface's testimony because he was attempting to explain the reasons the Board found error with two appraisals submitted as evidence in the Marvels' 2012 and 2013 assessment appeals. Their counsel also objected to Surface's testimony regarding the Marvels' 2015 and 2016 assessments on relevance grounds. The ALJ sustained both objections and we adopt his rulings.

ANALYSIS

11. 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

by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.

12. Regardless of the method used to prove a property's true tax value, 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. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2014 assessment was March 1, 2014. Ind. Code § 6-1.1-4-4.5(f).

13. As explained above, the Marvels have the burden of proving that their property's 2014 assessment was incorrect and what the correct assessment should be. The Marvels argue that the combination of their two original parcels was improper. They also challenge the characterization of one acre of their property as lakefront.[1]

14. We find nothing improper regarding the Assessor's decision to combine the Marvels' two original parcels. Indeed, "[a]n assessing official *shall* consolidate more than one (1) existing contiguous parcel into a single parcel if the assessing official has knowledge that an improvement to the real property is located on or otherwise significantly affects the parcels." I.C. § 6-1.1-5-16(b) (emphasis added). The evidence, including Mr. Marvel's own testimony, clearly demonstrates that there is a residence on the original 0.23-acre parcel and a *connected* garage on the original 2.09-acre parcel. Thus, the improvements are located on, and significantly affect, both of the original parcels.

15. In any case, a property's use governs how it should be valued. *See Cedar Lake Conf. Ass'n v. Lake Co. Prop. Tax Assessment Bd.*, 887 N.E.2d 205, 208 (Ind. Tax Ct. 2008) (explaining that the existence of separate parcel numbers does not alter how the property is used). The Marvels did not argue that they used the two original parcels for different purposes, nor did they provide us evidence of distinct uses. We therefore conclude that the Assessor properly combined the parcels.

16. The Marvels' second claim, challenging the Assessor's decision to assign the Marvels' property to the North Shore Drive – lakefront neighborhood instead of the North Shore Drive – lakeview neighborhood, is also unpersuasive. The Marvels attempted to portray their property as inferior to six parcels located in their lakefront neighborhood. We agree that those parcels may have better locations in relation to the main body of the lake, but that does not change the fact that the Marvels have direct access to Lake Lemon from a 30-foot wide cove in which they have both a boatlift and a boat ramp.

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[1] We analyzed and rejected both arguments in the Marvels' 2012 and 2013 appeals (See our July 14, 2015 Final Determination for Petition Nos. 53-003-12-1-5-00071 and 53-003-13-1-5-00011).

17. The Marvels also attempted to compare their property to two parcels owned by Barto and one owned by Hammel. However, unlike the Marvels' property, the one Barto parcel that *may* extend to the lake is unimproved, and there is no evidence suggesting that they use it to access the lake. Thus, the Assessor's decision to place it in the Lake Lemon Area – off-water neighborhood has little bearing on the correct neighborhood classification of the Marvels' property. On the other hand, the Hammel property certainly appears to share many similar characteristics with the Marvels' property. The only significant difference being that Hammel does not have a boat dock or other associated improvements to access Lake Lemon. On balance, however, we think that designating the Hammel property as lakefront is more justifiable than changing the Marvels' neighborhood designation to lakeview.

18. More importantly, in arguing about the proper neighborhood assignment, the Marvels are actually challenging the way in which the Assessor defined the neighborhoods and sorted properties into each distinct neighborhood.[2] A taxpayer, however, cannot rebut the presumption that an assessment is correct by contesting the assessor's methodology. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) ("Strict application of the regulations is not enough to rebut the presumption that the assessment is correct."). To make a case for a lower assessment, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Id*.

19. The Marvels offered no such market-based evidence, nor did they truly attempt to calculate a value. There was a cursory attempt in which they applied their current lakeview base rate of $265,000/acre to their original 0.23-acre parcel and their current excess acreage base rate of $25,000/acre to their original 2.09-acre parcel. However, as discussed above, we agree with the Assessor's decision to combine the Marvels' two original parcels.[3] We also note that this one attempt to compute a value does not reconcile with their main argument – that they should receive the same base rates applied to the lakeview neighborhood.

20. To some extent, the Marvels' second claim also appears to challenge their assessment under the "uniform and equal" mandate contained in Article 10, Section 1(a) of Indiana's Constitution. Among other things, Article 10 Section 1(a) requires the General Assembly to provide for a uniform and equal rate of assessment. Ind. Const. Art. X § 1(a); *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 397 (Ind. Tax Ct. 2007). In *Westfield Golf*, the Tax Court addressed the meaning of uniformity and equality in the context of Indiana's current assessment system. As the Court explained, before the switch to our current system, true tax value was determined under assessment regulations and bore no relation to any external, objectively verifiable measurement standard. *Westfield Golf*, 859 N.E.2d at 398. Properties within the same

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[2] The Manual requires assessors to assign all property within their jurisdiction to a neighborhood defined by the characteristics they deem appropriate. MANUAL, Ch. 2, pgs. 7-8.

[3] For residential parcels with a dwelling and more than one acre of land, the Manual requires assessors to apply the residential homesite base rate to one acre and the excess acreage base rate to the remaining acreage. MANUAL, Ch. 2, pg. 54.

neighborhood in a land order were presumed to be comparable to each other, and the principles of uniformity and equality were therefore violated when those properties were assessed and taxed differently. *Id*.

21. That changed under the new system, which incorporates market value-in-use as its external, objectively verifiable benchmark. The focus shifted from examining how assessment regulations were applied to examining whether a property's assessed value actually reflects that external benchmark. *Id*. at 399. Thus, "'the end result—a uniform and equal *rate* of assessment—is required, but there is no requirement of uniform procedures to arrive at that rate.'" *Id*. (*quoting State ex. rel. Att'y Gen. v. Lake Superior Court*, 820 N.E.2d 1240, 1250 (Ind. 2005) (emphasis in original). In a footnote, the Court explained that one method for proving a lack of uniformity and equality is to present assessment ratio studies, comparing the assessments of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals. *Id*. at n. 3. The taxpayer in *Westfield Golf* lost because it focused solely on the base rate used to assess its driving-range landing area compared to the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the properties. *Id*.

22. The Marvels focus was similarly misplaced. Again, the crux of their argument is that the lakeview base rates are the correct rates for valuing their property because unlike other lakefront properties, their property does not have direct access to Lake Lemon and is actually more comparable to Hammel's lakeview property. However, the Marvels failed to compare the assessments of any of the properties discussed during their case to objectively verifiable data, such as sales prices or market value-in-use appraisals. Furthermore, there is no evidence that any of the properties the Marvels included in their analysis actually sold. Thus, the Marvels did not present an analysis that we can construe as an assessment ratio study or from which we can otherwise draw any meaningful inference concerning the uniformity of assessments within their jurisdiction. Consequently, the Marvels' evidence is insufficient to demonstrate that their 2014 assessment violated the uniform and equal requirements.

23. Because the Marvels did not offer any probative evidence to establish the market value-in-use of the subject property or a lack of uniformity and equality, they failed to make a prima facie case that their 2014 assessment was incorrect. Where a petitioner has not supported his claim with probative evidence, the respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

FINAL DETERMINATION

In accordance with the above findings and conclusions, the Board finds for the Assessor and orders no change to the 2014 assessment.

ISSUED: March 2, 2017

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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>.