

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

**Petition Nos.:** 43-016-11-1-5-00020  
43-016-11-1-5-00021  
43-016-11-1-5-00022  
**Petitioners:** R. Steven & Delores M. Hearn  
**Respondent:** Kosciusko County Assessor  
**Parcel Nos.:** 2972600724  
2972600725  
2970302170  
**Assessment Year:** 2011

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

**Procedural History**

1. Steven and Delores Hearn filed three Form 130 petitions challenging the March 1, 2011 assessments for the above-referenced parcels. On October 20, 2011, the Kosciusko County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination. The PTABOA lowered the assessment on one parcel, but made no change to the other two assessments.
2. The Hearn then timely filed three Form 131 petitions with the Board. They elected to have the appeals heard under the Board’s small claims procedures.
3. On October 31, 2012, the Board held an administrative hearing on the three petitions through its designated administrative law judge, Jennifer Bippus (“ALJ”).
4. The following people were sworn in and testified:
  - a) For the Hearn: R. Steven Hearn
  - b) For the Assessor: Laurie Renier, Kosciusko County Assessor  
John Beer

Jack C. Birch appeared as the Assessor’s Counsel.

**Facts**

5. The Hearn use the three parcels together as a single property. Two of the parcels are vacant land and the third contains a single-family home. The property is located on Oswego Lake at 161 EMS T26 LN in Leesburg.

6. Neither the ALJ nor the Board inspected the property.

7. The PTABOA determined the following values for the subject property:

<b>Parcel No.</b>	<b>Land</b>	<b>Improvements</b>	<b>Total</b>
2972600724	\$315,900	\$0	\$315,900
2972600725	\$65,300	\$347,800	\$413,100
2970302170	\$36,000	\$0	\$36,000
<b>Total</b>			\$765,000

8. At the Board's hearing, the Hearn's requested a total value of \$600,000.

### **Summary of Parties' Contentions**

9. The Hearn's evidence and contentions:

- a) The Hearn's offered an appraisal report from Gloria Ostrowski, a certified appraiser, who estimated the value for two of the three subject parcels at \$600,000 as of February 14, 2011. Ms. Ostrowski certified that she prepared her appraisal in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Hearn testimony; Pet'rs Ex. 1.*
- b) Ms. Ostrowski applied the cost and sales-comparison approaches to value. In her cost-approach analysis, Ms. Ostrowski estimated the property's value at \$816,524, which included a site value of \$360,000. For her sales-comparison analysis, Ms. Ostrowski used five sales from Lake Tippecanoe and one listing from Lake Webster. Ms. Ostrowski adjusted each property's sale price for various ways in which it differed from the property she appraised. For example, she adjusted each price to account for the fact that the sold property was smaller than the two parcels she appraised, which were a combined 1.061 acres. Those site adjustments ranged from \$5,100 to \$9,310. Ms. Ostrowski also adjusted sale prices to account for differences in quality of construction, but she did not make any adjustment to account for differences in design. Similarly, because Ms. Ostrowski viewed all of the homes as being in good condition, she did not make any condition-related adjustments. *Pet'rs Ex. 1.*
- c) In practicing law, Mr. Hearn has sold property and has had clients who sold property. He has also handled estates on Lake Tippecanoe. Mr. Hearn therefore believes that he has a good grasp of property values in the county. In his professional opinion, properties on Lake Oswego sell for less than properties on Lake Tippecanoe. *Hearn testimony.*
- d) Mr. Hearn found two very comparable properties that sold at auctions in 2012. The first sale involved a beautiful property with 200 feet of lake frontage across the lake from the subject property. Although the property has 104 more feet of lake frontage than the subject property, it sold for only \$510,000 with no reserve. The second sale involved a choice property with 70 feet of frontage on Lake Tippecanoe, a full lake

view, and an out lot in back. It is located right around the corner from the subject property and sold for only \$345,000. While the Assessor questioned the validity of using auction sales to determine a property's market value, Mr. Hearn believes that auctions are the best way to get buyers and sellers together. Also, while the sales were from 2012, property values have remained low and have not fluctuated since 2008. *Hearn testimony; Pet'rs Exs. 4-5.*

