

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

**Petition No:** 76-011-07-1-5-00019  
**Petitioners:** James Wehrenberg et al<sup>1</sup>  
**Respondent:** Steuben County Assessor  
**Parcel No.:** 76-06-03-120-319.000-011  
**Assessment Year:** 2007

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

**Procedural History**

1. The Wehrenbergs appealed the subject property’s March 1, 2007 assessment. On December 11, 2007, the Steuben County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination lowering the assessment, but not to the level that the Wehrenbergs requested.
2. The Wehrenbergs then timely filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board’s small claims procedures.
3. On June 7, 2011, the Board held a hearing through its administrative law judge, Jennifer Bippus (“ALJ”).
4. The following people were sworn in and testified:
  - a) Kim Wehrenberg, taxpayer
  - b) Marcia Seevers, Steuben County Assessor  
Phyl Olinger, county representative

**Facts**

5. The subject property is a single-family home located at 395 Lane 150, on Lake James, in Angola, Indiana.
6. Neither the Board nor the ALJ inspected the subject property.

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<sup>1</sup> On the Form 131 petition, the property owner is listed as “James Wehrenberg et. al.” *Board Ex. A.* A property record card attached to that petition lists several owners, including Kim Wehrenberg, who signed the Form 131 petition and appeared at the hearing. *Id.*

7. The PTABOA determined the following values for the subject property:

Land: \$324,800      Improvements: \$31,900      Total: \$356,700

8. On the their Form 131 petition, the Wehrenbergs requested the following values:

Land: \$159,250      Improvements: \$30,700      Total: \$189,950

### **Parties' Contentions**

8. The Wehrenbergs offered the following evidence and arguments:

- a) The subject property is assessed too high in light of an administrative law judge's decision that altered the Wehrenbergs' riparian rights. *Wehrenberg testimony*. Lukis, who owns a property to the west of the subject property, put up a pier that blocked lake access for his neighbors to the east—the Blackburns and the Rays. *Id.* The Rays filed an administrative action with the Natural Resources Commission against Lukis, who then filed his own action against the Rays, Blackburns, and Wehrenbergs. *See id.* Although the administrative law judge ruled that the property owners' riparian zones should be proportionate to their respective amounts of frontage, she simply extended the property lines into the water. *Id.* As a result, the Wehrenbergs lost some of their riparian rights because they were ordered to give the Rays access to the lake. *Wehrenberg testimony*. The Wehrenbergs cannot swim or park their boat on the east side of their pier because that would impede the Rays from accessing the lake. *Id.*
- b) Yet, when faced with the Wehrenberg's plight, the PTABOA simply applied a 5% negative influence factor that amounts to only about 1½ feet of the 35 feet of effective frontage for which their property is assessed. *Wehrenberg testimony*. The Wehrenbergs, however, had asked the PTABOA to take 10 or 15 feet off the property's effective frontage. *Id.* Additionally, the subject property's assessment erroneously includes 10 feet at the back of the property that is a road used by Rays and Blackburns to access their properties. *Id.; Pet'rs Ex. 1 at 4*. Thus, 10 feet should be deducted from the subject property's depth, changing it from 200 feet to 190 feet. *Wehrenberg testimony*.
- c) Mr. Wehrenberg compared the subject property to a property owned by the Dunkelbergers, which he described as being similar to the subject property in many ways. *Wehrenberg testimony; Pet'rs Ex. 5*. The Dunkelbergers' property has 40 feet of actual frontage, which the Assessor reduced to 29 feet of effective frontage. *Id.* Mr. Wehrenberg believes that the reduction was due to an abnormal shoreline issue, although he was not sure exactly what that issue was. *Id.* The Dunkelbergers' property is 190 feet deep. That is the same as the subject property once the 10-foot-wide access road is deducted. *See id.* But the Dunkelbergers' property is assessed using a 98% depth factor compared to the 111% factor used to assess the subject property. *Id.*

