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IN THE INDIANA TAX COURT

DONALD F. ELLIOTT, JR.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cause No. 49T10-0812-TA-69
	)	
DEBRA A. DUNNING,	)	
MARSHALL COUNTY ASSESSOR,	)	
	)	
Respondent.	)	

ON APPEAL FROM A FINAL DETERMINATION OF
THE INDIANA BOARD OF TAX REVIEW

NOT FOR PUBLICATION
December 23, 2009

FISHER, J.

Donald F. Elliott, Jr. (Elliott) appeals the final determination of the Indiana Board of Tax Review (Indiana Board) which upheld the Marshall County Assessor's (Assessor) assessment of his real property for the 2006 tax year. While Elliott presents three issues for review, the Court consolidates and restates them as: whether Elliott prima facie demonstrated that his land assessment was incorrect.

FACTS AND PROCEDURAL HISTORY

Elliott owns residential real property along the eastern shore of Lake

Maxinkuckee in the Van Schoiack subdivision of Culver, Indiana (Union Township, Marshall County). Elliott's property consists of three parcels of land (hereinafter, "Parcels 1, 2, and 13").[1] Parcels 1 and 2 are on the lake, but Parcel 13, the subject of this appeal, has no direct view of, or access to, Lake Maxinkuckee. Parcel 13 shares its western and northern borders with a parcel not owned by Elliott (the Chocola property), its eastern border with East Shore Drive, and its southern border with Parcel 1. (*See* Cert. Admin. R. 29-30, 80.) Parcel 1, in turn, shares its western border with Lake Maxinkuckee, its northern border with the Chocola property and Parcel 13, its eastern border with East Shore Drive, and its southern border with Parcel 2. (*See* Cert. Admin. R. 29-30, 80.)

For the 2006 tax year, Parcel 13's land was assessed at $209,900. On April 26, 2007, Elliott challenged the assessment to the Marshall County Property Tax Assessment Board of Appeals (PTABOA). The PTABOA subsequently denied Elliott's challenge "due to a lack of evidence." (*See* Cert. Admin. R. at 7.)

On March 7, 2008, Elliott filed a Petition for Review (Form 131) with the Indiana Board. On August 6, 2008, the Indiana Board held a hearing on the matter, at which Elliott asserted that the assessed value of Parcel 13 should be $69,968. (*See* Cert. Admin. R. at 132, 198-202.) On October 31, 2008, the Indiana Board issued its final determination which upheld the Assessor's assessment on Parcel 13 in its entirety.

On December 8, 2008, Elliott filed an original tax appeal. The Court heard the parties' oral arguments on August 31, 2009. Additional facts will be supplied as necessary.

[1] There are improvements on these parcels, but their assessed values are not at issue in this case.

STANDARD OF REVIEW

When this Court reviews an Indiana Board final determination, it is limited to determining whether it is:

> (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
>
> (2) contrary to constitutional right, power, privilege, or immunity;
>
> (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations;
>
> (4) without observance of procedure required by law; or
>
> (5) unsupported by substantial or reliable evidence.

IND. CODE ANN. § 33-26-6-6(e)(1)-(5) (West 2009). The party seeking to overturn the Indiana Board's final determination bears the burden of proving its invalidity. *Osolo Twp. Assessor v. Elkhart Maple Lane Assocs.*, 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003).

DISCUSSION AND ANALYSIS

On appeal, Elliott argues that during the Indiana Board hearing he prima facie demonstrated that the Assessor misapplied the formula contained in Indiana's assessment guidelines when she determined the market value-in-use of Parcel 13.[2] Elliott therefore contends that the Indiana Board's final determination should be reversed. The Court agrees.

During the Indiana Board hearing, both Elliott and the Assessor designated

[2] Elliott also claims that the Indiana Board's final determination is erroneous because it disregarded his evidence and misinterpreted the case of *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). (*See* Pet'r Br. at 3, 12-15.) The Court, however, need not reach these issues, as this case will be resolved on other grounds.

Parcel 1 as the front lot to Parcel 13.[3,4] (*See, e.g.,* Cert. Admin. R. at 162, 198-99, 208-09 (footnotes added).) The parties also agreed that Parcel 13 was a rear lot.[5] These designations and agreements are not presently at issue. Rather, the issue in dispute concerns the application of the seven-step formula contained in Indiana's assessment guidelines by which the depth factor[6] of a rear lot is determined. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (2004 reprint) (hereinafter, "Guidelines") (incorporated by reference at 50 IND. ADMIN. CODE 2.3-1-2(c) (2002 Supp.)), Bk. 1, Ch. 2 at 50-56 (footnote added). More specifically, however, the issue in this case concerns how the first step in this formula is to be applied. *See infra* pp. 5-6. The first step of the formula provides: "Determine the overall depth of the lot by measuring from the street to the rear of the rear lot. If you have not already done so, determine the effective depth of the front lot." Guidelines, Bk. 1, Ch. 2 at 52.