- e) Although the Assessor's witness, John Beer, prepared a report attributing 99 feet of actual lake frontage to the two parcels that Ms. Ostrowski appraised, Mr. Hearn's survey does not support that conclusion. Similarly, Mr. Beer attributed 22 feet of effective lake frontage to one of the Hearn's parcels. But that parcel includes a portion of Out Lot 1 that comes to a point and therefore has no lake frontage.<sup>1</sup> Indeed, if the neighbors on either side of the Hearn's were to install piers, the Hearn's would be left with very little useable space along the lake. *Hearn testimony; Pet'rs Exs. 3, 7.* Even Mr. Beer agreed that piers can be a problem, and he testified that piers are limited in length for that reason. *See Beer testimony.*

10. The Assessor's evidence and contentions:

- a) The Assessor called John Beer as a witness. Mr. Beer is a certified residential appraiser who has appraised Kosciusko County lake properties since 1991. Mr. Beer critiqued a few aspects of Ms. Ostrowski's appraisal. First, Ms. Ostrowski used acreage instead of lake frontage as the unit for her site adjustments. Actual lake frontage is significant to realtors and appraisers in evaluating land value. Based on Mr. Beer's review, 90% of listings for Lake Tippecanoe properties referred to the listed property's lake frontage. Thus, when evaluating lakefront properties, it is more common to use actual or effective lake frontage instead of acreage as a unit of adjustment. *Beer testimony.*
- b) Ms. Ostrowski used a rate of \$10,000 per acre for her adjustments, which Mr. Beer believed was low for lakefront property. The subject property is much larger than any of Ms. Ostrowski's comparables. Depending on the portion of the lake, a more reasonable adjustment would be \$4,000 to \$6,000 per front foot. The subject land was assessed in the range of \$3,500 - \$4,000 per front foot. The extra frontage should therefore be adjusted by at least \$4,000 per foot. All but one of Ms. Ostrowski's comparables has significantly less lake frontage than the subject property. If Ms. Ostrowski had used average front foot values, she would have adjusted most of her site values in the \$100,000 range. *Beer testimony; Resp't Ex. 2; Pet'rs Ex. 1.*
- c) To illustrate the significance of proper site adjustments in valuing lakefront property, Mr. Beer pointed to five sales, which he described as a portion of the "extraction process" relating to "Plain Township/Tippecanoe Lakefront." *Resp't Ex. 2.* The

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<sup>1</sup> The witnesses did not give a parcel number for that tax parcel. Mr. Hearn generally referred to "Out Lot 1." *See Hearn testimony.* But it appears that the actual tax parcel to which the Assessor attributed 22 feet of effective frontage—parcel 2970302170—includes only part of what the Hearn's survey identifies as "Out Lot 1." *See Pet'rs Ex. 6B, Form 115 determination for parcel 2970302170 (giving the following legal description: "Pt O/L 1 Brocks SD Oswego Lake.") (emphasis added); Pet'rs Ex. 7.*

- extraction process involves taking the sale price of an improved lot, subtracting the assessed value of improvements to get a land value, and then dividing that land value by the lot's effective frontage to come up with a front-foot rate. The extracted land values from the five sales ranged from \$3,856 to \$8,799 per front foot, with a median of \$4,907 and an average of \$5,383. According to Mr. Beer, those extracted land values support the base rate used to assess land in the subject property's neighborhood.
- d) The five sales also show that for lakefront properties, most of the value is in land. In those sales, the median land-to-improvement value ratio was 68%. That fits in with Mr. Beer's experience for Kosciusko County's three major lakes, in which land value accounts for anywhere from 50% to 80% of a property's overall value. *Beer testimony; Resp't Ex. 2.*
  - e) Second, Ms. Ostrowski did not appropriately adjust sale prices to account for the subject home's comparatively better design and construction quality. Mr. Beer offered color photographs of all six of Ms. Ostrowski's comparable homes, which he claimed illustrate his point. In Mr. Beer's view, only the home on Comparable 3 could be considered to be the same quality as the subject home. Mr. Beer's photograph for Comparable 5 shows the home that existed when that property sold. The new owner demolished the home and built a new one in its place. Thus, Comparable 5 should be viewed as a bare land sale. *Beer testimony; Resp't Ex. 2.*
  - f) Third, Ms. Ostrowski did not adjust any of her comparable properties' sale prices to account for the subject home's relatively superior condition. Yet photographs from published listings for those properties show that a few of the homes are in significantly worse condition than the subject home. *Beer testimony; Resp't Ex. 2.*
  - g) Finally, Ms. Ostrowski's appraisal report lists only two of the three parcels on appeal. Ms. Ostrowski does not mention the triangular parcel with one corner touching the lake (parcel 2970302170). That parcel has 22 feet of effective frontage. Ms. Ostrowski estimated a site value of \$360,000 for the two parcels referenced in her report. Adding the extra 22 feet of frontage would change that value to \$443,000. *Beer testimony; Resp't Ex. 2.*
  - h) As to Mr. Hearn's purportedly comparable sales, the Assessor noted that they occurred in 2012, while the assessment on appeal was for March 1, 2011. Also, those properties were sold at auction rather than marketed through a realtor. According to Mr. Beer, auction sales generally produce lower values than sales where properties have been marketed by local realtors. While certain types of property, like farmland, typically sell through auctions, lakefront properties sell through realtors. *See Beer testimony.*

