

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

**Petition Nos.:** 44-010-06-1-5-00237; 44-010-06-1-5-00238  
**Petitioner:** Albert K. Germanson  
**Respondent:** LaGrange County Assessor  
**Parcel Nos.:** 44-10-17-400-000.056-010; 44-10-17-400-000.001-010  
**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. Albert K. Germanson filed written notices contesting his properties’ assessments. On May 9, 2008, the LaGrange County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations denying Mr. Germanson the relief he had requested.
2. Mr. Germanson then timely filed Form 131 petitions with the Board. He elected to have his appeals heard under the Board’s small claims procedures.
3. On February 12, 2009, the Board held a consolidated administrative hearing through its designated Administrative Law Judge, Patti Kindler (“ALJ”).
4. The following people were sworn in and testified:
  - a) Albert K. Germanson, *pro se*
  - b) For the Assessor: Lori Carney, LaGrange County Assessor  
Joy Sharp, witness

**Facts**

5. The appealed parcels are located at Oliver Lake, in LaGrange, Indiana. Parcel 44-10-17-400-000.056-010 (“the off-lake parcel”) includes two lots and contains a small barn assessed as a detached garage. Parcel 44-10-17-400-000.001-010 (“the lakefront parcel”) also includes two lots and contains a modular home with an attached garage. A road separates the two parcels.
6. Neither the Board nor the ALJ inspected the properties.

7. The PTABOA determined the following values for the parcels' March 1, 2006, assessments:

Off-lake parcel

Land: \$42,000            Improvements: \$23,400            Total: \$65,400.

Lakefront parcel

Land: \$166,200            Improvements: \$342,700            Total: \$508,900.

8. Mr. Germanson asked for the following assessments:

Off-lake parcel

Land: \$22,750            Improvements: \$23,400            Total: \$46,150.

Lakefront parcel

Land: \$179,700            Improvements: \$186,000            Total: \$365,700.<sup>1</sup>

### **Parties' Contentions**

9. Summary of Mr. Germanson's contentions:

- a) Mr. Germanson disagrees with both the off-lake parcel's land assessment and the lakefront parcel's improvement assessment. To support his claims, Mr. Germanson offered three main items that he felt showed the two parcels' values: (1) an appraisal report from Debra S. Lambright, a certified residential appraiser; (2) an itemized list of costs for his modular home; and (3) an insurance agent's estimate of the cost for replacing his home. *Germanson testimony; Appraisal; Pet'r Exs. 4-5, 8-9, 12.*
- b) Ms. Lambright prepared an appraisal valuing the combined parcels at \$458,150 as of January 1, 2005. *Appraisal; Pet'r Ex. 5.* She used the cost and sales-comparison approaches to estimate the value of the lakefront parcel at \$412,000. *Germanson testimony; Pet'r Exs. 4, 5.* Ms. Lambright considered the home as having a wood deck, although that deck had not yet been built on the March 1, 2006, assessment date. *Germanson testimony; Appraisal, at 2 of 6.* Ms. Lambright estimated the value of the off-lake parcel at \$46,150. *Germanson testimony; Pet'r Exs. 8-9.*
- c) In 2005, Schrock Builders built and delivered a Heckman modular home to the lakefront parcel. *Germanson testimony.* The total cost, including delivery, finishing, and supplements, was \$185,619. *Id.; Pet'r Ex. 2.*

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<sup>1</sup> Those are the amounts that Mr. Germanson listed in his Form 131 petition. In an attachment to that petition, Mr. Germanson asked that the lakefront parcel be assessed for \$412,000. *See Board Ex. A.*

- d) Similarly, a State Farm insurance agent used the Xactware® estimating tool to estimate the home's replacement cost at \$191,000. *Germanson testimony; Pet'r Ex. 3*. Mr. Germanson insures the home for \$200,000. *Germanson testimony*.