- d) Using the Dunkelbergers' assessment as a guide, Mr. Wehrenberg offered several calculations for what he believed would be a more accurate land assessment for the subject property. *Pet'rs Ex. 5*. According to Mr. Wehrenberg, his calculations accounted for the loss of riparian rights and corrected the Assessor's erroneous inclusion of the access road. *See id; Wehrenberg testimony*. He used three different variables to for the subject property's effective frontage (15', 20' and 25') and two different variables for the depth factor (98% and 100%). *Id*. His calculations ranged from \$129,360, which was based on 15 front feet and a 98% depth factor, to \$220,000, which was based on 25 front feet and a 100% depth factor. *Id*.
  - e) Finally, although the Form 131 petition points to some issues about the assessment of the Wehrenbergs' cottage, Mr. Wehrenberg waived those issues at the hearing. *Wehrenberg testimony*.
9. The Assessor offered the following evidence and arguments:
- a) The PTABOA addressed the change in the subject property's riparian rights by applying a 5% negative influence factor. *Olinger testimony*. But the Assessor's witness, Phyl Olinger, was not sure how the PTABOA arrived at that percentage. *Id*.
  - b) The Wehrenbergs still enjoy the same benefits from the lake; they still have access for swimming, boating, and fishing, albeit a little less than before. *Olinger testimony*. Furthermore, riparian rights are not something that an assessor values when determining assessments. *Seevers testimony*. The Assessor does not know how to measure a loss in riparian rights. *Olinger and Seevers testimony*.
  - c) Mr. Wehrenberg's calculations were wrong. *Olinger testimony*. Although Mr. Wehrenberg apparently got his depth factors by comparing the subject property to the Dunkelbergers' property, the Dunkelbergers' property was assessed using a different depth table. *Seevers testimony*.
  - d) During a recess in the hearing, the Assessor consulted GIS and found that the subject lot measures 207feet from the lakefront to the lot's back line. *Seevers testimony*. Yet, the lot is assessed as having an effective depth of only 200 feet. *Resp't Ex. 4*. Thus, assuming that one subtracts 10 feet for the access road, there is only a three-foot difference between the measured depth and what Mr. Wehrenberg has asked for. *See Seevers argument*. A survey would be required to get a perfectly accurate measurement. *Seevers testimony*.

### **Record**

10. The official record for this matter is made up of the following:
- a) The Form 131 petition

b) A digital recording of the hearing

c) Exhibits:

- Petitioners Exhibit 1: Page 1 – Form 114  
Page 2 – Front page of Form 130 petition  
Page 3 – Front side of property record card for the subject property  
Page 4 – Beacon site map (Lukis, Blackburn, Ray, Wehrenberg properties)  
Page 5 – Front side of Dunkelberger property record card  
Page 6 – Beacon site map (Dunkelberger)
- Petitioners Exhibit 2: Page from *Ray v. Blackburn and Lukis, et. al.* 10 CADDNAR 400 (2006) with Dock & Property Line Location Gleneyre Beach, Lake James
- Petitioners Exhibit 3: Photograph of boat and hand drawn line pointing to Wehrenbergs' property line
- Petitioners Exhibit 4: Photograph of locations for Ray, Wehrenberg, and Blackburn docks
- Petitioners Exhibit 5: Wehrenbergs' calculations for land value
- Petitioners Exhibit 6: Two pages from *Ray v. Blackburn and Lukis, et. al.* 10 CADDNAR 400 (2006)

- Respondent Exhibit 1: Respondent exhibit coversheet
- Respondent Exhibit 2: Summary of Respondent Testimony
- Respondent Exhibit 3: Power of Attorney Certification attached to Power of Attorney
- Respondent Exhibit 4: Subject property record card
- Respondent Exhibit 5: Form 115
- Respondent Exhibit 6: Beacon aerial map with subject parcel highlighted
- Respondent Exhibit 7: Dunkelberger property record card
- Respondent Exhibit 8: Beacon aerial map with subject parcel and Dunkelberger property locations
- Respondent Exhibit 9: Beacon aerial map with the subject, Scheele Ripley, and Culp property locations; beacon assessment information for Scheele, Ripley, and Culp properties
- Respondent Exhibit 10: Respondent Signature and Attestation Sheet

- Board Exhibit A: Form 131 petition
- Board Exhibit B: Hearing notice
- Board Exhibit C: Hearing Sign-In Sheet

d) These Findings and Conclusions.