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

- a) The Form 131 petitions,
- b) A digital recording of the hearing,

c) Exhibits:

- Petitioners Exhibit 1: Appraisal prepared by Gloria Ostrowski as of 2/14/11,  
Petitioners Exhibit 2: Form 131 petitions,  
Petitioners Exhibit 3: Survey of the subject property,  
Petitioners Exhibit 4: Auction brochure, property record card (“PRC”), and aerial map for comparable property A,  
Petitioners Exhibit 5: Auction brochure, sales disclosure form, and Beacon parcel summary for comparable property B,  
Petitioners Exhibit 6A: Form 115 determination and portion of PRC for parcel 29726000725,  
Petitioners Exhibit 6B: Form 115 determination for parcel 29720302170  
Petitioners Exhibit 6C: Form 115 determination for parcel 2972600724  
Petitioners Exhibit 7: Survey of the subject property with hand-drawn lines to show possible neighbor pier installments,
- Respondent Exhibit 1: Résumé of John Beer,  
Respondent Exhibit 2: John Beer’s “Critique of Gloria Ostrowski’s appraisal report on Steven and Delores Hearn’s property” with photographs of the subject property and Ms. Ostrowski’s comparable properties and land value extraction analysis for five sales,
- Board Exhibit A: Form 131 petitions,  
Board Exhibit B: Hearing notices,  
Board Exhibit C: Notice of appearance for Jack C. Birch,  
Board Exhibit D: Hearing sign-in sheet,

d) These Findings and Conclusions.

**Analysis**

Burden of Proof

12. Generally, 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 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. 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 Hearn made a prima facie case for reducing the assessments for two of the subject property's three parcels. The Board reaches this conclusion for the following reasons:
- a) Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance ("DLGF") has defined as the property's market value-in-use. To show a property's market value-in-use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs for the property under appeal, sales information for that property or comparable properties, and other information compiled according to generally accepted appraisal principles. In that vein, appraisers traditionally have used three methods to determine a property's market value: the cost, sales-comparison, and income approaches.
  - b) In any case, a party must explain how its evidence relates to the 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); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For March 1, 2011 assessments, the assessment and valuation dates were the same. *See* I.C. § 6-1.1-4-4.5(f).
  - c) The Hearn relied on two items: (1) sales prices from two auctions of nearby lakefront properties, and (2) Ms. Ostrowski's appraisal report. As to the auction sales, Mr. Hearn did very little to compare the sold properties to the subject property. *See Long*, 821 N.E.2d at 470-471 (explaining that the taxpayers needed to compare their property's characteristics to those of the purportedly comparable properties and explain how any differences affected the properties' relative market value-in-use). Also, both of the auction sales occurred more than a year after the relevant March 1, 2011 valuation date at issue in this appeal. Mr. Hearn did not explain how those sale prices related to the subject property's value as of March 1, 2011 other than to conclusorily assert that property values had not changed since 2008. Under those circumstances, the sale prices for the two properties have little or no probative weight.
  - d) Ms. Ostrowski's appraisal is a different matter. That appraisal is precisely the type of market-value-in-use evidence contemplated by the Manual and Tax Court. Ms. Ostrowski certified that she performed her appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). And she based her opinion on two generally accepted appraisal approaches—the sales-comparison and cost

approaches. Finally, Ms. Ostrowski estimated the property's value as of February 14, 2011, just a few weeks before the relevant March 1, 2011 valuation date.

