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

Petition:	**53-003-12-1-5-00071**
	53-003-13-1-5-00011
Petitioner:	**John G. and Ann A. Marvel**
Respondent:	**Monroe County Assessor**
Parcel:	**53-01-35-100-008.000-003**
Assessment Year:	**2012, 2013**

The Indiana Board of Tax Review ("Board") having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Procedural History

1. The property under appeal is located at 9330 Oak Lane in Unionville. John and Ann Marvel contested the property's assessments for 2012 and 2013. The Monroe County Property Tax Assessment Board of Appeals ("PTABOA") issued determinations valuing the property as follows:

2012:	Land: $183,000	Improvements: $281,900	Total: $464,900
2013:	Land: $183,000	Improvements: $285,900	Total: $468,900

2. The Marvels timely filed Form 131 petitions with the Board. On January 28, 2015, our designated administrative law judge, Andrew Howell, held a hearing on the Marvels' petitions. Neither he nor the Board inspected the subject property.

3. Angela Parker appeared as counsel for the Marvels. Brian Cusimano appeared as counsel for the Monroe County Assessor. John Marvel and Ken Surface testified under oath.

Record

4. The official record for this matter is made up of the following:

   a. A digital recording of the hearing,

   b. Exhibits:

Petitioners' Ex. 1:	Parcel map showing subject area dated Oct. 17, 2012,
Petitioners' Ex. 2:	Property report card ("Report Card") for subject property,
Petitioners' Ex. 3:	Report Card for parcel # 53-01-35-200-006.000-003,

Petitioners' Ex. 4:	Report Card for parcel # 53-01-35-200-013.000-003,
Petitioners' Ex. 5:	Report Card for parcel # 53-01-35-100-031.000-003,
Petitioners' Ex. 6:	Report Card and property record cards for parcel # 53-01-35-100-003.000-003,
Petitioners' Ex.7:	Report Card for parcel # 53-01-35-200-010.000-003,
Petitioners' Ex. 8:	Report Card for parcel # 53-01-35-100-003.000-003[1],
Petitioners' Ex. 9:	Report Card for parcel # 53-01-35-200-004.000-003,
Petitioners' Ex. 10:	Report Card for parcel # 53-01-35-200-026.000-003,
Petitioners' Ex. 11:	Report Card for parcel # 53-01-35-401-043.000-003,
Petitioners' Ex. 12:	Report Card for parcel # 53-01-35-100-024.000-003,
Petitioners' Ex. 13:	Report Card for parcel # 53-01-27-300-010.000-003,
Petitioners' Ex. 14:	Report Card for parcel # 53-01-27-300-009.000-003,
Petitioners' Ex. 15:	Report Card for parcel # 53-01-35-200-003.000-003,
Petitioners' Ex. 16:	Report Card for parcel # 53-01-35-100-012.000-003,
Petitioners' Ex. 31:	Spreadsheet prepared by Mr. Marvel,
Petitioners' Ex. 32:	Spreadsheet prepared by Mr. Marvel,
Petitioners' Ex. 33:	Appraisal report for the subject property dated Dec. 17, 2010, prepared by Gayle Norman,
Petitioners' Ex. 34:	Appraisal report for the subject property dated Dec. 27, 2011, prepared by Tom Gilbert,[2]
Respondent's Ex. A:	Property record card ("PRC") and photo of subject property,
Respondent's Ex. B:	Appraisal report for the subject property dated Dec. 17, 2010, prepared by Gayle Norman,
Respondent's Ex. C:	Mortgage documents for subject property,
Respondent's Ex. D:	PRC and photo for 9005 Emerald Court,
Respondent's Ex. E:	PRC and photo for 9424 N. Derrett Road,
Respondent's Ex. F:	Sales disclosure form for 9424 N. Derrett Road dated September 28, 2010,
Respondent's Ex. G:	PRC and photo for 8027 Lakeview Drive,
Respondent's Ex. H:	Sales disclosure form for 8027 Lakeview Drive dated June 11, 2010,
Respondent's Ex. I:	Sales disclosure form for 9005 Emerald Court dated September 30, 2011.
Respondent's Ex. J:	Spreadsheet with information for properties cited by the Marvels,
Respondent's Ex. K:	PRC for 53-01-35-200-006.000-003,
Respondent's Ex. L:	PRC for 53-01-35-100-031.000-003,
Respondent's Ex. M:	PRC for 53-01-35-100-003.000-003,
Respondent's Ex. N:	PRC for 53-01-35-200-010.000-003,
Respondent's Ex. O:	PRC for 53-01-35-100-004.000-003,

[1] This appears to be the same property as Petitioner's Ex. 6.
[2] The Petitioner did not offer any exhibits numbered 17-30.

