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

Petition: **76-011-07-1-5-00090 & 76-011-07-1-5-00091**
Petitioners: **John C. and Nancy L. Browning, Jr.**
Respondent: **Steuben County Assessor**
Parcels: **76-06-03-420-652.000-011 & 76-06-03-420-653.000-011**
Assessment Year: **2007**

The Indiana Board of Tax Review (Board) issues this determination in the above matter, finding and concluding as follows:

Procedural History

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

1. The Brownings filed Form 130 petitions with the Steuben County Assessor contesting the March 1, 2007, assessments for the above-captioned parcels.

2. On December 29, 2009, the Steuben County Property Tax Assessment Board of Appeals ("PTABOA") issued its determinations denying the Brownings the relief they had requested. The Brownings then timely filed Form 131 petitions with the Board. The Brownings elected to have their appeals heard according to the Board's small claims procedures

3. On November 31, 2011, the Board's administrative law judge, Patti Kindler ("ALJ"), held a single hearing on the Brownings' petitions. Neither the Board nor the ALJ inspected the subject parcels.

4. The following people were sworn in and testified:

   For the Brownings: John C. Browning, Jr.
   Dennis K. Kruse, II

   For the Assessor: Phyl Olinger, Steuben County Representative

5. The subject parcels are located at 60 Lane 200EA in Angola on a channel of Lake James. Lot 7 (Parcel 76-06-03-420-652.000-011) is a channel-front lot with a single-family home. The east half of Lot 8 ("Lot 8") (Parcel 76-06-03-420-653-000-011) is a channel-

front lot with a garage. The Board refers to the parcels collectively as the "subject property" unless otherwise indicated.

6. The PTABOA determined the following assessments:

Lot 7 (Parcel 76-06-03-420-652.000-011):		
Land: $106,900	Improvements: $29,400	Total: $136,300
Lot 8 (Parcel 76-06-03-420-653.000-011):		
Land: $ 42,900	Improvements: $ 4,000	Total: $46,900
		Total: $183,200

7. Based on an appraisal, the Brownings requested a combined assessment of $136,000.

8. The Brownings submitted the following exhibits:

Petitioners Exhibit 1a:	Petitioners' Exhibit Coversheet
Petitioners Exhibit 1b:	Beacon aerial map detailing the location of the subject property identified as (A), and of the Rodenbeck (B), Kloepper (C), Wurm (D), and Tax Free Strategies (E) properties
Petitioners Exhibit 2:	Beacon aerial map showing neighborhood wetland areas with photograph of the Brownings' crawl space
Petitioners Exhibit 3:	April 8, 2008 letter to Indiana Governor Mitch from the Brownings; April 24, 2008, letter to the Brownings from Brenda Summers of the Department of Local Government Finance; Form 115 determinations for the subject parcels
Petitioners Exhibit 4:	Form 131 petitions for subject parcels
Petitioners Exhibit 5:	Beacon plat map showing five different front foot assessment rates
Petitioners Exhibit 6:	Plat map showing the adjusted front foot rates for the subject parcels, and the Rodenbeck and Kloepper parcels, with attached Beacon property data sheets
Petitioners Exhibit 7:	Beacon property data for one of the Wurm Parcels with handwritten notations
Petitioners Exhibit 8:	Graph of the subject parcels' assessment history compared to two independent fee appraisals
Petitioners Exhibit 9:	Graph showing the history of taxes paid on the subject parcels
Petitioners Exhibit 10:	Lake James Property Assessment – Tax Payment History
Petitioners Exhibit 11:	Beacon aerial map; Beacon property and tax data sheets for the Cheverko property
Petitioners Exhibit 12:	Beacon property and tax data sheets for Tax Free Strategies property; photographs of the front of the Tax Free