- e) But, as the Assessor pointed out, Ms. Ostrowski purported to value only two of the three parcels that make up the subject property. The subject property consists of the following parcels, listed by two different parcel numbering systems:

Petition #	Parcel #	Local Parcel #
43-016-11-1-5-00020	43-07-12-300-420.000-016	2972600724
43-016-11-1-5-00021	43-07-12-300-187.000-016	2972600725
43-016-11-1-5-00022	43-07-12-300-418.000-016	2970302170

The first page of Mr. Ostrowski's appraisal report, however, shows only two parcel numbers: 43-07-12-300-187.000-016 (2972600725) and 46-07-12-300-420.000-016 (2972600724) and gives legal descriptions matching the descriptions contained on the Form 115 determinations for those two parcels. Ms. Ostrowski did not mention the third parcel, 43-07-12-300-418.000-016 (2970302170). The Form 115 determination for that parcel contains the following legal description: "*Pt OL 1 Brocks SD Oswego Lake.*" *Pet'rs Ex. 6B (emphasis added)*. The third parcel appears to be a portion of what the Hearn's survey refers to as "Out Lot 1." *See Pet'rs Ex. 7.*

- f) Thus, the Hearn's made a prima facie case for reducing the combined assessment for the two parcels that Ms. Ostrowski addressed in her appraisal but did not make a prima facie case for reducing the third parcel's assessment.
- g) The burden therefore shifted to the Assessor to impeach or rebut Ms. Ostrowski's appraisal. To that end, the Assessor's witness, Mr. Beer, challenged Ms. Ostrowski's valuation opinion along three lines: (1) Ms. Ostrowski's decision to use acreage rather than frontage to adjust site values, (2) her failure to appropriately adjust sale prices for differences in design and construction quality, and (3) her failure to adjust the sale prices of several homes that were in worse condition than the subject home.
- h) Mr. Beer's first point has some merit. Mr. Beer, who is a certified appraiser, persuasively testified that a lakefront property's relative amount of lake frontage likely influences the property's value more than its overall size does. Thus, the Board has at least some doubts about whether Ms. Ostrowski's site adjustments accurately reflect the full extent to which differences between the appraised parcels' site and the sites of her comparable properties affect the properties' relative values.
- i) That being said, Mr. Beer did not convincingly show the extent to which Ms. Ostrowski's less than ideal approach to site adjustments affected her valuation opinion. Mr. Beer used the neighborhood base rate for each comparable property to estimate the property's site value and then to quantify an adjustment that would make that site value comparable to the site value that Ms. Ostrowski estimated for the two parcels that she appraised. But with the possible exception of the subject property's neighborhood, Mr. Beer did not offer support for any of those neighborhood base rates.

- j) Mr. Beer did even less to support his criticisms of Ms. Ostrowski's adjustments, or lack thereof, for differences in design, construction quality, and condition. He offered nothing to explain how any differences in construction materials affected the relative values of the homes, much less to show that Ms. Ostrowski's adjustments were inaccurate. Similarly, while the photographs that Mr. Beer offered tend to show that the subject home had a higher-pitched roof and more varied roof lines than most of Ms. Ostrowski's comparables, he offered nothing to explain the extent, if any, to which those differences affected the homes' relative values. Finally, although Mr. Beer asserted that some of the comparable homes were in worse condition than the subject home, the photographs do not readily support that contention and Mr. Beer did not provide any specifics.
- k) Finally, the Assessor did not really offer her own evidence to independently value the subject property. At most, Mr. Beer pointed to the average and median extracted land values for five sales. But like Mr. Hearn, Mr. Beer did very little to compare the sold properties to the subject property or to explain how any relevant differences affected the properties' relative values. His sales data therefore has little or no probative value.
- l) In sum, although the Assessor impeached Ms. Ostrowski's valuation opinion to some extent, the Board still finds her opinion generally reliable. And the Assessor did not offer her own probative valuation evidence. Thus, the Board finds that the parcels covered in Ms. Ostrowski's appraisal (parcels 2972600724 and 2972600725) were assessed too high and that their combined true tax value was \$600,000.

### **Conclusion**

- 16. The Hearn's made a prima facie case for reducing the assessments for parcels 2972600724 and 2972600725. The Assessor failed to significantly impeach or rebut the Hearn's evidence. The Board therefore finds for the Hearn's and orders the Assessor to reduce the March 1, 2011 assessments for those two parcels to a combined total of \$600,000.
- 17. But the Hearn's failed to make a prima facie case for reducing parcel 2970302170's assessment. The Board therefore finds for the Assessor and orders no change to that parcel's March 1, 2011 assessment.

### **Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now orders that the subject parcel's assessments be changed as set forth above.



ISSUED: April 10, 2013

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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>>.