Respondent's Ex. P: PRC for 53-01-35-200-026.000-003,
Respondent's Ex. Q: PRC for 53-01-35-401-043.000-003,
Respondent's Ex. R: PRC for 53-01-35-100-024.000-003,
Respondent's Ex. S: PRC for 53-01-35-300-010.000-003,
Respondent's Ex. T: PRC for 53-01-27-300-009.000-003,
Respondent's Ex. U: PRC for 53-01-35-200-003.000-003,
Respondent's Ex. V: PRC for 53-01-35-100-012.000-003,
Respondent's Ex. W: PRC for 53-01-27-300-009.000-003,
Respondent's Ex. X: Google Maps printout showing route from 9330 Oak Lane to 9005 Emerald Court,

Board Ex. A: Form 131 petitions,
Board Ex. B: Hearing notices,
Board Ex. C: Hearing sign-in sheet.

c. These Findings and Conclusions and all other orders and filings.

Objections

5. The Assessor objected to Petitioners' Exhibits 33 and 34—appraisal reports for the subject property prepared by Gayle Norman and Tom Gilbert, respectively—as hearsay. The Marvels responded that they were only offering the reports to show a downward trend in values; they were not arguing that either appraisal accurately reflected the property's value.

6. The ALJ overruled the Assessor's objection, explaining that the Board's procedural rules allow it to admit hearsay, subject to certain limitations on the use of such evidence. The ALJ also observed that the Assessor waived her hearsay objection to the Norman appraisal because she offered the appraisal as her own exhibit. We adopt the ALJ's ruling to admit both exhibits, although as explained below, we ultimately give them no weight.

Burden of Proof

7. Generally, a taxpayer has the burden of proving that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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). Indiana Code § 6-1.1-15-17.2, also known as the burden-shifting statute, creates two exceptions to that rule.

8. First, the statute "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." I.C. § 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." I.C. § 6-1.1-15-17.2(b).

9. Second, subsection (d) of the statute "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 I.C. § 6-1.1.15." I.C. § 6-1.1-15-17.2(d). Under those circumstances, "if the gross assessed value of the 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." *Id.*

10. Thus, two mechanisms may trigger a shift in the burden of proof: (1) an increase of more than 5% between years, and (2) a successful appeal that reduces the previous year's assessment below the current year's level, regardless of the amount. The Marvels concede that they have the Burden for 2012, and there is no evidence in the record that the burden-shifting provisions should apply for that year.

11. The analysis is slightly different for 2013. As things currently stand, the property's assessment did not increase by more than 5% between 2012 and 2013. But our determination for 2012 may nonetheless trigger a shift of the burden for 2013. We therefore address that question below after we analyze the Marvels' 2012 appeal.

Summary of Contentions

12. The Marvels' case:

    a. The assessment increased significantly more between 2007 and 2012 than did the assessments for neighboring properties. Fairness dictates applying the average increase for those neighboring properties (15% for land and 7% for improvements) to the subject property, which would yield a value of $254,000. *Marvel testimony.*

    b. The Board should take judicial notice that property values declined between 2009 and the valuation dates at issue in these appeals.[3] In any case, two appraisals confirm that downward trend. Ms. Norman valued the property at $450,000 as of December 17, 2010, while Mr. Gilbert valued it at only $405,000 a little over one year later. *Marvel testimony; Pet'rs Exs. 33-34.*

    c. What now comprises the subject property was previously two separate tax parcels. One was 2.09 acres and the other was .23 acres. The Assessor combined the parcels and changed the classification from "lake view" (properties assigned to assessment neighborhood 53003071-033 North Shore Drive – Lake View – A") to "lakefront"

[3] We interpret this as a request for us to take official notice under 52 IAC 2-7-4. We decline that request.

(properties assigned to assessment neighborhood 53003071-033 North Shore Drive – Lakefront – A). Lake view sites are assessed for much less than lakefront sites. *Marvel testimony; Pet'rs Exs. 1-2.*

d. According to the Marvels, the Assessor should not have combined the parcels. Also, because the subject property's only lake access is a small strip of land touching the end of a cove, it should be classified as lake view rather than lakefront. Some neighboring properties are classified as lake view when they should be classified as lakefront. The properties classified as lakefront have significantly more lake access than the subject property. *Marvel testimony; Pet'rs Exs. 1-16.*

e. A nearby property owned by John Hammel is the most comparable to the subject property. It fronts North Shore Drive and has access to what Mr. Marvel described as a little reservoir. A small cove also goes to the back of the property. Unlike the subject property, however, the Hammel property is classified as lake view, and the entire 1.43-acre site was assessed for only $41,500 in 2012 and 2013. *Marvel testimony; Pet'rs Ex. 12*.

f. Another property owned by the Bermans was assessed for $291,500 but sold for $250,000. Although the property was not listed by a realtor, the sale was an arm's length transaction. Mr. Marvel did not know when the sale occurred. *Marvel testimony*.

