

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

**Petition No.:** 50-013-06-1-5-00105  
**Petitioner:** Donald F. Elliott, Jr.  
**Respondent:** Marshall County Assessor  
**Parcel No.:** 50-21-27-000-067-000-013  
**Assessment Year:** 2006

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

**Procedural History**

1. The Petitioner initiated an assessment appeal with the Marshall County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated April 26, 2007.
2. The Petitioner received notice of the decision of the PTABOA on January 31, 2008.
3. The Petitioner filed a Form 131 petition with the Board on March 7, 2008. The Petitioner elected to have this case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated June 4, 2008.
5. The Board held an administrative hearing on August 6, 2008, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
  - a. For Petitioner: Donald F. Elliott, Jr., owner of the property
  - b. For Respondent: Debra A. Dunning, Marshall County Assessor  
Jennifer Becker, Indiana Assessment Service

## Facts

7. The property under appeal is a rear lot 57' x 118', with a 14' x 24' detached garage located at 2014 East Shore Drive, Culver, Union Township, in Marshall County, Indiana (Lot 13).
8. The ALJ did not conduct an on-site inspection of the subject property.
9. The PTABOA determined the assessed value to be \$209,900 for the land and \$10,600 for the improvement, for a total assessed value of \$220,500.
10. At the hearing, the Petitioner requested the assessed value to be \$68,000 for the land and \$10,600 for the improvement, for a total assessed value of \$78,600.<sup>1</sup>

## Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
  - a. The Petitioner owns property on Lake Maxinkuckee. *Elliott testimony*. According to the Petitioner, he owns one lot fully (Lot 1) and fifteen feet of an adjoining lot (Lot 2), both of which extend to the lake. *Id.* He also owns a rear lot adjoining Lot 1, Lot 13, which is the parcel at issue in this appeal. *Id.* Mr. Elliott testified that Lot 13 is small and flat and has no view of the lake. *Id.* The Petitioner contends that due to the size of the property, there is only 20 feet which can be built upon pursuant to Culver's zoning restrictions. *Id.* In support of this contention, the Petitioner submitted a photograph and the Culver, Indiana – Zoning ordinance. *Petitioner Exhibits 3 and 18*. Lot 13, however, contains a garage and driveway for parking, because "in summer cottages, parking is a problem." *Elliott testimony*.
  - b. The Petitioner contends that the assessed value of the land on Lot 13 is overstated in comparison with properties in the surrounding area. *Elliott testimony*. According to Mr. Elliott, the Board determined in *Richard J. Kortenhoven v. Department of Local Government Finance*, Petition No. 45-028-02-1-5-00628, that a petitioner could use comparable assessments to establish the value of a property under appeal. *Petitioner Exhibit 17; Elliott testimony*.
  - c. The Petitioner argues that comparable lots within the same area have assessed values ranging from \$62,070 to \$68,260. *Elliott testimony; Petitioner Exhibits 4 and 7*. These assessed values are substantially lower than the assessed value of Lot 13 which is assessed for \$209,900. *Elliott testimony*. In support of this

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<sup>1</sup> On the Form 131 appeal, Mr. Elliott requested the assessed value to be \$67,968 for the land and \$10,600 for the improvement, for a total assessed value of \$78,568.

contention, Mr. Elliott presented assessment information on two lots. *Id.* The first lot is located at 1346 East Shore Drive. *Petitioner Exhibits 1 and 16; Id.* The lot is a slightly smaller, corner lot that has no view of the lake. *Id.* It has a guest house, and is located on a golf course. *Id.* It is also impeded by zoning restrictions like the subject property. *Id.* The second lot is Parcel No. 502127000029000013, which is the same size as the subject property. *Id.* The parcel has a detached garage and parking area. *Id.* Parcel No. 502127000029000013, however, is located across the street, which is classified as a different neighborhood according to the assessor's records. *Id.* The Petitioner argues that the subject property is similar to the comparable lots. *Elliott testimony.* Therefore, the Petitioner contends, the market value-in-use of the land should be no more than \$69,968. *Petitioner Exhibit 13; Id.*

