

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

**Petition No.:** 43-032-08-1-5-00012  
**Petitioners:** Martin A. & Susan K. Stephens  
**Respondent:** Kosciusko County Assessor  
**Parcel No.:** 43-11-05-400-118.000-032  
**Assessment Year:** 2008

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

**Procedural History**

1. On May 8, 2009, the Petitioners filed written notice contesting the subject property’s 2008 assessment. On October 12, 2009, the Kosciusko County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying the Petitioners relief.
2. The Petitioners responded by timely filing a Form 131 petition with the Board. They elected to have their appeal heard under the Board’s small claims procedures.
3. On April 13, 2010, the Board held an administrative hearing through its Administrative Law Judge, Patti Kindler (“ALJ”).
4. The following people were sworn in as witnesses:
  - a) For the Petitioners: Martin A. and Susan K. Stephens
  - b) For the Respondent:<sup>1</sup> Laurie Renier, Kosciusko County Assessor  
Christy A. Doty, employee or Respondent  
Teena Pence, secretary

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<sup>1</sup>Marilyn Meighen, appeared as counsel for the Respondent. The Petitioners objected to Ms. Meighen’s appearance on grounds that they had no advance warning that the Respondent would be represented by counsel. The Board overrules the Petitioners’ objection. The Board’s procedural rules do not require attorneys to file an appearance in advance of a hearing. Nonetheless, the ALJ gave the Petitioners an opportunity to request a continuance so they could obtain counsel. They chose to proceed with the hearing instead.

## Facts

5. The subject property contains a single-family home located at 2020 Deer Trail, in Warsaw, Indiana.
6. Neither the Board nor the ALJ inspected the property.
7. The PTABOA determined the following values for the subject property:  
Land: \$42,400      Improvements: \$149,600      Total: \$192,000.
8. The Petitioners requested a total assessment between \$178,000 and \$180,000.

## Parties' Contentions

9. The Petitioners offered the following evidence and arguments:
  - a) According to the Petitioners, the factor that the Respondent used to trend assessments from 2007 to 2008 did not reflect actual market conditions in Kosciusko County. *M. Stephens argument*. In developing that factor, the Respondent did not use a sufficient number of sales from either the Rolling Hills subdivision or a similar neighborhood. Instead, the Respondent applied a 0% factor to all of Rolling Hills, despite the fact that market values within Rolling Hills, across Kosciusko County, and nationwide have declined dramatically. *Id.*
  - b) Data supplied by the Kosciusko County Board of Realtors ("BOR") for both countywide sales and sales within Rolling Hills show that the Respondent should have used a trending factor between -6% and -6.8%. *M. Stephens testimony; Pet'rs Exs. 1-2*. The countywide data shows a 5% decline in sale prices for the 1,203 county properties that sold in 2006, and a 1% decline in sales prices for the 1,075 properties that sold in 2007. *M. Stephens testimony; Pet'rs Ex. 1*.
  - c) Rolling Hills experienced a similar decline, at least if the analysis is limited to appropriate sales. *M. Stephens argument*. Because trending factors are determined by comparing sale prices to the sold properties' assessments, the accuracy of those trending factors depends upon the accuracy of the underlying assessments. And the following three Rolling Hills sales from 2007 involved properties with "skewed" assessments:
    - 2021 Deer Trail sold for \$429,900, or 28% above its assessment
    - 185 Gilliam sold for \$158,000, or 26% above its assessment.
    - 330 Gilliam Drive sold for \$202,000, or 58% above its assessment.