	Strategies home and view of the swim beach, photograph of the view of the swim beach from the subject property
Petitioners Exhibit 13:	Beacon property and tax data sheets for the Deller property
Petitioners Exhibit 14:	Beacon aerial map of the Deller property showing lot dimensions
Petitioners Exhibit 15:	Appraisal of the subject parcels by Dennis Kruse, II with an effective date of January 1, 2007
Petitioners Exhibit 16:	Appraisal of the subject parcels by Dennis Kruse, II with an effective date of January 1, 2006
Petitioners Exhibit 17:	Beacon property and tax data for subject parcel 76-06-03-420-653.000-011, (Lot 8)
Petitioners Exhibit 18:	Beacon property and tax data for Rodenbeck half lot

9. The Assessor submitted the following exhibits:

Respondent Exhibit 1:	Respondent Exhibit Coversheet
Respondent Exhibit 2:	Summary of Respondent Testimony
Respondent Exhibit 3:	Power of attorney certification attached to power of attorney
Respondent Exhibit 4:	Property Record Card ("PRC"): Lot 7 (76-06-03-420-652.000-011)
Respondent Exhibit 4a:	2009 PRC: E1/2 Lot 8 (76-06-03-420-653-000-011)
Respondent Exhibit 5:	Copy of Kruse appraisal with effective date of January 1, 2007,
Respondent Exhibit 6:	Beacon aerial map showing the location of the subject and the first two comparables from Kruse appraisal along with the comparables' PRCs
Respondent Exhibit 7:	Beacon aerial map showing location of subject property and the Assessor's comparable sales; PRCs for the Assessor's comparable sales
Respondent Exhibit 8:	Respondent Signature and Attestation Sheet

10. The Board recognizes the following additional items as part of the record of proceedings:
    Board Exhibit A: Form 131 petitions
    Board Exhibit B: Hearing notices
    Board Exhibit C: Hearing sign-in sheet

Parties' Contentions

11. Summary of the Brownings' evidence and contentions:

    a) The subject parcels' assessments rose more than 5% between the 2006 and 2007 assessment years. Thus, Ind. Code § 6-1.1-15-17 puts the burden of proof on the Assessor. *Browning testimony; Pet'rs Ex. 8*.

b) The Brownings appealed the subject property's assessment for the March 1, 2003, assessment date. It is unclear from the record whether they also appealed the property's March 1, 2004, through March 1, 2006, assessments as well. In any event, on April 16, 2008, the PTABOA issued a Form 115 determination for each parcel reflecting a combined assessment of $134,600. *Browning testimony; Pet'rs Ex. 3.* In the margins of each Form 115 determination, the PTABOA listed identical values for March 1, 2004, through March 1, 2006. *Pet'r Ex. 3*. The Brownings, however, paid taxes on assessments for greater values than those reflected in the margins of the Form 115 determinations.

c) The Brownings bought the subject property for $97,000 in 1997. The property sits on the channel in an area called Willowdale. The Brownings' 862 square foot home sits on lot 7 and a detached garage sits on lot 8. The parcels are inseparable and have always been sold together. *Browning testimony; Pet'rs Ex. 1b.* Like the other Willowdale lots, the house is built on fill dirt and part of the property is wetland. The Brownings' house is only12 inches above the water line and is damp. *Browning testimony; Pet'rs Ex. 2.*

d) The property's assessment is too high in light of two appraisals performed by Dennis Kruse, II. Mr. Kruse is a certified general appraiser who has worked in Steuben County for eleven years, and his company, the Putnam Kruse Appraisal Group, is one of the leading experts on lake properties. *Kruse testimony*. In his first appraisal, Mr. Kruse estimated the property's market value at $136,000 as of January 1, 2007. *Browning testimony; Pet'rs Exs. 15*. Because the Assessor questioned the first appraisal's effective date, Mr. Kruse prepared the second appraisal with an effective valuation date of January 1, 2006. *Browning testimony; Pet'rs Ex. 16*. In preparing the revised appraisal, Mr. Kruse did not find any difference between the subject market's 2006 and 2007 values. He did, however, replace one of his comparable sales from the first appraisal because that sale was too far removed from the second appraisal's valuation date. In its place, Mr. Kruse used a sale from Snow Lake. *Browning testimony; Pet'rs Exs. 15, 16*.

