

REPRESENTATIVE FOR PETITIONER: Stephen R. Snyder, Attorney at Law

REPRESENTATIVE FOR RESPONDENT: Susan Engelberth, Kosciusko County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

ROBERT AND KELLY DARROW,	)	Petition No.: 43-026-21-1-5-00870-21
	)	
Petitioner,	)	Parcel No.: 43-04-08-200-016.000-026
	)	
v.	)	County: Kosciusko
	)	
KOSCIUSKO COUNTY ASSESSOR,	)	Assessment Year: 2021
	)	
Respondent.	)	

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**October 11, 2022**

**FINAL DETERMINATION**

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

**INTRODUCTION**

1. Robert and Kelly Darrow contested their 2021 assessment. Because they failed to present any probative, market-based evidence proving the subject property’s market value-in-use, we find for the Assessor and order no change to the 2021 assessment.

**PROCEDURAL HISTORY**

2. The Darrows challenged the 2021 assessment of their property located on Channel 3 Lane in Syracuse. On November 2, 2021, the Kosciusko County Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 115 determination valuing the subject property at \$74,300 (\$74,300 for land and \$0 for improvements).

3. The Darrows timely filed a Form 131 petition with the Board. On July 26, 2022, our designated administrative law judge, David Smith (“ALJ”), held a telephonic hearing on the petition. Neither he nor the Board inspected the subject property.

4. The following people testified under oath:

For the Darrows: Robert Darrow  
For the Assessor: Susan Engelberth, Assessor  
Christy Doty, Trending Deputy

5. The Darrows submitted the following exhibits:

Petitioner Ex. 1: Aerial photo/map of subject property  
Petitioner Ex. 2: 2021 Property Record Card (“PRC”) for subject property  
Petitioner Ex. 3: 2022 PRC for subject property  
Petitioner Ex. 4: 2022 PRC for contiguous parcel (Lot 4)  
Petitioner Ex. 5: 2022 PRC for contiguous parcel (Lot 3)  
Petitioner Ex. 6: 312 IAC 11-2-11.5; 312 IAC 11-4-1; 312 IAC 11-4-8  
Petitioner Ex. 7: Kosciusko County Ordinance Ord. #: 75-1 (various pages)  
Petitioner Ex. 8: Affidavit of Douglas R. Hines  
Petitioner Ex. 9: Sketch of subject property area  
Petitioner Ex. 10: Aerial photo/map of subject property

6. The Assessor submitted the following exhibits:

Respondent Ex. A: Imposition of Restrictive Covenant  
Respondent Ex. B: Minutes of the Town of Syracuse Board of Zoning Appeals  
Respondent Ex. C: Email from Matthew M. Sandy  
Respondent Ex. D: Email and attachments from Katelyn Salzer  
Respondent Ex. E: 2020 Lake Wawasee Lakefront Lot Sales Information  
Respondent Ex. F: Retracement Survey  
Respondent Ex. G: Flood information  
Respondent Ex. H: NFIP Flood Hazard Areas  
Respondent Ex. I: Beacon aerial map of subject property

7. The record also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

## **OBJECTIONS**

8. The Darrows objected to a portion of Engelberth's testimony about pier rental rates as hearsay because she received the information from her daughter. Engelberth did not dispute that her testimony was hearsay or that it fell within a recognized exception to the hearsay rule. Our ALJ took the objection under advisement.
  
9. While Engelberth's testimony was hearsay, our procedural rules specifically allow us to admit hearsay evidence provided we do not base our final determination solely on the evidence unless it falls within a recognized exception to the hearsay rule. 52 IAC 4-6-9(d). We therefore overrule the objection and admit the testimony, noting, however, that it ultimately has no bearing on our final determination.