- d. Further, the Petitioner contends, the land was assessed incorrectly. *Elliott testimony.* According to the Petitioner, the lot under appeal is located in the Maxinkuckee (Max) Lakefront East neighborhood, which has no established land acreage base rate. *Id.* Across the street in the area designated as the Max Off Lake neighborhood, however, the assessor established an acreage base rate of \$180,000 per acre. *Petitioner Exhibits 1, 5 and 6; Elliott testimony.* The Petitioner argues that, converting the lot from a front foot basis to acreage rate, the parcel is only .16 of an acre. *Elliott testimony.* If the assessor applied a base rate of \$180,000 per acre, the subject property would be valued at \$67,968. *Petitioner Exhibits 1 and 6; Id.* According to the Petitioner, this is further indication that the land under appeal is overstated. *Id.*
- e. Finally, the Petitioner argues that the county applied the rear lot calculation on the land incorrectly. *Elliott testimony.* According the Petitioner, in applying the REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A (GUIDELINES) to the land, the assessor was required to add the depth of Lot 1 (the Petitioner's lakefront lot) to the depth of the rear lot (Lot 13), which totals 345 feet. *Petitioner Exhibit 9; Id.* The total depth is then converted into a factor, which for 345 feet is 1.11. *Id.* The next step is to determine the depth factor of Lot 1, which is 1.03. *Id.* Then, subtracting the overall depth factor of 1.11 from the Lot 1 depth factor of 1.03, the depth factor to be applied to the rear lot is .08. *Id.* The .08 is then multiplied by the land base rate of \$15,344, to determine the adjusted land rate. *Id.* The adjusted rate is then taken times the effective frontage of the subject property, which results in an assessed value of approximately \$68,000. *Id.*

12. Summary of Respondent's contentions in support of the assessment:

- a. The Respondent contends that Lot 13 is properly assessed. *Becker testimony.* According to the Respondent, the land has been valued as a rear lot, in accordance with instructions set forth in the GUIDELINES, which is consistent with all rear lots of other parcels in the neighborhood and surrounding area. *Respondent Exhibits*

2, 4, 5 and 6; *Id.* In addition, the Respondent contends all lots including the Petitioner's which are located in the Max Lakefront East neighborhood were valued on a frontage basis. *Id.* Therefore, the Petitioner's argument that Lot 13 should be valued on an acreage basis is not applicable. *Id.*

- b. The Respondent further argues that the Petitioner's comparative properties are not comparable to the subject property. *Becker testimony.* According to Ms. Becker, the property at 1346 East Shore Drive is only 57 feet deep, whereas Lot 13 is 118 feet deep. *Respondent Exhibit 5; Becker testimony.* Therefore, when applying the GUIDELINES, the depth factor is much lower than the subject property's depth factor. *Id.* This results in a lower adjusted rate and ultimately accounts for the difference in value. *Id.* In addition, the Respondent contends that Parcel No. 502127000029000013 is located in a neighborhood that is designated "off-water," while the subject property is located in an "on-water" neighborhood. Thus, the Respondent argues, the properties would not have the same aesthetic value, which is reflected in the land base rate. *Id.*
- c. The Respondent also argues that the Petitioner erred in calculating the value of Lot 13. *Becker testimony.* According to Ms. Becker, to determine the overall depth, the lot located immediately in front of the rear lot and the actual rear lot are measured as if they are one lot and a depth factor is determined. *Respondent Exhibit 4; Id.* Then a depth factor is calculated on the front lot, which is subtracted from the overall depth factor to determine the depth factor to be applied to the rear lot. *Id.* Here, the depth factor for Lot 13 is .24. *Becker testimony.* When the depth factor is applied to the land base rate of \$15,344, the adjust land rate is \$3,683. *Id.* The adjusted rate of \$3,683 is then multiplied by the lot's effective frontage of 57, which results in a land value of \$209,900. *Id.*
- d. Finally, the Respondent contends the property is correctly assessed at \$209,900. *Becker testimony.* According to the Respondent, a property in the same area that consisted of a rear lot and a front lot with a dwelling and detached garage sold for \$1,200,000 on June 6, 2005. *Respondent Exhibit 6; Id.* In support of this contention, the Respondent submitted an aerial map and property record card. *Id.* The Respondent contends that by applying the allocation method to the \$1,200,000, the rear lot would be approximately 25% of the sales price or \$258,546. *Id.* Thus, the Respondent argues, the county has correctly assessed property in the subject area.

