

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

**Petition:** 74-016-14-1-5-10122-15  
**Petitioners:** Bruce and Kathy Utterback  
**Respondent:** Spencer County Assessor  
**Parcel:** 74-18-10-200-0001.011-016  
**Assessment Year:** 2014

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

**Procedural History**

1. The Petitioners, Bruce and Kathy Utterback, sought review of their assessment with the Spencer County Property Tax Assessment Board of Appeals (“PTABOA”). On March 17, 2015, the PTABOA issued its determination denying the Petitioners relief. The Petitioners responded by timely filing a Form 131 petition with the Board. They elected to proceed under our small claims procedures.
2. On February 17, 2016, our designated administrative law judge, Gary Ricks, held a hearing. Neither he nor the Board inspected the property.
3. The following people testified under oath: the Petitioners; Samuel A. Monroe, an employee of the Respondent’s reassessment vendor; and Jane McGinnis, Spencer County Assessor.
4. The PTABOA determined the following values:

Land: \$29,200	Improvements: \$1,000	Total: \$30,200
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5. The Petitioners asked for the following assessment:

Land: \$2,000	Improvements: \$1,000	Total: \$3,000
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6. The official record of this hearing consists of the following:
  - a. A digital recording of the hearing.
  - b. Exhibits:

Respondent Exhibit A: 2009-2014 Residential River Camp Sales,

Respondent Exhibit B: GIS map with sales and appeals plotted for reference,  
 Respondent Exhibit C: Property record card (“PRC”) for parcel # 74-18-09-100-002.002-016,  
 Respondent Exhibit C-1: Sales disclosure for parcel # 74-18-09-100-002.002-016,  
 Respondent Exhibit D: PRC for parcel # 74-18-09-100-002.003-016,  
 Respondent Exhibit D-1: Sales disclosure for parcel # 74-18-09-100-002.003-016,  
 Respondent Exhibit E: PRC for parcel # 74-18-09-100-002.005-016,  
 Respondent Exhibit E-1: Sales disclosure for parcel # 74-18-09-100-002.005-016,  
 Respondent Exhibit F: PRC for parcel # 74-18-09-100-002.007-016,  
 Respondent Exhibit F-1: Sales disclosure for parcel # 74-18-09-100-002.007-016,  
 Respondent Exhibit G: PRC for parcel #74-18-09-100-002.009-016,  
 Respondent Exhibit G-1: Sales disclosure for parcel # 74-18-09-100-002.009-016  
 Respondent Exhibit H: PRC for parcel # 74-18-09-100-002.011-016,  
 Respondent Exhibit H-1: Sales disclosure for parcel # 74-18-09-100-002.011-016,  
 Respondent Exhibit I: PRC for parcel # 74-18-09-100-002.011-016,  
 Respondent Exhibit I-1: Sales disclosure for parcel # 74-18-09-100-002.011-016,  
 Respondent Exhibit J: PRC for parcel # 74-18-09-100-002.014-016,  
 Respondent Exhibit J-1: Sales disclosure for 74-18-09- 100-002.014-016,  
 Respondent Exhibit K: PRC for parcel # 74-18-09-100-002.015-016,  
 Respondent Exhibit K-1: PRC for parcel # 74-18-09-100-002-016-016,  
 Respondent Exhibit K-2: PRC for parcel # 74-18-09-100-002.017-016,  
 Respondent Exhibit K-3: PRC for parcels #74-18-09-100-002  
 Respondent Exhibit L: PRC for parcel # 74-18-10-200-001.001-016,  
 Respondent Exhibit L-1: Sales disclosure for parcel # 74-18-10-200-001.001-16,  
 Respondent Exhibit M: PRC for parcel # 74-18-10-200-034.000-016,  
 Respondent Exhibit M-1: Sales disclosure for parcel # 74-18-10-200-034.000-016,  
 Respondent Exhibit N: PRC for the subject property.<sup>1</sup>