10. Summary of the Assessor's contentions:

- a) The parcels' current assessments are correct, fair, and equitable. The parcels are actually in different neighborhoods, and each is assessed fairly in relation to sales in its neighborhood. *Carney testimony and argument*.
- b) Market values for lakefront properties on Oliver Lake are rapidly increasing. *Id.* From 2002 to 2006, the neighborhood factor increased from 1.17 to 2.67, and the front-foot rate for land increased from \$1,285 to \$2,570. *Id.; Resp't Ex. 16*.
- c) A ratio study for Johnson Township shows that assessments and market-factor adjustments were within the allowable range. *Resp't Ex. 19*. In fact, properties sold for prices higher than their assessments. One lakefront property sold for \$275,000 in August 2006, but it was assessed for \$196,600. *Resp't Ex. 21*. Another sold for \$325,000 but was assessed for \$263,600. *Resp't Ex. 22*. And a third was assessed for only \$254,700. *Resp't Ex. 23*. Mr. Germanson's property was assessed using the same guidelines and methodology as those other properties. *Carney testimony*.
- d) The off-lake parcel's assessment contains adjustments because it lacks water and sewer hook-ups. *Carney testimony*. And because the house is a modular, it is graded at only "D+1," which is considerably low for the neighborhood. *Id.*
- e) Also, Mr. Germanson's evidence has problems. His appraiser, Ms. Lambright, may have failed to make some appropriate adjustments to the sale prices of her comparable properties. *Carney testimony*. In any event, like the other properties the Assessor identified, Ms. Lambright's comparable properties were assessed for less than their sale prices. *Id.; Resp't Exs. 28-29*.
- f) Similarly, Mr. Germanson's itemized list of costs to build his home was incomplete. There are exterior features that the list does not include. *Carney testimony; see also Resp't Ex. 12*. But even if the list included everything, the house is worth more sitting on a lake than it would be worth if it sat in the middle of town. *Carney testimony*.

## Record

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

- a) The Form 131 petitions,
- b) The digital recording of the hearing,
- c) The parties submitted several exhibits, all but one of which was numbered. The unnumbered exhibit is an appraisal of Mr. Germanson's property prepared by Deborah S. Lambright. The appraisal includes a cover page, a letter from Ms. Lambright, her Uniform Residential Appraisal Report, and an addendum to that report. Mr. Germanson separately labeled pages from the appraisal report as exhibits, but he did not formally introduce the entire document as a separately labeled exhibit. Nonetheless, the exhibit was physically before the parties during the hearing, and the hearing proceeded as if the document had been admitted into evidence. The Board therefore treats the document as evidence in the record. It will cite to the document as "Appraisal."
- d) The parties offered the following numbered exhibits:

- Petitioner's Exhibit 1 – Form 115 for the lakefront parcel,
- Petitioner's Exhibit 2 – Itemized list of construction costs for Mr. Germanson's house,
- Petitioner's Exhibit 3 – March 10, 2008, insurance estimate,
- Petitioner's Exhibit 4 – Page 3 of 6 from Uniform Appraisal Report,
- Petitioner's Exhibit 5 – Page 2 of 6 from Uniform Appraisal Report,
- Petitioner's Exhibit 6 – Form 115, page 2, for the lakefront parcel,
- Petitioner's Exhibit 7 – Form 115 for the off-lake parcel,
- Petitioner's Exhibit 8 – Addendum, page 3 of 4, from Uniform Appraisal Report,
- Petitioner's Exhibit 9 – "Addendum to Appraisal # 3823L,"
- Petitioner's Exhibit 10 – Photographs of the off-lake parcel and neighboring parcels,
- Petitioner's Exhibit 11 – Photograph of hill behind the garage on the off-lake parcel,
- Petitioner's Exhibit 12 – Addendum, page 4 of 4, from Uniform Appraisal Report,
  
- Respondent's Exhibit 1 – Property record card for lakefront parcel,
- Respondent's Exhibit 2 – Property record card for off-lake parcel,
- Respondent's Exhibit 3 – Property record card used as worksheet for lakefront parcel,
- Respondent's Exhibit 4 – May 4, 2007, photograph of the front view of Mr. Germanson's home,