13. The Assessor's case:

a. The house either sat on the edge of the larger of the two former parcels or straddled the parcels. Both parcels therefore supported the house. By statute, an assessor must combine contiguous parcels that support the same improvements. *Surface testimony.*

b. Ms. Norman's valuation opinion is close to the assessments for 2012 and 2013. She estimated the value as of December 17, 2010. Nonetheless, based on his experience with how values for Monroe County properties had been trending since 2010, the Assessor's witness, Ken Surface, believed Ms. Norman's appraisal supported the assessments for 2012 and 2013. *Surface testimony; Resp't Ex. B*.

c. By contrast, Mr. Gilbert's appraisal was carelessly prepared and contains errors relating to all three sale of his comparable sales:

- Comparable #1. Mr. Gilbert lists the property's address as 9005 Emerald Court in Unionville, and indicates that it is .13 miles from the subject property. He reported the sale price as $405,000. There was a $405,000 sale for 9005 Emerald Court, but that property is located 19.8 miles away on a different lake. Mr. Gilbert also described the site as 1.72 acres when it is

really only .35 acres. That error apparently led him to make no adjustment for what is actually a significant size difference between the sites.

- Comparable #2. Although Mr. Gilbert indicates the property sold for sold $450,000 in May 2011, there is no record of that sale. But there is a record of that property selling for $580,000 in September 2010. He also adjusted the sale price downward to account for the house being smaller than the subject house. The price should have been adjusted upward instead.

- Comparable # 3. Mr. Gilbert lists a sale of price of $382,500 from May 2011. The sale was actually from June 2010, as shown on a sales disclosure form.

Mr. Gilbert gave the greatest weight to his conclusions under the sales-comparison approach. The errors in that analysis make Mr. Gilbert's appraisal unreliable. *Surface testimony, Resp't Ex. F, H, I, X.*

d. Individual parcels may vary, but Monroe County as a whole did not see the same decline in property values as the rest of the country. Contrary to what Mr. Marvel believes, one cannot compare conclusions from two different appraisals to trend a property's value from one date to another, because appraisers use different methods and comparables. Instead, trending should be based on a paired-sales analysis. *Surface testimony.*

e. The differences between the subject property's assessment and the assessments for neighboring properties stem from the Assessor following state guidelines. She valued the subject property's one-acre homesite using a base rate of $150,000—the same rate she applied to most of the properties Mr. Marvel identified. She then used a table to adjust that base rate. The table is premised on the notion that site values do not necessarily increase in direct proportion to size, or as the Assessor's witness, Mr. Surface put it, the first handful of dirt is worth more than the pile. For example, one of the neighboring parcels is only .25 acres. Following the table, the Assessor applied a factor of 2, which effectively doubled the rate. *Surface testimony; Cusimano Argument, Resp't Exs. J-V.*

Analysis

14. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance ("DLGF") has defined as "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, for the property." 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). A party may offer evidence that is consistent with that standard. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Actual construction costs,

sale or assessment information for the subject or comparable properties, and other information compiled according to generally acceptable appraisal principles may also be probative. *Id.*; *see also*, I.C. § 6-1.1-15-18.

15. Regardless of the valuation method used, a party must explain how its evidence relates to the property's value as of the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation dates for 2012 and 2013 assessments are March 1, 2012, and March 1, 2013, respectively.

A. 2012 Appeal

16. As explained above, the Marvels have the burden of proof in their 2012 appeal. They argue essentially three theories: (1) the Assessor should not have combined their parcels, (2) the Assessor misclassified the property as lakefront instead of lake view, and (3) their assessment increased at a disproportionately higher rate than the assessments for nearby properties despite what Mr. Marvel believed was a declining market.

17. As to their first claim, "[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). An aerial photograph supports Mr. Surface's testimony that the subject house either sits entirely on the very edge of the former 2.09-acre parcel or straddles the two former parcels. We therefore find that the house significantly affected both former parcels and that the Assessor properly combined them. In any case, whether the Assessor combined the parcels or not, a property's use governs how it should be valued. Parcels used as a single economic unit should be valued together.