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[3] A lot is considered to be a front lot when it "fronts" a desirable feature like a street, road, or, as is the case here, a lake. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (2004 reprint) (hereinafter, "Guidelines") (incorporated by reference at 50 IND. ADMIN. CODE 2.3-1-2(c) (2002 Supp.)), Bk. 1, Ch. 2 at 60; Bk. 2, Glossary at 8 (defining "front foot").

[4] As an aside, in its final determination the Indiana Board concluded that the Rocap property was the front lot to Parcel 13. (*See* Cert. Admin. R. at 19-20 ¶ 15(c) (providing that the Assessor had "correctly defined the front lot as the portion of 1346 East Shore Drive which lies between [Parcel] 13 and Lake Maxinkuckee" (footnote omitted)).) (*See also* Cert. Admin. R. at 85-87 (indicating that the common address of the Rocap property is 1346 East Shore Drive).) As mentioned, however, the parties designated Parcel 1 as the front lot to Parcel 13. *See supra* pp. 3-4. Consequently, the Indiana Board's conclusion is unsupported by the evidence. The Court therefore designates Parcel 1 as the front lot to Parcel 13, as that designation comports with the parties' administrative arguments and evidentiary presentations.

[5] A rear lot is a lot that lacks direct access to a desirable feature such as a street, road, or lake. *See* Guidelines, Bk. 1, Ch. 2 at 60.

[6] A "depth factor" is a multiplier applied to a land assessment to account for the depth of the lot. *See id.* at 51.

Elliott asserts that the use of the word "overall" signals that the effective depths of both the front and rear lots must be added together in order to ascertain the overall depth of the rear lot.[7] (*See* Oral Argument Tr. at 13-15 (footnote added).) Elliott explains that, in this case, the effective depth of Parcel 1 (the front lot) is 230 feet and the effective depth of Parcel 13 (the rear lot) is 115 feet; thus, the overall effective depth of Parcel 13 is 345 feet. (*See* Cert. Admin. R. at 198-00). In turn, Elliott uses this figure throughout the remainder of the seven-step formula:

1) The depth factor of Parcel 13 is 0.08 (ascertained by first locating the depth factors in the guidelines' 200 foot standard depth table that are consistent with the overall effective depth of Parcel 13 and the effective depth of Parcel 1 and then subtract the two factors -- (1.11 – 1.03));

2) The adjusted base rate for Parcel 13 is $1,227.52 (ascertained by multiplying the Step 1 result by the base rate -- (0.08 × $15,344)); and

3) The market value-in-use of Parcel 13 is $69,968.64 (ascertained by multiplying the product of Step 2 by the effective frontage of Parcel 13 -- ($1,227.52 × 57)).

(*See* Cert. Admin. R. at 80-82, 140, 198-201; Oral Argument Tr. at 14-17.) *See also* Guidelines, Bk. 1, Ch. 2 at 52, 56. Elliott maintains that because his interpretation and application of the guidelines' formula is correct, he prima facie demonstrated that for the 2006 tax year, the market value-in-use of Parcel 13 should only be $69,968.

The Assessor, on the other hand, asserts that the Indiana Board's final determination should be affirmed because the evidence in the record demonstrates that it was she, and not Elliott, that applied the guidelines' formula correctly. (*See* Resp't Br. at 17-23; Oral Argument Tr. at 20-24.) According to the Assessor, the guidelines'

[7] Elliott argues that this interpretation of the formula is "underscored" by the fact that the first step of the formula references the need for the effective depths of both the front and rear lots. (*See* Oral Argument Tr. at 14-15.)

formula does not require the summation of anything, as the overall depth of Parcel 13 is equivalent to the effective depth of Parcel 1 (i.e., its front lot) or 230 feet. (*See, e.g.,* Resp't Br. at 22-23.) As such, explains the Assessor, the formula must be applied as follows:

> 1) The depth factor for Parcel 13 is 0.24 (ascertained by first locating the depth factors in the guidelines' 200 foot standard depth table that are consistent with both Parcel 1 and Parcel 13 and then subtract the two factors -- (1.03 and 0.79));
>
> 2) The adjusted base rate for Parcel 13 is $3,683 (ascertained by multiplying the Step 1 result by the base rate -- (0.24 × $15,344)); and
>
> 3) The market value-in-use of Parcel 13 is $209,931 (ascertained by multiplying the product of Step 2 by the effective frontage of Parcel 13 -- ($3,683 × 57)).

(*See* Cert. Admin. R. at 162, 208-11.) *See also* Guidelines, Bk. 1, Ch. 2 at 52, 56. The Assessor maintains that any differences between her figures and Elliott's simply boil down to mathematical error and a misunderstanding of the formula. (*See* Resp't Br. at 22-23.) Therefore, asserts the Assessor, the Indiana Board's final determination should be affirmed, as Elliott has only attacked the methodology by which she determined the market value-in-use of Parcel 13. The Court, however, cannot agree.

