

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

**Petition Nos.:** 76-011-07-1-5-00060  
76-011-08-1-5-00063  
**Petitioner:** Kenneth A. & Marilyn M. Messmann  
**Respondent:** Steuben County Assessor  
**Parcel No.:** 76-06-03-420-514.000-011  
**Assessment Years:** 2007 & 2008

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

**Procedural History**

1. Kenneth A. & Marilyn M. Messmann appealed their March 1, 2007 and March 1, 2008 assessments to the Steuben County Property Tax Assessment Board of Appeals (“PTABOA”). On November 19, 2009, the PTABOA issued its determinations.
2. The Messmanns then timely filed Form 131 petitions with the Board. They elected to have their appeals heard under the Board’s small claims procedures.
3. On June 7, 2011, the Board held a hearing through its administrative law judge, Jennifer Bippus (“ALJ”).
4. The following people were sworn in and testified:
  - a) Kenneth & Marilyn Messmann
  - b) Marcia Seevers, Steuben County Assessor  
Phyl Olinger, county representative

**Facts**

5. The subject property contains a single-family home located at 260 Lane 200 on Lake James in Angola, Indiana.
6. Neither the Board nor the ALJ inspected the subject property.
7. The PTABOA determined the following assessment for both March 1, 2007 and March 1, 2008:

Land: \$297,600	Improvements: \$68,100	Total: \$365,700
-----------------	------------------------	------------------

8. The Messmanns requested the following values for both assessment dates:

Land: \$181,900                      Improvements: \$68,100                      Total: \$250,000

### **Parties' Contentions**

9. The Messmanns offered the following evidence and arguments:

- a) The subject property is assessed too high in light of an appraisal performed by Gregory Lindsay, a state certified appraiser. *K. Messmann testimony; Pet'rs Ex. 1.* Mr. Lindsay estimated the property's value at \$250,000 as of September 15, 2008. *Id.* Mr. Lindsay used the sales-comparison and cost approaches to value, but he gave the most weight to his conclusions under the sales-comparison approach. *Pet'rs Ex. 1.* Mr. Lindsay certified that he prepared his appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Id.*
- b) For his sales-comparison analysis, Mr. Lindsay used four sales from around Lake James. *Pet'rs Ex. 1.* Those sales occurred between May 29, 2007 and November 30, 2007. *Id.* While Mr. Lindsay adjusted those sale prices to account for various ways in which the comparable properties differed from the subject property, he did not make any adjustments to account for time-related differences between the sale dates and his September 15, 2008 valuation date. *Id.*
- c) Assessments around Lake James are inconsistent. Land is assessed at rates varying from \$3,300 to \$8,800 per front foot. *K. Messmann testimony.* In Mr. Messmann's view, that does not make sense because it is all the same water. *Id.* Mr. Messmann heard that a property in the Phillips Bay area was assessed for only \$3,300 per front foot, but that the assessment was later raised. *Id.*
- d) In 2008, a property located eight doors from the subject property sold for \$200,000. That property had 38 feet of lake frontage versus the subject property's 40 feet. It also had a home on it. *K. Messmann testimony.*

10. The Assessor offered the following evidence and arguments:

- a) According to the Assessor's witness, Phyl Olinger, Mr. Lindsay's appraisal is too recent. Mr. Lindsay analyzed four sales that occurred in 2007 and did not adjust the sale prices to January 1, 2007 or January 1, 2006—the relevant valuation dates for the assessments under appeal. *Olinger testimony; Resp't Ex. 2.*
- b) The Assessor testified that she believed the Messmanns were duped by Mr. Lindsay. *Seevers testimony.* According to the Assessor, Mr. Lindsay prepared an identical appraisal for Mr. Cook, another taxpayer who appealed his assessment to the Board. *Id.* The Assessor testified that Mr. Lindsay simply cut and pasted his analysis from one appraisal to the other, and that he was sloppy in doing so. *Id.* For example, Mr. Lindsay adjusted the sale prices for comparable sales 3 and 4 because they had no fireplace, but the subject property does not have one either. *Id.* In fact, Mr. Lindsay

prepared 10 appraisals for taxpayers in the area, and his conclusions were all within \$20,000 of each other. *Id.*

- c) Also, while Mr. Lindsay used sales from Lake James, the properties were from inferior locations. *Olinger testimony*. In fact, Mr. Lindsay’s fourth comparable property was located in a different township than the subject property. *Id.* To illustrate the inferiority of Mr. Lindsay’s comparables, Ms. Olinger pointed to the fact that the subject property was assessed using a land base rate of \$8,000 per front foot while Mr. Lindsay’s comparables had base rates ranging from \$3,075 to \$6,500 per front foot. *Id.*; *Resp’t Exs. 2, 9.*
- d) To support the \$8,000-per-front-foot base rate used to assess the subject property, Ms. Olinger pointed to six sales. For the sales that included improvements, she abstracted a land value by subtracting the assessed value of the improvements from the property’s total sale price. *Olinger testimony*; *Resp’t Exs. 2, 7-8.* The following table lays out those sale prices and abstracted land values:

