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

Petition Nos.:	**50-014-06-1-5-00070**
	50-014-06-1-5-00071
Petitioners:	**Lawrence & Glenda Pachniak**
Respondent:	**Marshall County**
Parcel Nos.:	**50-21-21-304-407-000-014**
	50-21-21-304-369-000-014
Assessment Year:	**2006**

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

Procedural History

1. Lawrence & Glenda Pachniak asked the Marshall County Property Tax Assessment Board of Appeals ("PTABOA") to reduce the assessments for two parcels of real estate. On April 4, 2008, the PTABOA issued its determinations denying the Pachniaks' request.

2. The Pachniaks disagreed with the PTABOA's determination and timely filed Form 131 petitions with the Board. They elected to have these cases heard under the Board's small-claims procedures.

3. On December 18, 2008, the Board's designated Administrative Law Judge, Patti Kindler ("ALJ"), held a single administrative hearing on the Pachniaks' appeals.

4. Roy Michael Roush appeared as counsel for the Pachniaks. The following people appeared and were sworn-in as witnesses:

   a) For the Pachniaks:

      Rene´ Williams, Certified Residential Appraiser

   b) For the Marshall County Assessor:

      Jennifer Becker, County Consultant
      Debra Dunning, County Assessor

5. The parcels under appeal abut each other and are located at 1028 West Shore Drive in Culver. Parcel no. 50-21-21-304-369-000-014 ("parcel 369") contains a detached garage. Parcel 50-21-21-304-407-000-014 ("parcel 407") is a small triangular lot that runs along the corner of parcel 369. Both parcels are across the street from two other parcels that the Pachniaks also own. Those other parcels front Lake Maxinkuckee and contain a house.

6. Neither the Board nor the ALJ inspected the parcels.

7. The PTABOA determined the following values for the parcels under appeal:

<u>Parcel 369</u>
Land: $452,500 Improvements: $14,400 Total: $466,900

<u>Parcel 407</u>
Land: $93,800 Improvements: $0 Total: $93,800

8. The Pachniaks did not contest the value assigned to their garage. They asked for land values of $200,000 for parcel 369 and $10,000 for parcel 407.

Parties' Contentions

9. Summary of the Pachniaks' contentions:

   a) The assessor improperly valued the appealed parcels as lakefront properties. *Roush argument.* Although the Pachniaks own parcels that do front Lake Maxinkuckee, those parcels are across West Shore Drive. Neither of the parcels under appeal fronts the lake. Several appraisers and realtors agree that the appealed parcels therefore should not be appraised as lakefront properties. *Roush argument; Pet'rs Exs. 6-10*. And Culver's zoning ordinance supports those professional opinions by referring to lakefront property as a property with a boundary "abutting a lake, stream channel or other body of water." *Pet'rs Ex. 11*. Indeed, an old property record card for parcel 407 says that it is not a lakefront property. *Pet'rs Ex. 4; Roush argument*.

   b) The appealed parcels' assessments are out-of-line with assessments for other off-lake parcels in the area, and that inconsistency violates the requirement for uniform and equal assessments. *Roush argument*. Parcels like the appealed parcels have been assessed three different ways: (1) as lakefront parcels; (2) as off-lake parcels; and (3) as excess acreage. *Roush argument; Pet'rs Exs. 13-15.* As shown in the assessments for parcels owned by the Fishers and Harrison Steel Casting Company, the last two methods lead to substantially lower assessments. *Roush argument; Pet'rs Exs. 15-17.*

   c) The assessment for a property owned by Peter and Susan Korellis illustrates the disparity in assessments. The Korellis's corner lot abuts the appealed parcels. It has full access to utilities and contains a three-stall garage with an apartment

above it. Yet the Korellis's property is assessed for only $417,700. The appealed parcels, by contrast, have no utilities, a two-car garage without an apartment, and a less-desirable non-corner location. But they are assessed for a combined amount of $550,800. *Roush argument; Pet'rs Exs. 3, 19-21; see also Williams testimony*.

d) Rene´ Williams's appraisal of the appealed properties further highlights the inconsistency in assessments around Lake Maxinkuckee. In her appraisal report, Ms. Williams said that she had "utilized this land form to establish a fair market tax assessment and opinion of value, as compared to similar off-lake properties." *Williams testimony; Pet'rs Ex. 12.* Ms. Williams compared the appealed parcels to three other parcels. The first two were off-lake parcels whose owners also owned lake frontage across the street. The third included a shallow lakefront lot. *Pet'rs Ex. 12*. Ms. Williams concluded that, at $31.61 per square foot and $6,280 per front foot, the appealed parcels were assessed at almost twice the rate of the adjacent off-lake parcel and even higher than the parcel with the lake frontage. *Pet'rs Ex. 12*.