*M. Stephens testimony; Pet'rs Exs. 6-8*. Unlike the subject property, none of those three properties abuts the industrial complex north of Deer Trail. *M. Stephens testimony; Pet'rs Ex. 9*. Bordering that industrial complex, however, profoundly

affects the subject property's value. According to an article in the *Philadelphia Business Journal*, Penn State University researchers concluded that the "least desirable land use within 400 meters of a house was industrial." *Pet'rs Ex. 9.*<sup>2</sup> It therefore appears that the three sales described above grossly inflated the Respondent's trending factor for Rolling Hills. *Id.*

d) Instead, the Respondent should have used the following three Rolling Hills sales that were more in line with the sold properties' assessments:

- 220 N. Gilliam Drive, which sold in 2006 for \$159,000, or 4.2% below its assessment.
- 1901 Deer Trail, which sold in 2007 for \$232,500, or 14.5% below its assessment.
- 534 Crestlane, which sold in 2007 for \$250,000, just slightly below its assessment of \$250,400.

*M. Stephens testimony; Pet'rs Exs. 2-5.* The average assessment for those three sales was \$229,467, while the average sale price was \$213,833. Based on those sales, an appropriate trending factor would be -6.8%. *M. Stephens testimony.*

e) The current method for calculating trending factors is statistically flawed because the county's neighborhood profiles do not contain enough sales to provide reliable data. *M. Stephens testimony, argument.* The State requires assessors to use at least five sales from the prior year. Where fewer than five sales are available, the State directs assessors to use data from similar neighborhoods. *M. Stephens testimony.* The Kosciusko County BOR's data shows that 1,075 homes sold in 2007, or approximately 5% of the total homes in the county. Thus, trending factors are based on sales of as few as 5% of homes countywide. *Id.* Using such a small number of sales in a heterogeneous neighborhood like Rolling Hills, where homes vary dramatically in location, size, and quality, skews the county's trending data. *Id.; M. Stephens argument.*

f) National and regional data offer further proof that the Respondent's 0% trending factor is inaccurate. Composite Indices published by Case-Shiller, which track nationwide housing prices, show a 15% market decline in 2006 and a 10% decline in 2007. *Id.* Another graph from Case-Shiller breaks down housing-price declines by major metropolitan area. *M. Stephens testimony; Pet'rs Ex. 12.* According to that graph, prices in Detroit dropped approximately 37%, while prices in Chicago dropped 18%. *Id.* Because Kosciusko County is located between those two cities, their real estate markets are geographically relevant to Kosciusko County's market. *M. Stephens argument.* A third publication, the National Home Price Index, shows that home prices have reverted to late-2003 levels. *M. Stephens testimony; Pet'rs Ex. 14.* If the Respondent had used a trending factor of -6% to -7% as suggested by the

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<sup>2</sup>According to Mr. Stephens, the sales history of a property located one parcel to the east of the subject property shows how bordering an industrial park can hurt property values. The neighboring property was on the market for almost three years and sold for 32% below its original asking price. *M. Stephens testimony.*

BOR's data, the property's 2008 assessment would have been between \$178,560 and \$180,480, or just below its 2003 assessment of \$181,500. *M. Stephens testimony; Pet'rs Ex. 15.*

10. The Respondent offered the following evidence and arguments:
- a) Christy Doty, an Indiana licensed residential appraiser and part-time employee of the Respondent, testified on behalf of the Respondent. Although Ms. Doty did not perform the 2008 ratio study for Rolling Hills, she interpreted that ratio study in her testimony. *Doty testimony.*
  - b) A neighborhood ratio study must include at least five sales. Because there were not enough valid single-parcel sales from Rolling Hills, the Respondent could not develop a trending factor for that neighborhood. *Doty testimony.*
  - c) There were actually seven sales in Rolling Hills within the relevant period, but four had to be excluded. The sales of 2021 Deer Trail, 185 Gilliam Drive North, and 534 Crestlane Drive were excluded because each of those sales involved multiple parcels. And 330 Gilliam Drive South was excluded because it was an "outlier," meaning that the sale price was more than 50% above the property's assessment, and the reason for that disparity could not be identified. If the ratio study had included that outlier, all Rolling Hills homeowners would have seen their assessments increase substantially. *Doty testimony.* That left three sales for the ratio study: 220 N. Gilliam, 1901 Deer Trail, and 225 N. Gilliam. *Doty testimony; Resp't Ex. E.* The \$159,000 sale price that Mr. Stephens used for 220 Gilliam was actually the sale price for 225 Gilliam. *Id.*
  - d) The Petitioners' data regarding the decline in values for Kosciusko County residential properties does not necessarily apply to Rolling Hills. *Doty argument; Meighen argument.* That data includes sales of properties ranging from mobile homes on leased land to lakefront homes costing up to \$3 million. *Doty testimony.*