e) To ensure his comparable sales were arm's length transactions that met the definition of market value, Mr. Kruse used the Multiple Listing Service ("MLS"). He searched for similar channel-front properties with access to an all-sports ski lake. Because of its size, Lake James is typically viewed as superior to Snow Lake and Crooked Lake. But that is reflected in properties that have an actual lake view. For properties, like the subject property, that have a channel location with a limited view, the typical buyer does not care whether a property is on Lake James or another comparative lake like Crooked Lake because he simply wants a property that has access to an area to ski and participate in sports activities. *See Kruse testimony; Pet'rs Ex. 16*. Mr. Kruse therefore settled on five channel-front lots with environmental issues and limited views similar to the subject property. *Kruse testimony; Pet'rs Exs. 15, 16*.

f) Mr. Kruse addressed Ms. Olinger's claim that his first comparable sale, the Deller property located at 35 LN 255 Lake James, sold twice in 2005—first on February 17, 2005, for $160,000, and again on December 16, 2005, for $289,500. In response to the Assessor's argument that Mr. Kruse should have relied on the second sale price, Mr. Kruse explained that the second sale was not listed in the MLS. Mr. Kruse therefore suspected that the second sale either was not an arm's length transaction or involved additional property. *Kruse testimony*. The first sale, by contrast, was listed in MLS and occurred after the property was exposed to the open market for 158 days. *Id.; Pet'rs Ex. 16*.

g) The Deller property's second sale price is also suspect because it represents an abnormal appreciation level—81% in just 10 months—without any justification. To make matters worse, Ms. Olinger relied on the second, inflated sale to support her testimony that channel-front property could be worth over $4,000 per front foot. *Browning testimony.*

h) The Assessor relied too heavily on abstracted front-foot values from sales, none of which were from Willowdale. But a property's value depends on much more than its channel frontage. *See Browning testimony*. In any case, the properties that the Assessor pointed to in support of her assessment were more desirable than the subject property in various ways. *Id; Pet'rs Exs. 7, 11-12*. And the Assessor applied front foot rates inconsistently. For example, the subject parcels were assessed using base rates of $2,225 and $2,350, respectively, while other nearby properties were assessed using lower base rates. *Browning testimony; Pet'rs Ex. 6*.

12. Summary of the Assessor's evidence and arguments:

a) According to a July 2009 memorandum from the Department of Local Government Finance ("DLGF"), the burden-shifting statute only applies to appeals filed after July 1, 2009. The Brownings' appeals, however, address the subject property's March 1, 2007 assessment. So the statute does not apply.

b) Regardless, Mr. Browning is mistaken in contending that the subject parcels' assessments increased between 2006 and 2007. According to the subject parcels' property record cards, both parcels' assessments decreased between 2006 and 2007. Lot 7's assessment went from $146,100 for 2006 to $136,300 for 2007. Similarly, Lot 8's assessment dropped from $57,400 to $46,900. *Olinger testimony; Resp't Exs. 4, 4a*. The "settlement" that Mr. Browning described the Assessor as having agreed to in April of 2008, is actually two Form 115 determinations for the 2003 assessment year. Those determinations have no bearing on the subject parcels' 2006 assessments. *Olinger testimony*.

c) Before the Board's hearing, the Brownings' issue was solely with their land, but in light of Mr. Kruse's latest appraisal, the Brownings may have changed the scope of

their appeal.[1] *Olinger testimony.* Because negative influence factors were already applied to the subject parcels—Lot 7 had a 30% influence factor and Lot 8 had a 50% negative influence factor—the PTABOA voted against lowering the parcels' 2007 assessments any further. *Olinger testimony.*

d) The subject parcels have the following dimensions:

- Lot 7—65' wide with an effective depth of 86'
- Lot 8—34' feet wide with an effective depth of 103'.