## **FINDINGS OF FACT**

10. The subject property is an unimproved, 0.07-acre lot located on Channel 3 Lane in Syracuse. It has 104 feet of frontage on Lake Wawasee and is contiguous to two residential lots owned by the Darrows (Lots 3 and 4 in the 8<sup>th</sup> Addition to Oakwood Park). The subject property is zoned agricultural and has no water or sewer service. It provides the only waterfront access for Lots 3 and 4, and there is a single pier that extends from the subject property into the lake. In 2018, the Darrows placed a restrictive covenant on the subject property that prevents it from being sold separately from Lot 4 without the permission of the Kosciusko County Board of Zoning Appeals ("BZA").  
*Darrow testimony; Engelberth testimony; Pet'r Exs. 2-5, 9; Resp. Exs. A, B, F.*

## **THE DARROWS' CONTENTIONS**

11. The Darrows own the subject property and two adjacent platted lots (Lots 3 and 4 in the 8<sup>th</sup> Addition to Oakwood Park). The subject property is zoned agricultural and Lots 3 and 4 are zoned residential. The subject property has water frontage on the south and west sides. In 2021, the Assessor valued 96 feet of the subject property's water frontage

at \$65,390 and eight feet of its water frontage at \$8,900, for a total assessment of \$74,300. Lots 3 and 4 do not have any water frontage. The Assessor assessed Lot 4, which is a vacant lot in the “Wawasee Channel In Town” neighborhood (#801600-026) at a rate of \$2,500/front foot for water frontage. The Assessor also assessed Lot 3, which is an improved lot in the same assessment neighborhood, at the same \$2,500/front foot rate for water frontage. The Darrows contend that they are being double taxed on the same water frontage and the County is receiving a windfall on the taxes imposed on Lots 3 and 4. *Darrow testimony; Pet’r Exs.1, 2, 4, 5, 10.*

12. One of the possible uses for the subject property is pier rental. Based on Darrow’s understanding of the Department of Natural Resources’ (“DNR”) regulations, if he were to allow more than four pier rentals, the DNR would consider it to be a group pier and would require a permit. Further, the subject property could not be used for more than four piers due to the lack of off-street parking and lack of access over a 10-foot strip of right-of-way. If the Darrows wanted to use the subject property as a marina, its dimensions would prevent the Darrows from placing enough parking spaces on the parcel to comply with the Kosciusko County Zoning Ordinance (“Zoning Ordinance”). *Darrow testimony; Pet’r Exs.6, 7.*
  
13. According to Douglas Hines, former President of the Oakwood Property Owners Association, annual rent for the six pier slips the Association rents to homeowners, which are adjacent to the Darrows’ properties, was \$600/slip as of September 23, 2021. The Darrows currently have a single pier that extends from the subject property. If the Darrows were to rent another pier on a channel lot in Oakwood, the \$600/year rental rate specified by Hines would apply. Without access to a street wider than 10 feet and the ability to get a marina approved by the BZA, the subject property has no value beyond the potential value of four pier slip rentals. At \$600/year, that would yield the Darrows \$2,400/year. Applying a capitalization rate of 15% produces a value for the subject property of \$16,000, which is the assessed value the Darrows are requesting. *Darrow testimony; Pet’r Ex.8.*

14. The BZA required the Darrows to execute an Imposition of Restrictive Covenant as part of a variance request. The Darrows filed the variance request to determine what they could or could not do with Lot 4. The restrictive covenant states “[t]he imposition of this covenant shall not result in the combination of the two tracts into a single tract for tax and zoning purposes.” The Darrows included that statement so a combination would not occur. And according to Paragraph 2 of the restrictive covenant, which states that the Darrows received a variance to construct a residence on Lot 4, the covenant only applies if the Darrows construct a residence on Lot 4. The Darrows would never consider selling the narrow strip along the west side of the subject property (channel side) that provides lake access for Lots 3 and 4. And if they decided to sell just the lakefront portion of the subject property, it would change the configuration that the parcel had in 1975 (the date the Zoning Ordinance became effective). As a result, any attempt to sell only a portion of the subject property would be illegal under the Zoning Ordinance. *Darrow testimony; Resp’t Ex. A; Pet’r Ex. 7.*

#### THE ASSESSOR’S CONTENTIONS

15. The subject property is located on Lake Wawasee, the most desirable lake in Kosciusko County. The three parcels that the Darrows own (Lot 3, Lot 4, and the subject property) are all contiguous. The subject property is a vacant lakefront area at the end of a subdivision with a strip of ground extending north along the shoreline in front of the Darrows’ home on Lot 3. Without the subject property, Lots 3 and 4 would not be on the water. The subject property provides the Darrows’ only lake access, making it invaluable to them. *Engelberth testimony; Resp. Ex H.*
16. On April 19, 2018, the Darrows petitioned the Syracuse Board of Zoning Appeals (“SBZA”) for a variance to allow the construction of a new residence. The sketch of the setbacks attached to the SBZA minutes shows that the Darrows’ restrictive covenant increased Lot 4’s buildable area. The Imposition of Restrictive Covenant, recorded on May 21, 2018, states “[n]either of the tracts described herein shall be sold separately, one

from the other without the permission of the Kosciusko County Board of Zoning Appeals. This shall not prevent the sale of both tracts as a whole.” The Assessor contends that the restrictive covenant changes the subject property’s potential uses. *Engelberth testimony; Resp. Exs A, B.*