### **Record**

13. The official record for this matter is made up of the following:
  - a. The Form 131 petition and related attachments.

b. The digital recording of the hearing.

c. Exhibits:

Petitioner Exhibit 1 – Trial brief submitted by Donald F. Elliott, Jr., which contains the following:

Exhibit A – plat map of the area,

Exhibit B – page 73 of the REAL PROPERTY ASSESSMENT GUIDELINES,

Exhibit C – map of Lake Maxinkuckee,

Petitioner Exhibit 2 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,

Petitioner Exhibit 3 – Aerial map and property record sheet for 2014 East Shore Drive and warranty deed dated August 16, 1955,

Petitioner Exhibit 4 – Aerial map and property record sheet for 1346 East Shore Drive and warranty deed dated July 7, 1969,

Petitioner Exhibit 5 – Union Township neighborhood base rate schedule,  
Petitioner Exhibit 6 – Petitioner’s schedule of properties in Max Off Lake East under \$180,000 acreage base rate,

Petitioner Exhibit 7 – Aerial map and property record sheet for Parcel No. 502127000029000013,

Petitioner Exhibit 8 – Notice of Assessment of Land and Structures – Form 11 R/A – C/I,

Petitioner Exhibit 9 – Brief and testimony of Donald Elliott, Jr., from the Marshall County Property Tax Assessment Board of Appeals hearing,

Petitioner Exhibit 10 – Union Township response to Petitioner Issues,

Petitioner Exhibit 11 – Union Township representative’s response to Petitioner’s evidence presented at the PTABOA hearing, dated January 17, 2008,

Petitioner Exhibit 12 – Petitioner’s reply to the township’s written rebuttal,

Petitioner Exhibit 13 – Plat map with Petitioner’s rear lot calculation,

Petitioner Exhibit 14 – Aerial map and property record sheet for Parcel No. 502127000103000013,

Petitioner Exhibit 15 – Aerial map and property record sheet for Parcel No. 502127000104000013,

Petitioner Exhibit 16 – Comparable fact sheet between Lot 13 and 1346 East Shore Drive,

Petitioner Exhibit 17 – Indiana Board of Tax Review final determination in *Richard J. Kortenhoven v. Department of Local*

Government Finance, Petition No. 45-028-02-1-5-00628,

Petitioner Exhibit 18 – Culver, Indiana – Zoning Ordinance,

Respondent Exhibit 1 – Notice of Appearance of Consultant on behalf of Assessor,

Respondent Exhibit 2 – Property record card for Donald F. Elliott, Jr.,

Respondent Exhibit 3 – Aerial map of the area,

Respondent Exhibit 4 – Page 49, 50, 51 and 52 of the REAL PROPERTY ASSESSMENT GUIDELINES,

Respondent Exhibit 5 – Respondent’s Rebuttal sheet showing the various pricing calculations on lots,

Respondent Exhibit 6 – Aerial map and two property record cards for Parcel No. 502127000103000013,

Respondent Exhibit 7 – Respondent Signature and Attestation Sheet, dated August 28, 2008,

