

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

**Petition:** 43-025-06-1-5-00166  
**Petitioners:** Cathy A. Lemberg and Carolyn S. Baker  
**Respondent:** Kosciusko County Assessor  
**Parcel:** 07-719037-90  
**Assessment Year:** 2006

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

**Procedural History**

1. The Petitioners initiated an assessment appeal with the Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 14, 2007.
2. The PTABOA mailed notice of its decision on September 12, 2007.
3. The Petitioners appealed to the Board by filing a Form 131 on October 9, 2007, and elected small claims procedures.
4. The Board issued a notice of hearing dated November 15, 2007.
5. Administrative Law Judge Patti Kindler held the administrative hearing in Warsaw on January 9, 2008.
6. The following persons were present and sworn in at the hearing:

For the Petitioners – Cathy A. Lemberg, owner,  
Carolyn S. Baker, owner,  
For the Respondent – Patty Gammieri, Township Assessor,  
Christy A. Doty, Deputy Township Assessor,  
Laurie Renier, County Assessor,  
Gerald Bitner, PTABOA member,  
Susan Myrick, PTABOA member,  
Richard Shipley, PTABOA member,  
Brock V. Ostrom, PTABOA member.

## Facts

7. The subject property is a lakefront residential dwelling located at 9057 East Waveland Cove Lane in Syracuse, Indiana.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The PTABOA determined the assessed value is \$570,300 for land and \$43,400 for improvements (total \$613,700).
10. The Petitioners requested an assessed value of \$456,000 for land and \$43,400 for improvements (total \$499,400).

## Issue

11. Summary of the Petitioners' contentions:
  - a) The land value is excessive, which makes the total assessment erroneous. A certified real estate appraisal dated December 31, 2005, values the subject property at \$500,000. The appraisal includes details about sales of forty-four comparable properties ranging from \$7,000 to \$17,000 a front foot. The predominant value is \$12,000 per front foot and this amount was used in the appraisal. The appraisal reduced the site value by 5% to account for the subject property location. Heavy boat traffic causes the subject property's beach area to be covered with muck and weeds. *Lemberg testimony; Pet'rs Ex. 1.*
  - b) Several properties in the neighborhood were assessed at different rates. The Clemens property is ten piers away and was assessed with a base rate of \$14,444, adjusted to \$12,711. *Pet'rs Ex. 5.* The Sellers property, consisting of several small lots, was adjusted from \$14,444 to a range of \$4,767 to \$9,966 per front foot. *Pet'rs Ex. 5-2.* The Beekman property has an effective frontage of 147 feet and was assessed with an adjusted base rate of \$12,711. *Pet'rs Ex. 5-3.* The Hoffman property, located next to the Petitioners' land, has a higher market value because the lot is larger and the improvements on the property are worth \$100,000. *Pet'rs Ex. 6.* The Rarick/Bowles property received a 48% reduction with a \$14,444 base rate. *Pet'rs Ex. 6-4 through 6-8.* Randomly selected property record cards show inconsistencies in assessments. A property on Waco Drive was assessed with a base rate of \$11,839 and adjusted up to \$13,141. Ogden Island property was adjusted down from \$14,444. Properties on Vawter Park were adjusted both up and down from the base rate of \$11,839. A property on Sunset Beach has a base rate of \$11,839 and was adjusted downward. Each of these properties had a lesser base rate than Waveland Cove. *Lemberg testimony; Pet'rs Ex. 7.*
  - c) The Petitioners' lot is wedge shaped and located on a dirt road maintained by the Petitioners. Taxes for the subject property increased by 66%, but other properties

in the neighborhood decreased by as much as 30%. This demonstrates major inconsistencies. *Baker testimony*. The application of a depth factor created too much variation in the assessments. *Lemberg testimony*.

12. Summary of the Respondent's contentions:

- a) Lake Wawasee properties sold with front foot values from \$8,000 to \$19,000 in 2004 and 2005. The average front foot value was \$11,144 in 2004 and \$15,497 in 2005. *Gammieri testimony; Resp't Ex. 3B*. A ratio study was prepared based on sales disclosure statements and included the comparables used in the subject property's appraisal. *Gammieri testimony; Resp't Ex. 3A*.
- b) There were two sales on the same side of the lake as the subject property. The buyers demolished the homes intending to replace them with new constructions. As a result, the analysis provides no value for the older homes—all value is attributed to the land. The lot prices of the two sales were \$13,140 and \$15,500 per front foot. *Gammieri testimony; Resp't Ex. 3B*.
- c) The Miller property sold in 2001 for \$501,000 according to county MLS data. The site has 45 feet of lakefront, the same as the subject property and the home was torn down. Dividing the sale price by 45 feet results in a front foot value of \$11,133. The 2001 sales price was entirely attributable to land because the structure was torn down. *Gammieri testimony; Resp't Ex. 4A*.
- d) Determined by law, depth factors and effective frontage are used to calculate the base rate. The base rate can only be changed by the legislature, not the assessor. *Gammieri testimony*.

