

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

**Petition Nos.:** 91-010-06-1-5-00099  
91-010-06-1-5-00100  
91-010-06-1-5-00101  
91-010-06-1-5-00102

**Petitioners:** Steven W. and Linda K. Carter

**Respondent:** White County Assessor

**Parcel Nos.:** 007-93420-00  
007-93410-00  
007-93400-00  
007-93430-00

**Assessment Year:** 2006

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

**Procedural History**

1. The Petitioners appealed the assessments of four parcels. On December 17, 2007, the White County Property Tax Assessment Board of Appeals (“PTABOA”) issued notice of its determinations denying the Petitioners’ appeals.
2. On January 28, 2008, the Petitioners filed Form 131 petitions with the Board. The Petitioners elected to have those petitions heard according to the Board’s small-claims procedures.
3. The Board issued notices of hearing to the parties dated September 10, 2008.
4. October 15, 2008, the Board held an administrative hearing before its duly appointed Administrative Law Judge, Dalene McMillen (“ALJ”).
5. The following people were present and sworn in at hearing:
  - a. For Petitioners: Steven W. Carter, owner  
Paul D. Simmons, taxpayer representative

- b. For Respondent: Karen A. Hatter, White County Assessor  
Scott Potts, county representative

### Facts

6. The parcels under appeal are four contiguous residential lots that, between them, have a 2,177-square-foot single-family home, a detached garage, a screened deck, and a storage shed. They are located at 8467 North Kiger Drive, Monticello. Because the Petitioners treated the parcels as a single property, we refer to them collectively as the “subject property.”
7. The ALJ did not inspect the subject property.
8. The PTABOA made the following assessment determinations:

Parcel 007-93420-00

Land: \$43,700      Improvements: \$8,500      Total: \$52,200

Parcel 007-93410-00

Land: \$43,300      Improvements: \$0      Total: \$43,300

Parcel 007-93400-00

Land: \$43,700      Improvements: \$274,100      Total: \$317,800

Parcel 007-93430-00

Land: \$42,900      Improvements: \$37,900      Total: \$80,800.

Total: \$494,100

9. The Petitioners requested a total assessment of \$234,000 for all four parcels.

### Parties' Contentions

10. Summary of the Petitioners' contentions and evidence:
- a. The Respondent assessed the subject property for more than its market value-in-use. *Simmons argument.* Jack Cross, an Indiana Certified Appraiser, appraised the subject property in connection with a loan that the Petitioners had applied for. The Petitioners offered four pages from Mr. Cross's ten-page appraisal report. *Pet'rs Ex. B.* Those pages show that Mr. Cross estimated the property's value at \$234,000 as of March 14, 2006. *Pet'rs Ex. B.* According to Mr. Simmons, the Petitioners' tax representative, Mr. Cross followed the Uniform Standards of Professional Appraisal Practice (“USPAP”). *Id.*; *Simmons testimony.*

- b. Mr. Cross used the sales-comparison and cost approaches to value in appraising the subject property, although the portions of the appraisal report that the Petitioners submitted do not include Mr. Cross's cost-approach analysis. *Pet'rs Ex. B*. Those pages do contain a sales-comparison grid setting forth various adjustments that Mr. Cross made to the sale prices of comparable properties. Below that grid Mr. Cross provided a space for a "Summary of Sales Comparison Approach." Rather than explain his sales comparison approach in that space, Mr. Cross wrote "see attached addenda." *Id.* The Petitioners, however, did not include those addenda in the four pages that they submitted.
- c. The Respondent pointed to the sale of a property located further down the same river that the subject property sits on. But that property does not compare to the subject property. *Simmons testimony*. When turning onto the Petitioners' street, the first things people see are "tacky" mobile and modular homes. *Carter testimony*.

11. Summary of Respondent's contentions and evidence:

- a. Mr. Cross's appraisal suffers from a major flaw and therefore should be given little weight. *Potts testimony*. Mr. Cross did not sufficiently adjust the sale prices of his comparable properties to reflect the fact that those properties had significantly less frontage along the river than the subject property. *Id.* The primary value of a waterfront property stems from the part of the property that actually fronts the water. That is particularly true in this case because waterfront properties in the area are scarce. *Id.* Mr. Cross's comparable properties had only 173, 135 and 130 feet of water frontage, respectively, while the subject property had 404 feet. *Id.; Pet'r Ex. B*. Yet Mr. Cross did not make any site adjustment to the first comparable property's sale price. And he only adjusted the other two properties' sale prices by \$10,000. *Id.* In fact, Mr. Cross appears to have used a simple \$10,000-per-acre adjustment that would be more applicable to rural residential properties than to waterfront properties. *Potts testimony*.
- b. The sale of a property downriver from the subject property illustrates why Mr. Cross's site adjustments were too small. That property was approximately 10% of the subject property's size and had only 88 feet of water frontage. *Potts testimony; Resp't Ex. 4*. Yet it sold for \$90,000 on June 21, 2004. *Id.* While the property had a house on it at the time of the sale, the buyers removed that house and built a new one. So the sale price actually reflected only the value of the land. *Potts testimony*.