<b>Owner</b>	<b>Price</b>	<b>Date</b>	<b>Land Value</b>	<b>Front Foot Value</b>
Jeffory Deahl	\$340,000	1/30/06	\$284,300	\$7,289
Nussbaum	\$677,500	7/12/05	\$633,200	\$9,539
Brodbeck	\$325,000	3/1/05	\$325,200	\$6,500
Scheele	\$267,666	9/26/07	\$257,866	\$9,209
Joseph Deahl	\$316,000	1/19/07	\$284,700	\$7,118
Culp	\$515,000	9/20/07	\$470,500	\$6,535

*Olinger testimony*; *Resp’t Exs. 2, 7-8.* The average front foot value for the sales from 2007 is \$7,620 and the average for the sales from 2005-2006 is \$7,289. *Id.* As illustrated on a color-coded map of Lake James, the sales that Ms. Olinger used are closer to the subject property than are the sales that Mr. Lindsay used in his appraisal. *Olinger testimony*; *Resp’t Ex. 10.*

- f) Ms. Olinger also addressed the Messmanns’ question regarding the different land base rates around the lake. According to Ms. Olinger, the Assessor analyzes and maps valid sales around the lake. Some areas have greater sale values than others. *Olinger testimony.*
- g) Finally, Ms. Olinger noted that Mr. Lindsay’s appraisal report lists the subject house as having two bathrooms, while the property record card shows only one bathroom. She recommended that the error be corrected. *Olinger testimony*; *Resp’t Ex. 2.*

## Record

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

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1: Appraisal report from Gregory P. Lindsay, Lindsay Appraisal Services

Respondent Exhibit 1: Respondent Exhibit Coversheet

Respondent Exhibit 2: Steuben County Assessor Summary of Testimony

Respondent Exhibit 3: Power of Attorney Certification attached to Power of Attorney

Respondent Exhibit 4: Subject 2007 and 2008 property record cards (“PRCs”)

Respondent Exhibit 5: Copy of appraisal report from Gregory P. Lindsay, Lindsay Appraisal Services

Respondent Exhibit 6: Copy of Lake James map with 2005 and 2006 sales located and three PRCs for sales

Respondent Exhibit 7: Copy of Lake James map with 2007 sales and four PRCs for sales

Respondent Exhibit 8: Copies of PRCs used as comparable sales in Lindsay’s appraisal

Respondent Exhibit 9: Copy of Lake James map with sales from appraisal and Assessor’s comparable sales highlighted

Respondent Exhibit 10: Respondent Signature and Attestation Sheet

Board Exhibit A: Form 131 petition

Board Exhibit B: Hearing notice dated March 25, 2011

Board Exhibit H: Hearing sign-in sheet

- d) These Findings and Conclusions.

## Analysis

### Burden of Proof

12. A taxpayer seeking review of an assessing official’s determination must make a prima facie case proving both that the current assessment is wrong and what the right assessment should 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).

13. In making its case, the taxpayer must explain how each piece of evidence relates to its 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”).

14. If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer’s evidence. *See American United Life Ins. Co v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

#### Discussion

15. The Messmanns proved that the subject property should be assessed for \$250,000 for the March 1, 2008 assessment date. They, however, did not make a prima facie case for reducing the property’s March 1, 2007 assessment. The Board reaches these conclusions for the following reasons:
  - a) Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines as “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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property’s value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
  - b) A property’s market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to USPAP often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n. 6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
  - c) Regardless of the method used to challenge an assessment’s presumed 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). Otherwise, the evidence lacks probative value. *See id.* (“[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment values without some explanation as to how these values relate to the January 1, 1999 value.”) (emphasis added). For March 1, 2007 assessments, the valuation date was January 1, 2006. 50 IAC 21-3-3(2006). For March 1, 2008 assessments, the valuation date was January 1, 2007. *Id.*
  - d) The Messmanns offered an appraisal report in which Mr. Lindsay used two generally accepted appraisal approaches to estimate the subject property’s market value. And Mr. Lindsay certified that he prepared his report in accordance with USPAP. Thus,

Mr. Lindsay's valuation opinion is probative of the subject property's market value-in-use as of his report's effective date—September 15, 2008. But that effective date is more than 1 ½ years after the January 1, 2007 valuation date for the March 1, 2008 assessment, and more than 2 ½ years after the valuation date for the March 1, 2007 assessment.