## Analysis

### Burden of Proof

11. A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
12. In making its case, the taxpayer 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”).
13. 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. *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.

### Discussion

14. The Wehrenbergs did not make a prima facie case for reducing the subject property’s assessment. The Board reaches this conclusion for the following reasons:
  - a) Indiana assesses real property based on its “true tax value,” which the 2002 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 (2008)). Appraisers have traditionally used three methods to determine a property’s market value: the cost, sales comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
  - b) A property’s market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *reh’g den. sub nom.; P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer may rebut that presumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n. 6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, or any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

- c) By contrast, a taxpayer normally does not rebut an assessment's presumed accuracy simply by contesting the methodology that the assessor used to compute it. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). 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 should offer the types of market-value-in-use evidence contemplated by the Manual. *Id.*
- d) The Wehrenbergs focused primarily on what Mr. Wehrenberg characterized as the loss of the subject property's riparian rights. It is not clear precisely what rights the Wehrenbergs lost. Mr. Wehrenberg offered two isolated pages from an administrative law judge's decision in a case filed with the Indiana Natural Resources Commission. It is therefore difficult to tell exactly how the decision affects the Wehrenbergs' riparian zone, beyond the administrative law judge's finding that "Lukis and the Wehrenbergs who possess the ability to either impede the remaining parties' access and navigation or improve the situation, must choose the latter."<sup>2</sup>
- e) Regardless, the Wehrenbergs did not offer any of the types of market-based evidence that the Manual describes to try to quantify the effect that their claimed loss of riparian rights had on the subject property's market value-in-use. Instead, Mr. Wehrenberg attempted to recalculate the subject property's Guidelines-based assessment using various assumptions about the property's effective frontage and depth. That amounts to little more than an attack on the Assessor's methodology in computing the assessment. As explained above, such an approach does not suffice to rebut the presumption that the subject property was accurately assessed. *See Eckerling* 841 N.E.2d at 678.
- f) In any case, Mr. Wehrenberg offered little support for his assumptions. For example, he simply asserted that the administrative law judge's decision caused the subject property to lose 10 to 15 feet of effective frontage. He apparently based that assertion, in part, on the fact that Dunkelbergers' property was assessed using effective frontage of 29 feet even though it had 40 feet of actual frontage. But while Mr. Wehrenberg thought that the difference between the Dunkelbergers' actual frontage and their effective frontage was attributable to an abnormal shoreline, he did not actually know the reasons for that difference.

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<sup>2</sup> The Wehrenberg's exhibit cites to *Lukis v. Ray*, 888 N.E.2d 325 (Ind. Ct. App. 2008) in which the Indiana Court of Appeals reversed the trial court's decision that, in turn, had reversed the decision of the Natural Resource Commission. *Pet'rs Ex. 6*. The appellate opinion provides more background than what is contained in Petitioners' Exhibit 6, although it does not specifically discuss how the Commission's determination affected the Wehrenbergs. *Lukis v. Ray*, 888 N.E.2d 325 (Ind. Ct. App. 2008). Interestingly, the Court of Appeals cast doubt on whether the Commission's decision actually changed any of the homeowners' riparian rights, noting that Ray and Blackburn had bought their lots pursuant to a homeowners association's constitution and bylaws that provided each lot owner "full riparian rights to the lakefront bounded by the respective property lines extended past the shoreline." *Id.* Those match the riparian zones that the Commission determined, although the Commission gave a different reason for its decision. *Id.* at 327-28.