17. At the PTABOA hearing and in their Form 131 petition, the Darrows portrayed the subject property’s only use as being for the placement of piers because it does not have water or sewer service and cannot receive such services because it is not of sufficient size to develop. The Darrows also asserted that development was not possible because it does not meet zoning requirements for square footage or frontage on a public way. However, the Assessor has addressed these issues with influence factors of -71% on the front portion of the subject property and -70% on the rear part. *Engelberth testimony; Pet’r Ex. 2.*
  
18. The Assessor also disputes the Darrows’ contention that the subject property’s only use could be for four piers due to DNR regulations. Those regulations define a “group pier” as having at least five property owners and at least five rental units, which contradicts the Darrows’ use of four piers to calculate a value. Additionally, the Assessor disagrees with the \$800/year pier rental rate the Darrows listed on their Form 131 petition and the \$600/year pier rental rate contained in the Hines’ affidavit. Engelberth’s daughter has rented piers on Lake Wawasee for several years, and the rental rates she has paid over the years have ranged between \$700 and \$1,200/year. Thus, the Assessor questions whether the \$600/year rental rate is a discounted rate for non-waterfront owners within Oakwood Park. *Engelberth testimony; Pet’r Ex. 8; Resp’t Ex. D.*
  
19. Placing a marina within a public freshwater lake also requires a written license under I.C. 14-26-2 and 312 IAC 11-4-1. According to Matthew M. Sandy, Assistant Planner and Floodplain Administrator for the Kosciusko County Area Plan Commission, the Commission would consider pier rental in a residential district a commercial use marina and such a use would require the approval of the BZA, which the Darrows have not

sought. The Darrows have owned the subject property since 2003 and have never placed piers out for rent—they have used it for their own personal use. The Assessor therefore contends that pier rental is not the subject property’s current use, and its market value-in-use cannot be based on that use. *Engelberth testimony; Pet’r Ex. 6; Resp’t Ex. C.*

20. The subject property is an L-shaped tract with frontage on a channel and the lakefront of Lake Wawasee, Indiana’s largest natural lake. It provides the Darrows’ home with lake access. Without it, the Darrows’ home would be like all other off water lots in Oakwood Park. Thanks to the law of limited supply, lakefront properties generally come with a higher price tag than their inland counterparts. *Doty testimony.*
21. Doty developed several valuation methods for the subject property but focused on the price per front foot method because that is how lake lots are typically priced. She identified eight sales of waterfront lots on Lake Wawasee from 2020. Because Sales 1, 3, and 6 sold with additional land across the road (off-water), she adjusted their sales prices by deducting the assessed values for the off-water lots. Based on the eight vacant sales, Doty concluded that buyers are willing to pay between \$7,407 and \$18,013/front foot for access to the lake. Doty was unable to find any sales involving a lot similar to the subject property, but it does receive land factor adjustments of -50% for being unbuildable and -20% due to its shape/size. It also receives a -\$2,000 adjustment because it has no sewer or water service. The subject property’s current assessment (\$74,300) divided by its effective frontage (78 feet) produces a rate of \$952/front foot, which is a much lower rate than indicated by the eight sales. *Doty testimony; Resp’t Ex. E.*

#### ANALYSIS

22. Generally, an assessment determined by an assessing official is presumed to be correct. 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. The petitioner has the burden of proving that the assessment is incorrect and what the correct assessment should be. *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).

23. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC § 2.4-1-1(c); MANUAL at 2. True tax value does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines true tax value as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
24. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice often will be probative. *See id.*; *see also Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). So may cost or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Eckerling*, 841 N.E.2d at 678.
25. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the property's value as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466,471 (Ind. Tax Ct. 2005). For 2021, the assessment date was January 1, 2021. I.C. § 6-1.1-2-1.5(a).
26. As discussed above, the Darrows contend that the subject property's 2021 assessment should be \$16,000 based on an income approach they developed using the subject property's potential income from the rental of four piers. However, we ultimately agree with the Assessor's argument that pier rental was not the subject property's current use on the assessment date, and that basing its market value-in-use on its potential to produce income from such a use is therefore inappropriate.



