PETITIONERS APPEARING PRO SE:
LAWRENCE PACHNIAK
Culver, IN

ATTORNEY FOR RESPONDENT:
MARILYN S. MEIGHEN
MEIGHEN & ASSOCIATES, P.C.
Carmel, IN

IN THE INDIANA TAX COURT

LAWRENCE and GLENDA PACHNIAK,)
)
Petitioners,)
)
v.) Cause No. 49T10-0904-TA-18
)
MARSHALL COUNTY ASSESSOR,)
)
Respondent.)

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

NOT FOR PUBLICATION
June 8, 2010

FISHER, J.

Lawrence and Glenda Pachniak (the Pachniaks) challenge the final determination of the Indiana Board of Tax Review (Indiana Board) regarding their 2006 real property assessment. The issue on appeal is whether the Indiana Board erred in upholding the Marshall County Assessor's (Assessor) valuation of the Pachniaks' property.

RELEVANT FACTS AND PROCEDURAL HISTORY

In 2006, the Pachniaks purchased residential property on Lake Maxinkuckee, in Culver, Indiana. The Pachniaks paid $1,175,000 for the property, which consists of four

parcels: two parcels sit directly on the lake while the other two parcels sit directly across a street (Shore Drive) from the two lakefront parcels.[1] (*See* Cert. Admin. R. at 134-35; Oral Argument Tr. at 19-20 (footnote added).)

For the 2006 assessment, the Assessor assigned the Pachniaks' property a market value-in-use of $1,182,700 ($1,075,800 for land and $106,900 for improvements).[2] (*See* Cert. Admin. R. at 123-28 (footnote added).) In arriving at that value, the Assessor classified the land as "lakefront" and applied a base rate of $12,862 per front foot.[3] (*See* Cert. Admin. R. at 123-28 (footnote added).) Both across-the-street parcels, however, received negative 50% influence factors to account for "traffic flow" and "size and shape." (*See* Cert. Admin. R. at 123, 128.)

The Pachniaks subsequently filed an appeal with the Marshall County Property Tax Assessment Board of Appeals (PTABOA), arguing that the Assessor clearly erred in classifying the land of the two "across-the-street" parcels as "lakefront" because

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[1] The property's house sits on one of the lakefront parcels; the garage sits on one of the "across-the-street" parcels. This is typical of many properties on Lake Maxinkuckee.

[2] In Indiana, real property is assessed on the basis of its market value-in-use. IND. CODE ANN. § 6-1.1-31-6(c) (West 2006); 2002 REAL PROPERTY ASSESSMENT MANUAL (2004 Reprint) (hereinafter, "Manual") (incorporated by reference at 50 IND. ADMIN. CODE 2.3-1-2 (2002 Supp.)) at 2. A property's market value-in-use (i.e., the value of the property "for its current use, as reflected by the utility received by the owner or a similar user, from the property") may generally be thought of as the ask price for the property by its owner. Manual at 2. In markets where regular exchanges occur and ask and offer prices converge – e.g., the residential housing market – market value-in-use typically equals value-in-exchange. *See id.*

[3] To determine the market value-in-use of land, Indiana's assessing officials rely on neighborhood valuation forms. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (hereinafter, Guidelines) (incorporated by reference at 50 I.A.C. 2.3-1-2), Bk. 1, Ch. 2. Neighborhood valuation forms provide base rates for different neighborhoods based on sales information from the area. *Id.* at 7-28.

neither one of them abutted the lake.[4] On April 4, 2008, the PTABOA denied their appeal. The Pachniaks then filed an appeal with the Indiana Board.

On December 18, 2008, the Indiana Board conducted an administrative hearing on the matter. During the hearing, the Pachniaks complained that the assessments of their across-the-street parcels were not only inconsistent with, but excessive when compared to, the assessments of several other across-the-street parcels along Shore Drive. (*See generally* Cert. Admin. R. at 143-50, 161.) As the Pachniaks explained, their two across-the-street parcels, when combined, constituted about one half of an acre with an assessed value of $546,400.[5] In contrast, the Pachniaks explained that:

> a 1.75 acre across-the-street parcel about a mile south was classified as "off-lake" and assessed at only $160,500;
>
> a 1.71 acre across-the-street parcel about a mile and a half south was classified as "off-lake" and assessed at only $30,800; and
>
> the parcel next door, even though it was classified "lakefront," was assessed at only $245,800 despite the fact that it was slightly larger at 0.6 acres.