- g) More importantly, the Guidelines do not contemplate manipulating a property's effective frontage to account for variations in the property's riparian rights. The Guidelines require assessors to determine a lot's effective frontage where the lot's shape departs from what the Guidelines call a 100% lot, which is essentially a square or rectangle. *See* GUIDELINES, ch. 2 at 40.<sup>3</sup> The Guidelines address the shape of the land; they do not address the shape of riparian zones. *See* GUIDELINES, ch. 2 at 40-51. So, Mr. Wehrenberg's calculations dealing with the loss of riparian rights through changing the subject property's effective frontage do not appear to comply with the Guidelines.
- h) Mr. Wehrenberg's choice of depth factor similarly lacks support. He chose his alternate depth factors (98% and 100%) in part based on the depth factor used to assess the Dunkelbergers' lot, reasoning that once the access road is removed from the subject property's assessment, the two lots would have the same effective depth. Leaving the issue of whether the access road should be excluded from the subject property's assessment aside for the moment, a given lot's depth factor is determined by comparing the lot's effective depth to the effective depth of the assessment neighborhood's base lot. *See* GUIDELINES, ch. 2 at 51 ("The depth table adjusts the lot value of those lots that have either less depth or more depth than the standard established for the neighborhood). The subject property and the Dunkelbergers' property are in different assessment neighborhoods. *Pet'rs Ex. 1 at 3* (listing the subject property's neighborhood as 135071); *Pet'rs Ex. 1 at 5* (listing the Dunkelbergers' neighborhood as 135111). Thus, without showing that the two neighborhoods had the same size base lot, the fact that the subject lot and the Dunkelbergers' lot might have the same effective depth does not mean that the same depth factor should be used to assess them. Indeed, the Assessor testified that she used different depth tables to assess the two lots.
- i) That leaves the Wehrenbergs' claim that the subject property's assessment should not include what Mr. Wehrenberg called the "access road" at the rear of the property. *Wehrenberg testimony*. Generally, where an encumbrance, such as an easement, detracts from a property's market value-in-use, the encumbrance's effect should be reflected by a negative influence factor. *See* GUIDELINES, glossary at 10 (defining "influence factor" as "[a] multiplier that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel"); *see also* GUIDELINES, ch. 2 at 56, 61 (indicating that a negative influence factor may be applied to reflect "a decrease based on encumbrances, restrictive covenants or obstructions that limit the use of land). Influence factors may be quantified using market data. *Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).
- j) The Wehrenbergs, however, offered no information about the extent of the encumbrance other than Mr. Wehrenberg calling the strip in question an "access

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<sup>3</sup> According to the Guidelines, in a 100% lot, the lot's vertical lines form right angles with its horizontal lines, there are no lines that do not form a 90° angle, and the narrowest portion of the lot is usually its frontage. GUIDELINES, ch. 2 at 40.

road” and saying that it was used by the Rays and Blackburns to access their properties. They similarly offered no market evidence to quantify how the encumbrance affected the lot’s market value-in-use as a whole.<sup>4</sup>

- k) Because the Wehrenbergs failed to offer probative evidence to rebut the presumption that the subject property was accurately assessed, they failed to make a prima facie case for changing the property’s assessment.

**Conclusion**

- 15. The Wehrenbergs did not make a prima facie case for changing the subject property’s assessment. The Board finds for the 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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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

<sup>4</sup> Even if the Board were to accept Mr. Wehrenberg’s claim that the subject property’s assessment should be re-calculated under the Guidelines by excluding the access road, that re-calculation would barely change the property’s assessment. Although the record does not show the dimensions for the subject neighborhood’s base lot, a 1.11 depth factor for a lot with 200 feet of effective depth corresponds to the depth table for lots that are 150 feet deep. GUIDELINES, ch. 2 at 55. Under that table, subtracting 10 feet from the subject lot’s depth would only change the depth factor to 1.10. *Id.* Thus the base rate used to assess the subject land would change by \$88—from \$9,768 to \$9,680. That would reduce the property’s assessment by \$3,080 (\$88 x 35 front feet).



## 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>>.