

REPRESENTATIVE FOR PETITIONER:

Charles E. Koziarz, *Pro se*

REPRESENTATIVE FOR RESPONDENT:

Debra A. Dunning, Marshall County Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Charles E. Koziarz	)	Petition Nos.: 50-017-12-1-5-00012
	)	50-017-12-1-5-00014
	)	
Petitioner,	)	
	)	Parcel Nos.: 50-31-13-000-053.000-017
	)	50-31-13-000-052.000-017
v.	)	
	)	
Marshall County Assessor,	)	Marshall County
	)	West Township
	)	
Respondent.	)	2012 Assessment Year

Appeal from the Final Determination of the  
Marshall County Property Tax Assessment Board of Appeals

**May 22, 2014**

**FINAL DETERMINATION**

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

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **INTRODUCTION**

1. The Petitioner appeals the 2012 assessments on two lakefront parcels that contain a single residence. The Petitioner fails to prove the assessments are incorrect.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

2. The property consists of two contiguous parcels improved with a residential dwelling located at 15351 12<sup>th</sup> Road, Plymouth, Indiana.
3. The Petitioner initiated the 2012 assessment appeals with the Marshall County Property Tax Assessment Board of Appeals (PTABOA) on September 26, 2012.
4. On April 30, 2013, the PTABOA issued its assessment determinations affirming the assessments.
5. On May 6, 2013, the Petitioner filed Form 131 Petitions for Review of Assessment seeking the Board's review of the 2012 assessments.
6. Administrative Law Judge Ellen Yuhan held the hearing in Plymouth on February 26, 2014.
7. Charles E. Koziarz, Marshall County Assessor Debra A. Dunning, and Deputy Assessor Mindy S. Relos-Penrose testified under oath.
8. The Petitioner presented the following exhibits:
  - Petitioner Exhibit 1 – Multiple Listing Service (MLS) data for a Meyers Lake property on 12<sup>th</sup> Road (parcel 50-31-13-000-061.000-017),
  - Petitioner Exhibit 2 – Property record card for the Dyrz property on 12<sup>th</sup> Road,
  - Petitioner Exhibit 3 – Property record card for the Roberts property on 12<sup>th</sup> Road.

9. The Respondent presented the following exhibits:

For parcel 50-31-13-000-053.000-017 (parcel 053):

Respondent Exhibit 1 – Form 130,  
Respondent Exhibit 2 – Form 134,  
Respondent Exhibit 3 – Form 115,  
Respondent Exhibit 4 – Form 131,  
Respondent Exhibit 5 – 2012 property record card,  
Respondent Exhibit 6 – 2012 Land Order,  
Respondent Exhibit 7 – Photograph of the subject property,  
Respondent Exhibit 8 – Aerial pictometry map of the subject property,  
Respondent Exhibit 9 – 2011 Cost Tables,  
Respondent Exhibit 10 – 2012 Cost Tables,  
Respondent Exhibit 11 – Spreadsheet of comparable sales,  
Respondent Exhibit 12 – Comparable sale 15002 Happy Acres Trail,  
Respondent Exhibit 13 – Comparable sale 15096 Happy Acres Trail,  
Respondent Exhibit 14 – Comparable sale 14989 12<sup>th</sup> Road,  
Respondent Exhibit 15 – Comparable sale 15231 Happy Acres Trail,  
Respondent Exhibit 16 – Letters from the taxpayer,

For parcel 50-31-13-000.052.000-017 (parcel 052):

Respondent Exhibit 1 – Form 130,  
Respondent Exhibit 2 – Form 134,  
Respondent Exhibit 3 – Form 115,  
Respondent Exhibit 4 – Form 131,  
Respondent Exhibit 5 – Property record card,  
Respondent Exhibit 6 – 2012 Land Order,  
Respondent Exhibit 7 – Aerial map of the subject property,  
Respondent Exhibit 8 – Spreadsheet of comparable sales,  
Respondent Exhibit 9 – Comparable sale 15002 Happy Acres Trail,  
Respondent Exhibit 10 – Comparable sale 15096 Happy Acres Trail,  
Respondent Exhibit 11 – Comparable sale 14989 12<sup>th</sup> Road,  
Respondent Exhibit 12 – Comparable sale 15231 Happy Acres Trail,  
Respondent Exhibit 13 – Correspondence between taxpayer and assessor,