Both lots were assessed using a base rate of $2,500 per front foot, which is supported by comparable land sales. *Olinger testimony; Resp't Exs. 4, 4a.* For example, 380 LN 200 E, Lake James sold for $150,000 in 2004. Using the abstraction method, Ms. Olinger subtracted the $46,200 improvement assessment from the property's $150,000 sale price and divided the remaining land value by the property's 40' frontage to determine a price of $2,595 per front foot. *Olinger testimony; Resp't Ex. 7.* The second sale of the Deller property likewise supports the subject land's assessment. That sale yielded an abstracted land value of $4,424 per front foot. *Olinger testimony; Resp't Ex. 6 at 4-5*.

e) Indeed, Ms. Olinger took issue with Mr. Kruse's decision to use the older of the two sales of the Deller property. Ms. Olinger was not sure why Mr. Kruse used that property's February 17, 2005, sale price of $160,000 when the property sold again on December 16, 2005, for $289,500. *Olinger testimony; Resp't Ex. 6 at 4-5*. Ms. Olinger also attacked the Brownings' characterization of their property as wetlands, pointing out that they offered nothing to support that proposition beyond a Beacon aerial map. And the Brownings are mistaken in claiming that nearby properties were assessed using lower base rates than the subject property—all the properties have the same base rate of $2,500, but the rates were adjusted using depth factors. *Olinger testimony*.

Analysis

A. The Brownings had the burden of proof.

13. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its 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). If the taxpayer makes a prima facie case, the burden shifts to

[1] The Brownings requested a change to their improvement value for lot 8 on their Form 131 petition to the Board, so the Assessor should not have been surprised if they discussed the assessment of their improvements. Furthermore, both of the Brownings' appraisals, one of which Ms. Olinger presented as part of the Assessor's evidence, valued the parcels as a whole.

the assessor to offer evidence to rebut or impeach 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.

14. The Brownings, however, claim that Ind. Code § 6-1.1-15-17, which was originally enacted effective July 1, 2011 and which has since been repealed and re-enacted as Ind. Code § 6-1.1-15-17.2,[2] shifts the burden of proof to the Assessor in these appeals. That statute provides the following:

> This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increase the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana Board of Tax Review of to the Indiana Tax Court.

I.C. § 6-1.1-15-17.2.

15. The parties dispute whether the statute applies to appeals not yet heard as of July 1, 2011, or instead only applies to appeals of assessments made after that date. The Board has already issued a number of decisions aligning with the first position—that Ind. Code § 6-1.1-15-17.2 applies to all appeals that had not yet been heard as of July 11, 2011. *See, e.g., Echo Lake, LLC v. Morgan County Assessor,* petition nos. 55-016-09-1-4-00001 -02 and -03 (Ind. Bd. of Tax Rev. Nov. 4, 2011); *Stout v. Orange County Assessor,* pet no. 59-007-09-1-5-00001 (Ind. Bd. Tax Rev. Nov. 7, 2011).[3]

16. But that is beside the point, because the PTABOA determinations that the Brownings have appealed do not represent an increase in the subject property's assessment of more than 5% over the assessment determined by the *county or township assessor* for March 1, 2006. In fact, the subject property's assessment actually decreased from $203,400 as determined by the township or county assessor for March 1, 2006, to $183,200—the amount determined by the PTABOA for March 1, 2007, and appealed to the Board.