Board Exhibit A: Form 131 petition with attachments,  
 Board Exhibit B: Hearing notice,  
 Board Exhibit C: Hearing sign-in sheet.

c. These Findings and Conclusions

**Petitioners’ Contentions**

7. The subject property was assessed for a total of \$3,000 in 2013. Both the assessment and the Petitioners’ taxes jumped by almost 1,000% for 2014. The property is not worth anything close to the increased value. *B. Utterback testimony and argument.*
8. The Petitioners use the property solely for recreational purposes. It abuts the Ohio River and floods often. Because of the flooding, the Petitioners typically can only use the

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<sup>1</sup> The Petitioners did not offer any exhibits.

property for two or three months per year, and the Army Corps of Engineers will not let them build a home on it. Under those circumstances, classifying the property as residential is inaccurate. *B. Utterback argument.*

9. The Respondent used sales of other river camps to value the property. But those sales were inflated because the buyers had rented the properties for years and would pay anything to buy them. Also, they are on higher ground and do not flood as severely as the subject property. *B. Utterback and K Utterback testimony.*

### **Respondent's Contentions**

10. The property is a .942-acre lot located at Country Road 290 South in Enterprise, Indiana. It is near other "river camps" that are used seasonally. The only improvement on the property is a 22' x 20' unenclosed canopy. *Monroe testimony.*
11. The assessment increased when the Respondent changed the classification of river camps in the area from agricultural to residential. Even though the Petitioners cannot build a home on the property, the residential classification better describes it than the available alternatives: commercial/industrial or agricultural. *Monroe testimony.*
12. The Respondent determined the land base rate for river camps by analyzing sales. In 2010, a large tract of land near the subject property was subdivided into smaller parcels known as "Island Time River Camps." Several of those parcels sold between 2010 and 2014 for prices ranging from \$21,815/acre to \$39,138/acre, with an average of \$31,926/acre. Based on those sales, the Respondent used a base rate of \$31,000/acre to assess river camps in the area, including the subject property. *Monroe testimony, Resp't Exs. A-N.*

### **Burden of Proof**

13. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor in specified circumstances, including where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property. I.C. § 6-1.1-15-17.2(a) and (b). If the assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level or to another amount shown by probative evidence. *See I.C. § 6-1.1-15-17.2(b).*
14. The subject property's assessment jumped from \$3,000 in 2013 to \$30,200 in 2014, an increase of far more than increased 5%. The Respondent acknowledged she had the burden of proof.

## Analysis

15. Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-6(c). The DLGF’s 2011 Real Property Assessment Manual defines true tax value as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to Uniform Standards of Professional Appraisal Practice often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
16. Regardless of the method used, a party must explain how its evidence relates to 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. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2014 assessments, the valuation date was March 1, 2014.
17. The Respondent relied on the sale prices for several nearby river camps, which it used to set the base rate for the subject property’s assessment neighborhood. For sales data to be probative, however, the sold properties must be comparable to the property under appeal. The party offering the data must identify the characteristics of the property under appeal and explain both how those characteristics compare to the characteristics of the sold properties and how any relevant differences affect values. *Long*, 821 N.E.2d at 471.
18. The Respondent compared the other river camps to the subject property in terms of some relevant characteristics. For example, she offered an aerial map showing the properties are all located near each other along the river. Similarly, they all appear to be regularly shaped, and they are all used as river camps. But the Respondent did not even attempt to explain how relevant differences, such as differences in elevation and proneness to flooding, affected the properties’ relative values. Also, five of the twelve sales from the Respondent’s base-rate analysis occurred on or before October 20, 2011, and the Respondent did little to explain how those sale prices related to the March 1, 2014 valuation date.
19. For those reasons, the Respondent failed to make a prima facie case that the assessment was correct. The Petitioners are entitled to have the assessment reduced to its 2013 level of \$3,000.

## **Final Determination**

In accordance with these findings of fact and conclusions of law, the 2014 assessment must be changed to \$3,000.

Issued: May 17, 2016

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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

### **-APPEAL RIGHTS-**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 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 Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.