e) In an addendum, Ms. Williams also identified several sales, focusing most heavily on two sales of off-lake properties. One was a March 7, 2005, sale of a 75' x 158' parcel from Heinsen to Doyle. Doyle bought the property for $250,000, or $3,333 per foot of road frontage. The other sale, which Ms. Williams described as "really confusing the issue of value," involved a 4.88-acre parcel that sold for $73,000. *Pet'rs Ex. 12*.

f) Ms. Williams concluded her addendum with the following:

> The assessment period is 3-1-2006 and 3-1-2007 (no change in values), the above OFF LAKE actual sales in the correct time frame is a more realistic value guide than lake front values. As the reader can see, there is a hugh (sic) difference in the above off lake, across the street from the homes on the water, sales. Howvever (sic), even the high end is only 26% of the base value being currently used assess the subject.

Pet'rs Ex. 12.

g) Not only does Ms. Williams's appraisal show the inconsistency between assessments, it also shows that the appealed parcels had market values far below what they were assessed for. Her appraisal therefore should be given great weight. *Roush argument*.

h) By pointing to what the Pachniaks paid for four parcels as a group, the assessor ignores that the parcels are assessed and taxed individually. The assessment rules must be applied correctly to each parcel. *Roush argument*.

10. Summary of the Marshall County Assessor's contentions:

a) When contiguous parcels are owned by the same person, what matters is the true tax value of the property as a whole. *Becker testimony.* Most property sales along Lake Maxinkuckee involve multiple parcels; few parcels are sold individually. *Id.* The Pachniaks ignore that reality and focus on only two of their four parcels arguing that parcels that are assessed and taxed separately must be valued separately. Yet the Pachniaks themselves offered Ms. Williams's assessment analysis in which she estimated a single value for the two appealed parcels. *Becker argument.*

b) When the Pachniaks' four parcels are correctly viewed as a single property, their overall assessment is closely supported by the market. In 2006, the four parcels were assessed for a total of $1,182,100. On June 1, 2006, the Pachniaks bought all four parcels for $1,175,000. Thus, when viewed as a whole, the property's assessment was within 1% of its sale price. *Becker testimony; Resp't Exs. 2, 5.*

c) The Pachniaks also failed to offer evidence of the whole property's market value-in-use. The letters from appraisers and realtors only address whether the appealed parcels should be considered as lakefront properties; those letters say nothing about the parcels' market values. *Becker argument.* And what Ms. Williams referred to as her appraisal was really an analysis based on assessed values. She did focus on one purportedly comparable sale, but one sale does not suffice for an appraisal. *Id.*

Record

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

a) The Form 131 petitions,

b) A digital recording of the hearing.

c) Exhibits:

Petitioners' Exhibit 1 – Form 131 petition for parcel 50-21-21-304-407-000-014,
Petitioners' Exhibit 2 – Form 131 petition for parcel 50-21-21-304-369-000-014,
Petitioners' Exhibit 3 – A color map of parcels,
Petitioners' Exhibit 4 – Property record card ("PRC") for parcel 50-21-21-304-407-000-014, printed April 11, 2007,
Petitioners' Exhibit 5 – PRC for parcel 50-21-21-304-407-000-014, printed April 4, 2008,
Petitioners' Exhibit 6 – Undated letter from Shawn Reed,
Petitioners' Exhibit 7 – July 10, 2008, letter from Maria Pesak,
Petitioners' Exhibit 8 – January 9, 2008, letter from Rene´ Williams,

Petitioners' Exhibit 9 – December 10, 2008, letter from Pam Baker with two pages attached,
Petitioners' Exhibit 10 – January 11, 2008, letter from Steve Harper,
Petitioners' Exhibit 11 – Section 3.2-L-1 from Culver zoning ordinance,
Petitioners' Exhibit 12 – October 6, 2008, letter from Rene´ Williams and attached Land Appraisal Report,
Petitioners' Exhibit 13 – Map with parcels owned by Fisher and Harrison Steel highlighted,
Petitioners' Exhibit 14 – Color map for Fisher parcel,
Petitioners' Exhibit 15 – PRC for Fisher parcel,
Petitioners' Exhibit 16 – Color map for Harrison Steel parcel,
Petitioners' Exhibit 17 – PRC for Harrison Steel parcel,[1]
Petitioners' Exhibit 19 – Color photograph of property owned by Peter and Susan Korellis,
Petitioners' Exhibit 20 – PRC for Korellis property,
Petitioners' Exhibit 21 – Photograph of the appealed parcels,