- e) Because Mr. Lindsay relied solely on sales from 2007 and did not adjust those sale prices to reflect time-related differences between the sale dates and his September 15, 2008 valuation date, his valuation opinion bears at least some relationship to the subject property's value as of January 1, 2007. Granted, that relationship is not precise. But the Department of Local Government Finance's rules for annual adjustments that were in effect at the times relevant to these appeals instructed assessors to use sales from 2006 and 2007 in performing ratio studies for the March 1, 2008 assessment date. 50 IAC 21-3-3(a) (2006) ("For assessment years occurring March 1, 2007, and thereafter, the local assessing official shall use sales of properties occurring the two (2) calendar years preceding the relevant assessment date."). Thus, Mr. Lindsay's valuation opinion bears enough of a relationship to the subject property's value as of January 1, 2007 to make a prima facie case for reducing the property's March 1, 2008 assessment.
- f) The same cannot be said for the subject property's March 1, 2007 assessment. All of Mr. Lindsay's sales occurred more than a year after the applicable January 1, 2006 valuation date. And neither Mr. Lindsay in his report, nor the Messmanns in their testimony, attempted to explain how Mr. Lindsay's valuation opinion related to the subject property's market value-in-use as of that earlier date.
- g) Nonetheless, because Mr. Lindsay's appraisal report is prima facie evidence that the subject property's March 1, 2008 assessment should be reduced to \$250,000, the burden shifted to the Assessor to impeach or rebut Mr. Lindsay's valuation opinion. The Assessor and her witness, Ms. Olinger, pointed to three things that she believed made Mr. Lindsay's opinion unreliable: (1) his failure to relate his opinion to the appropriate valuation date; (2) his sloppiness and general lack of diligence; and (3) his use of properties from inferior locations as comparable sales.
- h) As to the first point, the Board has already discussed how Mr. Lindsay's valuation opinion at least prima facie relates to the subject property's value as of the appropriate valuation date. And Ms. Olinger did not offer any evidence to dispute that relationship. In fact, like Mr. Lindsay, Ms. Olinger used sales from September 2007 in her own analysis without adjusting those sale prices to January 1, 2007 values. *See Resp't Exs. 2, 7-8.*
- i) The Assessor likewise offered little evidence to support the second point—that Mr. Lindsay was sloppy and did not diligently appraise the subject property. While simply cutting and pasting the analysis from one appraisal to another might show a lack of care, the Assessor did not offer any of the other appraisals that Mr. Lindsay had performed to back up her general claims. She, however, did point to concrete evidence of at least one error by Mr. Lindsay—treating the subject property as if it

had a fireplace. While that may show some carelessness on Mr. Lindsay's part, it does not significantly detract from the reliability of his valuation opinion.

- j) The third point—Ms. Olinger's claim that Mr. Lindsay's comparable sales were from inferior locations—similarly does little to impeach Mr. Olinger's valuation opinion. Other than citing to differences in land base rates, Ms. Olinger did not explain what made those locations inferior. The different rates might have been based on sales that would tend to show that one location is more valuable than the other. But Ms. Olinger did not offer any information about the sales that the Assessor used to determine those respective base rates. The Board therefore gives little weight to Ms. Olinger's claim that Mr. Lindsay's comparable properties were in inferior locations.
- k) In addition to her attempts at impeachment, Ms. Olinger pointed to six sales to support the land portion of the subject property's assessment. Ms. Olinger, however, did little to explain how those sales were more appropriate than Mr. Lindsay's comparable sales, other than to say that her sales were located closer to the subject property. Indeed, Ms. Olinger's analysis was far too superficial to constitute probative evidence of the subject property's market value-in-use. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005) (holding that sales data lacked probative value where taxpayers failed to explain how the characteristics of their property compared to the characteristics of purportedly comparable properties or how any differences between the properties affected their relative market values-in-use).
- l) Thus, Mr. Lindsay's appraisal is the best evidence of the subject property's true tax value for the March 1, 2008 assessment.

### **Conclusion**

- 16. Based on Mr. Lindsay's appraisal, the Messmanns proved by a preponderance of the evidence that the subject property's March 1, 2008 assessment was wrong and that the property should be assessed for \$250,000. Because the Messmanns failed to explain how Mr. Lindsay's valuation opinion related to the subject property's value as of the appropriate valuation date for the March 1, 2007 assessment, however, they failed to make a prima facie case for changing that assessment.<sup>1</sup>

### **Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review orders that the subject property's March 1, 2008 assessment be changed to \$250,000 and that its March 1, 2007 assessment remain unchanged.

---

<sup>1</sup> Although Ms. Olinger suggested that the subject property's record card should be corrected to reflect the addition of a bathroom, the Assessor does not need an order from the Board to do that. Regardless, correcting the property's record card does not change the Board's finding regarding the assessment amounts for 2007 and 2008. That is especially true given the lack of evidence as to when the Messmanns added the bathroom.

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

\_\_\_\_\_  
Chairman, Indiana Board of Tax Review

\_\_\_\_\_  
Commissioner, Indiana Board of Tax Review

\_\_\_\_\_  
Commissioner, Indiana Board of Tax Review

**IMPORTANT NOTICE**

**- 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>>.