## **Record**

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

- a. The Form 131 petitions and related attachments.
- b. A digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit B – Four pages from a Uniform Residential Appraisal Report, prepared by Jack Cross, Cross Appraisals, Inc., dated March 21, 2006,

Respondent Exhibit 1 – Property record card for parcel 91-83-11-000-003.600-010 located at 9353 North Lenback Court, Monticello,

Respondent Exhibit 2 – Property record card for parcel 91-83-15-000-005.900-010 located at 8719 North Kiger Drive, Monticello,

Respondent Exhibit 3 – Property record card for parcel 91-83-15-000-006.300-010 located at 8741 North Kiger Drive, Monticello,

Respondent Exhibit 4 – Property record card for parcel 91-83-21-000-003.200-010 located at 5697 East Bass Center Road, Monticello,

Respondent Exhibit 5 – Plat map of the subject area,

Board Exhibit A – Form 131 petitions with attachments,

Board Exhibit B – Notices of hearing,

Board Exhibit C – Hearing sign-in sheet.

- d. These Findings and Conclusions.

## **Analysis**

13. The most applicable governing cases are:

- a. A petitioner seeking review of a an assessing official's determination 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 Township 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 Township 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.
14. The Petitioners did not prove that their properties’ assessments should be lowered. The Board reaches this decision for the following reasons:
- a. Real property is assessed based on its “true tax value,” which does not mean fair market value. It instead means the “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.” Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (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, sales-comparison and income approaches. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3.
  - b. To that end, the then State Board of Tax Commissioners promulgated a series of guidelines that explain how to apply the cost approach. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A* (incorporated by reference at 50 IAC 2.3-1-2). But the value established using those Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer may offer evidence relevant to a property’s market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5. The most effective method to show that the value assigned by the assessor is incorrect is often through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). *Kooshtard Property VI v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).
  - c. Regardless of the method used to rebut the 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. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006,

assessment, that valuation date is January 1, 2005. IND. ADMIN. CODE tit. 50, r. 21-3-3.

- d. Here, the Petitioners offered evidence that, at least in some respects, mirrors what the Manual and Tax Court describe as being relevant to a property's market value-in-use. Specifically, the Petitioners offered four pages from an appraisal that estimated the subject property's value at \$234,000. *Pet'r Ex. B.* Mr. Cross, the appraiser, was an Indiana Certified Appraiser, and he used two generally accepted appraisal methods to estimate the property's value—the cost and sales-comparison approaches. *Id.*
- e. But the Petitioners omitted key portions of Mr. Cross's appraisal report. For example, in none of the four pages that the Petitioners offered did Mr. Cross certify that he followed USPAP. Mr. Simmons's testimony that Mr. Cross followed USPAP was a poor substitute for Mr. Cross's own certification. More importantly, the report's missing pages appear to contain key information about Mr. Cross's analysis. For example, in performing his sales-comparison analysis, Mr. Cross significantly adjusted the sale prices of his three comparable properties. Yet the summary of Mr. Cross's sales-comparison analysis, in which Mr. Cross presumably explained his adjustments, is contained in an "attached addenda" that the Petitioners did not submit.
- f. Also, Mr. Cross estimated the subject property's value as of March 14, 2006—more than fourteen months after the relevant January 1, 2005, valuation date. And the Petitioners did not explain how Mr. Cross's valuation opinion related to the subject property's value as of January 1, 2005. True, Mr. Cross relied on comparable sales that occurred between April 2004 and May 2005 and he did not adjust those sale prices to reflect time-related value differences. And it is possible that Mr. Cross based his decision not to adjust those sale prices on evidence that market remained stable between April 2004 and the effective date of his appraisal. But the Petitioners' decision to omit significant portions of Mr. Cross's appraisal report prevents the Board from drawing that inference.
- g. Thus, in light of the Petitioners' decision to omit key portions of Mr. Cross's appraisal report, the Board gives little or no weight to Mr. Cross's valuation opinion. And the Petitioners offered no other evidence to support their case. At most, Mr. Carter testified about nearby mobile and modular homes in an effort to explain why the subject property did not compare to a property downriver. But Mr. Carter did not offer any evidence to quantify how the presence of those mobile and modular homes affected the subject property's value.

### **Conclusion**

15. Because the Petitioners' omitted key portions of Mr. Cross's appraisal report, his valuation opinion was insufficiently reliable to make a prima facie case. And the Petitioners offered no other probative evidence to rebut the subject property's assessment. The Board therefore finds for the Respondent.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should not be changed.

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

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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

## IMPORTANT NOTICE

- APPEAL RIGHTS -

**You may petition for judicial review of this final determination pursuant to 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 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/bills/2007/SE0287.1.html>.**