27. Again, the DLGF defines “market value in use” as “[t]he market value-in-use of a property *for its current use*, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2 (emphasis added). Here, the Darrows, were not using the subject property to produce income from four pier rentals on the assessment date. In fact, the Darrows have never rented out any piers. Nor have they ever sought the BZA’s approval to offer pier rentals.
28. The Darrows were instead using the subject property to provide their two contiguous residential properties, Lots 3 and 4, with access to Lake Wawasee from a single pier. Indeed, the subject property is such an integral part of Lots 3 and 4 that Robert Darrow testified he and his wife would never consider selling the narrow strip along the west side of the subject property that provides Lots 3 and 4 with lake access. The Darrows also placed a restrictive covenant on the subject property that prevents it from being sold separately from Lot 4 without the permission of the BZA.<sup>1</sup> Thus, we conclude the subject property and Lots 3 and 4 formed a single economic unit that the Darrows were using for residential purposes.<sup>2</sup> Because pier rental was not the subject property’s current use on the assessment date, we conclude that the Darrows’ income approach is not an appropriate method for determining its market value-in-use.
29. Even if we thought that the Darrows’ income approach was a proper way to value the subject property, we would still conclude that they failed to make a prima facie case. The Tax Court has explained, “to provide a sound value indication under the income capitalization approach, one must not only examine the historical and current income,

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<sup>1</sup> We find no support for the Darrows’ contention that the restrictive covenant only applies if they construct a residence on Lot 4.

<sup>2</sup> We disagree with the Darrows’ assertion that the terms of the restrictive covenant prevent the combination of the subject property with Lot 4 for tax purposes. In essence, they are attempting to have the parcels assessed without any relation to each other despite their pledge to not sell them separately. However, the Darrows provided no authority establishing their right to unilaterally impose such a limitation on assessing officials, who we note are required to combine contiguous parcels into a single parcel in certain circumstances. See Ind. Code § 6-1.1-5-16(b). Furthermore, the division of properties into separate parcels with different parcel identification numbers does not dictate how they were used on the assessment date. *Cedar Lake Conf. Ass’n v. Lake Co. Prop. Tax Assessment Bd. of Appeals*, 887 N.E.2d 205, 209 (Ind. Tax Ct. 2008), *review denied*. As we have repeatedly explained, multiple tax parcels should be valued as one property when a taxpayer is using them as a single economic unit.

expenses, and occupancy rates for the subject property, but the income, expenses and occupancy rates of comparable properties in the market as well.” *Indiana MHC, LLC v. Scott Co. Ass’r*, 987 N.E.2d 1182, 1185-86 (Ind. Tax Ct. 2013).

30. Here, however, the Darrows did not examine any factors beyond the annual rental rate for six adjacent piers (i.e., the income). Furthermore, because those six piers are all rented out by the same neighborhood association, the Darrows ultimately relied on the rental rate reported by a single property owner to estimate market rent. They have therefore failed to convince us that their estimated market rental rate of \$600/year is a reliable indicator of market rent. We also note that the Darrows only have a single pier extending from the subject property, and as previously mentioned, they have never sought the BZA’s approval to offer any pier rentals. Finally, the Darrows provided no market-based evidence to support their selection of a 15% capitalization rate. We conclude that these errors deprive the Darrows’ income approach of any probative value.<sup>3</sup>
  
31. Because the Darrows did not offer any probative market-based evidence to demonstrate the subject property’s correct market value-in-use for 2021, they failed to make a prima facie case for a lower assessment. Where a petitioner has not supported their claim with probative evidence, the respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### **FINAL DETERMINATION**

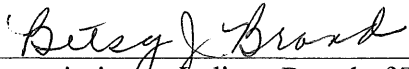
In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the 2021 assessment.

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<sup>3</sup> While the Darrows also claimed that the Assessor is improperly taxing Lots 3 and 4 for water frontage they do not have, the subject property’s 2021 assessment is the only appeal properly before us.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

  
Chairman, Indiana Board of Tax Review

  
Commissioner, Indiana Board of Tax Review

  
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>.