### **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:
    - Petitioners Exhibit 1: Kosciusko Board of Realtors' 2006-2007 sales summary,
    - Petitioners Exhibit 2: Kosciusko Board of Realtors' Rolling Hills Sales for 2003 to 2009,
    - Petitioners Exhibit 3: Property record card for 220 Gilliam Drive,

Petitioners Exhibit 4: Property record card for 1901 Deer Trail,  
Petitioners Exhibit 5: Property record card for 534 Crestlane Drive,  
Petitioners Exhibit 6: Property record card for 2021 Deer Trail,  
Petitioners Exhibit 7: Property record card for 185 Gilliam Drive,  
Petitioners Exhibit 8: Property record card for 330 Gilliam Drive,  
Petitioners Exhibit 9: Map of subject property and industrial park,  
Petitioners Exhibit 10: Article entitled “Penn State analyzes the value of houses”  
from *Philadelphia Business Journal*,  
Petitioners Exhibit 11: *Case-Shiller Home Price Indices* graph,  
Petitioners Exhibit 12: *Case-Shiller Home Price Indices* graph by major city,  
Petitioners Exhibit 13: Article entitled “Under the Court House Dome”,  
Petitioners Exhibit 14: *Case-Shiller National Home Price Index* graph,  
Petitioners Exhibit 15: 2007 property record card for the subject property,

Respondent Exhibit A: Appeal history and Final Determination and Findings and  
Conclusions for *Stephens v. Kosciusko County Assessor*,  
Pet. no. 43-032-06-1-5-00072 (Ind. Bd. of Tax Rev.,  
April 3, 2008), and *Stephens v. Kosciusko County  
Assessor*, Pet. No. 43-032-07-1-5-00009 (Ind. Bd. Of Tax  
Rev., April 27, 2009),<sup>3</sup>

Respondent Exhibit B: 2008 property record card for the subject property,  
Respondent Exhibit C: Property record card for 2002 Deer Trail,  
Respondent Exhibit D: 2007 property record card for the subject property,  
Respondent Exhibit E: 2008 Rolling Hills sales ratio study,

Board Exhibit A: Form 131 petition,  
Board Exhibit B: Notice of hearing,  
Board Exhibit C: Hearing sign-in sheet,  
Board Exhibit D: Notice of Appearance for Respondent’s Attorney,

d) These Findings and Conclusions.

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<sup>3</sup> Mr. Stephens objected to the Respondent’s exhibits because the Respondent did not give him copies of those exhibits five days before the hearing. Mr. Stephens, however, did not say that he had requested those exhibits. The ALJ properly overruled Mr. Stephens’s objection. Pursuant to 52 IAC 3-1-5(c), there is no prehearing discovery in small claims, except as provided in 52 IAC 3-1-5(d). And 52 IAC 3-1-5(d) reads as follows: “*If requested by any party*, the parties shall provide to all other parties copies of any documentary evidence . . . at least five (5) business days before the small claims hearing.” 52 IAC 3-1-5(d)(emphasis added). As already explained, the Petitioners elected to proceed under the Board’s small claims rules. *Board Ex. A*. Because the Petitioners did not request copies of the Respondent’s exhibits, Mr. Stephens’s objection fails.

## 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 incorrect and specifically what the correct 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. Once the taxpayer makes a prima facie case, the burden shifts to the respondent 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.