Respondent's Exhibit 1 – Notice of Appearance of Consultant on behalf of Assessor,
Respondent's Exhibit 2 – PRCs for appealed parcels and two other parcels owned by the Pachniaks,
Respondent's Exhibit 3 – GIS photograph of the appealed parcels,
Respondent's Exhibit 4 – Union township's responses from original PTABOA hearing,
Respondent's Exhibit 5 – Copies of signed sales-disclosure form for sale from Charles O. Faulkner to Lawrence B. Pachniak,
Respondent's Exhibit 6 – Respondent Signature and Attestation Sheet,[2]

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of hearing,
Board Exhibit C – Hearing sign-in sheet,
Board Exhibit D – Board's request for Mr. Roush to file a notice of appearance,
Board Exhibit E – Mr. Roush's Notice of Appearance,

d) These Findings and Conclusions.

Analysis

Burden of Proof

12. A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect, and specifically what the correct assessment should be. *See Meridian Towers East & West v. Washington*

[1] The Pachniaks did not offer an Exhibit 18.
[2] The Assessor also submitted a three-page document with a list of her exhibits and a summary of testimony. She did not offer that document as an exhibit

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).

13. In making its case, the petitioner must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor,* 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis").

14. Once the petitioner establishes a prima facie case, the burden shifts to the assessor to impeach or rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley,* 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers,* 805 N.E.2d at 479.

The Pachniaks' Case

15. The Pachniaks did not prove that the appealed parcels' assessments should be reduced. The Board reaches this conclusion for the following reasons:

A. The Pachniaks did not rebut the appealed parcels' assessments or show a lack of uniformity and equality through evidence of other properties' assessments

a) Indiana assesses real property based on its "true tax value," which the 2002 Real Property Real Property Assessment Manual defines as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2).

b) Assessors typically use a mass-appraisal version of the cost approach to assess individual properties. The Real Property Assessment Guidelines for 2002 – Version A detail that approach. But those Guidelines are merely a starting point for determining value. *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). Thus, while a property's market value-in-use, as ascertained by applying those Guidelines, is presumed to be accurate, that presumption may be rebutted using relevant evidence that is consistent with the Manual's definition of true tax value. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006); *see also* MANUAL at 5. That evidence includes market-value-in-use appraisals, actual construction costs, sales information for the subject property or comparable properties, and other evidence compiled using generally accepted appraisal principles. *Id.*

c) By contrast, a taxpayer cannot rebut an assessment's presumed accuracy simply by contesting the methodology that the assessor used to compute it. *Eckerling*, 841 N.E.2d at 678. Instead, the taxpayer must show that the assessor's methodology yielded an assessment that did not accurately reflect the property's market value-in-use. *Id.* Strictly applying the Guidelines does not suffice; rather, the taxpayer must offer the types of market-value-in-use evidence contemplated by the Manual. *Id.*

d) The Pachniaks mainly focused on what they viewed as the assessor's indefensible decision to classify the appealed parcels as lakefront properties. The Board, however, sees little difference between that claim and other methodology-based claims that the Tax Court has rejected. *See Eckerling*, 841 N.E.2d at 674, 678 (taxpayers claimed that the assessor erred by using residential, instead of commercial, pricing schedules); *O'Donnell v. Dep't of Local Gov't Fin*., 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006)(taxpayers contested, among other things, the front foot rate and quality grade used to assess their property).

e) The same holds true for the Pachniaks' related argument that assessments around Lake Maxinkuckee were not uniform and equal. Once again, the Pachniaks focused largely on the disparate methods that the assessor used to value what the Pachniaks claimed were similar parcels. But as *Westfield Golf* illustrates, focusing on methodology instead of market value-in-use fares no better in lack-of-uniformity-and-equality claims.

f) In *Westfield Golf*, a taxpayer grounded its claim on the fact that the landing area for its driving range was assessed using a different base rate than the rate used to assess other driving ranges' landing areas. *Westfield Golf*, 859 N.E.2d at 397-98. In rejecting the taxpayer's claim, the court explained that "the overarching goal of Indiana's new assessment scheme is to measure a property's value using objectively verifiable data." *Id.* at 399. Thus, while uniformity and equality is required in the end result, the procedures used to arrive at that result need not be uniform. *Id*. Rather than focusing on that end result by comparing the actual market value-in-use of its property to the market values-in-use of the other driving ranges, the taxpayer focused solely on the methodology used to compute the properties' assessments. *Id*.

g) Like the taxpayer in *Westfield Golf*, the Pachniaks focused on the different methodologies used to assesses the appealed properties as compared to several other properties around Lake Maxinkuckee. Also like the *Westfield Golf* taxpayer, the Pachniaks did nothing to compare the appealed parcels' levels of assessment—the difference between their assessments and their market values-in-use—to the other properties' levels of assessment.