For both parcels:

Respondent Rebuttal Exhibit 1 – Letter from the Marshall County Health  
Department regarding a septic system for parcel 50-31-  
13-000-061.000-017,  
Respondent Rebuttal Exhibit 2 – Aerial map and land order for the Drycz property,  
Respondent Rebuttal Exhibit 3 – Aerial maps, PTABOA minutes, property record card,  
and listing for the Roberts property.

10. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:
  - Board Exhibit A – Form 131 Petitions,
  - Board Exhibit B – Notices of Hearing, dated January 15, 2014,
  - Board Exhibit C – Hearing sign-in sheet.
  
11. The PTABOA determined the assessed value of parcel 053 is \$44,600 for the land and \$55,300 for the improvements (totaling \$99,900), and the assessed value of parcel 052 is \$22,500. Petitioner requests an assessed value for parcel 053 of \$9,000 for the land and \$55,300 for the improvements (totaling \$64,300). For parcel 052 the Petitioner requests an assessed value of \$4,500.

#### **BURDEN**

12. Generally, the taxpayer has the burden to prove that an 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). A burden-shifting statute creates two exceptions to that rule in I.C. § 6-1.1-15-17.2 as amended by P.L.97-2014.
  
13. First, I.C. § 6-1.1-15-17.2 “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).
  
14. Second, I.C. § 6-1.1-15-17.2(d) “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 IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of 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.” These provisions may not apply if there was a change in improvements, zoning, or use, or if the assessment was based on an income capitalization approach.

15. To determine whether I.C. § 6-1.1-15-17.2 applies, the Board compares the assessment for the prior tax year to the assessment as determined by the PTABOA for the tax year on appeal. Because the improvement is built on both parcels, the Board finds that the parcels form a single economic unit, and the property will be considered as a single unit.<sup>1</sup> Parcel 053 was assessed at \$36,500 (land) and \$67,500 (improvement) for 2011. And parcel 052 was assessed at \$18,400 for 2011. The 2011 total for both parcels was \$122,400. In 2012, the PTABOA assessed parcel 053 at \$44,600 (land) and \$55,300 (improvement) while parcel 052 was assessed at \$22,500. Again the total for both was \$122,400. Because there was no change in the total assessed value of the property as a whole, the Board finds that the burden-shifting statute does not apply and the Petitioner has the burden.<sup>2</sup>

#### **PETITIONER’S CONTENTIONS**

16. The Petitioner contends that the assessed value of the land is over-stated based on sales of similar properties. The Petitioner presented the following evidence in support of his contentions:

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<sup>1</sup> Ms. Dunning argued that “because the house sits over both parcels, the taxpayer has the burden of the total.” *Dunning testimony*. While the Petitioner only appeals the land assessments and not the improvement, he fails to rebut the Respondent’s evidence that the parcels form a single economic unit.

<sup>2</sup> Even were the burden on the Respondent, and the burden was not met, the values would return to the prior year. The assessment would still be \$122,400.

- A. A property on Myers Lake with 56 feet on the lake is listed for \$24,750 (\$442 per front foot). Another property on 12<sup>th</sup> Road with 60 feet on a lake sold for \$9,500 (\$152 per front foot) in 2012, but it is assessed at \$11,000. The Roberts property on Myers Lake with 156 feet on the lake sold for \$49,000 (\$320 per front foot). All these properties have one thing in common: their assessments are as much as 50% higher than the selling price. *Koziarz testimony; Petitioner Exhibits 1-3.*
- B. The Petitioner is not appealing the assessment of the improvements, only the land value. The Respondent is using improved properties that have nothing to do with the value of lakefront land. The general public is not going to pay the assessed value for the land. *Koziarz testimony.*