### Record

13. The official record for this matter is made up of the following:

- a) The Petition,
- b) The digital recording of the hearing,
- c) Petitioners Exhibit 1 - Appraisal of subject property,  
Petitioners Exhibit 2 - Forms 130, 114, 131, and notice of assessment,  
Petitioners Exhibit 3 -Form 115, Notification of Final Assessment and Guidelines,  
Petitioners Exhibit 4 - Geographic information system (GIS) maps and pictures,  
Petitioners Exhibit 5 – Property record cards for neighborhood properties,  
Petitioners Exhibit 6 - Mike Hoffman and Rarick/Bowles property record cards  
and photographs,  
Petitioners Exhibit 7 - Lake Wawasee property records cards from around the  
lake,  
Petitioners Exhibit 8 - Comparison of neighborhood property taxes,

Petitioners Exhibit 9 - Letter to the Editor of local newspaper,  
Respondent Exhibit 1A - Form 131 Petition,  
Respondent Exhibit 1B - Form 115, Notification of Final Assessment,  
Respondent Exhibit 2A - Pictures of the subject property and property record card,  
Respondent Exhibit 2B - Appraisal, MLS data, GIS maps, and property record cards,  
Respondent Exhibit 3A - Trending information – Ratio Study,  
Respondent Exhibit 3B - Lake Wawasee land sales for 2004 and 2005,  
Respondent Exhibit 4 - Information on the sale of a property three doors east of the subject property,  
Respondent Exhibit 5 - Authorization for the Turkey Creek Township Assessor to represent the Kosciusko County Assessor in the appeal,  
Board Exhibit A - Form 131 Petition with attachments,  
Board Exhibit B - Notice of Hearing on Petition,  
Board Exhibit C - Hearing Sign-In Sheet,

d) These Findings and Conclusions.

### Analysis

14. The most applicable governing cases are:

- a) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would 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).
- b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the 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”).
- c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioners provided sufficient evidence to support a lower assessment. This conclusion was arrived at because:

- a) Real property is assessed on the basis of its “true tax value,” which does not mean fair market value. It means “the market value-in-use of a property for its current

use, as reflected by the utility received by the owner or similar user, from the property.” Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter MANUAL) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (hereafter GUIDELINES). The value established by use of the GUIDELINES, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

- b) The 2006 assessment is to reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property’s value as of January 1, 2005. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c) The Petitioners presented a certified appraisal that estimated the property’s value at \$500,000 as of December 31, 2005. The appraiser utilized the sales comparison approach. The sales comparison approach is a generally recognized method of valuing property, and was based on the sales prices of comparable residential properties during the period August 2004 to July 2005.
- d) The sales used in the appraisal bracket the January 1, 2005, valuation date. In addition, the appraisal specifically describes property values in the subject neighborhood as stable. Evidence of stability in property values and the analysis of sales from 2004 and 2005 establish the required link between the January 1, 2005 valuation date and the appraisal. The appraisal is sufficient to establish a prima facie case.
- e) The Respondent attempted to support the current land assessment with sales/assessment ratio studies relating to both unimproved and improved parcels in 2004 and 2005. The Respondent’s data shows the average front foot value for 2004 and 2005 as \$11,144 and \$15,497, respectively. The Respondent fails to explain or resolve this difference. Neither of these values corresponds to the Petitioners’ land assessment, which has a front foot value of \$14,444.
- f) Further, the Respondent relied on two sales on the lake with front foot values ranging from \$13,140 to \$15,500 support the current valuation. Merely alleging that properties are comparable is insufficient to establish the purported comparable properties are comparable to the property under appeal. *See Long*,

821 N.E.2d at 470; *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711 (Ind. Tax Ct. 2002). The Respondent failed to provide the kind of facts and analysis to explain how these other properties are comparable to the Petitioners' property or to account for any differences. Consequently, these sales have little or no probative value.

g) The Respondent failed to rebut the Petitioners' prima facie case.

### **Conclusion**

16. The Board concludes that the parcel's 2006 value-in-use is the amount stated on the certified appraisal. The Board finds in favor of the Petitioners.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$500,000.

ISSUED: \_\_\_\_\_

\_\_\_\_\_  
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, 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>>