Respondent's Exhibit 5 – March 29, 2006, photograph of the front view of Mr. Germanson's home,  
Respondent's Exhibit 6 – March 29, 2006, photograph of the front view of Mr. Germanson's home,  
Respondent's Exhibit 7 – March 29, 2006, photograph of the street view of Mr. Germanson's home,  
Respondent's Exhibit 8 – Form 130, page 4 for lakefront parcel,  
Respondent's Exhibit 9 – Form 130, page 4, for the off-lake parcel,  
Respondent's Exhibit 10 – Form 115 for the lakefront parcel,  
Respondent's Exhibit 11 – Form 115 for the off-lake parcel,  
Respondent's Exhibit 12 – Itemized list of construction costs with hand-written notes,  
Respondent's Exhibit 13 – Certificate of Occupancy,  
Respondent's Exhibit 14 – Application for Building and Improvement Location Permit,  
Respondent's Exhibit 15 – February 24, 2008, letter from Mr. Germanson to the LaGrange County PTABOA,  
Respondent's Exhibit 16 – Assessor's trending notes for area lakes,  
Respondent's Exhibit 17 – Sheet containing trending statistics,  
Respondent's Exhibit 18 – Property record card for Haifley property showing a 2004 sale price,  
Respondent's Exhibit 19 – Johnson Township ratio study report,  
Respondent's Exhibit 20 – "iDox" report,  
Respondent's Exhibit 21 – Property record cards for Heiny property with sales disclosures and photograph,  
Respondent's Exhibit 22 – Property record cards for Bollinger property with sales disclosures and photograph,  
Respondent's Exhibit 23 – Property record cards for O'Shaughnessy property with sales disclosure and photograph,  
Respondent's Exhibit 24 – Google aerial view of Mr. Germanson's parcels,  
Respondent's Exhibit 25 – Plat map including the off-lake parcel, lots 91 and 92,  
Respondent's Exhibit 26 – Plat map including the lakefront parcel, lots 1 and 2,  
Respondent's Exhibit 27 – Page 2 of 6 from Uniform Residential Appraisal Report,  
Respondent's Exhibit 28 – Property record card for 4906 E. 580 S.,  
Respondent's Exhibit 29 – Property record card for 540 E. 365 S.,  
Respondent's Exhibit 30 – Assessor's witness and exhibit list,  
  
Board Exhibit A – Form 131 petition,  
Board Exhibit B – Notice of hearing,  
Board Exhibit C – Hearing sign-in sheet,  
Board Exhibit D – Request for continuance of hearing,  
Board Exhibit E – Board's grant of continuance,

- e) These Findings and Conclusions.

## **Analysis**

### Burden of Proof

12. A taxpayer seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and 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).
14. If the taxpayer establishes a prima facie case, the burden shifts to the respondent 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. Mr. Germanson proved that the appealed parcels' assessments should be reduced. 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 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).
  - b) Assessors typically use a mass-appraisal version of the cost approach to assess individual properties. The Real Property Assessment Guidelines for 2002 – Version A detail that approach. But those Guidelines are merely the starting point for determining value. *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). Thus, while a property's market value-in-use, as ascertained by applying those Guidelines, is presumed to be accurate, that presumption may be rebutted using relevant evidence that is consistent with the Manual's definition of true tax value. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006); *see also* MANUAL at 5. That evidence includes market-value-in-use appraisals, actual construction costs, sales information regarding the appealed parcel or comparable properties, and other evidence compiled using generally accepted appraisal principles. *Id.*

- c) Here, Mr. Germanson offered three estimates of value: (1) an appraisal report from Debra S. Lambright, (2) an itemized list of costs for his modular home, and (3) an insurance agent's estimate of the home's replacement cost.
- d) The Board first turns to Ms. Lambright's appraisal. As the Tax Court has repeatedly said, the most effective method to rebut an assessment's presumed accuracy is by offering "a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP)." *Eckerling*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Ms. Lambright's appraisal meets that description. Ms. Lambright certified that she prepared her appraisal in conformance with USPAP. She used two generally accepted valuation methodologies—the cost and sales-comparison approaches. And she estimated the property's value as of January 1, 2005—the relevant valuation date for March 1, 2006, assessments.
- e) That does not necessarily end the Board's inquiry into Mr. Germanson's case. He also offered an itemized list of what it cost to build and transport his house and a replacement cost estimate from an insurance agent. If, as Mr. Germanson requested, the Board were to accept either of those estimates and simply add it to the lakefront parcel's land assessment, the overall assessment for that parcel would be less than the \$412,000 estimated by Ms. Lambright. The Assessor, however, claimed that the itemized list did not include costs for all the home's features. And there is nothing to show how the insurance agent arrived at his estimate other than that he used a software program. Regardless, to the extent that either the itemized list or replacement cost estimate has any probative value, Ms. Lambright's appraisal is more persuasive.
- f) Thus, based on Ms. Lambright's appraisal, Mr. Germanson made a prima facie case that the parcels' assessments are wrong and that their combined market value-in-use is \$458,150.
- g) The burden therefore shifted to the Assessor to impeach or rebut Ms. Lambright's appraisal. *Meridian Towers*, 805 N.E.2d at 479. The Assessor sought to do both, but succeeded in doing neither.
- h) The Assessor tried to impeach Ms. Lambright's appraisal by claiming that it contains "discrepancies." *Carney testimony*. But the Assessor did not point to specifics. For example, the Assessor said that Ms. Lambright failed to make some adjustments to her comparable properties' sale prices without explaining what those adjustments should have been. The Assessor also pointed to the fact that, while Ms. Lambright appraised Mr. Germanson's house as having a wood deck, that deck did not exist on the assessment date. If anything, though, that would make Ms. Lambright's estimate too high rather than too low.
- i) The Assessor also tried to justify the parcels' assessments by claiming that the assessments were "fair and equitable." To support that claim, she pointed to a