(*See* Cert. Admin. R. at 106, 108, 111, 114, 147-50, 161-62.) (*See also* Pet'r Br. at 2; Oral Argument Tr. at 7, 9-10.)

On March 9, 2009, the Indiana Board issued a final determination affirming the assessment. On April 23, 2009, the Pachniaks filed an original tax appeal. The Court heard the parties' oral arguments on March 25, 2010. Additional facts will be supplied as necessary.

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[4] The assessed values assigned to the improvements are not at issue in this case.

[5] The individual parcels were assessed at $452,600 and $93,800, respectively. (*See* Cert. Admin. R. at 123, 128.)

ANALYSIS AND OPINION

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 2010). The party seeking to overturn the Indiana Board's final determination bears the burden of demonstrating its invalidity. *Osolo Twp. Assessor v. Elkhart Maple Lane Assocs.*, 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003).

Discussion

On appeal, the Pachniaks argue that the Indiana Board erred when it failed to reclassify their two across-the-street parcels so that their assessed values were more in line with the assessed values of the other across-the-street parcels. (*See generally* Pet'r Br.; Oral Argument Tr. at 23-24.) The Court disagrees.

When taxpayers challenge the accuracy of their assessments, they must do more than complain that the method by which their assessment was computed was incorrect; rather, they must also present objectively verifiable evidence demonstrating what their property's market value-in-use actually is. *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). Here, the Pachniaks' property assessment is consistent with evidence as to its actual market value-in-use (i.e., its purchase price of $1,175,000). In turn, to the extent there is nothing in the administrative record that indicates what portion of that purchase price was allocated to the two across-the street parcels individually, the Court cannot say that their assessment is incorrect. *See Hurricane Food, Inc. v. White River Twp. Assessor,* 836 N.E.2d 1069, 1074 (Ind. Tax Ct. 2005) (explaining that even if the method used by an assessing official to value property is incorrect, the assessment will not necessarily be invalidated if other probative evidence indicates that property's assessed value accurately reflects its market value-in-use).

Furthermore, the three "comparables" upon which the Pachniaks relied do not support their claim. Indeed, two of them were in an entirely different neighborhood and presumably subject to an entirely different provision of the applicable neighborhood valuation form. (*Cf.* Cert. Admin. R. at 108, 111 *with* 123, 128 (indicating that the two parcels designated as "off-lake" are in neighborhood 800203, while the Pachniaks' parcels are in neighborhood 1500504).) The third "comparable" – the one next door to the Pachniaks' parcels and in the same 1500504 neighborhood – was valued using the exact same base rate ($12,862 per front foot) as was applied to the Pachniaks' parcels.[6] (*Cf.* Cert. Admin. R. at 114 *with* 123, 128 (footnote added).)

[6] The parcel's assessment was lower because it had a different depth factor and it received a negative influence factor of 70%. (*Cf.* Cert. Admin. R. at 114 *with* 123, 128.)

CONCLUSION

The Pachniaks have not demonstrated that their assessment was either excessive or inconsistent with other comparable properties.[7] Accordingly, the Indiana Board's final determination is AFFIRMED.

[7] The Pachniaks have also argued that because their property consists of four parcels each with distinct key numbers, the parcels should be assessed individually and, essentially, without relation to each other. (*See, e.g.,* Cert. Admin. R. at 173-74.) As the Court has previously explained, however, key numbers (i.e., parcel identification numbers) are simply the administrative tools used by assessing officials to distinguish properties from one another; thus, the use of such numbers in this case does not alter the fact that the Pachniaks' four parcels were marketed together as one property, were purchased together as one property, and are used together as one residential property. *See Cedar Lake Conference Ass'n v. Lake County Prop. Tax Assessment Bd. of Appeals,* 887 N.E.2d 205, 209 (Ind. Tax Ct. 2008), *review denied*.

Having said that, the Court notes that the Pachniaks maintain that their across-the-street parcels could be sold independently of the other two parcels. (*See* Oral Argument Tr. at 10; Cert. Admin. R. at 98.) While the Pachniaks presented an "appraisal" valuing the land of their across-the-street parcels at $234,900, the appraisal arrived at that value not by examining sales data, but rather by examining other property assessments. (*See* Cert. Admin. R. at 100-05.) As explained above, however, this evidence is insufficient to show that the Pachniaks' assessment was incorrect.