17. The Brownings, however, point to two Form 115 determinations by the PTABOA resolving the Brownings' appeals of the subject property's March 1, 2003, assessment. The PTABOA determined the property's total assessment at $134,600. In the margins, the same amounts are also listed for March 1, 2004 – March 1, 2006. At best, those determinations are ambiguous as to whether the PTABOA determined the subject

[2] HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.
[3] Both those decisions address Ind. Code § 6-1.1-15-17 before its repeal and re-enactment as Ind. Code § 6-1.1-15-17.2.

property's assessment for March 1, 2006. Even if that were the case, however, the starting point for the year-to-year comparison required by Ind. Code § 6-1.1-15-17.2 is the prior year's assessment (in this case 2006) determined by the *township or county assessor*, not the PTABOA. That is then judged against the assessment that is the *subject of review* for the second year (in this case, 2007). And in Board proceedings, the assessment under review is the assessment determined by the PTABOA. As already explained, the PTABOA's determination for 2007 actually decreased from the county or township assessor's assessment for 2006. So Ind. Code § 6-1.1-15-17.2 does not operate to shift the burden of proof to the Assessor in these appeals.

B. The Brownings met their burden.

18. The Brownings proved that the subject property's assessment should be reduced to $136,000. The Board reaches that 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 (2009)). Appraisers traditionally have used three methods to determine a property's market 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.; 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. *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 rebut 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. *See 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). Otherwise, the evidence lacks probative value. *Id.* For March 1, 2007 assessments, that valuation date was January 1, 2006. 50 IAC 21-3-3(2009).

d) Here, the Brownings offered an assortment of evidence, much of which focuses on differences between how the subject property and various nearby properties were assessed. Because the Brownings did not meaningfully compare the properties in terms of characteristics that affect market value-in-use, however, that evidence has little or no probative weight. But the Brownings also offered Mr. Kruse's professional valuation opinion that the subject property's market value was $136,000 as of January 1, 2006—the valuation date that applied to the March 1, 2007 assessments at issue in the Brownings' appeals. Mr. Kruse, who is a certified appraiser with experience in the local market, certified that he performed his appraisal in conformance with USPAP. He considered all three traditional approaches to value and developed an estimate under one of them—the sales-comparison approach. In light of Mr. Kruse's appraisal, the Brownings made a prima facie case that the subject property's assessment was wrong and that the property's true tax value was $136,000.

e) The burden therefore shifted to the Assessor to impeach or rebut Mr. Kruse's valuation opinion. While she attempted to do both, she succeeded in doing neither.

f) In an effort to impeach Mr. Kruse's appraisal, Ms. Olinger pointed to Mr. Kruse's decision to use the first sale of the Deller property instead of the second sale, which had a significantly higher sale price. But the only evidence that Ms. Olinger pointed to in support of her position that the Deller property actually sold twice in 2005 was the property's record card, which simply lists two transfers and sale prices from that year. The card, however, includes little other information about either transaction. Under those circumstances, Mr. Kruse was more than justified in using the first sale, which unlike the later sale, was listed in MLS, exposed to the market for 158 days, and verified as an arm's length transaction.

g) Ms. Olinger also attempted to support the subject property's assessment by pointing to what she described as comparable land sales. But she did little to explain how most of the properties involved in those sales compared to the subject property or to explain how any differences may have affected the properties' relative values. Thus, Ms. Olinger's analysis was too superficial to be probative 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). Arguably, Ms. Olinger did explain how one of her purportedly comparable properties—the Deller property—compared to the subject property. After all, Mr. Kruse used that property as one of his comparables. But Ms. Olinger relied on the second sale, which was not listed in MLS and about which she had no information. Given the stark difference between that second sale price and the MLS-listed sale from just ten months earlier, the Board gives Ms. Olinger's sales-comparison based on that second sale little or no weight.

h) Thus, Mr. Kruse's valuation opinion is the only persuasive evidence of the subject property's January 1, 2006 market value-in-use. The subject property's assessment therefore must be reduced to $136,000—the amount that Mr. Kruse estimated in his appraisal.

Summary of Final Determination

19. Because the Brownings offered Mr. Kruse's probative valuation opinion, they rebutted the presumption that the subject parcels' assessments were accurate. And the Assessor's Representative did little to impeach or rebut Mr. Kruse's opinion. The Board therefore orders that the subject parcels' combined assessment be changed to $136,000.

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