18. We find the Marvels' second claim—that the property should have been assessed using the base rate for the lake view assessment neighborhood instead of the base rate for the lakefront neighborhood—similarly unpersuasive. A party generally does not make a case for changing an assessment simply by showing how the DLGF's assessment guidelines should have been applied. *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."). Instead, it should offer market-based evidence to show the property's true tax value. *See id*. The Marvels offered little such evidence. Although they submitted two appraisals, the first one valued the property as of December 17, 2010—more than 14 months before the valuation date that applies to the Marvels' 2012 appeal. The second appraisal, prepared by Mr. Gilbert, was riddled with factual errors. Indeed, the Marvels disagreed with the valuation opinions in both appraisals. Under those circumstances, the appraisals are not probative of the property's value.

19. The Marvels, however, did offer evidence of several other properties' assessments and one property's sale price. Indiana Code 6-1.1-15-18 allows a party to offer evidence of

comparable properties' assessments to prove the market value-in-use for a property on appeal. But the evidence must still comply with generally accepted appraisal or assessment practices. As the Indiana Tax Court recently explained, a party relying on sale or assessment data for other properties must account for relevant similarities and differences between the properties:

> Thus, while the land assessments of the [comparable properties] might have been an appropriate starting point for the [taxpayer] in its appeal preparation, they were just that—a starting point. Indeed, the [taxpayer] needed to provide some sort of explanation or analysis as to what factors made the value of the land at those properties comparable to its own; likewise, if there were any distinguishing characteristics that would affect the land values, the [taxpayer] needed to account for those by making adjustments.

Indianapolis Racquet Club, Inc. v. Marion County Ass'r, 15 N.E.3d 150, 155 (Ind. Tax Ct. 2014) (citing *Long*, 821 N.E.2d at 470). While Mr. Marvel compared some of the properties' relevant features, such as their view of, and access to, the lake, he failed to account for how various differences affected value.[4]

20. Indeed, the Marvels do not really claim that the neighboring properties are comparable to the subject property. They instead claim the properties are superior because they have direct access to the lakefront while the subject property has access only to the back-end of a cove. Although aerial photographs and a hand-drawn parcel map lend some general support to the notion that the neighboring sites are better situated than the subject site and therefore should have a higher per-unit value, the assessment data for those properties says little or nothing about how much higher the value should be.

21. The Marvels seek to answer that question by pointing to the assessment for the Hammel property, which Mr. Marvel testified was similarly situated to the subject property in that it lacked access to the lakefront but touched the back-end of a cove. The Assessor applied the base rate for the lake view neighborhood to that property. The Marvels argue that she should have applied the same rate to the subject site. Again, aside from showing that the Hammel property appears to have a sliver of access to a cove, Mr. Marvel did little or nothing to compare relevant characteristics of the two properties or to adjust for any relevant differences. Thus, the Hammel property's assessment does not show what the subject property was worth.

22. The Marvels appear to have offered their comparative assessment information less to show the true tax value than to show that they were not being treated fairly compared to owners of nearby properties. In short, they claim a lack of uniformity and equality in assessments.

[4] Mr. Marvel did not even attempt to compare the property that sold (the Berman property) to the subject property. Indeed, he could not even testify as to when the sale occurred.

23. Among other things, Article 10 section 1(a) of the Indiana Constitution 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 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*.

24. 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 procedure 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*.

25. The Marvels base their claim largely on the fact that the subject property's assessment increased at a substantially higher rate between 2007 and 2012 than did the assessments for neighboring properties. We first note that each assessment year generally stands alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)) ("Finally, the Court reminds Fleet Supply that each assessment and each tax year stands alone. … Thus, evidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later.") Also, the Marvels appear to argue that the Assessor trended their assessment differently than she did other assessments. As Mr. Surface testified, however, the Assessor corrected the underlying data on which various properties' assessments were based, which led to valuation changes that were not necessarily related to trending.

26. In any case, the Marvels' claim goes to the procedures the Assessor used to assess each property rather than to whether the properties were assessed uniformly in reference to the external benchmark of market value-in-use. Indeed, the Marvels offered almost no evidence to show the market value-in-use for any of the properties in question.

27. Because the Marvels failed to make a prima facie case for reducing the 2012 assessment, we find for the Assessor and do not order any change.

B. 2013 Appeal

28. The Marvels did not prevail on their 2012 appeal and the assessment did not increase more than 5% between 2012 and 2013. Hence, they retain the burden of proof for the 2013. They offered the same evidence and argument for that year as they offered for 2012. We therefore reach the same conclusion.

FINAL DETERMINATION

29. The Marvels failed to present a prima facie case either that the subject property was assessed for more than its true tax value or that they were entitled to relief based on a lack of uniformity and equality. We therefore find for the Assessor and order no change to the 2012 or 2013 assessments.

ISSUED: July 14, 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>.