report setting out statistical measures of accuracy and uniformity for Johnson Township assessments. Somewhat contradictorily, she also pointed to several properties that sold for prices that were significantly higher than their assessments.

- j) In any event, the Board is not persuaded. First, the Assessor offered no support for her underlying premise—that an assessment is correct even if it exceeds a property’s market value as long as the assessment is “fair and equitable” when compared to other properties’ assessments. To the contrary, an individual taxpayer has the right to prove that his property’s assessment does not accurately reflect its market value-in-use. *See* MANUAL at 5. That right exists independently of constitutional and statutory requirements for uniform and equal assessments.<sup>2</sup> Thus, a taxpayer may have his property’s assessment reduced to its market value-in-use, even if neighboring properties are also over-assessed.
- k) Second, the fact that an assessor’s mass-appraisal methodology led to relatively accurate assessments for other properties does little to show that the methodology resulted in an accurate assessment for a specific property under appeal. It certainly does not outweigh an appraiser’s valuation opinion. Indeed, the Assessor’s position distills to a claim that the property was correctly assessed under the Guidelines. But the Tax Court has held that strictly applying the Guidelines is not enough to rebut the presumption that an assessment is correct. *Eckerling*, 841 N.E.2d at 678. It follows that, once a taxpayer has offered probative market value-in-use evidence to rebut an assessment’s accuracy, an assessor cannot overcome that evidence by showing that she correctly applied the Guidelines.
- l) The Board therefore finds that Mr. Germanson proved that the current assessments for his two parcels are incorrect and that their combined values should be no more than \$458,200 (\$458,150 rounded to the nearest \$100). Because Ms. Lambright’s appraisal broke the values down by parcel the Board orders their respective assessments to be reduced accordingly. Thus, the off-lake parcel’s assessment should be reduced to \$46,200 (rounded)<sup>3</sup> and the lakefront parcel’s assessment should be reduced to \$412,000.<sup>4</sup>

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<sup>2</sup> The Indiana Constitution requires the General Assembly to provide “a uniform and equal rate of property assessment and taxation.” IND. CONST. ART. 10 § 1. Indiana Code § 6-1.1-2-2 similarly requires property to “be assessed on a just valuation basis and in a uniform and equal manner.”

<sup>3</sup> Assessments are expressed in numbers rounded to the nearest \$100. GUIDELINES, ch. 2 at 130.

<sup>4</sup> The Board recognizes that the lakefront parcel’s value may actually be slightly lower, because Ms. Lambright’s estimate included a wood deck that did not exist on the assessment date. While it is tempting to simply subtract \$6700 (the value that the Assessor gave the deck), that might distort Ms. Lambright’s opinion. Ms. Lambright gave the most weight to her conclusions under the sales-comparison approach. Her appraisal does not say how much the deck contributed to the property’s overall value under that approach. And Mr. Germanson did not introduce any other evidence to show the deck’s contributory value.



**Conclusion**

- 16. Mr. Germanson made a prima facie case for reducing his parcels' assessments. The Assessor failed to impeach or rebut Mr. Germanson's evidence. The Board therefore finds for Mr. Germanson.

**Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the off-lake parcel's assessment should be changed to \$46,200, and the lakefront parcel's assessment should be changed to \$412,000.

ISSUED: May 12, 2009

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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>>