### The Petitioners’ Case

15. The Petitioners did not make a prima facie case for reducing the subject property’s assessment. The Board reaches this conclusion 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 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. PA 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 the Uniform Standards of Professional Appraisal Practice (“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. By contrast, a taxpayer does not rebut the presumption that an assessment is accurate simply by contesting an assessor’s methodology in computing it. *Eckerling v. WayneTwp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).

Strictly applying the Guidelines is not enough; instead, the taxpayer should offer the types of market-value-in-use evidence described in the Manual. *Id.*

- c) Regardless of the method used to rebut the assessment's presumption of accuracy, a party must explain how its evidence relates to the appealed 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 2008 assessments, that valuation date was January 1, 2007. 50 IAC 21-3-3 (2009).
- d) The Petitioners focus entirely on what they characterize as the Respondent's erroneous decision not to apply an annual adjustment factor in light of evidence that they allege shows a decline in the real estate market. At first blush, that appears to be little more than an attack on the Respondent's methodology. Even if the Respondent failed to apply an annual adjustment factor that reflected the relevant market's actual decline between January 1, 2006, and January 1, 2007—the valuation dates for the 2007 and 2008 assessments—that failure might not, by itself, show whether the subject property's 2008 assessment was accurate. At most, an annual adjustment factor accounts for the relative difference in a property's value from year to year; it does not show the property's market value-in-use.<sup>4</sup>
- e) But the Board need not decide that question. Even if a taxpayer can make a prima facie case simply by showing that an assessor failed to apply the correct annual adjustment factor to a property, the Petitioners did not make that case here.
- f) Much of the Petitioners' data is national or regional, which does little to show how the residential real estate market for Rolling Hills changed between January 1, 2006, and January 1, 2007. The Petitioners, however, also offered data from the Kosciusko BOR. While that raw data is more geographically relevant than the Petitioners' other evidence, the inquiry does not end there. The BOR's data, and the Petitioners' analysis of it, needed to meet the standards for determining annual adjustment factors.
- g) The Department of Local Government Finance ("DLGF") has adopted administrative rules that govern the process for annually adjusting assessments. The rules that applied for assessment years 2006 through 2009<sup>5</sup> tied that process to standards set by the International Association of Assessing Officers ("IAAO"). Thus, the rules incorporated by reference the 1999 IAAO Standard on Ratio Studies ("IAAO Standard"). 50 IAC 21-2-3(2009). And those rules similarly provided: "*In*

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<sup>4</sup> If, however, one proves that the previous year's assessment accurately reflected a property's market value-in-use as of the valuation date for that assessment, proof of changes in the relevant real estate market would tend to show the property's market value-in-use for the following year. In this appeal, Respondent arguably might be estopped from contesting the accuracy of the subject property's 2007 assessment, because that assessment was determined by the Board's order after the parties had the opportunity to fully litigate that issue. *See Resp't Ex. A, (Stephens v. Kosciusko County Assessor, Pet. No. 43-032-07-1-5-00009 (Ind. Bd. Of Tax Rev., April 27, 2009))*.

<sup>5</sup> The DLGF recently repealed 50 IAC 21 and replaced it with a new rule, 50 IAC 27, concerning annual adjustments and equalization. *See 50 IAC 21(Repealed by Dep't of Local Gov't Fin.; filed April 8, 2010, 1:45 p.m.: 20100505-IR-050090502FRA); see also 50 IAC 27 (2010)*.

*conjunction with IAAO standards, the township assessor shall utilize the sales verified to determine whether an adjustment factor shall be applied.” 50 IAC 21-3-2 (2009)*