#### **RESPONDENT'S CONTENTIONS**

17. The Respondent contends the assessed values are correct and equitable. She presented the following evidence in support of the assessment:
- A. The Respondent contends the property is assessed correctly when compared to sales of waterfront properties in the subject neighborhood. In support of this contention Ms. Dunning submitted property record cards, sales disclosure forms, and a spreadsheet of four properties that sold between June 2009 and August 2013. She used sales of improved properties with well and septic because they are the most comparable to the Petitioner's property. She calculated the median price per square foot and the average price per square foot by extracting the assessed value of the improvements from the sale price. The median price per front foot is \$1,126 and the average price per front foot is \$1,362. The subject property's 75 feet of frontage is assessed at \$895 per front foot. *Dunning testimony; Respondent Exhibit 11(parcel 53); Respondent Exhibit 8(parcel 52).*

- B. The property shown on Petitioner's Exhibit 1 is not comparable to the subject property. That property has not been approved for a septic system so it is not buildable. *Relos-Penrose testimony; Respondent Rebuttal Exhibit 1.*
- C. Petitioner's Exhibit 2 is the property record card for the Drycz property. That property is on a different lake. The base rate for the subject property is \$939. The base rate for the Drycz property is \$305 per front foot. Due to the difference in base rates and proximity to the subject property, that property is not comparable. *Relos-Penrose testimony; Respondent Rebuttal Exhibit 2.*
- D. Petitioner's Exhibit 3 is for the Roberts' property. Mr. Roberts appealed the assessment on this property. According to Mr. Roberts, the parcel is swampy, has steep drop-offs, and due to county setbacks and topography, the building area is limited. The PTABOA applied a -60% influence factor for those restrictions. The aerial map of Mr. Koziarz's property and the Roberts' property shows that the Roberts' property appears to be much swampier than the subject property. Because of the restrictions, the Roberts' property is not comparable to the subject property. Further, the sale of \$49,900 is an outlier because it does not represent the typical price per front foot for properties on Myers Lake. The sale also occurred after the March 1, 2012 assessment. The property was relisted for \$87,500 and was on the market for just 100 days. *Relos-Penrose testimony; Respondent Rebuttal Exhibit 3.*

#### ANALYSIS

18. For 2012, 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 a similar user, from the property." I.C. § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2(incorporated by reference at 50 IAC 2.4-1-2). ). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then

adds the depreciated cost of the improvements to arrive at a total estimate of value. *Id.* at 2. Any evidence relevant to the true tax value of the property as of the assessment may be presented, including an appraisal prepared in accordance with generally recognized appraisal standards. *Id.* at 3.

17. Regardless of the method used to rebut an assessment's presumption of accuracy, 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. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2012, assessment, the valuation date is March 1, 2012. I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
19. Here, the Petitioner contends the property is over-assessed based on one listing and two sales of vacant property. *Petitioner Exhibits 1-3*. The Petitioner did not establish the properties were comparable and did not address any differences that might affect the market value-in-use. In fact, as the Respondent pointed out, the properties are not comparable. One property is not suitable for a residence because a septic system cannot be installed, another property is on a different lake, and the last has building restrictions.
20. Additionally, the Petitioner averaged the prices per front foot of the properties and calculated \$304 per front foot. The Petitioner proposed a value of \$400 per front foot (Petitioner's cover sheet). Neither of these values supports the Petitioner's requested values of \$9,000 and \$4,000.
21. Where the party with the burden has not supported its claims with probative evidence, the opposing party's duty to offer substantial evidence of the correct assessment is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Thus, the Board will not review the Respondent's evidence.



**CONCLUSION**

22. The Petitioner failed to make a prima facie case that the assessed values of the subject parcels are incorrect, and the values will not be reduced.

**FINAL DETERMINATION**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the correct assessed land values are those set forth by the PTABOA: parcel 053 at \$44,600 (land) and \$55,300 (improvement), and parcel 052 was assessed at \$22,500.

ISSUED: May 22, 2014

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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>>.