In challenging the validity of his 2006 land assessment, Elliott has done more than merely attack the Assessor's methodology. Indeed, Elliott's claim presents an issue of regulatory construction: namely, what does the meaning of the word "overall" within the context of the guidelines' formula mean? When an administrative regulation is susceptible to more than one interpretation, it is considered to be ambiguous and thus subject to judicial construction. *Will's Far-Go Coach Sales v. Nusbaum*, 847 N.E.2d 1074, 1078 (Ind. Tax Ct. 2006) (citation omitted). *See also Harlan Sprague Dawley,*

Inc. v. Indiana Dep't of State Revenue, 605 N.E.2d 1222, 1229 (Ind. Tax Ct. 1992) (stating that when interpreting administrative regulations, this Court applies the same rules of construction that apply to statutes). Accordingly, the Court's foremost goal in construing a regulation is to give effect to the intent of the promulgating administrative agency. *Will's Far-Go*, 847 N.E.2d at 1078 (citation omitted). In doing so, the Court presumes that the administrative agency intends for the Court to apply regulations in a logical manner, so as to prevent an unjust or absurd result. *Id.* (citing *Chavis v. Patton*, 683 N.E.2d 253, 257 (Ind. Ct. App.1997) (explaining that legislative intent prevails over a strict and literal reading of a statute)).

In this case, the practical effect of the Assessor's application of the formula produces an unjust and absurd result. Indeed, it produces depth factors and assessed values that are inconsistent with the assessment data regarding other rear lots in the Van Schoiack subdivision contained in the administrative record. For example, the Smitson property record card provides that the depth factor of the Smitson rear lot is 0.10 and its assessed value is $76,700. (*See* Cert. Admin. R. at 166.) In applying the formula advanced by the Assessor in this case, however, the Smitson property would have a depth factor of 0.43 and an assessed value of $329,896. *See supra* pp. 5-6 (the Assessor's formula); Guidelines, Bk. 1, Ch. 2 at 56. (*See also* Cert. Admin. R. at 163-66.) Similarly, when this formula is applied to another rear lot in the subdivision, the Rocap property, it produces another irreconcilable result: an overall depth factor of 0.50 and an assessed value of $682,808 despite the assessment data in the record which provides that the depth factor for this property is 0.05 and its assessed value is $68,260. *See supra* pp. 5-6 (Assessor's formula); Guidelines, Bk. 1, Ch. 2 at 56. (*See also* Cert.

Admin. R. at 85-87, 140.)

Elliott's interpretation and application of the formula, however, generates depth factors and assessed values that mirror the assessment data in the record. Indeed, when Elliott's construction of the formula is applied to the Smitson property it produces the same overall depth factor and assessed value as recorded on the Smitson property record card. *See supra* p. 5 (Elliott's formula); Guidelines Bk. 1, Ch. 2 at 56. (*See also* Cert. Admin. R. at 163-66.) Likewise, when Elliott's rendition of the formula is applied to the Rocap property it produces an overall depth factor and assessed value consistent with the Rocap property assessment data. *See* supra p. 5 (Elliott's formula); Guidelines Bk. 1, Ch. 2 at 56. (*See also* Cert. Admin. R. at 85-87, 140.)

This Court has often explained that an assessor's misapplication of the guidelines will not *necessarily* invalidate an assessment; rather, the pivotal question is, notwithstanding the assessor's misapplication of the guidelines, does the assessment accurately reflect the property's market value-in-use? *See, e.g., Westfield Golf Practice Ctr. v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007); *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 93-94 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677 (Ind. Tax Ct. 2006). To that end, when a taxpayer challenges his assessment he must do more than merely allege that the guidelines were misapplied; indeed, he must also present objectively verifiable evidence which demonstrates that his assessment is incorrect. *See, e.g., Eckerling*, 841 N.E.2d at 677 ("Strict application of the [guidelines] is not enough to rebut the presumption that the assessment is correct"). Elliott has met this burden: his interpretation and application of the guidelines' formula is supported by other objectively verifiable market

value-in-use evidence (i.e., the assessment data in the record relating to the Smitson and Rocap properties). *See supra* pp. 7-8. Consequently, the Court concludes that Elliott established that the 2006 assessment of Parcel 13 was incorrect.[8]

CONCLUSION

For the foregoing reasons, the final determination of the Indiana Board is REVERSED. The matter is REMANDED to the Indiana Board so that it may instruct the appropriate assessing officials to take actions consistent with this opinion.[9]

[8] This Court believes that "the 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)." *Kooshtard Prop. VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005), *review denied*. As evidenced by the holding in this case, however, the presentation of such an appraisal is not the only way to rebut the presumption that an assessment is correct. *See also Lakes of the Four Seasons Prop. Owners' Assoc. v. Dep't of Local Gov't Fin.*, 875 N.E.2d 833 (Ind. Tax Ct. 2007) (where taxpayer established the market value-in-use of its property without a USPAP appraisal), *review denied*.

[9] On a final note, in applying their formulas, both Elliott and the Assessor assigned an effective depth of 115 feet to Parcel 13. (*See, e.g.,* Cert. Admin. R. at 162, 198-200, 208-09.) The assessment data in the record, however, provides that the effective depth of Parcel 13 is 118 feet. (Cert. Admin. R. at 80-82.) While this error probably has little consequence as to the overall assessed value of Parcel 13, the proper effective depth of 118 feet should be used on remand.