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

### Analysis

14. The most applicable governing cases are:

- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township 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).
- b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township 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”).
- c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official

must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioner failed to raise a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
  - a. Real property is assessed based on “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, for the property.” Ind. Code § 6-1.1-31-6 (c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal method as evidence consistent with the Manual's definition of true tax value, such as actual construction cost, appraisals, or sales information regarding the subject property or comparable properties that are relevant to the property's market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Regardless of the method used to show a property's market value-in-use, however, a 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Petitioners who present evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property's value as of January 1, 2005. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
  - b. Here, the Petitioner contends his property is over-valued based on the assessment of neighboring properties. *Petitioner Exhibits 4, 7 and 16*. This argument, however, was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that the assessed value does not accurately reflect the property's market value-in-use.<sup>2</sup> *Id.* The Petitioner presented no evidence of the market value of the subject property to show its assessment does not reflect the market value-in-use of the property. Therefore the Petitioner failed to raise a prima facie case his property is over-valued.
  - c. Next, the Petitioner contends that the Respondent's methodology of assessing the subject property was not in accordance with the 2002 REAL PROPERTY ASSESSMENT MANUAL. The Petitioner first argues that the land should be

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<sup>2</sup> The Petitioner argues that the Board determined in *Richard J. Kortenhoven v. Department of Local Government Finance*, Petition No. 45-028-02-1-5-00628, that a petitioner could use comparable assessments to establish the value of a property under appeal. In that case, as the Respondent here notes, the Department of Local Government Finance did not dispute the petitioner's value. Further, that decision was issued on May 27, 2005, which predates the Tax Court decisions in *Westfield Golf* and *Eckerling*.

assessed by applying an acreage value from an adjacent neighborhood rather than valued on a front foot basis. *Elliott Testimony*. An assessor, however, is given the discretion to select “the most applicable pricing method for the neighborhood,” and the Petitioner failed to submit evidence that the front foot basis was not applicable. REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A at 16. Second, the Petitioner argued that the Respondent’s rear lot calculation was applied incorrectly. The conflict between the party’s divergent figures turns on the meaning of “front lot” in the Guidelines. While the Petitioner made the assumption that Lot 1 should be treated as the front lot, the Respondent correctly defined the front lot as the portion of 1346 East Shore Drive which lies between Lot 13 and Lake Maxinkuckee.<sup>3</sup> Thus, the assessor did not err in its assessment of the land value on the subject property.

- d. Even if the assessor had erred in its calculation, which it did not, a Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 677 (Ind. Tax Ct. 2006). Instead, the Petitioner must show the assessment does not accurately reflect the subject property’s market value-in-use. *Id.* See also *P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (The focus is not on the methodology used by the assessor, but instead on determining whether the assessed value is actually correct. Therefore, the taxpayer may not rebut the presumption merely by showing an assessor’s technical failure to comply strictly with the Guidelines). Again, because the Petitioner failed to present evidence of the market value-in-use of the property, the Petitioner failed to raise a prima facie case his property is over-valued.
- e. Finally, to the extent that the Petitioner can be seen to argue that the land value on the subject property should be adjusted or receive a negative influence factor because the lot is hindered by its size, irregular shape, lack of a lake view, or zoning restrictions, that argument is not supported by sufficient evidence. The Board notes that Lot 13 is merely a small part of a larger property owned by the Petitioner. While Lot 13 may be seen to be negatively impacted by its size, lack of lake view or zoning restrictions when viewed in a vacuum, there is no evidence that the Petitioner’s property as a whole has such negative influences.
- f. Where the Petitioner has not supported his claims with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

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<sup>3</sup> The plain meaning of the term “front lot” implies that it is in front of, and not adjacent to, the rear lot. The Petitioner has offered no substantive rebuttal to this plain meaning.



**Conclusion**

16. The Petitioner failed to establish a prima facie case. The Board finds in favor of the Respondent.

**Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should not be changed.

ISSUED: \_\_\_\_\_

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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

## IMPORTANT NOTICE

- APPEAL RIGHTS -

**You may petition for judicial review of this final determination pursuant to 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 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/bills/2007/SE0287.1.html>.**