- h) The Petitioners, however, did not show that either the BOR’s data or their own analysis of that data complied with the DLGF’s regulations or IAAO standards. For example, the Petitioners offered nothing to show that the BOR’s data included only sales that were verified as genuine indicators of market value. *See 50 IAC 21-3-2(2009) (requiring township assessors to retain and verify sales disclosure forms); see also 1999 IAAO Standard, § 6.3 (discussing, among other things, methods for confirming sales and determining invalidity).* Even if the BOR had verified its data, the BOR’s countywide calculations appear to compare only the following: (1) the average 2006 sale price for residential properties countywide, to the average 2005-sale price for such properties, and (2) the average 2007-sale price for all property classes countywide to the average 2006 sale price for those same property classes. *See Pet’rs Ex. 1.* In each case, the year-to-year change may have stemmed from differences in the properties that were sold rather than from differences in market levels. For example, the 2005 sampling of residential properties might have included nicer houses than the 2006 sampling. Perhaps the samples were large enough to negate those things, but the Petitioners did not offer any evidence to support that notion. In any event, this appeal deals with market changes between January 1, 2006, and January 1, 2007. Thus, the 5% decrease from 2005 to 2006 does little for the Petitioners’ case, and the BOR’s data shows only a 1% decrease from 2006 to 2007.
- i) That leaves the Petitioners’ analysis of the Rolling Hills properties that sold in 2006 and 2007. Of the seven properties that sold, Mr. Stephens and Ms. Doty agreed that only three sales were valid, although each included one sale that the other did not.<sup>6</sup> But three sales is a very small sample. When performing ratio studies, the IAAO Standard requires assessors to use an adequate sample size. *See 1999 IAAO Standard, at § 8.1 (referring to “required” sample sizes).* And the IAAO Standard explains that a sample’s adequacy depends “primarily on acceptable sampling error and the variability in the population.” *Id.* One can evaluate the adequacy of a given sample by computing measures of reliability; if the standard error or confidence interval is sufficiently small, the sample is large enough. But if the standard error or confidence interval is too wide, “the analyst will either have to accept less precision or collect additional observations.” *Id.* at § 8.2. In such cases, the analyst should

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<sup>6</sup> The ratio study excluded 534 Crestline while Mr. Stephens included it. Similarly, the ratio study included 225 Gilliam. Although Mr. Stephens did not purport to include 225 N. Gilliam, Ms. Doty persuasively testified that Mr. Stephens actually used the 225 N. Gilliam’s sale price for a property that he did include—220 N. Gilliam. The record supports Ms. Doty. First, the BOR sheet that Mr. Stephens relied upon appears to have originally listed 225 Gilliam as one of the sold properties. The last number in the address was altered with a “0” handwritten over what appears to have been a “5.” *Pet’rs Ex. 2.* Second, the Respondent offered a listing sheet for 225 N. Gilliam showing a sale price of \$159,000 and a list price of \$165,000, which match the prices listed on the BOR’s sheet. *Id.; Resp’t Ex. E.* By contrast, the property record card for 220 N. Gilliam shows a sale price of \$162,000. *Pet’rs Ex. 3.* Mr. Stephens’s error led him to calculate an erroneous sale-price-to-assessment ratio, because he used the sale price for 225 N. Gilliam and the assessment for 220 N. Gilliam.



consider alternatives, including, among other things, re-stratifying properties or expanding the period from which sales are drawn. *Id.* at § 8.4.

- j) Mr. Stephens did not compute measures of reliability to show that his three-sale sample was adequate. Indeed, the DLFG’s new annual-adjustment rule prohibits assessors from using study samples with fewer than five sales due their “exceptionally poor reliability.” 50 IAC 27-5-3(c)(2010). And Mr. Stephens himself argued that a sample of even five sales would have been too small. Instead of re-stratifying properties or taking any of the other steps suggested by the DLGF’s Annual Adjustment Rule or the IAAO Standard, however, Mr. Stephens asked the Board to rely on his three-sale sample. Granted, the Respondent similarly abandoned her duty to take those other steps. But the Petitioners, not the Respondent, bore the burden of proof.
- k) Thus, because the Petitioners failed to offer probative evidence to show what, if any, annual adjustment factor should have been applied to the subject property, they failed to make a prima facie case for changing the property’s assessment.

**Conclusion**

- 16. The Petitioners did not make a prima facie case for reducing the subject property’s 2008 assessment. The Board finds for the Respondent.

**Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment.

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 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>>