B. Ms. Williams's testimony and appraisal report were not probative of the appealed parcels' true tax values

h) The Pachniaks did offer what they characterized as probative evidence of the appealed parcels' market value. Specifically, they offered the opinion of Ms. Williams, a certified appraiser. Ms. Williams prepared a Land Appraisal Report in which she estimated the appealed parcels' combined value at $234,900 as of October 8, 2008. *Pet'rs Ex. 12*.

i) While a market value-in-use appraisal performed in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP") can be compelling evidence of a property's true tax value[3], the Board finds Ms. Williams's report too unreliable to give it any weight. True, Ms. Williams used an appraisal-report form and certified that she appraised the parcels in conformity with USPAP. On the other hand, Ms. Williams described the purpose of her assignment not as to determine the parcels' market value, but rather "to establish a fair market tax assessment and opinion of value, as compared to similar off-lake properties." *Pet'rs Ex. 12*. Indeed, in the grid meant for the appraiser to show how she applied the sales-comparison approach, Ms. Williams looked at other properties' assessments instead of sales. *Id.*

j) Ms. Williams's heavy reliance on other properties' assessments gives the Board pause. It shows that she was less concerned with determining the appealed parcels' market value-in-use than with showing a lack of uniformity and equality in assessment. To the extent she looked to the other assessments to estimate the appealed parcels' market value-in-use, Ms. Williams did little to show that such an approach complied with generally accepted appraisal principles. She did testify that many things, including assessments, can play into an appraisal. *Williams testimony*. And the sales-comparison approach recognizes that one can estimate a property's value indirectly by looking to the values of comparable properties. *See* MANUAL at 13. But in using assessments instead of sale prices, Ms. Williams relied on mere estimates of the other properties' values, and mass-appraisal estimates at that. Also, Ms. Williams herself believed that assessments throughout the neighborhood were inconsistent. That hardly inspires confidence that the assessments for the purportedly comparable properties accurately reflected their market values-in-use.

k) The Board recognizes that in the report's addendum, Ms. Williams did include information about several sales. She gave the most weight to the sale in which Doyle bought an off-lake parcel for $250,000. But Ms. Williams did little to compare Doyle's property, or any of the other sold properties, to the appealed parcels. And she did not explicitly adjust those sale prices or otherwise explain how any differences between those properties and the appealed parcels affected their relative market values-in-use. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005) (rejecting taxpayers' sales-comparison evidence where taxpayers failed to explain how properties were comparable or how any relevant differences affected their relative market values-in-use).

l) Finally, Ms. Williams looked at the appealed parcels' values independently from the Pachniaks' lakefront lots. True, assessors separately assess and tax each parcel listed on the tax rolls. But where the owners and the market view related

[3] *Kooshtard Prop. VI, LLC v. White River Twp. Assessor,* 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005 ("[T]he most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice [USPAP]").

parcels as one property, we ultimately care about the value of the entire property—not its individual components. That is intrinsic to the definition of true tax value, which looks to the utility that an owner, or similar user, receives from a property. Thus, one cannot divorce the value of any individual parcel from the market value-in-use of the property as a whole. Saying that one parcel is over- or under-assessed inspires little confidence that the property's overall assessment is wrong.

m) Of course, that all depends on whether the owner uses multiple parcels together or separately. Here, the relevant evidence shows that the Pachniaks and their predecessors in title used the four parcels together. Indeed the Pachniaks bought the four parcels as a unit. And the appealed parcels have a garage that the Board can only infer is used by the lakefront parcels' inhabitants. The Board therefore gives little weight to Ms. Williams's opinion about the appealed parcels' value as properties independent from the Pachniaks' lakefront lots.

Conclusion

16. The Pachniaks failed to offer probative evidence to show that the appealed parcels' assessments should be lowered. The Board therefore finds for the Marshall County Assessor.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now affirms the assessment.

ISSUED: ___________________

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>